

Compliance and peer review of BEPS minimum standards

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A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



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1. The puzzle

- Peer review BEPS 4 Minimum Standards, soft law (except MLI), but countries comply? Why?
- Countries outside the BEPS 44 group did not participate in the decision making of the content of the standards.
- The potential costs of compliance are high, and benefits are unclear (resources, other non-BEPS problems, changes to domestic law and treaty law that may take years).
- Unlike EOI, not clear that BEPS minimum standards benefit developing countries or that it addresses the problems of developing countries. Some other BEPS measures (e.g. best practices) may be more favorable.
- No (full) data regarding the benefits from BEPS in terms of revenue.
- Peer reviews in other areas but taxation. Peer review in taxation is new.

1. The puzzle

- Article started in Dec 2018. At that time still role of G24 developing countries was considered as relevant, and the peer reviews were at early stage (1 report).
- After peer reviews of 3 of the 4 minimum standards, sufficient data to analyse the compliance of developing countries with the BEPS 4 Minimum Standards.
- However unlike EOI:
 - Information is succinct regarding why countries comply or not
 - Input of countries is limited
 - No clear how countries can benefit from the standards
 - In some cases changes to domestic law (e.g. Action 13) or to treaty law (e.g. Action 6) have not yet taken place, and not reason for the delay
 - One standard (i.e. Action 14) has been deferred – deferral currently under review.

2. Methodology

- Use theories of compliance: Rationalist, constructivist and bounded rationality explanations.
- Desk research: Peer review reports of 7 countries outside BEPS 44: Congo, Cameroon, Costa Rica, Jamaica, Sri-Lanka, Viet Nam, Peru.
- Empirical research: Interviews to representatives of the above mentioned countries in the BEPS Inclusive Framework (but how many? Constrains regarding their role?)
- Observations in conferences regarding the role of developing countries in the BEPS Inclusive framework (e.g. ICTD roundtable, FACTI panel, OECD BEPS IF, etc)

3. Different approaches/questions

- Are we trying to explain compliance with the minimum standards or participation in the peer review process?
- Isn't implementation the same as compliance?
 - This article: Reviewing compliance with the BEPS 4 Minimum Standards in accordance to the OECD Terms of reference and methodology.
 - PhDs : Effective implementation of the minimum standards, and the reasons for deviation from the BEPS 4 Minimum Standards, that could be found in the tax culture, and tax system of each country
- Topic of compliance is just new for us in taxation, and it only started in 2009 with exchange of information, and therefore, we "tax" scholars are still trying to figure out how this works from an international relations perspective, so this is just the beginning.

The GLOBTAXGOV project aims to ask the questions but we may not always have the answers.

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