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to other tax jurisdictions, it results in the erosion of tax revenue hence impact tax collection and undermine the credibility of the tax system due to negative public perception.

Commonly encountered profit shifting structure includes the following:-

a. Excessive or unwarranted intra group payments such as interest on loans, management fees or technical services fees, or payment for intellectual properties.
It is difficult to determine if these payments are excessive or represent a fair return of tax paid.

b. Global Value Chain Model
Globalisation and rapid tech
business models to new b

Model. Such business models make it easier for MNCs to shift profits between different tax jurisdictions. Malaysia has encountered cases of supply chain restructuring where risks are contractually transferred out which resulted in profits being shifted from a local company to a regional office. With this ability to contractually shift risk between members of the group, MNC can plan where profits are reported.

c. Mispricing of services rendered
- Important functions such as R&D performed here with only normal routine compensation given to the local entity
- Marketing activities performed in order to capture the local market was not compensated
- Low compensation given higher functions performed, assets employed and risks borne

The above are in relation to Actions 8, 9, 10 to assure that the transfer pricing outcomes are in line with value creation. By not properly compensating the local entities, Malaysia's tax base is eroded as taxes are not paid in jurisdiction where economic activities are generated. Profits are easily shifted to related parties in low tax jurisdiction where there are no/minimal real economic activities.

3. When you consider an MNE's activity in your country, how do you judge whether the MNE has reported an appropriate amount of profit in your jurisdiction?

   Through transfer pricing audit activities. Cases are first selected based on a risk assessment procedure. Malaysia has specific provisions on transfer pricing in our legislation.

4. What main obstacles have you encountered in assessing whether the appropriate amount of profit is reported in your jurisdiction and in ensuring that tax is paid on such profit?

   The main obstacles faced include:-

   a. Lack of information due to difficulties in obtaining the relevant information especially information regarding foreign operations.
   b. Lack of transparency on the part of the MNE in disclosing relevant information on international dealings necessary for understanding the global business.
   c. Information not provided in a timely manner.
   d. Lack of comparables (from transfer pricing perspective).

   Other relevant obstacles:

   e. Inadequate legislation.
   f. Lack of skills on auditors part to identify and deal with profit shifting issues.
   g. Insufficient resources (number of personnel) to deal with high risk cases – this will ultimately impact on compliance level of MNCs in local jurisdiction.

The Subcommittee have identified a number of actions in the Action Plan that impact on taxation in the country where the income is earned (the source country), as opposed T T 8
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- Action 9 – Assure that transfer pricing outcomes are in line with

Do you have any other comments you wish to share with the Subcommittee about base erosion and profit shifting, including your experience of obstacles to assessing and then addressing the issues, as well as lessons learned that may be of wider benefit?

No comments for now.