UPDATE ON TAX CERTAINTY

IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors

July 2018

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Please cite this publication as:
IMF/OECD (2018), *OECD/IMF Report on Tax Certainty - 2018 Update*, Paris.
www.oecd.org/tax/tax-policy/g20-report-on-tax-certainty.htm

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Executive summary

We emphasize the effectiveness of tax policy tools in supply-side structural reform for promoting innovation-driven, inclusive growth, as well as the benefits of tax certainty to promote investment and trade and ask the OECD and IMF to continue working on the issues of pro-growth tax policies and tax certainty.

G20 Leaders, Hangzhou Summit Communique, September 2016

1. In response to the call from G20 Leaders, the OECD secretariat and IMF staff produced a comprehensive report on tax certainty (OECD/IMF Report on Tax Certainty, the "2017 Report"). This report identified the sources of uncertainty in tax matters and the various tools that taxpayers and governments could use to reduce it from the perspective of businesses and tax administrations in G20 and OECD countries. The G20 has asked for an update of the 2017 Report to be delivered in 2018.

2. The 2017 report highlighted that tax uncertainty creates a risk of discouraging investment. The OECD survey, for example, suggests that businesses find tax certainty in corporate tax and VAT important for investment and location decisions. The major drivers of tax uncertainty for businesses relate to uncertain tax administration practices, inconsistent approaches of different tax authorities in applying international tax standards, and issues associated with dispute resolution mechanisms. To enhance tax certainty, the report identifies a set of concrete and practical approaches and solutions. These include improving the clarity of legislation, increasing predictability and consistency of tax administration practices, effective dispute prevention, and robust dispute resolution mechanisms. While the 2017 report focused on tax certainty in G20 and OECD countries, it was recognized that it is important also for developing countries, even though the tools to enhance tax certainty in those countries would need to be assessed against their weaker enforcement and lower implementation capacities.

3. This update discusses what has happened since the 2017 report. It elaborates first on developments in OECD and G20 countries. Progress is reported on, for example, implementation of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project and developments in dispute resolution, such as mutual agreement procedures (MAP) and arbitration. The update also reports on new initiatives, such as the OECD initiatives to mitigate uncertainty in tax treaties, the IMF initiative to address international taxation issues in its surveillance, developments in the treaty relief and compliance enhancement (TRACE) project, and the Forum on Tax Administration (FTA) initiative to improve risk assessment and audit processes. Finally, some initiatives are discussed that were not explicitly mentioned in the 2017 report, but which do matter for tax certainty, such as exchange of information, country-by-country reporting and OECD International VAT/GST Guidelines.

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4. The importance of tax certainty for developing countries is reflected in some of the more granular data obtained from the OECD business survey of 2017. Moreover, a workshop in Tanzania in 2017 highlighted the importance of tax certainty for governments in developing countries. Several initiatives are discussed in this update that aim, among others, to enhance tax certainty in developing countries, such as toolkits by the Platform for Collaboration on Tax, Medium-Term Revenue Strategies, the wide array of IMF technical assistance in revenue mobilization (tax policy design, legal drafting, and tax administration), progress made with the tax administration diagnostic assessment tool (TADAT) and the joint OECD/UNDP program on Tax Inspectors Without Borders (TIWB).

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1. Introduction

5. The work conducted by the IMF and OECD in 2017 on tax certainty (the "2017 Report") reflects the concerns of taxpayers and governments in G20 and OECD countries on the issue, especially in the context of international taxation. These concerns come amid the spread and emergence of new business models and increased internationalization of business activities; heightened concern with aggressive tax planning; some fragmented and unilateral policy decisions; certain court decisions; and updates to the international tax rules, such as through the G20/OECD Base Erosion and Profit Shifting (BEPS) Project.

6. The 2017 report explores various dimensions of tax certainty, such as the nature of tax uncertainty, its main sources, and the effects on business decisions. It also outlines a set of concrete and practical approaches to help policymakers and tax administrations shape a more certain tax environment. These include issues in tax policy and legislation, such as development of a robust principles-based tax law design coupled with measures to improve clarity and reduce complexity. In tax administration, it discusses timely issuance of rulings and technical interpretations, proactive taxpayer engagement and education to improve understanding of the legislation and its requirements. In the international tax context, the 2017 report outlines approaches to enhance tax certainty through dispute prevention (such as cooperative compliance programs, advance pricing agreements (APAs), and simultaneous and joint audits), robust and effective international dispute resolution mechanisms such as mutual agreement procedures (MAP) and arbitration, and consistent implementation of international standards and guidance.

7. The present report provides an update of the 2017 report in two dimensions: first, it reports on developments in the approaches in G20/OECD countries to enhance tax certainty. The update partly mirrors the approaches that were identified in the 2017 report, such as progress on implementation of the BEPS action items, and progress in dispute prevention and dispute resolution. Other and new initiatives are also discussed, such as tax transparency initiatives and initiatives related to IMF surveillance on international taxation.

8. A second component of this update relates to the issue of tax certainty in developing countries. The 2017 report focused on tax certainty in G20 and OECD countries. Yet, it did recognize that tax certainty is important for developing countries as well, even though the approaches to enhance it might differ due to weaker enforcement and implementation. This report first identifies some of the distinct issues related to tax certainty in developing countries, based on specific results from the 2017 OECD survey (see also appendix A) and a workshop conducted in Tanzania. It then elaborates on initiatives that, among others, contribute to enhancing tax certainty in developing countries, such as toolkits developed by the Platform for Collaboration on Tax, Medium-Term Revenue Strategies, the wide array of IMF technical assistance in revenue mobilization, the tax administration diagnostic assessment tool (TADAT) and the joint OECD/UNDP program on tax inspectors without borders (TIWB).

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2. Update on tax certainty in G20/OECD countries

9. The 2017 Report identifies several practical tools for enhancing tax certainty in G20 and OECD countries. These include issues in tax policy design and legislation as well as issues in tax administration (such as avoiding and resolving disputes). More specifically, the following list of possible areas of enhancement was identified in the 2017 report (p.41-60):

- Addressing complexity;
- Improving clarity;
- Anti-avoidance rules;
- Improved withholding tax collections and treaty relief procedures.
- Effective domestic dispute resolution regimes;
- Tax administration and programs for resolving international tax disputes;
- Mandatory disclosure;
- Advance pricing agreements;
- Simultaneous and joint audit;
- Mutual agreement procedure;
- Arbitration;

10. This section provides an update on the developments in a selection of these areas, with a focus on issues related to international taxation. It starts with measures in tax design and implementation (subsection 2.1). This subsection also elaborates briefly on some developments in areas that were not explicitly discussed in the 2017 report, but which are important for tax certainty, such as country-by-country reporting, exchange of information, and the OECD International VAT/GST Guidelines. Then, it analyses measures to prevent and resolve tax disputes (subsection 2.2).

2.1. Rule design and implementation

11. Tax certainty calls for clear and simple rules and regulations that minimise disputes. In the area of international taxation, several ongoing developments contribute to enhancing tax certainty, such as a consistent implementation of BEPS measures through the BEPS Inclusive Framework on which a brief update is provided. The OECD is also working specifically to address uncertainty in the application of tax treaties and is supporting the TRACE project. Finally, developments will be discussed in the minimum BEPS standard on country-by-country (CbC) reporting, automatic exchange of information, and implementation of the OECD International VAT/GST Guidelines. The IMF has a well-developed program of providing technical assistance (TA) and training to IMF member countries, which contributes to tax certainty. This includes drafting new laws or amendments to existing laws, which is discussed in more detail in subsection 3.5 (see also Box 2). In both advanced and developing countries, issues of international taxation and tax certainty are also dealt with in IMF surveillance on which this section reports.

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2.1.1. Combatting Tax Avoidance

12. In November 2015, two years after the G20 Leaders endorsed the ambitious OECD/G20 Action Plan on BEPS, the OECD/G20 BEPS package of 15 measures to tackle tax avoidance was agreed by all OECD and G20 countries. It was designed to stop countries and companies from competing on the basis of a lack of transparency, artificially locating profit where there is little or no economic activity, or the exploitation of loopholes or differences in countries' tax systems. The OECD/G20 BEPS Project is focused on preventing double non-taxation without creating double taxation and it was meant to be as inclusive as possible so that all countries and jurisdictions can benefit from a multilateral approach to tackling tax avoidance and harmful tax practices.

13. The ongoing peer-review monitoring of the BEPS minimum standards by the OECD/G20 Inclusive Framework on BEPS and its 116 member jurisdictions will help ensure consistent implementation of these international standards. The Tax Certainty 2017 Report noted that ensuring the consistent adoption, interpretation and implementation of these minimum standards could increase certainty in the international tax system, in particular with regard to instances of double taxation. Crucially, the past year has seen delivery of the first results of the peer reviews of the BEPS minimum standards.

Box 1. Peer review results of the BEPS minimum standards

- **Action 5 – preferential tax regimes**: **175 regimes have been considered by the OECD Forum on Harmful Tax Practices (FHTP)** against the standard for harmful tax regimes, of which 31 have already been modified; 81 require legislative changes which are in progress; 47 do not pose any BEPS risks in practice; 4 have harmful or potentially harmful features and 12 regimes are still under review.
- **Action 5 – tax rulings**: **Over 17 000 rulings have already been identified** and information is now being exchanged between Inclusive Framework members, on the key issues contained in such rulings, which can then be used by tax authorities for risk assessment.
- **Action 13 – Country-by-Country reporting (CbC reporting)**: **The first annual peer review report, released in May 2018, contains a comprehensive examination of the implementation of the minimum standard by 95 jurisdictions**, focusing mainly on their domestic legal and administrative frameworks. The second annual peer review, covering all members of the Inclusive Framework, was launched in April 2018 and will focus on the exchange of information aspects of CbC reporting, as well as compliance with the confidentiality and appropriate use conditions.
- **Action 14 – improvement of mutual agreement procedures (MAP)**: **21 jurisdictions have already been subject to peer reviews with reports published** that identify areas for improvement, 16 are currently underway, and 35 more have been scheduled through December 2019. In addition, MAP country profiles for more than 80 countries have been published to increase transparency of the MAP processes in those countries.

14. Additionally, the FHTP has considered a number of possible ways for jurisdictions to promote tax certainty, focussing on measures to ensure communication and consultation with taxpayers, particularly around rulings programs, noting that the appropriateness and effectiveness of the proposals to assist with tax certainty will depend on each jurisdiction's legal and administrative framework, as well as the approach to tax compliance in the jurisdiction and the need to effectively implement the BEPS minimum standards.

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Box 2. IMF technical assistance and surveillance on anti-avoidance rules

The IMF supports its member countries with the design and drafting of anti-avoidance rules (below), including by reviewing the consistency of their existing rules against international standards in the context of IMF surveillance (see subsections 2.17 and 3.5).

The IMF also prepares a series of Tax Law IMF Technical Notes that are designed to provide information and analysis on comparative solutions to topical problems in tax law design and implementation. This has relevantly included a technical note on the design and drafting of a general anti-avoidance rule (GAAR) and guidance in relation to its application, which is also applied when delivering technical assistance.[1] The success of a GAAR and the level of tax certainty achieved is often dependent on it being applied by the tax administration in a measured, even handed and predictable way, particularly given that a GAAR is necessarily less rules-based by legal design and more discretionary in its application.

The tax law design and implementation issues which are dealt with by the Tax Law IMF Technical Notes are often identified in the course of providing TA to member countries, but selected because they are of relevance to a wider audience so as to warrant publication of a technical note. The technical notes are published regularly, and their target audience includes tax law drafters and legal design officers within the ministries of finance (MOF) and tax administrations of IMF member countries, as well as the tax law community more generally (e.g., public and private sector entities, academics, think tanks etc.). The notes provide sample legislative provisions in order to promote consistency, international comparability, and therefore enhance tax certainty.

2.1.2. Tax treaties

15. The OECD is working on a project that aims to address tax uncertainty related to court cases. The project will identify the most disputed articles of the OECD Model Tax Convention in courts and in the MAP cases (other than transfer pricing cases). Through a review of those court and MAP cases, it aims to provide additional Commentary and/or guidance for tax administrations and taxpayers to ensure a consistent tax treatment by tax authorities and courts.

[1] Waerzeggers, C. and C. Hillier, 2016, "Introducing a General Anti-Avoidance Rule (GAAR)," *Tax Law IMF Technical Note*, Vol.1(1), IMF Legal Department.

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Box 3. OECD's project on the Principal Purposes Test

Another OECD project intends to provide more predictability in the interpretation and application of the Principal Purposes Test (PPT).

The PPT was developed as part of Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances) of the OECD/G20 BEPS Project and has been introduced in the 2017 OECD Model Tax Convention, in bilateral treaties and in the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI).

The implementation of PPT rules in bilateral treaties, while effective in reducing aggressive tax planning, is perceived as potentially increasing tax uncertainty. Various stakeholders have in fact expressed concerns on the implementation of the PPT. These concerns are expressed notwithstanding the **extensive work already carried on by the OECD on tax conventions and related questions on the development on Commentary on the application of the PPT or on the work carried on the possible inadvertent effects of the PPT on the treaty entitlement of non-collective investment vehicles (CIVs) funds**.[2]

To increase tax certainty in the application of the PPT, the OECD has formed an informal group of interested delegates that would explore various areas where more tax certainty could be provided in the PPT, including best practices in the area of the general anti-avoidance rules and would report back with recommendations.

2.1.3. Treaty Relief and Compliance Enhancement

16. The Treaty Relief and Compliance Enhancement (TRACE) project will standardise the system for claiming withholding tax relief at source on portfolio investments through a self-contained set of agreements and forms to be used by any country that wants to implement the so-called Authorised Intermediary ("AI") system. It removes the administrative barriers that currently affect the ability of portfolio investors, including investors making use of pooled investment vehicles, to effectively claim the reduced rates of withholding tax to which they are entitled pursuant to tax treaties or to domestic law of the country of investment. Moreover, it minimises administrative costs for all stakeholders and enhances the ability of both source and residence countries to ensure proper compliance with tax obligations.

