

# Why follow the G20's lead?

## Assessing policymakers' considerations on joining the Base Erosion and Profit Shifting project

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**GLOBTAXGOV**  
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- **Why is it a success? Analysis of discourse by policymakers in third countries**
- Conclusion: Legitimate? Effective?



# GLOBTAXGOV

A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING

- 5 year project at Universiteit Leiden funded by European Research Council
  - Investigate and compare the implementation of the BEPS minimum standards in 12 countries (6 OECD and 6 non-OECD). How? Why? Which actors?
  - Assessing conditions of legitimacy of OECD and EU in international tax policy making
- Together with Irma Mosquera and Adrian Grant
- More info on: <https://globtaxgov.weblog.leidenuniv.nl/>

# What is BEPS?

• **Base Erosion** and **Profit Shifting**



- Less tax revenue for governments because of specific tax planning techniques by MNEs

Why? (technical)

- Mismatch in domestic rules
- Problems in treaties for the avoidance of double taxation (commonly “tax treaties”)
- Lack of transparency and information exchange between authorities

# What is BEPS?

• **Base Erosion** and **Profit Shifting**



- Less tax revenue for governments because of specific tax planning techniques by MNEs

Why? (political)

- MNE's?
  - Lack of social responsibility
- Their advisors?
  - Tax planning as lucrative business model
- Governments themselves?
  - Tax competition and “beggar-thy-neighbor” policies

# Timeline

- G20 Mexico 2012: OECD developed Action plan (15 Actions) together with G20 countries
- OECD produces initial Action plan
- Endorsement at G20 Russia 2013
- 2015: Reports with precise recommendations are delivered (15 Actions)
- 2016: Set up of BEPS inclusive framework
- 2017: Multilateral convention to update existing bilateral tax treaties
- 118 jurisdictions part of Inclusive Framework + 22 commitments

*“We also welcome the work that the OECD is undertaking into the problem of base erosion and profit shifting and look forward to a report about progress of the work at our next meeting”*

*“We fully endorse the ambitious and comprehensive Action Plan submitted at the request of the G-20 by the OECD aimed at addressing base erosion and profit shifting (BEPS) with a mechanism to enrich the Plan as appropriate . We welcome the establishment of the OECD/G20 BEPS project and encourage all interested countries to participate”*

# BEPS inclusive framework: what does it mean?

- Becoming a “BEPS associate”
- Working together on an “equal footing”
- Potential to shape implementation process
- Commitment to apply the 4 minimum standards
- Peer-review mechanism
- Technical support

# Criticism from the academic world - process

- The “Inclusive Framework on BEPS” where all members participate on an “equal footing” versus the non-inclusive agenda setting



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# Criticism from the academic world - outcome

- Limited relevance
- +Complexity and limited resources
- really the best allocation of capacity?
- Giving up sovereign choices (in both directions → protecting tax base and investors)
- Giving up one potential development route (subject to debate)
- Only incremental change (no fairer distribution between countries)
- Strengthening of the OECD's position as international rule making body (which reflects the interests of its member states), at the expense of e.g. UN



Free decision?

# An interesting case

- Interesting because...
- Insights into how the G20 set standards and achieves its effectiveness
- How does global governance work?  
→ Material interests, ideas, socialization?
- Informs arguments about the legitimacy of the G20 (among others the question of the “free will”)

# Method

- Searching for statements by policymakers from concerned countries
- Finding common patterns or patterns that resonate with theories
- Later stage: Interviews

# The first evidence base: What politicians say

- Shared goals with BEPS – Strengthening revenue generation
- Combating undesired behavior – against a common enemy
- Attracting investment
- Gaining prestige by applying “modern”, “international standards”
- Coerced by the EU list of non-cooperative jurisdictions
- Centripetal force of the network?

