

BEPS: still far too many places to hide profits from tax

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This press release has been issued by the BEPS Monitoring Group of which I am a member:

The publication today of the final reports of the G20/OECD project on Base Erosion and Profit Shifting (BEPS) marks an important milestone on the road to reform of the international system for taxation of multinational enterprises (MNEs). Nevertheless, much remains to be done to construct an international tax system fit for the 21st century.

The OECD announced that cooperation will continue for a further five years to 2020, through 'a framework ... to better involve other interested countries and jurisdictions'. This will include both coordination and monitoring of the implementation of the proposals, and continued work on uncompleted topics. A key unresolved issue is the development of principles for allocation of profits, including the profit split method for transfer pricing.

Further, the report on digitalisation of the economy agrees that this phenomenon has greatly exacerbated the weaknesses of a system designed nearly a century ago. This entails going beyond the BEPS project, to re-examine the basic concepts of residence and source, and principles to determine where profit should be considered to be earned. It identifies some far-reaching options to be considered, including a new test of significant economic presence, and consideration of formulary apportionment. This work is also expected to take five years.

Our General Evaluation shows in detail that the BEPS outputs mainly aim at patching up the existing system, making the rules even more complex and in many cases contradictory. They will provide considerable strengthening of the existing rules, giving better tools to tax authorities, but only if they have the capacity and will to use them. The subjective and discretionary nature of many of the principles will make them hard to administer especially for smaller countries, and increase the likelihood of conflicts. They do little to stop the competition between states to offer corporate tax

breaks to attract multinationals, involving beggar-thy-neighbour policies which damage all.

The urgency in the BEPS project to make rapid repairs to a rickety system led those involved to neglect the need to begin by diagnosing the causes of its failures. However, some proposals begin to lay the foundation for a new approach, which in our view is essential, enabling the MNE to be considered as a single firm and ensuring that profits are allocated according to economic activity in each country. We hope that the next phase will provide the opportunity to tackle this key issue.

Notes to Editors

The BMG is a network of researchers on various aspects of international tax, supported by a number of civil society organizations which research and campaign for tax justice, under the umbrella of the Global Alliance for Tax Justice. We are the only independent commentators to have produced detailed comments on each and every report and discussion draft produced for the BEPS project, available at BEPS Monitoring Group. Neither those detailed comments nor this General Evaluation have been approved in advance by our supporting organizations, which do not necessarily accept every detail or specific point made here, but they support the work of the BMG and endorse its general perspectives.

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