17. TRACE is designed to enhance tax certainty for:

- portfolio investors, by removing the administrative barriers that currently affect their ability to effectively claim treaty benefits with respect to investments held through custodians;
- investors making use of pooled investment vehicles (whether collective investment vehicles (CIV) or non-CIV funds), by addressing administrative challenges that may be associated with demonstrating their eligibility for treaty benefits and applying anti-abuse provisions (including those adopted under Action 6 of the OECD/G20 BEPS Project);
- governments, by improving compliance and reducing the risk of fraud and abuse related to refund systems.

18. The OECD is assisting interested countries with the implementation of TRACE.

[2] Para. 169-191, Commentary to Article 29, OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing.

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2.1.4. Country-by-Country Reporting

19. Under the Action 13 BEPS Minimum Standard, jurisdictions have committed to foster tax transparency by requesting the largest multinational enterprise groups (MNE Groups) to provide the global allocation of their income, taxes and other indicators of the location of economic activity. This aims to boost tax authorities' risk-assessment capabilities. This can help reduce tax uncertainty for tax administrations.

20. A peer review process to ensure a consistent and timely implementation is proceeding in stages with three annual reviews in 2017, 2018 and 2019. They focus on three key areas: the domestic legal and administrative framework, the exchange of information framework, and the confidentiality and appropriate use of CbC reports. The first review on the domestic legal and administrative framework contained 95 jurisdictions.

21. More than 60 jurisdictions have now implemented an obligation for relevant MNE Groups to file a CbC report, of which more than 45 have completed all necessary domestic processes and have the full legal framework in place in respect of fiscal year 2016 (in addition, around 10 other jurisdictions have allowed MNE Groups to voluntarily file a CbC report in respect of fiscal year 2016 in the absence of legislation applying for such year). As a result, legislation is in place for around 95% of the groups expected to be affected by CbC Reporting requirements around the world and the first exchanges of CbC reports will take place in June 2018.

22. In order to achieve consistency and efficiency at international level, the OECD has developed guidance on interpretive questions, thus providing more clarity and certainty for tax administrations and taxpayers for the implementation of CbC Reporting requirements. It has also developed a series of guidance in relation to the appropriate use and effective use of CbC information, as well as handbooks on effective implementation and effective tax risk assessment, which will be of particular use for developing countries.

2.1.5. Automatic Exchange of Information

23. After maintaining an intense focus for several years to ensure delivery of the widespread commitments to the new OECD/G20 standard in the automatic exchange of financial account information (the AEOI Standard), the first exchanges took place in September 2017 amongst nearly 50 jurisdictions. This was a momentous occasion, with tax authorities currently utilising this new tool to strengthen their enforcement capacity—and reducing tax uncertainty. The next tranche of over 50 jurisdictions are now finalising their preparatory work with a view to commencing exchanges in September 2018. Whilst most jurisdictions are on track and have successfully met the implementation targets, some are experiencing delays: these jurisdictions are being closely monitored and offered assistance. Full and timely implementation will remain a core priority for the Global Forum over the coming months and further reports on the delivery of the commitments will be provided.

24. As the evidence of the benefits delivered through AEOI continue to emerge, the interest of developing countries is growing. At its plenary meeting, which took place on 15-17 November 2017 in Yaoundé (Cameroon), the Global Forum adopted the Plan of Action for Developing Country Participation in AEOI which draws a pathway for developing countries by offering a structured step-by-step approach to implementing the standard. Recognising that significant resources are required to support developing countries' efforts through the provision of technical assistance, the Global Forum plenary called on international development agencies, governments and other potential donors to support this agenda. With more than a dozen developing countries already receiving assistance under the step-by-step approach, this call for support is now also addressed to the G20 countries.

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25. Many barriers which undermined tax transparency and prevented an effective exchange of information for tax purposes have now been removed. However, the challenges which still lie ahead should not be underestimated. In 2018, the Global Forum will focus on ensuring the full and timely delivery of the commitments to commence exchanges under the AEOI Standard in 2018, carrying out assessments of the key modules of its implementation around the world, developing the framework for the full peer reviews of the effectiveness of AEOI implementation, and facilitating the participation of developing country members in this new standard.

26. In an effort to ensure effective implementation of the AEOI standard, the OECD has issued new model disclosure rules that require lawyers, accountants, financial advisors, banks and other service providers to inform tax authorities of any schemes they put in place for their clients to avoid reporting under the Common Reporting Standard (CRS) or prevent the identification of the beneficial owners of entities or trusts.

27. As the reporting and automatic exchange on offshore financial accounts pursuant to the CRS becomes a reality in over 100 jurisdictions this year, many taxpayers that held undeclared financial assets offshore have come clean to their tax authorities. It is estimated that by June 2018, jurisdictions around the globe have identified EUR 93 billion in additional revenue (tax, interest, penalties) as a result of voluntary compliance mechanisms and other offshore investigations put in place since 2009.

28. At the same time, there are still persons that, often with the help of advisors and financial intermediaries, continue to try hiding their offshore assets and fly under the radar of CRS reporting. The model rules target these persons and their advisers, by introducing an obligation on a wide range of intermediaries to disclose the schemes to circumvent CRS reporting to the tax authorities. The model rules also require the reporting of structures that hide beneficial owners of offshore assets, companies and trusts.

2.1.6. OECD International VAT/GST Guidelines

29. The OECD International VAT/GST Guidelines provide a set of internationally agreed principles on neutrality of the VAT/GST and on the design and operation of consistent rules for determining the place of taxation of cross-border transactions, focusing in particular on trade in services and intangibles, including digital supplies. Implementation of these principles helps clarify VAT/GST systems and thus contributes to tax certainty.

30. To date, over 50 jurisdictions, including the overwhelming majority of OECD and G20 countries, have adopted rules for the VAT/GST treatment of Business to Consumer (B2C) supplies of services and intangibles by foreign suppliers in accordance with these Guidelines. The OECD has expressed an ambition to step up its efforts to enhance certainty in the VAT/GST area by further intensifying the involvement of countries and jurisdictions worldwide in this work through its Global Forum on VAT. Moreover, it has developed implementation packages to promote greater consistency in the international application of VAT/GST, including to address new challenges posed by the digital economy (e.g. the "sharing economy").

31. Enhanced international administrative cooperation is important to ensure consistency in the VAT/GST treatment of international trade and investment. Existing instruments for mutual administrative cooperation (such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters; the OECD Model Tax Convention Article 26 (Information Exchange); and the OECD Model Agreement on Exchange of Information) can enhance consistency in the application of VAT/GST in the international context and to address issues of evasion and avoidance.

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2.1.7. IMF surveillance

32. The IMF undertakes country surveillance consisting of an ongoing process that culminates in regular (usually annual) comprehensive consultations with individual member countries. The consultations are known as "Article IV consultations" because they are required by Article IV of the IMF's Articles of Agreement. The IMF continues to give greater prominence to international tax issues in this surveillance, including in relation to tax certainty (Box 4). Complexity of tax legislation and frequency of tax law changes are commonly cited as sources of tax uncertainty for both taxpayers and tax administrations. This work draws on the IMF’s extensive TA experience with member countries at all levels of development. International tax issues are being assessed in Article IV consultations for 10 countries per year across all levels of development.

Box 4. Denmark - Tax certainty

Tax uncertainty was a concern among the business community—as in many other countries. It has been subject to a longstanding debate in Denmark, given that Denmark has historically been an early adopter of strong anti-avoidance rules.

Despite risks to tax certainty, various tax integrity or anti-avoidance rules were required in order to effectively counter tax avoidance practices and protect the integrity of the tax system. Denmark has a suite of anti-avoidance rules including a general anti-avoidance rule (or GAAR), various specific anti-avoidance rules (or SAARs), equivalent provisions to that of a GAAR or SAAR in tax treaties, as well as established judicial anti-abuse doctrines. Anecdotal evidence suggested that this had made the Danish tax system relatively more complex and uncertain for businesses when compared to other countries who have deferred adoption of new or tighter tax anti-avoidance rules, despite many of those rules being considered necessary to protect the local corporate income tax base.

Many of the stronger and more complex tax anti-avoidance rules that have been adopted early by Denmark now form part of the BEPS recommendations and the **EU’s Anti-Tax Avoidance Directive (ATAD).** Therefore, the Danish tax system could now benefit from relatively greater stability and predictability (and therefore reduced taxpayer compliance costs) when compared to other countries which need to implement more significant tax law reforms in order to comply with those measures.

Source: Denmark; Selected Issues; IMF Country Report (forthcoming)

2.2. Preventing and resolving international tax disputes

33. The 2017 report found that preventing and resolving tax disputes and improving the clarity and application of tax rules were two important ways in which tax certainty could be improved. Against this backdrop, the OECD is now moving forward on a comprehensive dispute resolution agenda. It is driven by the belief that prevention is better than cure and that ideally disputes should be resolved at the earliest point in time when information is readily available and positions have not yet become entrenched. There are several developments in this area, which are discussed in this section. The IMF has focused some of its TA program on examining the potential for the development of a regional approach to tax audits on the basis that multilateral approaches to audits contribute to improved tax certainty (Box 6). Moreover, the IMF’s Tax Administration Diagnostic Assessment Tool (TADAT) assesses, amongst other things, the effectiveness of a country’s tax dispute resolution framework. Results from recent assessments are discussed in this section.

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2.2.1. *Improving risk assessment and audit process*

34. Modern risk assessment tools and techniques, sometimes coupled with the cooperative compliance arrangements, allow for more effective identification of higher risk taxpayers or higher risk crosscutting issues where administrations may wish to focus more of their compliance resource. More information and increased transparency can then also be translated into earlier tax certainty. Building on this, the OECD is working to further improve the effectiveness of tax risk assessment for MNEs through:

- Improvements in risk assessment documentation (BEPS Action 13);
- Work to enhance mutual understanding of domestic risk assessments that may lead to greater convergence and exchange of information; and
- The International Compliance Assurance Programme (ICAP), a pilot for a multilateral approach to risk assessment and assurance.

35. At the audit stage, which should become more targeted through better risk assessment, the FTA has agreed to work further on two projects on Joint Audit and Compliance Risk Assessment as part of the wider set of work on enhancing tax certainty and improving compliance effectiveness. The aim of the project on risk assessment is to enhance mutual understanding between tax administrations of the different risk factors used by different countries. This may lead to greater convergence between countries over time as well as increase auditors' understanding of the wider international picture. The project on joint audits will examine the experience of tax administrations to date on the use of joint audits and whether and where improvements can be made to make them easier to undertake and to obtain the benefits sought by administrations and MNEs.

36. As a result of the BEPS Action 13 (Country-by-Country (CbC) reporting) package, tax administrations will soon be able for the first time to work from the same dataset to assess international tax risks posed by MNE groups in their jurisdictions. This creates an opportunity for tax administrations to explore ways to work multilaterally to achieve a robust and considered basis for risk assessing large MNE groups, deliver earlier tax certainty for groups wishing to be transparent and compliant as well as providing greater assurance for tax administrations.

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Box 5. International Compliance Assurance Programme

A number of FTA members have launched a pilot of the International Compliance Assurance Programme (ICAP). Participating tax administrations in the pilot are **Australia, Canada, Italy, Japan, the Netherlands, Spain, the UK and the US**. The ICAP pilot will use CbC reports and other Information to facilitate a coordinated risk assessment to help achieve earlier and stronger tax assurance.

The ICAP pilot will provide four key benefits to participating MNE groups and tax administrations:

- Fully informed and targeted use of CbC information;
- Efficient use of resources;
- A faster, clearer route to tax certainty; and
- Fewer disputes going into MAP.

Entry into the ICAP pilot involves an MNE group indicating to the tax administration in the jurisdiction where it is headquartered (the lead tax administration) which other jurisdictions it wishes to be included in a multilateral risk assessment.

Following agreement by the lead tax administration, the tax administrations in these jurisdictions will then be asked whether or not they wish to participate, taking into account factors such as:

- the presence of the group in their jurisdiction,
- its perceived risk profile,
- and the resources available.

An ICAP risk assessment will not cover all of an MNE group's tax issues but **will focus on those associated with transfer pricing, permanent establishments and any other material international issues agreed between the group and participating tax administrations.**

An ICAP risk assessment will begin when an MNE group willing to explain and secure its positions provides a package of documents, including its CbC report, master file and local file (or equivalent information), value chain analysis and tax reconciliations, which will be shared among participating tax administrations under existing tax information exchange agreements. This will be followed by a meeting involving the MNE group and the participating tax administrations to ensure a full and consistent understanding of the group's profile and activities.

An initial risk assessment will then be conducted by each participating tax administration. This may determine that the MNE group poses no or low risk in the relevant areas. If this is not the case, a more detailed and comprehensive risk assessment will be conducted, with the MNE group being kept informed via the lead tax administration. Following the conclusion of the risk assessment stage, a meeting will be held with the MNE group to discuss the outcomes of the assessment.

Where participating tax administrations conclude that an issue covered by ICAP represents no or a low tax risk, they will individually issue an assurance letter setting out these findings and providing multilateral certainty to the MNE group considered. The form of the assurance letter will vary by jurisdiction. The timeline for the ICAP will depend upon a number of factors, but in most cases the period from the initial meeting to the issuance of assurance letters should be within 12 months.

A multilateral assessment of specific **international** tax risks posed by each MNE group in the ICAP pilot will commence **during the first half of 2018 and is expected to be completed within a target timeframe of 12 months.**

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37. The IMF, in its technical assistance, deals frequently with ways to improving risk assessment and audit processes. One innovation in this regard is the regional approach to tax audits in the Caribbean (Box 6).

Box 6. Caribbean: Developing a regional approach to tax audits

The IMF has a new TA program to strengthen fiscal management in the Caribbean. A key element of this program is to examine the potential for the development of a regional approach to tax audits on the basis that multilateral approaches to audits contribute to improved tax certainty. The regional audit team will operate in the Caribbean region, with a particular focus on the Eastern Caribbean Currency Union (ECCU) members.

The motivation behind this initiative is to help build regional audit capacity, develop a regional approach to conducting audits, and identify the means to share the expertise gained. Many countries in this region have very small tax administrations, small audit teams, and typically have a limited capacity to audit large taxpayers with complex operations. The project explored the feasibility of forming a regional tax audit team that could help build economies of scale in this area drawing from tax auditors from within the region, strengthen countries' tax audit capacity more visibly, and reduce their reliance on external TA to support their tax audit work.

The project entailed developing administrative and institutional arrangements to underpin the operations of the regional tax audit team**,** providing targeted training, and will involve conducting pilot audits in selected ECCU countries on large and high-risk taxpayers from the most complex industry sectors.