“The Government acknowledges that BEPS issue is significant and through responsible agencies needs to have in place the most appropriate mechanisms to counter transfer pricing and *protect our revenue.*” (Taxation Review Committee, PNG)

“The *multinationals enrich themselves* immensely by circumventing the control systems and the ordinary mechanisms put in place to apprehend the taxable matter. This annihilates reforms to broaden the tax base. It is imperative to *counterattack*” (Head of Benin’s Tax Administration)

“Botswana’s tax system will be put under scrutiny whether it conforms to international best practice *which should in turn boost investor confidence and hence it has the potential to attract investment by credible investors*” (Botswana’s Tax Policy Director in MoF)

“... The relationship with these bodies has provided forums for the country to *benchmark its services to international standards.*” (Head of Kenya Revenue Authority)

“Thus, in order to avoid the destruction the industrialized world can visit on us by way of punishment, Belize has committed to have the necessary legislative amendments in place by October 2018. [...] The making of this commitment was essential to avoid being “black listed” and devastated by the EU.” (Prime Minister of Benin)

“The current work being undertaken by the OECD/G20 should be followed closely by PNG, particularly given that two-thirds of PNG’s bilateral treaty partners are currently engaged in that work.” (PNG Taxation Review Committee)

	<b>Strengthening revenue generation</b>	<b>Together against a common enemy</b>	<b>Investment attraction</b>	<b>Modernity and international best practice</b>	<b>Network effects</b>	<b>EU Blacklist</b>
Belize						X
Benin	X	X		X		
Botswana	X	X	X	X		
Burkina Faso	X			X		
Cameroun	X	X				
Côte d'Ivoire	X	X		X		
Kenya	X	X		X		
Papua New Guinea	X			X	X	
Peru	X					
Senegal	X					

# EU blacklist – relevant with regards to more countries

Country Name	WB classification	Member of BEPS inclusive framework since	Committed to apply BEPS measures after EU letter in Jan 2017	Potentially committed to apply BEPS measures in order to be moved from black to grey list in 2018
Albania	Upper middle income	Committed	Yes	
Armenia	Upper middle income	Committed	Yes	
Bosnia and Herzegovina	Upper middle income	Committed	Yes	
Cabo Verde	Lower middle income	Committed	Yes	
eSwatini	Lower middle income	Committed	Yes	
Fiji	Upper middle income	Committed	Yes	
Grenada	Upper middle income	Committed		Yes
Jordan	Upper middle income	Committed	Yes	
Macedonia, FYR	Upper middle income	2018-08	Yes	
Maldives	Upper middle income	2018-05	Yes	
Marshall Islands	Upper middle income	Committed		Yes
Mongolia	Lower middle income	2018-05		Yes
Montenegro	Upper middle income	Committed	Yes	
Morocco	Lower middle income	Committed	Yes	
Nauru	Upper middle income	Committed	Yes	
Niue	NA	Committed	Yes	
Serbia	Upper middle income	2018-05	Yes	
St. Lucia	Upper middle income	2018-05		Yes
St. Vincent and the Grenadines	Upper middle income	Committed	Yes	
Tunisia	Lower middle income	2018-05		Yes
Vanuatu	Lower middle income	Committed	Yes	

# The G20/OECD BEPS project – legitimate towards third countries?

- To some – maybe yes
- Towards all – probably not
- Possibility to create sovereignty preserving global consensus? – Difficult
- Differentiated approach developing / developed countries? – maybe yes, but also difficult
- Orientation towards other principles? – Not preserving sovereignty but “Leave no one behind”



# The G20/OECD –creating an effective global outcome?

- Will it help developing countries to generate more revenue?
- Outcome of actual implementation process is uncertain (difficult to measure)
- Many possibilities to diverge in implementation
- Many actors involved in implementation
- Disagreements on issues
- Too early probably to call it a political success

*“It will take some fancy footwork indeed to preserve some semblance of this business while at the same time complying with the new standards and criteria being set by the developed countries to muscle it out of existence. Resilience and creativity, together with the ingenuity of the service providers, will have to be the watchwords.” (Prime Minister of Belize)*

**Thank you!  
Vielen Dank!  
Dankuwel!**

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