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**Is There a Cure for BEPS?**

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The British Tax Review is a journal of record, with a relatively long shelf life. People reading the articles in this issue in five or ten years' time will know the outcome of the BEPS project currently underway at the OECD. However, at this early stage we do not know what that outcome will be. Will the BEPS project be the starting point for the development of new principles of international tax law; or will it be the final failure of the OECD to gain consensus, despite an apparent level of political support? The authors in this special issue are writing at the start of the process, when little is known as to what the outcomes might be, and are partly speculating on how those outcomes might turn out. Aside from explaining to current readers the project, the process, and the possible outcomes, these articles will be of interest to future readers who can see what hopes or concerns existed at the outset of the project.

What exactly is BEPS? Like many acronyms it means different things to different people. At its simplest, it is an abbreviation for "base erosion and profit shifting", and is a project that seeks to find solutions to practices adopted by some multinational enterprises to reduce their corporate profit tax bills in certain countries by the deduction of sums that erode the tax base or by simply shifting profits into lower tax jurisdictions. For those who might object that corporate profit taxes supply only a relatively small part of total tax revenue in many countries, the response comes that such revenue is still important; that recent events have highlighted the avoidance of tax by multinationals; and that there is a political will to do something to meet perceived public anger at these avoidance activities.

More broadly, BEPS stands for an agenda announced by the OECD and endorsed by the G20 for its work plan on taxation for the next two years and beyond.<sup>1</sup> It is a highly ambitious agenda, involving an intense flurry of activity and devotion of resources to try to find solutions. At the moment we do not know whether solutions can be found, and, even if they can, whether they will prove acceptable. One wonders how an exhausted international tax world will resume normal working in two or more years' time.

At a third level, BEPS is a political commitment of the OECD and G20 countries to work towards solutions of the problems identified.<sup>2</sup> The commitment is, of course, at present a commitment to the agenda and to work towards finding solutions: it is not a commitment to accept whatever solutions come out of the process. Already there are concerns not only that it will prove impossible to reach consensus on solutions to some problems, but that some solutions adopted by the majority would not be implemented by all countries.

Finally, at the broadest level, the BEPS project is an attempt by the OECD countries to maintain their dominant position over the development of rules of international tax law, a dominant position which they have held since the late 1950s. Although the project has the support of the G20, it is being led by the OECD in Paris. There is, therefore, a very real imperative for some of the OECD countries to seek a successful outcome (or at least an outcome sufficiently acceptable for them to declare it a success, and not look foolish in doing so), so that they can keep control over international tax policy within a relatively small group of 34 countries. If they fail to do this—if it becomes apparent that even within the OECD it is impossible to reach agreement on solutions—the leadership and the legitimacy of the OECD in tax matters will have been fatally undermined. There are potential successors in the wings to assume the mantle of leadership—the UN (in principle only), or the IMF—which have greater democratic legitimacy, but not yet the capability to take over the worldwide work on tax policy. The real outcome of the BEPS project may prove to be a vacancy in leadership for a period of time (rather as there was when the UN ceased its work on taxation in 1954).

The articles in this issue cover a range of items in the BEPS action plan. Edoardo Traversa discusses interest deductibility (one of the issues in Action Points 2 and 4); Englisch and Yevgenyeva discuss harmful tax practices (Action Point 5 promises a revisit of this issue)<sup>3</sup>; Richard Collier discusses the avoidance of PE status (Action Point 7); Georg Kofler discusses BEPS and transfer pricing (several issues in the BEPS agenda relate to work already underway at the OECD on transfer pricing—see Action Points 8, 9 and 10); and Miller and Kirkpatrick discuss the possible use of multilateral instruments to implement the BEPS conclusions, if any

(Action Point 14). In addition, Schoueri and Barbosa discuss the recent moves towards greater tax transparency and exchange of information, with links to the BEPS project.

The first issue for 2014 will continue the theme of focusing on international tax developments, and will contain an excellent article by Antony Ting on the tax structure of one US multinational which has achieved an effective tax rate on foreign source income only slightly north of zero. Many people might conclude that the article highlights the real problem of BEPS—that is, the fundamentally dysfunctional nature of the US international tax system, amounting to an unfair international trade practice. That system, which should perhaps be the real target of concerned politicians, is unlikely to be fundamentally changed by the OECD works on BEPS.

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1. OECD, *Action Plan on Base Erosion and Profit Shifting* (OECD Publishing, July 19, 2013), available at: <http://dx.doi.org/10.1787/9789264202719-en> [Accessed November 15, 2013].

2. See the Loch Erne Declaration of the G8 leaders, June 18, 2013 available: <https://www.gov.uk/government/publications/g8-loch-erne-declaration> [Accessed November 15, 2013], and the G20 Leaders' Declaration, St Petersburg Summit, September 5-6, 2013, available at: [http://www.g20.org/events\\_summit/20130905/780962092.html](http://www.g20.org/events_summit/20130905/780962092.html) [Accessed November 14, 2013].

3. The fact that it needs to be revisited so soon after the OECD's Harmful Tax Competition project may reflect the fact that, in reality, the OECD member countries have done little if nothing to meet their harmful tax practices. See OECD, *The OECD's Project on Harmful Tax Practices: 2006 Update on Progress in Member Countries*. The previous progress reports are *The OECD's Project on Harmful Tax Practices: The 2004 Progress Report (2004)*; *Towards Global Tax Co-operation (2000)* and *The OECD's Project on Harmful Tax Practices: The 2001 Progress Report (2001)*.

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