2.2.2. Diagnostic findings from TADAT

38. The Tax Administration Diagnostic Assessment Tool (TADAT) can be used to evaluate the tax dispute resolution process of countries (see Box 7). From an assessment of 51 countries, it appears the design of the systems is good overall. Generally, a three-tiered approach is adopted: (i) administrative management of disputes; (ii) appeal to a quasi-judicial body or committee at the second level; and (iii) appeal to a judicial level for interpretation of the law, and increasingly, considering facts of the dispute as well. However, systems seem to falter during implementation—evidence available suggests that it takes too long to address disputed cases even though the processes may be in place. Additionally, monitoring of case-status appears to be generally poor. Causes of delay may be a combination of issues that may include: caution exercised by tax officials who may perceive that quick resolution may result in errors and taxes given away; cases may be complex and take longer than anticipated; inadequate numbers or skill levels of tax administration staff; or the inadequacy of the facilities (and related infrastructure) necessary to dispense justice.

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Box 7. TADAT – Dispute resolution scores across 51 countries

The Tax Administration Diagnostic Assessment Tool (TADAT)—discussed in greater detail in Section 3.6—assesses the health of a country's tax administration at a point in time. The framework comprises nine Performance Outcome Areas (POAs) and 28 high level indicators critical to tax administration performance that is linked to the POAs. Forty-seven measurement dimensions are taken into account in arriving at each indicator score. A four-point 'ABCD' rating scale is used with 'A' representing adherence to good international tax administration practice and 'D' suggesting that the fundamentals are either not in place or the evidence required is unavailable or unreliable.

POA7 deals with the process by which a taxpayer seeks an independent review, on grounds of facts or interpretation of the law, of a tax assessment resulting from an audit. A tax dispute resolution process must safeguard a taxpayer's right to challenge a tax assessment and get a fair hearing. The process should be: (i) based on a legal framework; (ii) known and understood by taxpayers; (iii) easily accessible and guarantee transparent independent decision-making; and (iv) able to resolve disputed matters in a timely manner. Three performance indicators (in Version 6 of the TADAT Field Guide)[3] are used to assess POA7:

- P7-19: Existence of an independent, workable, and graduated resolution process. For this indicator three measurement dimensions assess (1) the extent to which a dispute may be escalated to an independent external tribunal or court where a taxpayer is dissatisfied with the result of the tax administration's review process; (2) the extent to which the tax administration's review process is truly independent; and (3) the extent to which taxpayers are informed of their rights and avenues of review.

- P7-20: Time taken to resolve disputes. This indicator assesses how responsive the tax administration is in completing administrative reviews. Assessed scores are shown in Table 21 followed by an explanation of reasons underlying the assessment.

- P7-21: Degree to which dispute outcomes are acted upon. This indicator looks at the extent to which dispute outcomes are taken into account in determining policy, legislation, and administrative procedure.

The next figure summarizes the preliminary findings for TADAT Performance Outcome Area (PAO) 7 from 51 assessed countries.

[3] There is a slight variation in the number of indicators between TADAT Field Guide Versions 3 and 5 on one hand, and Version 6 on the other. However, the assessment outcomes are consistent.

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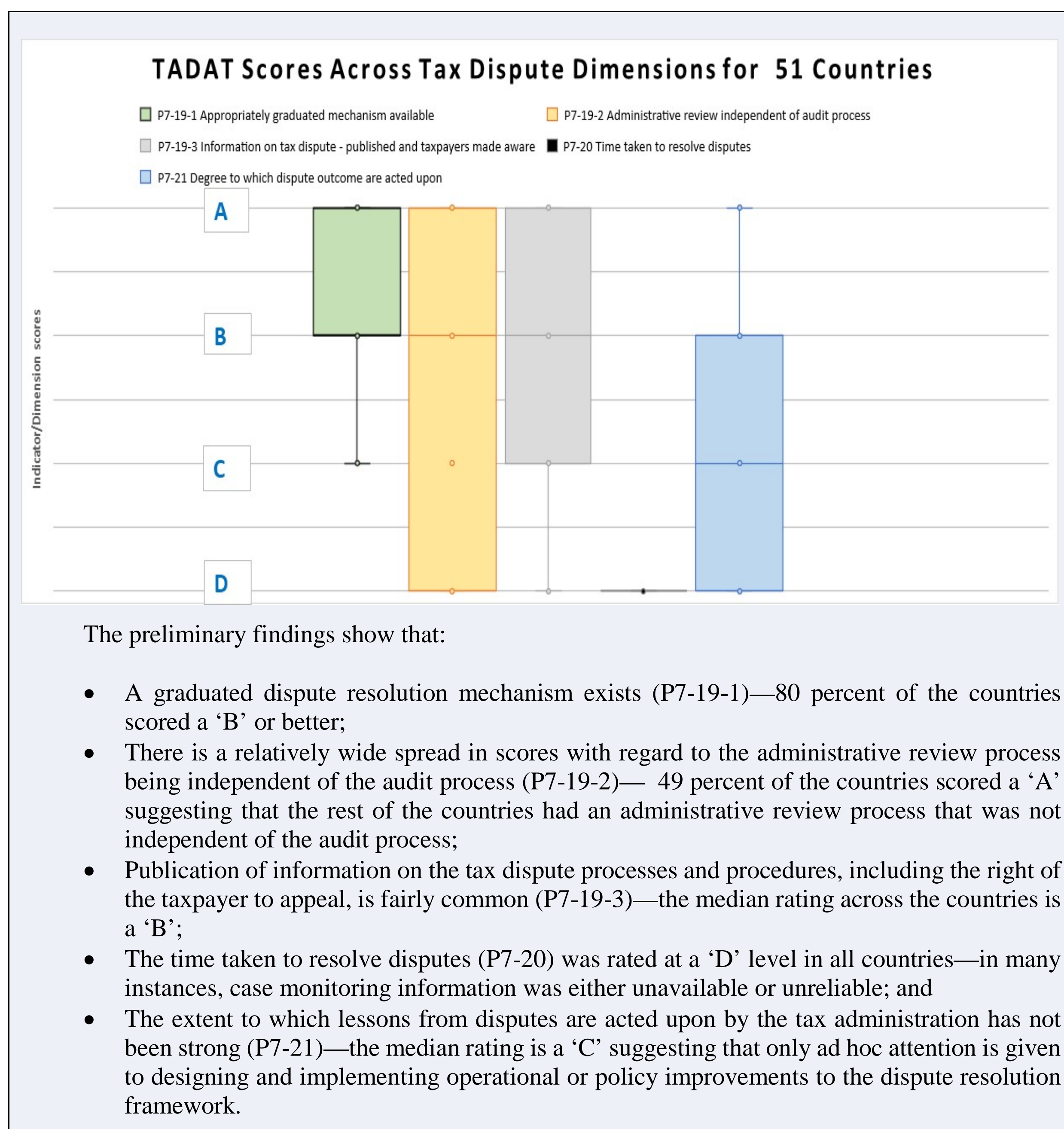

The preliminary findings show that:

- A graduated dispute resolution mechanism exists (P7-19-1)—80 percent of the countries scored a 'B' or better;
- There is a relatively wide spread in scores with regard to the administrative review process being independent of the audit process (P7-19-2)— 49 percent of the countries scored a 'A' suggesting that the rest of the countries had an administrative review process that was not independent of the audit process;
- Publication of information on the tax dispute processes and procedures, including the right of the taxpayer to appeal, is fairly common (P7-19-3)—the median rating across the countries is a 'B';
- The time taken to resolve disputes (P7-20) was rated at a 'D' level in all countries—in many instances, case monitoring information was either unavailable or unreliable; and
- The extent to which lessons from disputes are acted upon by the tax administration has not been strong (P7-21)—the median rating is a 'C' suggesting that only ad hoc attention is given to designing and implementing operational or policy improvements to the dispute resolution framework.

Mutual Agreement Procedure

39. The mutual agreement procedure (MAP) continues to be made more timely, effective and efficient as a result of the peer review process for the BEPS Action 14 minimum standard. The Action 14 peer reviews were officially launched in December 2016 and reports for the first six jurisdictions were published in September 2017. This was followed by seven more jurisdiction's reports in December 2017 and eight more in March 2018. In total, 51 more jurisdictions are scheduled for review through December 2019. The rest of the Inclusive Framework jurisdictions, some of which have opted for a deferral of their peer review, will be reviewed beginning in 2020 either because they are a developing country or because their MAP experience is limited.

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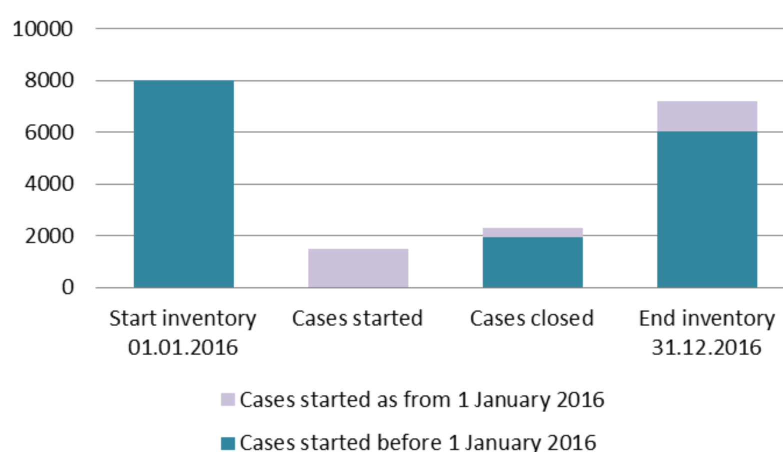
40. The 21 peer review reports contain a substantial number of targeted recommendations that assessed jurisdictions have already begun to address. Over 110 specific recommendations were made in the first batch of peer review reports. More than 170 recommendations were made in the second batch of peer review reports and over 215 targeted recommendations were made in batch 3 reports. As a result of these publications, anecdotal evidence suggests that even jurisdictions scheduled for review at a later date have already begun implementing changes to their tax treaty network with respect to the MAP article in their tax treaties. Such changes are being implemented both through the Multilateral Instrument and through direct bilateral tax treaty negotiations when the Multilateral Instrument will not modify a jurisdiction's tax treaty to bring it in line with the Action 14 minimum standard.

41. During stage 2 of the Action 14 peer review process the already assessed jurisdictions will be evaluated on the progress they have made on addressing each recommendation in the one year since its stage 1 report was approved by the Inclusive Framework. The 21 jurisdictions that have already been assessed are therefore already making changes to ensure that they achieve the three following general objectives that were set out in the BEPS Action 14 final report, all of which facilitate tax certainty:

- Treaty obligations related to MAP are fully implemented in good faith and MAP cases are resolved in a timely manner
- Administrative processes promote the prevention and timely resolution of treaty related disputes; and
- Taxpayers that meet the requirements to access to the MAP can do so.

42. It is clear that the peer reviews are having a real, tangible impact on enhancing tax certainty. The MAP Statistics Reporting Framework provides objective, measurable criteria against which a jurisdiction's commitment to resolve disputes in a timely manner can be judged. Reporting under this new framework began on 1 January 2016. As can be seen in Figure 1, more cases were closed than started in 2016 and total MAP caseload inventories decreased.

Figure 1. Total MAP caseload



43. This new reporting framework ensures consistency as it requires each jurisdiction to use common definitions for a variety of criteria and eliminates the double counting of cases that previously made an objective evaluation of MAP statistics difficult. A distinction is also drawn between attribution/allocation cases and other cases. The continued monitoring

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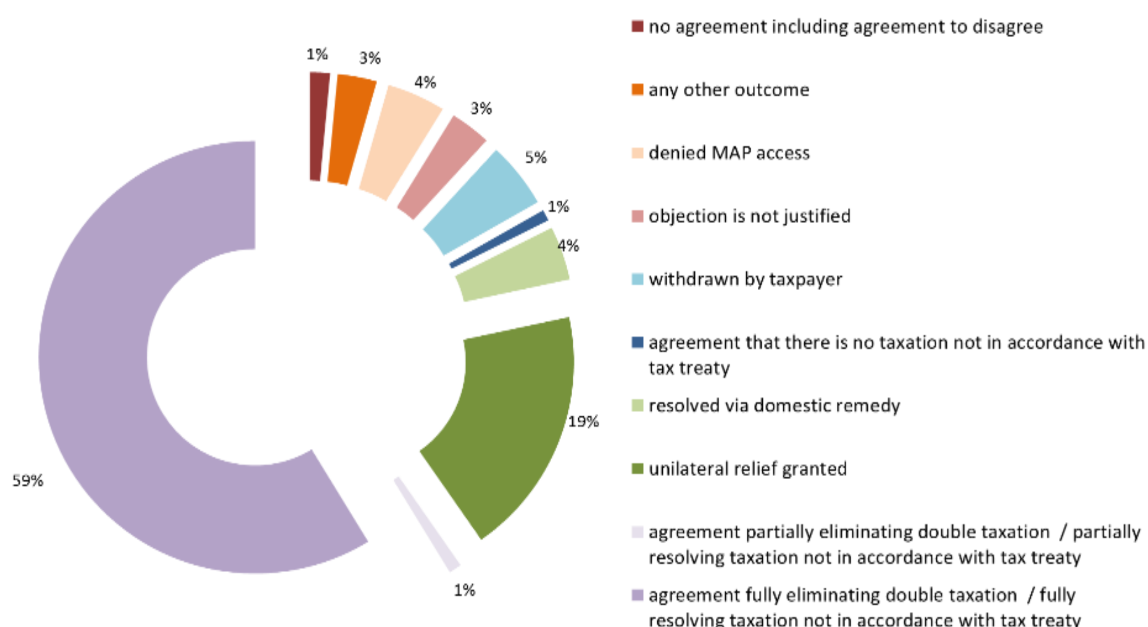
of both types of cases under the MAP Statistics Reporting Framework will help incentivize jurisdictions to seek to resolve their MAP cases within a 24 month time period. These efforts to ensure the timely resolution of MAP cases further help to increase tax certainty as taxpayers can now view detailed breakdowns of the average length of time it can expect to wait until its MAP case is resolved for a particular jurisdiction.

44. The following illustrates some highlights from the 2016 statistics:

- Transfer pricing cases account for slightly more than half of the MAP cases in inventory.
- Transfer pricing cases take more time on average than other cases: approximately 30 months are needed for transfer pricing cases and 17 months for other cases.
- Over 85% of MAPs concluded in 2016 resolved the issue. Almost 60% of MAP cases closed were resolved with an agreement fully resolving the taxation not in accordance with the tax treaty and almost 20% of them were granted a unilateral relief while almost 5% were resolved via domestic remedy. Finally, 5% of the MAP cases closed were withdrawn by taxpayers while approximately 10% were not resolved for various reasons (see Figure 2).

Figure 2. MAP outcomes



45. The Action 14 minimum standard also requires countries to publish their specific "MAP profiles", meaning public information on their competent authority details, links to their domestic MAP guidelines and to other useful information regarding the MAP process, pursuant to an agreed template. Publishing MAP profiles promotes the transparency and dissemination of jurisdictions' MAP programmes. In this respect, around 75 MAP profiles have been published on the OECD website.

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Arbitration

46. While specific measures for preventing disputes will reduce the number of cases going through the MAP, mechanisms are also necessary to ensure that cases are resolved in a timely manner once they are being dealt with in this procedure. For this reason a mandatory and binding arbitration procedure was added as a final stage to the MAP of Article 25 of the OECD Model Tax Convention in 2008. Competent authorities involved are, pursuant to Article 25(5), given a two-year term to reach an agreement on how to resolve a situation of taxation not in accordance with the provisions of a tax convention. In the absence of such an agreement, taxpayers can request the initiation of the arbitration procedure for the unresolved issues of the case. The outcome of that procedure is binding for the competent authorities concerned.

47. Since 2008 approximately 100 treaties have incorporated this provision, although the number of countries that are signatories to these treaties is limited. Furthermore, the procedure was often not effective, where treaty partners did not agreed on rules to be applied during the arbitration procedure (e.g. appointment of arbitrators, timelines, etc.). Mandatory and binding arbitration is not a minimum standard of the OECD/G20 BEPS project, but an optional arbitration provision was developed as part of the Multilateral Instrument (MLI). Part VI of that instrument contains the optional provision setting out rules on timelines for the procedure, the appointment of arbitrators and type of arbitration process. In total 28 jurisdictions have so far opted for Part VI that will apply to a treaty only if both treaty partners to that treaty choose to apply it. Via the MLI, more than 150 treaties will incorporate this arbitration procedure, a number that is expected to increase over time. Although this may appear to be a limited number of treaty relationships, going forward a large percentage of the current MAP inventory will be covered.

48. And action has not only taken place at the global level but also at EU level. Since 1995, the EU Arbitration Convention has been applicable for transfer pricing disputes, which provides for an arbitration procedure if EU member states cannot resolve a case within a period of two years under the MAP. Following the developments at global level, the European Commission proposed a Directive on Dispute Resolution, which was adopted by the Council in October 2017. The procedures under this Directive are based on the EU Arbitration Convention. The convention's scope of application is extended to all disputes on the application/interpretation of tax conventions between EU member states. Furthermore, enforcement mechanisms have been introduced that allow taxpayers to appeal against denial of access to the Directive's procedures and/or the non-initiation of the arbitration procedure. The Directive is to be implemented by member states into their domestic legislation by June 30 2019, and will be applicable for disputes arising on or after January 1 2018.

49. Thus, there is a lot of concrete and targeted work taking place across the full spectrum of dispute prevention and dispute resolution. On the dispute resolution side a large part of the global MAP inventory is, or will soon be, covered by binding mandatory arbitration and practically the full global MAP inventory is now being assessed against a minimum standard in a published peer review process. This should significantly improve the MAP process, but it will also have knock on effects on the earlier stages of the process. At the same time, there is a renewed focus on the dispute prevention side consistent with the belief that the best dispute resolution mechanism is one that prevents a dispute from arising in the first place. Advancing further on this agenda will take commitment, dedication and persistence from both taxpayers and tax administrations, but this is an opportunity that they should seize together if they wish to further improve predictability.

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2.3. Update on remaining issues

50. The 2017 report uses data for a selected group of countries on the frequency of tax changes and the gap between announcement and implementation—as indicators of tax uncertainty. The data were derived from a preliminary version of the IMF's tax reform database, which uses text mining techniques applied to country reports of the OECD and news clips of the IBFD. On April 26, 2018 this "Tax Policy Reform Database (TPRD)" was published by the IMF for public use (see www.imf.org/en/News/Seminars/Conferences/2018/03/08/evaluating-tax-reforms). The database reveals information about tax policy reforms in 23 countries, dating back often to the 1970s and sometimes even further. It can be used for research, including to derive indicators of tax uncertainty used in the 2017 report.

51. An important question is how tax uncertainty influences investment. The OECD survey suggests that businesses indicate that tax certainty is indeed important for investment. Yet, the question remains whether such a relationship s sustained by data on actual investment behavior. A recent IMF study sheds new light on this issue.[4] It uses an indicator developed by Mescall and Klassen (2014) on the perceived risk of countries related to transfer pricing regulation, derived from a survey among transfer pricing experts.[5] The study assesses how this perceived transfer pricing risk influences multinational investment. The identification strategy relies on a quasi-experimental approach, whereby affiliates of multinational groups are the treated group, while affiliates of purely domestic groups are the control group (not affected by transfer pricing regulation). The results indicate that higher transfer pricing risk (more tax uncertainty) systematically reduces investment in the multinational affiliates.

[4] R. de Mooij and L. Liu, 2018, At A Cost: the Real Effects of Transfer Pricing Regulations, IMF Working Paper 18/69, International Monetary Fund, Washington DC.

[5] Mescall, D., and K.J. Klassen, 2014, "How do tax and accounting policies affect cross-border mergers and acquisitions?" Working paper series, University of Saskatchewan.

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3. Tax certainty in developing countries

52. Developing countries have an urgent need for domestic resource mobilization (DRM) to finance the 2030 Agenda for Sustainable Development. Against this backdrop, they are seeking to build and protect a sustainable revenue base to fund long-term development needs. The challenge is to balance this objective with the need to provide a fair, efficient, stable and predictable tax system that is conducive to investment and economic growth. In this context, tax certainty can play an important role.

53. The 2017 Report focused on G20 and OECD countries. Yet, it noted that the underlying concerns and suggested approaches have potential relevance to developing countries as well. However, it was also recognized that developing countries face challenges different from those in OECD countries, which could also require alternative tools, having regard to their enforcement capabilities and implementation capacity.

54. This section of the report elaborates further on tax certainty in developing countries. It reports on some of the specific results for developing countries obtained from the OECD Survey, and compares those with results for the OECD. It also presents outcomes of a consultative process undertaken in Tanzania in 2017. Finally, this section describes several initiatives undertaken by the OECD and the IMF that affect tax certainty in developing countries (along with other aspects of their tax system).

3.1. OECD Survey

55. The 2016 OECD business survey on tax certainty, discussed extensively in the 2017 report, provides valuable data on how views on tax certainty may differ between regions and between countries with different levels of economic development. This survey saw responses from 724 companies headquartered across 62 countries and jurisdictions, with regional headquarters in 107 countries and jurisdictions[6]. Overall, information on 115 jurisdictions across Africa, Asia, Latin America and the Caribbean and the OECD is available. While overall the survey was dominated by responses on OECD countries, the wide range of information gives the potential to disaggregate some of the data and identify some notable differences on how tax certainty is viewed between different regions, and so identify some findings that are more relevant to other regions composed predominately of developing countries.

56. As was emphasized in the 2017 report, the results of the OECD surveys need to be interpreted with caution. Being explicitly presented as relating to tax certainty, the surveys in themselves could signal to potential respondents that this is seen by the G20 as important enough to warrant particular study. This may bias the results towards attaching importance to the issue, and those within participating companies who respond are likely to be those particularly concerned about tax certainty and may not necessarily be those responsible for investment decisions. Moreover, a survey of tax experts may be biased toward finding

[6] See Annex A for regional breakdown of responses

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taxation issues to be particularly important. Nonetheless, responses on the relative importance of various parts of the tax system, and various drivers of and solutions to tax uncertainty are likely to be informative.

57. Additional caveats to be noted are that, as the data is separated into its component parts, the sample size for each region is reduced. This was especially relevant for Africa where the sample size of respondents in some questions is as low as 41 (covering 12 African countries). There are also risks that overrepresented countries within regions will skew the results. Nonetheless, while these results are likely to be informative in helping regional groupings (such as the African Tax Administration Forum (ATAF), Inter-American Center of Tax Administrations (CIAT), and Commonwealth Association of Tax Administration (CATA), and those looking to support the development of tax certainty in developing regions, identify starting points for further work.

58. The results of the specific responses relating to developing countries indicate that there are likely to be different priorities for addressing tax certainty in developing countries, when compared to OECD countries, since some significant differences are seen once the results are disaggregated. The key results of the disaggregated survey data are:

Investment and Location Decisions: Tax certainty may be more significant in African and Latin America and Caribbean countries

- The tax system is reported as an important factor influencing investment and location decisions, but in no region is it the most important factor.
- Tax uncertainty appears to have a more frequent impact on investment decisions in Africa, Latin America and Caribbean (LAC) than in the OECD.
- Firms operating in Africa and LAC appear significantly more likely to exploit tax uncertainty to reduce their tax liability than in the OECD.
- Tax uncertainty appears more likely to increase the risk premium or hurdle rate for investment in Africa, Asia and LAC than in the OECD.

Non-profit taxes are a greater source of tax uncertainty in developing countries than OECD

- There are some significant differences in the sources of tax uncertainty between the regions; for example uncertainty about the ability to obtain withholding tax relief is identified as a much greater source of uncertainty in all developing regions than in the OECD, as is the inability to achieve early certainty through rulings or similar mechanisms.

Complexity and frequency of changes in the tax system are lower priority concerns in developing countries than OECD

- While the frequency of changes in the tax system is one of the leading sources of tax uncertainty in the OECD (4th), it is a much lower priority in LAC (15th), Africa (19th) and Asia (20th).
- Complexity in the tax system is a lower order concern source of tax uncertainty in Africa (16th) and Asia (12th) than LAC or OECD (both 3rd).

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International tax dimensions are higher priority concerns

- International dimensions of tax are higher priority sources of tax uncertainty in developing regions. Inconsistencies or conflicts on interpretations of international tax and lack of expertise in tax administration on aspects in international tax were of higher priority across all three regions in comparison to the OECD.
- The availability of simplified approaches for tax compliance (e.g. safe harbours) seems to be a much higher priority in Africa than in other regions; this was identified as the 8th highest priority solution for addressing tax uncertainty in Africa, while it was 16th in Asia, 14th in LAC and 17th in the OECD.

59. Overall, the findings from the survey give some indications on why and how governments in developing countries may want to address tax certainty issues. Addressing issues on VAT and withholding, for example, appear of greater importance for developing countries. These areas thus might benefit from increased focus. Africa especially may gain from simplified approaches such as safe harbours. All regions may enjoy gains through adoption of international standards – this may especially be the case in Asia where domestic administration concerns were often of a lower magnitude than in Africa and LAC, but international dimensions were more comparable.

3.2. Consultative Workshops

60. An area missing in the survey analysis of the previous subsection is the views of tax authorities. Two consultative workshops on tax certainty held were in the last year, in Africa and Asia. The outcomes and proposed next steps from these workshops give an indication of what the priorities for developing country tax administrations are to addressing tax certainty.

3.2.1. Consultative Workshop on Tax Certainty, 25-27 October, Tanzania

61. A consultative workshop on Tax Certainty was held in Dar-es-Salam, Tanzania from 25th to 27th October 2017 under the auspices of ATAF and Gesellschaft für Internationale Zusammenarbeit (GIZ), attended by more than 50 delegates. Amongst the attendees were officials from Ministries of Finance and tax administrations of 21 African countries. Furthermore, representatives of the ATAF Secretariat, the German Federal Ministry for Economic Cooperation and Development, the German Federal Ministry of Finance, the Argentine Ministry of Finance, GIZ, IMF, OECD, as well as from the civil society, and business representatives participated in this meeting. It sought to discuss, from an African perspective, the concept of tax certainty and related challenges, as well as to share international experiences and to suggest practical approaches to implementing tax certainty on the continent and find practical solutions to issues related to tax certainty.

62. Discussion points at the workshop included the effectiveness of legislative procedures, the reliability and capacities of tax administrations, challenges in addressing BEPS in Africa, the role of international tax treaties, the targeted, transparent and effective use of investment tax incentives in African countries, open and transparent relations between tax administrations and taxpayers, the use of instruments such as dispute resolution mechanisms, capacity development support from ATAF, GIZ and other international institutions.

63. In these discussions, participants confirmed that tax certainty is required by African tax administrations to create a stable tax environment to encourage investment. Prominent issues contributing to tax uncertainty and which required urgent attention included

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insufficient administrative capacities, aggressive tax planning especially by multinational enterprises, corruption, lack of leadership, political interference, poor information communications technology (ICT) within tax administrations and weak tax legislation. It was also noted that tax uncertainty in Africa was exacerbated by dependency on a few large taxpayers whilst a significant portion of a country's economy falls outside the tax net and contributes towards revenue losses and the destabilisation of a country's revenue base. According to the delegates, there is often a lack of coordination between e.g. between the Ministry of Finance and the tax administration, and between different institutions such as the Foreign Office, Ministry of Tourism, Ministry of Trade, and local authorities. As a result, there tends to be a mismatch between tax policy and tax administration and overall fiscal consequences of individual tax incentives and tax treaties are often ignored. The lack of coordination (or the absence of a 'whole-of-government approach') was an additional factor contributing to tax uncertainty in Africa.

64. Several good practises were discussed during the workshop. Delegates identified nine ideas to adapt tax policy, legislation processes as well as revenue administrations' capabilities in their countries:

- **Increase tax dialogue between relevant stakeholders.** 80 percent of delegates indicated that a relatively close relationship exists between the tax administration and businesses in their countries. Leveraging off this relationship was considered important to improving the tax administration's understanding of businesses and industry practices, and also to facilitate an intensification of the business sector's efforts towards full compliance, responsible tax behaviour and acknowledgment of the role of government in mobilising revenue. Individual country practices such as taxpayer appreciation initiatives for highly compliant taxpayers that are in effect in Benin, Rwanda and Uganda could also be considered.
- **Improve dispute resolution mechanisms.** Implement effective dispute resolution mechanisms as a means to enhance tax certainty for both taxpayers and tax authorities. Delegates concluded that dispute resolution mechanisms should be fair, independent from audit activities, accessible to taxpayers and effective in resolving disputes in a timely manner. This requires designing an independent, workable and graduated dispute resolution process comprising an administrative and judicial stage. The administrative stage could involve alternative dispute resolution mechanisms, while, on the judicial side, the issue of judicial capacity needs to be addressed as a matter of priority.
- **Develop more coherent and transparent (regional) processes for the granting of tax incentives.** The discretionary powers with regards to the introduction of tax incentives should be with the Ministries of Finance, supported by tax administrations. Delegates concluded that cost based incentives are preferred over profit based incentives, and that some regional cooperation is required (e.g. codes of conduct with guiding principles to prevent harmful tax competition).
- **Ensuring balanced and appropriate double taxation treaties.** Experts from Ministries of Finance and/or tax administrations should be part of African government teams negotiating new tax treaties that are aligned to domestic laws without having high revenue costs. Treaty negotiation skills for representatives of Ministries of Finance and tax administrations to develop a modern treaty network should be enhanced.
- **Improve tax policy design and legislation.** A reasonable degree of tax certainty can be derived from a well-developed tax law design, making and monitoring

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process which can include addressing complexity, improving clarity and implementing anti-avoidance rules. Delegates concluded that sample legislative provisions can help achieve greater clarity, less complexity and better guidance. Delegates also indicated a preference to consult with internal and external stakeholders and experts before introducing new legislation and to announce legislative changes in a timely manner.

- **Use TADAT assessments to improve tax certainty and investment.** The Tax Administration Diagnostic Assessment Tool (TADAT) can be used to improve the performance of tax administrations. Several delegates indicated that a TADAT assessment is a "wake-up call" for tax administrations, and that cooperation and transparency with TADAT assessors makes the process more constructive and effective.
- **Formalise the informal sector to increase the tax base and tax certainty.** Developing countries should stabilise and widen their tax bases to mobilise domestic resources. Delegates considered that this would reduce reliance on a few large taxpayers.
- **Step up technical support to improve investment conditions** Development partners should provide capacity building support at the individual, organisational and institutional level which can either explicitly or implicitly contribute to tax certainty. Delegates agreed that development partners should increasingly provide "hands-on" technical assistance tailored to their respective needs. In cases where several development partners are active in the same country, coordination between them was considered crucial to achieve coherent recommendations and ensure quality of technical advice. It was also agreed that dissemination of developed tools (e.g. toolkits prepared by the Platform for Collaboration on Tax) needs to be intensified. Finally, delegates considered that Compact with Africa countries could also make tax certainty a case for attracting investment in their individual country compacts.
- **Increase developing countries' involvement in the international standard setting.** ATAF and its member states, and other developing countries must continue to influence new standards in international tax and participate in discussions and the development of such standards.

65. Delegates agreed that there was interest in future regional workshops on Tax Certainty. In Africa, follow-up events could delve deeper into individual aspects of tax certainty. ATAF and GIZ, with the assistance of development partners, will consider any medium to long-term impacts of the workshop and determine additional needs for consultation and exchange of views on the issue of tax certainty.

3.2.2. Improving Tax Certainty through Dispute Resolution Mechanisms - Singapore, 29 March 2018

66. Delegates from tax administrations from developing and developed countries met in Singapore from 26-28 March 2018 to discuss the importance of tax certainty for businesses and a sustainable global taxation framework and to highlight the various work streams of the OECD tax certainty agenda and BEPS Action 14, making dispute resolution mechanisms more effective.

67. Delegates from 12 jurisdictions participated in an interactive programme concerning tax certainty that included lectures and case studies on the topic. There was also time for the delegates to share experiences on the design of tax policy and legislation in the

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context of providing tax certainty in domestic and international settings. All jurisdictions, including developing countries, are working to address some of the top 10 factors for tax uncertainty. Special attention was given by developing countries to increase the expertise in international taxation of their officials and to the creation or improvement of the guidance on domestic and international tax matters. During the event, the importance of dispute prevention and dispute resolution were recognised by all delegates as important tools to enhance tax certainty.

3.3. Platform for Collaboration on Tax – Toolkits

68. As highlighted by the business survey, inconsistent or unpredictable treatment by tax authorities, lack of expertise in international taxation, and inconsistencies or conflicts between tax authorities on their interpretations of international tax standards are all high priority concerns of businesses in relation to developing countries. In this context the toolkits being developed by the Platform for Collaboration on Tax (PCT), which consists of the IMF, OECD, UN, and WBG are potentially a useful tool. These toolkits, being delivered as part of a mandate from the G20 Development Working Group, are designed to help developing countries address eight issues in international corporation tax that they have identified as high priority.

69. Two toolkits have already been published, with the remaining six being developed over the next two years (Box 8). Each toolkit individually can help contribute to building tax capacity. This can in turn support tax certainty through providing clear options for developing countries to use, that are consistent with international standards.

Box 8. Platform for Collaboration on Tax - Toolkits

A report on **designing and implementing tax incentives for investment** in low income countries in ways that are efficient and effective was published in 2015. In addition to providing information on good practices for the design of incentives to encourage investment, the report also sets out the importance of good governance in their implementation: measures which would include greater transparency and certainty around the eligibility criteria and conditions which apply to incentive regimes.

Following this, a toolkit for **addressing difficulties in accessing comparable data for transfer pricing analyses** was completed in 2017. This toolkit provides step-by-step guidance on interpretation of the arm's length principle in accordance with international norms, including in cases where comparables are difficult to find. A lack of comparable data needed to apply transfer pricing rules is a common source of uncertainty and the toolkit aims to reduce the likelihood of inconsistent or arbitrary approaches in such scenarios. The toolkit also includes a supplementary report addressing **information gaps in pricing of minerals sold in an intermediate form**, which provides a solid analytical framework to help determine appropriate pricing for mineral products in the absence of directly applicable market prices.

A toolkit on **offshore indirect transfers of interests** was published for comment in 2017 and is expected to be finalised in 2018. This toolkit will address the legal and practical difficulties that may be involved in taxing the transfer of shares in foreign entities which hold, directly or indirectly, valuable local immovable property. A variety of domestic practices currently exist in relation to such scenarios and this toolkit will provide developing countries with practical solutions and international best practices.

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A toolkit on **implementing effective transfer pricing documentation** is due to be released in 2018. The former will describe policy choices and rationales involved in developing a transfer pricing documentation regime as well as providing sample legislative provisions which would be effective and efficient in meeting those policy goals. It will facilitate the use of the standardised documentation package as recommended in the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing by providing legislative models. The existence of coherent documentation rules in a country enhances tax certainty by ensuring tax administrations have access to necessary information in a timely fashion in order to conclude assessments.

Further toolkits on **treaty negotiation, base eroding payments and supply chain restructures** are also planned. As with the above, these toolkits will aim to provide developing countries with examples and best practices for addressing their international tax priorities in coherent and more standardised ways.

The toolkit on **BEPS risk assessment** will provide assistance to tax administrations in developing risk flags and risk assessment tools. It will discuss the merits of publishing certain risk flags to enable taxpayers to adjust their behaviour in order to ensure they are compliant, and provide examples of self-assessment risk tools which help to give compliant taxpayers greater certainty that they are unlikely to be audited on a particular issue if they accurately self-assess themselves as low risk.

3.4. Medium Term Revenue Strategies

70. Revenue mobilization efforts can be more effective with the formulation and implementation of medium-term revenue strategies (MTRS), an initiative proposed by the Platform for Collaboration on Tax and endorsed by the G20. An MTRS approach to tax system reform sets out a high-level road map for the tax system reform— covering policy, administration, and legal frameworks—over a four-to-six-year period. An MTRS is always government-led and country-owned. With strong country commitment to a steady and sustained implementation, an MTRS can achieve the revenue needed for critical spending needs to secure economic and social development. It will also help reduce uncertainty in tax matters through government commitment to implement the pre-announced reform agenda.

71. The IMF has in 2017 piloted the development of an MTRS in three countries:

- In **Uganda**—where tax-to-GDP ratio is at 13.5 percent in 2016/17—increasing domestic revenue is critical to implement the country's development strategy. Building on ongoing work, the IMF helped the authorities prepare a five-year MTRS framework, starting in FY2017/18, with the goal of achieving a tax-to-GDP of 16 percent in four years. It includes options for tax policy reform, key measures to raise tax and customs compliance, and selected tax law measures to support these compliance programs.
- The IMF helped **Papua New Guinea** develop a first comprehensive MTRS. In mid-2017, PNG faced a severe downturn in revenue and needed to revitalize the tax system and mobilize domestic revenue. The government developed and published its MTRS to modernize the tax system, aiming to increase the tax to GDP ratio, and ensuring reform plans were integrated across the main revenue agencies. The MTRS conveys the government's commitment to the revenue reform program and outlines a multi-agency roadmap for reforming tax policy, tax administration, and legal framework over the next 5 years.

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- In **Indonesia**, with a tax-to-GDP ratio below 12 percent—the IMF supported the government in formulating an MTRS that aims to boost the tax-to-GDP ratio by 5 points over a 5-year horizon. Measures include a variety of policy reforms in VAT, income tax and property tax, as well as several administrative efforts to improve compliance in VAT, the taxation of professionals and high-wealth individuals. The authorities are currently reformulating their MTRS based on internal consultations.

3.5. IMF technical assistance

72. The IMF provides technical assistance (TA) and training in key tax system components—tax policy, revenue administration, and legal design and drafting of tax legislation—including in the taxation of natural resources. Fund revenue TA serves over 100 countries each year to support especially developing countries in capacity development. TA is provided directly from headquarters and through the Fund's 10 regional technical assistance centers. The focus is on developing an effective, efficient and fair, stable and predictable tax system, based on each country's context and capacity and a coherent medium-term strategy. Tax certainty plays a key role. Significant TA is provided in drafting new laws or amendments to existing laws. In over seventy countries, TA has been provided in the drafting of some 200+ laws and regulations dealing with tax (income tax, value added tax, and others), tax administration and procedures, and customs (Box 9).

Box 9. IMF technical assistance in tax law design and drafting

The IMF tax law design and drafting TA could consist of one or more of the following four elements, all contributing to enhanced tax certainty of rule design and implementation:

1. **Developing countries raise specific tax law problems with the IMF and make specific requests for TA to resolve those problems.** This could include a request to modernize and strengthen the income tax law of a developing country.
2. **Where TA is provided in response to the request, the IMF would typically benchmark the relevant developing country's tax law against international best practices for the purpose of providing legal design** and **drafting assistance in order to modernize and strengthen those laws.** A strengthened tax law framework will support greater domestic revenue mobilization, ensure international compatibility, minimize tax avoidance and achieve greater tax certainty.
3. **The IMF could also provide guidance in relation to the application of the legal framework developed to demonstrate how it is intended to be applied by the developing country.** This could take the form of technical notes or explanatory memoranda which accompany the legislative bill at the time of its enactment. Consistent and predictable application of the tax law achieves greater tax certainty.
4. **The IMF could identify common tax law design and drafting issues or trends faced by developing countries and publish a more general Tax Law IMF Technical Note (see earlier)**, so that information and analysis on comparative solutions can be made publicly available and, therefore, be of benefit to the broader membership base of the IMF.

73. The IMF has two donor trust funds for revenue capacity building, both of which have entered into their second 5-year phase.

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- The **Revenue Mobilization Trust Fund** (RMTF) was launched in 2011 (as the 'Tax Policy and Administration TF') to help low-income and lower middle-income countries establish well designed and administered tax systems that generate sustainable revenue to pay for essential public services. Sound tax policy and administration also helps foster an environment of tax certainty where both small- and medium-sized businesses and large multinationals can flourish. By raising the tax-to-GDP ratio and supporting sustainable economic growth, the RMTF aims to help countries reduce dependency on foreign aid. This trust fund receives financial support from Australia, Belgium, Denmark, the European Commission, Germany, Japan, the Republic of Korea, Luxembourg, the Netherlands, Norway, Sweden, and Switzerland.

- The **Managing Natural Resource Wealth Trust Fund** (MNRW-TF) was also established in 2011. It aims to support low- and lower-middle income countries in strengthening the capacity to manage their natural resource wealth effectively. The fund provides capacity building in five key areas of natural resource revenue management: (i) designing and implementing fiscal regimes (tax policy); (ii) improving revenue administration and risk management; (iii) strengthening macro-fiscal frameworks and public financial management systems; (iv) advising on exchange rate regimes and macro-prudential policies; and (v) improving statistical reporting. Most country level technical assistance projects under the thematic fund combines policy advice with customized training. The MNTW-TF also supports analytical work, multi-country training and thematic conferences on natural resource revenue management. Recent key analytical outputs include two flagship publications on fiscal regimes for mining and petroleum, a handbook on revenue administration, publication of the Fiscal Analysis for Resource Industries (FARI) model, as well as development of a natural resource revenue template and technical guidance notes. The fund receives financial support from Australia, the Netherlands, Norway, and Switzerland.

74. The IMF also develops analytical and data-driven diagnostic tools to support capacity development efforts and to help identify key areas for improvement in tax systems. These include:

- A web-based platform to gather key country-specific indicators for revenue administration—RA-FIT—which powers a collaborative platform (called "ISORA", which is a joint initiative with the OECD) used by other international organizations.

- A public web-based tax policy assessment framework (TPAF), developed jointly by the IMF and the World Bank. It provides guidance on how to assess tax policy design and offers up-to-date data and comparative institutional information of tax systems.

- IMF's World Revenue Longitudinal Dataset (WoRLD) is publicly available and provides detailed cross-country tax revenue data. A new release with near-universal coverage with revenue data since 1990 will be available soon.

- The IMF framework for assessing resource revenue regimes ("FARI"), which is also available on line.

- IMF's RA-GAP program, which has helped more than 30 countries estimate VAT compliance gaps and is adding a framework for corporate tax gap analysis.

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3.6. Tax administration Diagnostic Assessment Tool (TADAT)

75. The Tax Administration Diagnostic Assessment Tool (TADAT) Trust Fund was established in 2014 to support the implementation of the Tax Administration Diagnostic Assessment Tool. It finances the TADAT Secretariat, training of assessors, and implementation of the tool. It is supported by 'TADAT partners' who include the EU, the IMF, Germany, Japan, the Netherlands, Norway, Switzerland, the UK, and the World Bank. TADAT is designed to provide an objective and standardized assessment of the health of key components of a country's system of tax administration. This framework is focused on the nine key performance outcome areas (POAs) that cover most tax administration functions, processes and institutions. The assessment of these performance outcome areas is based on 28 high-level indicators that are each built on 1 to 4 dimensions that together add up to 47 measurement dimensions, making TADAT a comprehensive but practicable diagnostic tool. The TADAT assessments are particularly helpful in:

- Identifying the relative strengths and weaknesses in tax administration systems, processes, and institutions.
- Facilitating a shared view on the condition of the system of tax administration among all stakeholders (e.g., country authorities, international organizations, donor countries, and technical assistance providers).
- Setting the reform agenda, including reform objectives, priorities, initiatives, and implementation sequencing.
- Facilitating management and coordination of external support for reforms, and achieving faster and more efficient implementation.
- Monitoring and evaluating reform progress by way of subsequent repeat assessments.

76. TADAT focuses on the performance of the major national taxes: corporate income tax (CIT), personal income tax (PIT), value added tax (VAT) (or its indirect tax equivalent such as sales tax), and Pay As You Earn (PAYE) amounts withheld by employers (which, strictly speaking, are remittances of PIT). Social security contributions (SSCs) may also be included in assessments where SSCs are a major source of government revenue and are collected by the tax administration, as is the case in many European countries. Trained assessors apply the TADAT methodology and are guided by approved and standardized terms of reference, and standards set out in the TADAT Assessor Field Guide. The TADAT Secretariat reviews all performance assessment reports to ensure quality standards are met and consistency is maintained.

77. TADAT assessments are shedding light on tax certainty issues. More broadly, the 60 assessments to end-April 2018 (56 national- and four at subnational-level)[7] have identified key tax administration system strengths and weaknesses. Key strengths include: the use of modalities to expand the tax base, providing information that enables taxpayers to meet their obligations, the design of dispute resolution processes and procedures are sound, internal and external oversight frameworks are strong, and financial and operational results are generally published. On the other hand, general areas of weakness include: poor data quality, inaccuracies in the taxpayer registration database, compliance and institutional risk management practices, poor on-time filing of declarations and on-time payment of taxes, sub-optimal tax debt management practices, long dispute resolution wait times, and inefficient revenue accounting systems. It is encouraging to note that a number of TADAT

[7]Number of assessments by country income classification are: high income countries—4; upper middle income—22; lower middle income—18; and low income—17.

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assessed countries are using the assessment results to review and refine their tax administration reform programs. Examples include Fiji, Georgia, Greece, Jamaica, Malaysia, the Philippines and Rwanda. The TADAT framework is now also being applied at subnational level.

3.7. Tax Inspectors Without Borders (TIWB)

78. The joint OECD/UNDP – TIWB initiative launched in Addis Ababa in July 2015 facilitates targeted, tax audit assistance programmes in developing countries across the globe. The TIWB Initiative (Box 10) is a strong response to effective and efficient mobilisation of domestic resources in achieving the Sustainable Development Goals.

Box 10. TIWB role in promoting tax certainty

Through **practical assistance in implementing legislation during audits** in the international tax area TIWB programmes help bridge the gap between the tax legislation and its application in developing countries through transfer of global best practices. TIWB experts often assist host administrations to develop audit manuals and practice notes that help clarify application of legislation in a clear and consistent manner.

TIWB experts audit support has proved very effective in enabling host administrations to undertake **effective risk assessments that ensure only deserving cases are subjected to audit**. Further, the experts transfer skills to auditors on correct application of law and principles thus ensuring that audits are concluded in the shortest time possible with coherent adjustments that limit disputes.

TIWB experts help host administrations **develop better comprehension of international business models**. TIWB focusses on providing industry experts to advise auditors on industry value chains, information that is critical to enabling correct application of the law to the facts and circumstances.

TIWB is levelling the playing field by supporting tax administrations that have fewer resources to **challenge taxpayers that are pursuing aggressive tax strategies**. This is designed to promote an overall change in taxpayer behaviour away from aggressive behaviour. In the short run changes in compliance behaviour such as filing and responses to requests for documentation have been noted following TIWB interventions.

In respect of the host administration taxpayers, **TIWB strives for openness, transparency, and collaboration**. In both respects, a TIWB expert fosters a culture of compliance and minimises the possibility of litigious conflict. Countries undertaking TIWB programmes are already witnessing improved relationships with their taxpayers.

Creating substantive and administrative certainty. Through **transfer of professionalism and consistency in the application of the relevant tax rules and regulations** TIWB empowers taxpayers to know what they can expect from the tax administration in respect of a particular type of conduct.

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Box 10. TIWB role in promoting tax certainty *(condt.)*

Striking the balance between the need to raise domestic revenue and taxpayers' right to fairness (procedural and substantive). This has always been a very difficult exercise for most countries' revenue administrations, particularly in Africa due to lower capacity and expertise especially in international tax matters. As such, some countries including in Africa are said to abuse international tax principles and treaty provisions in their quest to achieve revenue targets. TIWB experts are well experienced and are able to assist the host countries in achieving revenue targets without unduly burdening the taxpayers and in a manner that is consistent with international tax principles and standards.

Status Update: There are currently 7 completed programmes, 31 ongoing and 22 upcoming TIWB programmes across the globe. The target by 2020 is to undertake 100 deployments. The growing demand for TIWB is driven by the positive feedback from countries already hosting TIWB experts.

3.8. Business engagement in technical assistance

79. Industry insight can help tax authorities better understand common industry practices, both altering them to tax base erosion risks, and helping improve the engagement between tax authorities and business. The OECD has sought to integrate industry expertise, where useful, across its technical assistance. Examples include Unilever providing industry experts to train Zimbabwe Revenue Authority officials on the value chain for fast-moving consumer goods; a diamond industry expert was included in the TIWB programme in Botswana (see Box 11); the OECD Global Relations training event on transfer pricing and mining in Korea included a visit to a steelworks to enable participants to gain a practical insight into how mineral products (especially iron ore) are used in steelmaking. Feedback is also sought from business in the development of the Platform for Collaboration on Tax toolkits. As a result of these efforts several developing countries have acquired an increased understanding of taxpayers' industries, enabling them to build a more collaborative relationship with business.

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Box 11. Collecting tax revenue from rough diamonds

Rough diamonds present acute DRM challenges for many developing countries, particularly in Africa. Valuing rough and polished diamonds when they leave African countries is difficult, yet achieving value estimates as accurate as possible is essential to ensuring the diamond-producing country receives an appropriate share of the final price paid by jewellery buyers. While diamond jewellery buyers concern themselves with the "four C's" – cut, colour, clarity and carat – rough diamond values focus more on the potential of a rough stone and the value that can be achieved once it has been cut and polished. Other factors, including the shape of stones, become important, since shape determines how a stone can be cut to maximise yield. Assessing the value of rough diamonds for tax purposes is uniquely challenging – the traders of rough diamonds can monitor anything up to (and over) 11,000 pricing points, which can fluctuate daily.

Bringing diamond industry experts to meet directly with developing country tax revenue authorities can help overcome this valuation complexity, with mutual benefits: taxpayers can operate in a more certain tax environment if tax officials understand their business and its value drivers, and tax authorities can have greater confidence they are taxing local economic activity in accordance with BEPS principles.

In 2017, the Secretariat involved diamond industry experts in training events for African tax officials, which enabled tax officials to better understand the processes used by companies for sorting and aggregating rough diamonds for sale and the intellectual property involved. Based on feedback from tax officials in diamond-rich developing countries, the aim for 2018 will be to increase the number of industry experts providing insight locally to tax authorities in developing countries.

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Annex A. Detailed findings of the business survey

80. The data used is the same as in the 2017 Report and so the design and methodology will not be repeated here[8]. A notable difference is the regional analysis, to enable these two approaches have been taken. Country-specific responses have been aggregated by region, namely Africa, Latin America and Caribbean, Asia and OECD.[9] This approach provides significantly different numbers of observations in each region, and also has significantly different numbers of observations per country, though in no region was the most frequent country chosen by respondents responsible for more than 35% of responses[10]. For the questions where respondents were asked to give answers without reference to a specific country, the approach taken has been to include for analysis for each region those respondents which have identified having either a global or regional headquarters in a region. This approach does mean that some responses will be included in multiple regions, reflecting the multi-regional nature of their companies' operations. Tables 1 and 2 provide more complete details on the regional breakdown.

Table 1. Regional breakdown of number of countries and firms included in data for Figures 3-5, 7, 9 and 10

(questions where responses were provided in relation to the views of the respondent generally, not in relation to a specific named country)

	Global HQs		Regional HQ		Total (GHQ+RHQ)	
	Countries	Firms	Countries (additional to GHQ)	Firms	Countries	Firms
Africa	7	24	5	25	12	49
Asia	7	25	21	192	28	217
LAC	10	78	11	84	21	162
OECD	33	456	0	59	33	515

Note: As many companies operate across multiple regions their responses will be recorded in multiple regions.

Table 2. Regional breakdown of number of countries and firms included in data for Figures 6 and 8

(questions where responses were in relation to a specific named country)

	Selected Countries	
	Countries	# Firms
Africa	26	92
Asia	33	299
LAC	23	231
OECD	33	587

[8] See IMF/OECD *Tax Certainty – IMF/OECD Report for the G20 Finance Ministers* (March 2017), especially pp27-29 and Annex B.

[9] Excluding Mexico and Chile, which have been included in LAC. Japan and the Republic of Korea are included in the OECD grouping rather than Asia.

[10] Most frequent country represented 34% of all responses in LAC, 28% in Asia, 16% in OECD and 14% in Africa.

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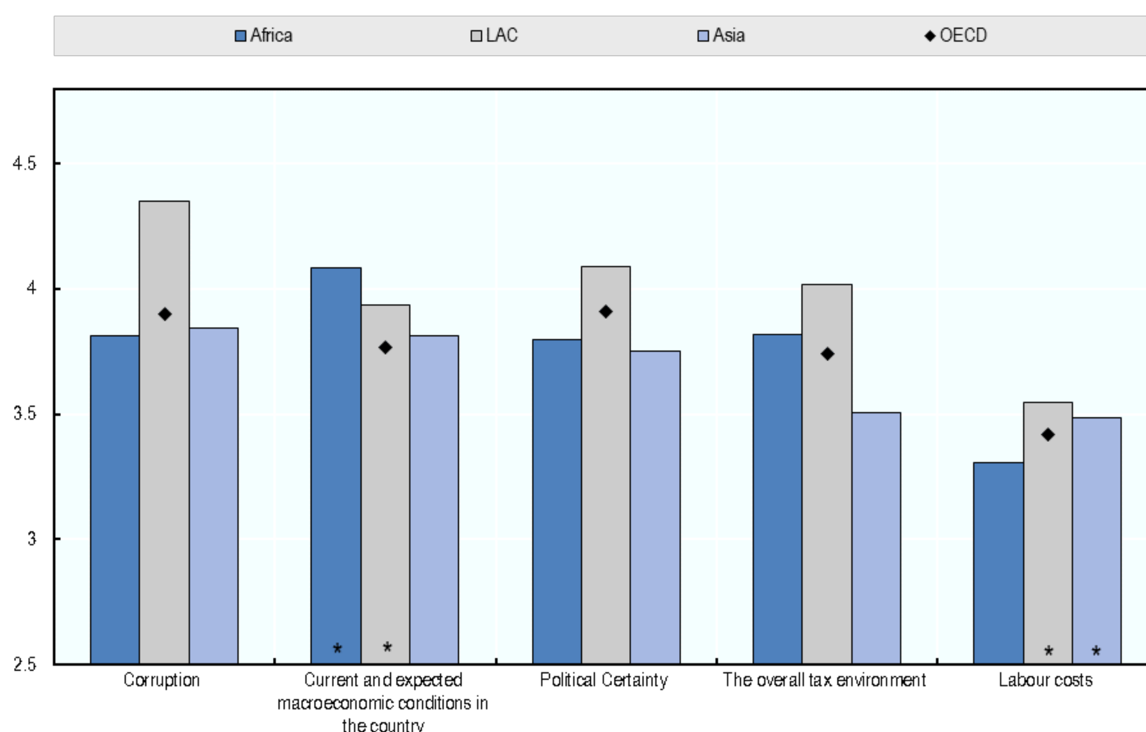
Factors driving investment

81. Whilst on average similar factors appear to drive investment decisions, there are some clear differences between regions. As in the overall survey findings reported in 2017[11] the top 5 most important factors in investment location decisions were: corruption, current and expected macroeconomic conditions in the country, political certainty, the overall tax environment and labour costs, though both the relative and absolute importance of these varies significantly between the regions (Figure 3). The much higher importance of corruption in LAC and lower importance of the tax environment in Asia being especially notable. As noted previously[12] the higher rating for the overall tax environment than in other surveys is likely to be driven by the fact the survey was promoted as a survey on taxation and targeted at tax specialists.

82. The difference in importance of factors such as exchange rate risk, presence of natural resources or regional customers are of statistical significance in some regions. Figure 4 shows the investment location factors that show the greatest difference between the highest and lowest absolute scores, and show that factors that are of minor concern in some regions are much more significant in others. The significance of exchange rate risks for companies with global or regional HQs in Africa and LAC for example, and the significance of a developed regional consumer base in Asia.

Figure 3. Top 5 business factors affecting investment or location decisions



Note: Results for the question 'Based on your experience, please assess the importance of each of the following factors for your firm's investment and location decisions. Please use a scale from 5 to 1 where 5 are extremely important and lower numbers indicate that the factor is progressively less important. If a factor is not at all important, select 1. If you have no experience or do not know, select n/a'

* denotes significance at 5%, difference between the region and OECD

[11] See IMF/OECD 2017 pp29-30

[12] See ibid p29

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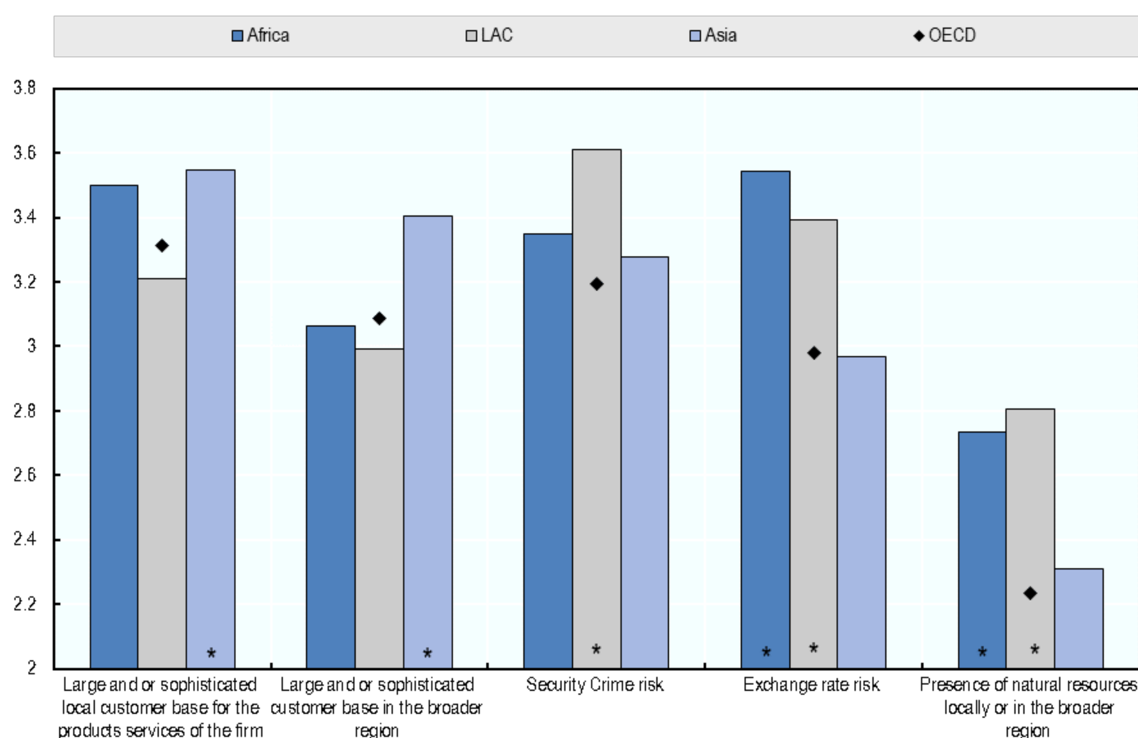
Figure 4. Business factors affecting investment and location decision with greatest variation between regions



** denotes significance at 5%, difference between the region and OECD*

Tax factors affecting investment and location

83. While corporate income tax appears the most important tax factor affecting investment and location decisions, VAT, withholding taxes and tax treaties are all factors in some regions. Figure 5 shows the top five factors affecting investment and location decisions for companies with global or regional HQs Africa, LAC and Asia. Here again we see some similarity with the findings in the 2017 Report, though the existence of tax treaties appears more important (3rd vs 5th most important) and uncertainty about relief for withholding tax also appears, suggesting that issues around cross-border transactions are especially important for MNEs operating in the three regions. Tax incentives did not appear to be a major driver of investment and location, except in Latin America and the Caribbean where it was the third most important factor (out of 12)[13]. While it is notable that the uncertainty over rates is consistently rated as more important than the level of the tax itself, the note of caution for this finding from the 2017 Report should be reiterated, that this finding may be a result of bias from the respondents in knowing this survey was about tax certainty.[14]

[13] Tax incentives were identified as 7th most important factor for companies with global or regional HQs in Asia, and 8th most important for OECD and Africa.

[14] See IMF/OECD 2017 p 31

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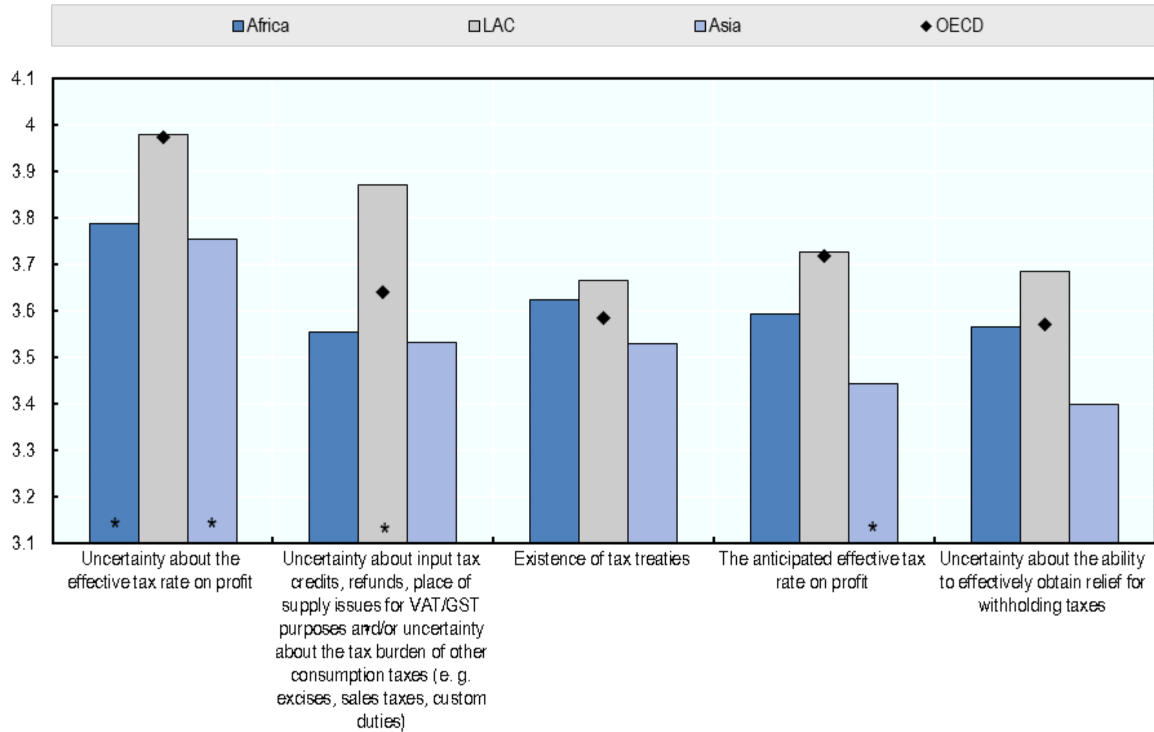
Figure 5. Top 5 tax factors affecting investment or location decisions



Note: Results for the question 'Which specific tax factors affect the investment and location decisions of your firm? Based on your experience, please assess the importance of each of the following factors.' The respondents could choose from a scale from 5 to 1, where 5 is extremely important and lower numbers indicate that the factor is progressively less important.

* denotes significance at 5%, difference between the region and OECD

Impact of tax uncertainty

84. Tax uncertainty appears to have a more frequent impact on investment decisions in the three regions than the OECD. Figure 6 shows responses on how frequently tax uncertainty has affected significant business decisions in relation to specific countries (aggregated to the regional level for the figure). From this figure there is a significant difference with tax uncertainty having a more frequent impact on significant business decisions in the three regions; this is especially pronounced for LAC where tax uncertainty having very frequent impacts on business decisions is also significantly higher than in the OECD.

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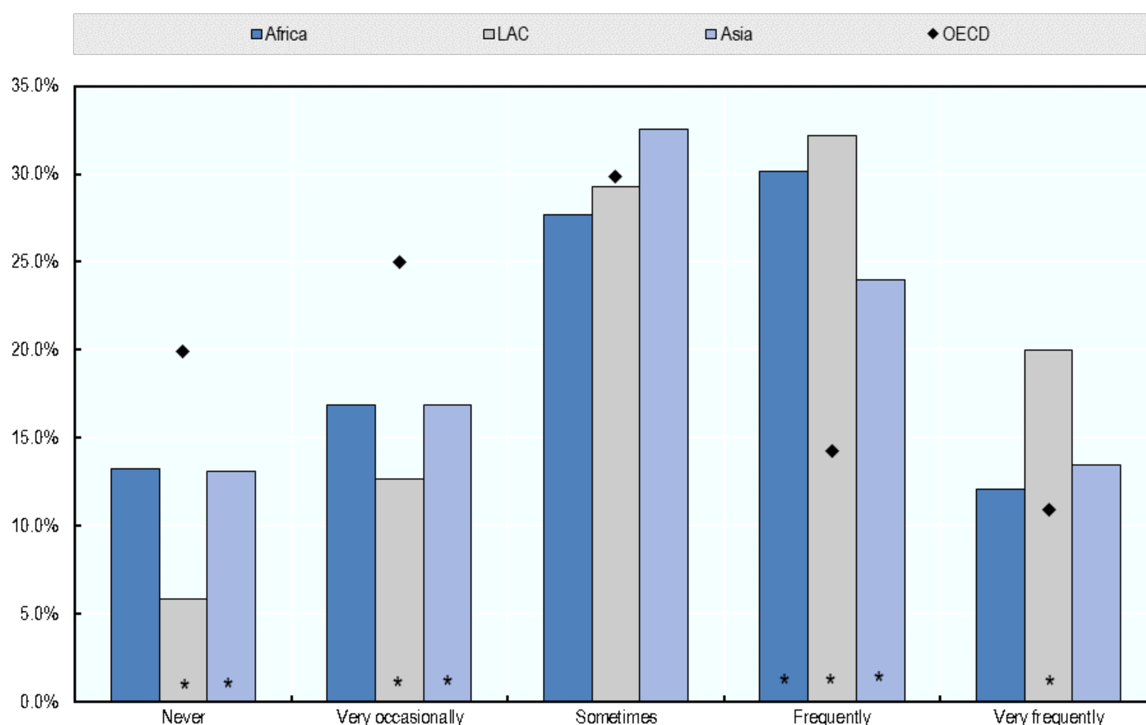
Figure 6. Frequency that tax uncertainty has seriously affected business decisions



Note: Responses to the question, 'How frequently has uncertainty in the tax system has a serious impact on business decisions?' Respondents were asked to use a scale for 5 to 1 where 5 indicated very frequently, 4 frequently, 3 sometimes, 2 very occasionally, and 1 never.

The question represented in this table was asked separately for each country selected by the respondents, each respondent could select a maximum of 4 countries.

* denotes significance at 5%, difference between the region and OECD.

85. The impact of tax uncertainty also may be different in the three regions, with increasing risk premiums, and a greater (though still relatively low) likelihood of firms using tax uncertainty to reduce their tax liability. Figure 7 shows the percentage of companies operating in each region that identified specific consequences of tax uncertainty; these represent the top four consequences, plus one where the relative difference between regions was significant. From these results we can see that there may be some differences in the impact that tax uncertainty is having in different regions. Most notable is that companies operating in the three regions are significantly more likely than the OECD to report that tax uncertainty will increase the risk premium or hurdle rate for potential investment (i.e. the cost of risk for the investment, or the rate of return required for the investment to proceed is increased), indicating that tax uncertainty may be having a greater impact on the investment climate in the three regions than the OECD. Potentially more concerning is that companies operating in Africa and LAC are significantly more likely than those in the OECD to report that they have taken advantage of tax uncertainty to reduce a firm's tax liability in a country. While this is a relatively low percentage, this does represent a fifth of companies, and may indicate that tax uncertainty in Africa and LAC may not only affect the investment climate, but may also negatively impact the volumes of revenues raised from the investment that takes place.

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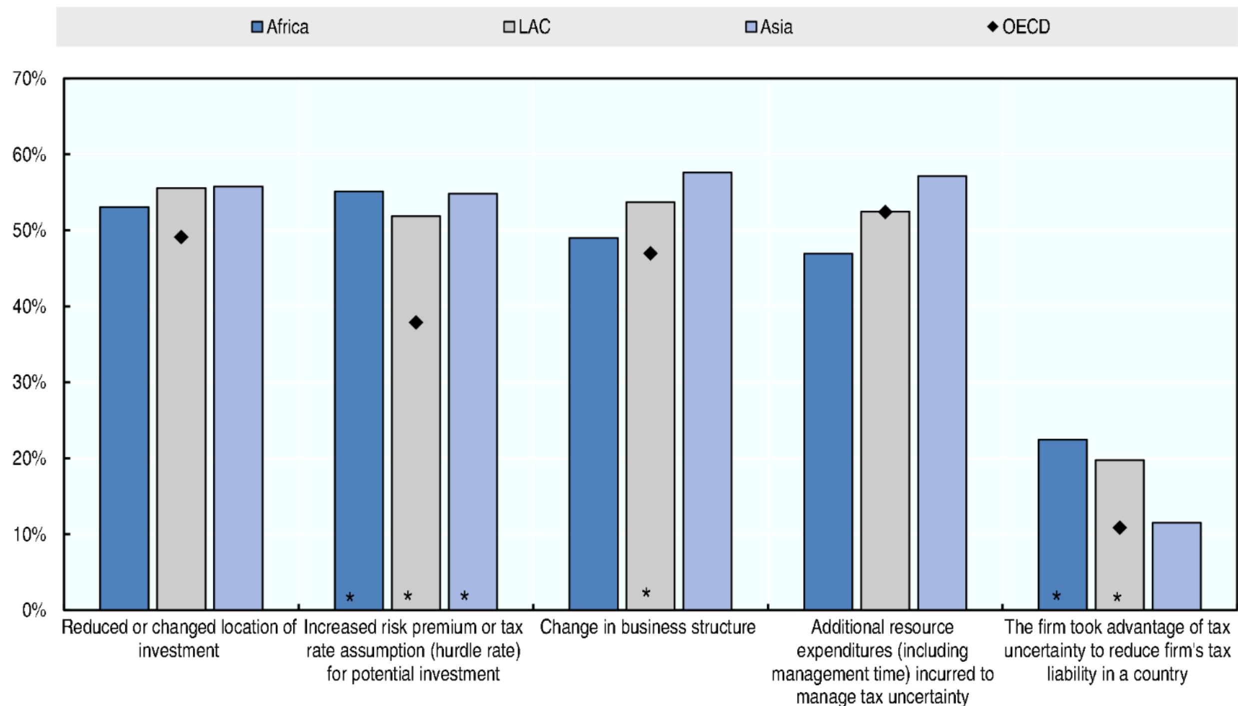
Figure 7. Impact of tax uncertainty



Note: Results for the question, 'In your experience, in which of the following ways has tax uncertainty affected business operations?'

* denotes significance at 5%, difference between the region and OECD.

Sources of tax uncertainty

86. When we turn to look at the sources of tax uncertainty, we can also find some substantial differences between regions. In keeping with the global findings the sources of tax uncertainty are across multiple dimensions – legal, administrative, dispute resolution and international, however there is also some variation. Figure 8 shows the top 10 sources of tax uncertainty respondents identified for specific countries, aggregated by region and then averaged across the three emerging regions. In keeping with the greater prominence given to the uncertainty of both VAT and withholding taxes in investment decisions, respondents from the three regions give significantly greater prominence to withholding tax relief and VAT refunds than the OECD. Unpredictable or inconsistent treatment by the tax authority also shows a significant difference with the OECD, and in both Africa and Asia was of more importance than the overall level of bureaucracy. The general pattern is that absolute values are higher for the emerging regions than the OECD, which may indicate a generally higher perception of tax uncertainty in developing countries[15]. There is a notable exception to this rule however, in that in both Africa and Asia the frequency of changes in the tax system were ranked as less important than in the OECD in absolute terms (3.17 for OECD versus 3.08 for Africa and 2.95 for Asia).

[15] This distinction was not observable in earlier questions in the survey (e.g. Figure 3) where respondents were giving a single response for their company as a whole, but only in these questions where opinions were provided in relation to the situation in a named country.

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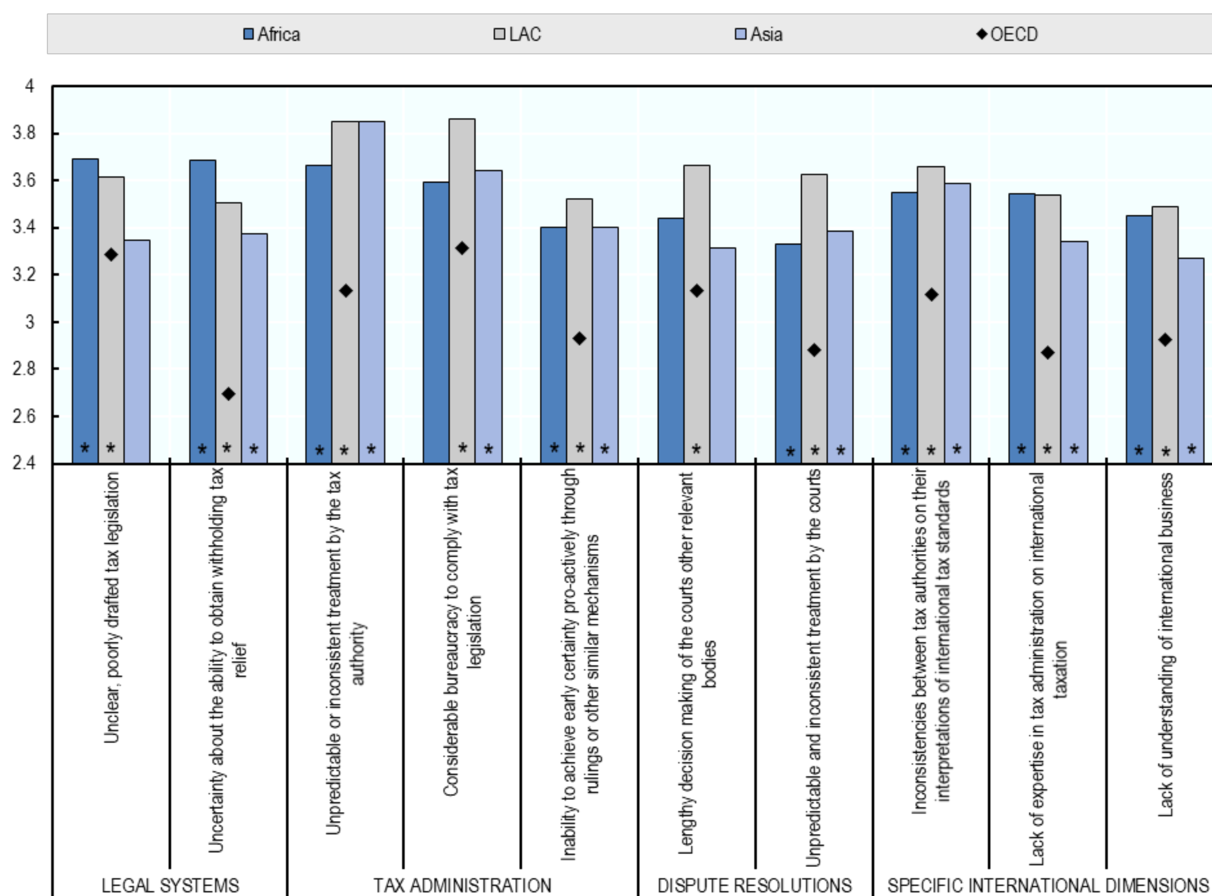
Figure 8. Top 10 sources of tax uncertainty



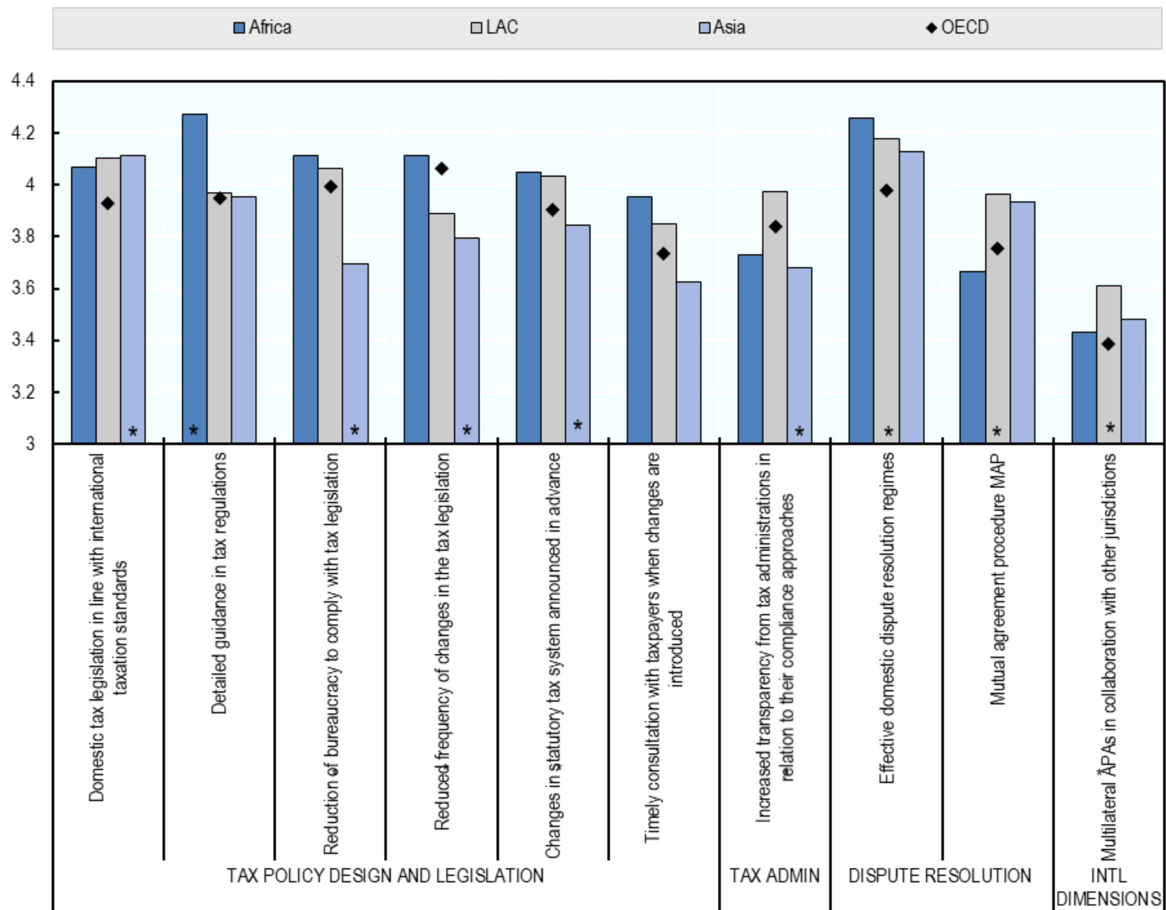
Note: Results for the question, 'Please identify in your experience how important each of the below factors has been in increasing the overall uncertainty on tax issues in the countries you have selected?' The respondents could choose from a scale from 5 to 1, where 5 are extremely important and lower number indicates the factor is progressively less important. The question represented in this table was asked separately for each country selected by the respondents, each respondent could select a maximum of 4 countries.

* denotes significance at 5%, difference between the region and OECD.

Tools to address tax uncertainty

87. There are also variations among the regions among the tools seen as most useful for improving tax certainty. Figure 9 shows the top 10 tools identified among the emerging regions as most important for addressing tax certainty. The importance of domestic dispute regimes is notable across all regions, as is alignment of domestic rules with international standards. Improved guidance appears especially important in Africa, while MAP issues appear to be relatively more important in Asia, and especially LAC than in Africa (or OECD). In keeping with the lower importance of frequency of changes as a source of tax uncertainty there appears to be less of a need to consider the frequency of changes to tax legislation in LAC and especially Asia than in the OECD (or Africa); indeed Asia shows a general pattern of having less focus placed on domestic tax policy and administration issues than all other regions.

Figure 9. Top 10 tools to foster tax certainty



Note: Results for the question, 'Which of the following tools has enhanced or could enhance certainty in the tax system?' The respondents could choose from a scale from 5 to 1, where 5 is the specific tool has increased or could increase certainty substantially, and lower numbers where the tool is progressively less important.

* denotes significance at 5%, difference between the region and OECD.

88. These variations are even more pronounced when looking beyond the top 10. Figure 10 looks at the ten tools for fostering tax certainty that have the greatest difference in ranking of importance between regions. When taking this approach the potential impact of tools such as simplified approaches (e.g. safe harbours) in Africa can be seen, as well the greater priority given to other ruling regimes in LAC (and Africa, though the divergence is not statistically significant). Asia continues to show significant divergence in some aspects of tax administration, most notably through much less demand for increased efficiency of communication between taxpayers and administration, but also in less demand for reduced complexity of legislation, and reduced frequency of changes.

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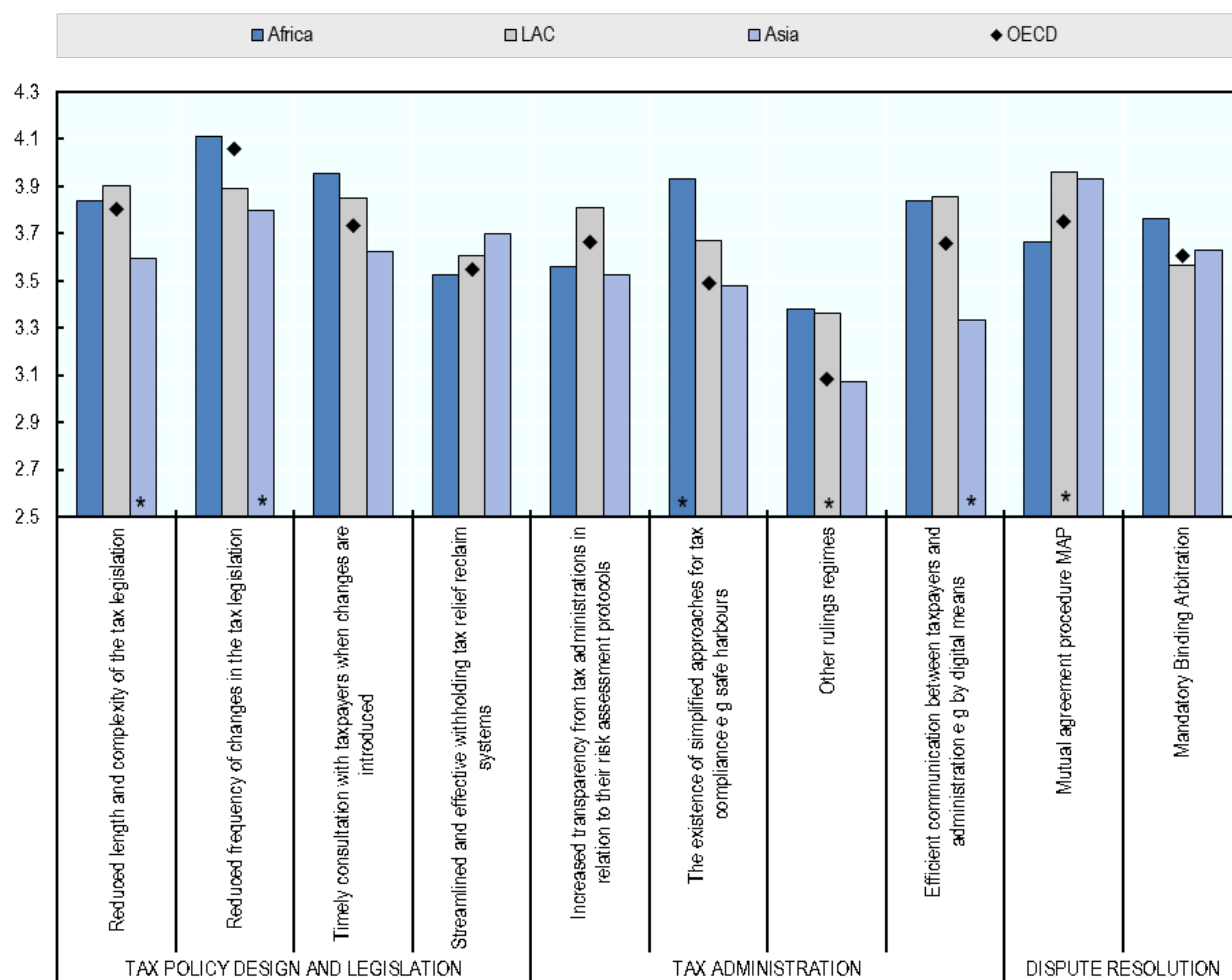
Figure 10. Greatest variation between regions in tools to foster tax certainty



** denotes significance at 5%, difference between the region and OECD*

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