

BASE EROSION AND PROFIT SHIFTING – AN OVERVIEW**Lecturer PhD Marius-Sorin CIUBOTARIU***Stefan cel Mare University of Suceava, 720229, Romania
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corina_petrescu23@yahoo.com***Abstract**

In the current context of globalization and digitization of the economy that is strongly characterized by transnational businesses, the need to approach the problem of unethical tax practices and policies is more and more obvious because its unwanted effects are seen and experienced in almost every country that is opened to foreign investments. Being a specific problem of the multinational companies (but not only), the unethical tax practices and policies attracted the interest of many international organizations, becoming this way subject of many debates, disputes and regulation that are searching for the most efficient solutions to combat them and to manage their effects that consist in tax base erosions and profit shifting (BEPS). This paper aims to sketch in the mind of the readers a clear image of the conceptual meaning of the BEPS phenomenon, of the current level of international enactment and standardization and on the encountered difficulties for a harmonized implementation of the anti-BEPS regulation.

Key words: *BEPS, tax practices and policies, OECD, BEPS Action Plan*

JEL Classification: *F38, F62, M48*

I. INTRODUCTION

Becoming one of the most significant global tax concerns - given the massive monetary losses it generates - the BEPS phenomenon needed also a global solution that could tackle as many as possible domains affected by it and that could offer real and effective recommendations and answers for each one of them, making this way a much more secure and equitable international trading environment for any kind of transaction or information exchange. Such a solution came in 2015 through the issuing of the BEPS Action Plan - by the OECD at the request of the members of The Group of Twenty (G20) - that approaches 15 main aspects or actions through which the problem could have a better management (OECD, 2013). This Action Plan represents the modern foundation of the anti-BEPS global fight, many standards or regulation being issued or updated based or depending on its stipulations, fact that highlights its significant role, utility and contribution to the international framework of this domain.

II. CONCEPTUAL APPROACH REGARDING BASE EROSION AND PROFIT SHIFTING

For everyone to understand the subject of our research, we need to define and explain it. Therefore, BEPS phenomenon refers to tax planning strategies – especially of the multinational companies - which exploit the gaps and the contradictions from the existing legal regulation of this domain, just to make sure that the company's profits are transferred to the subsidiary where the economic activity is very small or non-existent and in a country where these profits would be taxed at a very low level or even not at all, places we name tax havens (<https://www.oecd.org/tax/beps/about/>). Therefore, an erosion of the tax base will result and the beneficiaries of this situation will not be the states governments or the citizens, but only the companies of which profits were shifted. There it is estimated that approximately 100 – 240 billion United States Dollars (USD) are annually lost – at a global level - through diminishing the tax bases and through evasion from tax obligations by the contributors (see <http://www.oecd.org/about/impact/combatinginternationaltaxavoidance.htm>).

This kind of situations is mostly generated by the practices of the multinational companies that carry out their activity on the territory of many countries, fact that facilitates and encourages these unethical activities. Therefore, as a response to the global call that something needs to be done to prevent, to discourage and to diminish these kind of multinational companies practices, international organizations came up with the mentioned above BEPS Action Plan which provides a number of recommendation without legal force, but with strong ethical and moral impact. That is why, by applying the provisions of this Action Plan, the governments will be capable to

control and supervise much better the information exchange and the financial transactions between affiliated companies or affiliated people and between those companies belonging to the same group. Therefore, huge amounts of money will be saved from being shifted in tax havens and will be accordingly taxed, fact that will generate new and consistent revenues for the state’s budgets that can be used to meet the needs of the citizens and of the society, improving this way the standard of living and the quality of life.

The main objective of the BEPS Action Plan is to strategically tackle the aspects and the circumstances that favor the manifestation of the base erosion and profit-shifting phenomenon and to find solutions for all of them, solutions that have to be consistent with the following three pillars (Remeur, 2019: 2):

- improving the coherence of tax rules across borders;
- reinforcing substance requirements;
- enhancing transparency and certainty.

We see that these pillars highlight the importance of tax regulations harmonization at an international level and the importance of a transparent, professional and qualitative communication and exchange of information between subjects and jurisdictions, fact that would be a real help in the implementation of the BEPS Action Plan stipulations which are structured in 15 actions, as can be seen in the Figure 1 below.

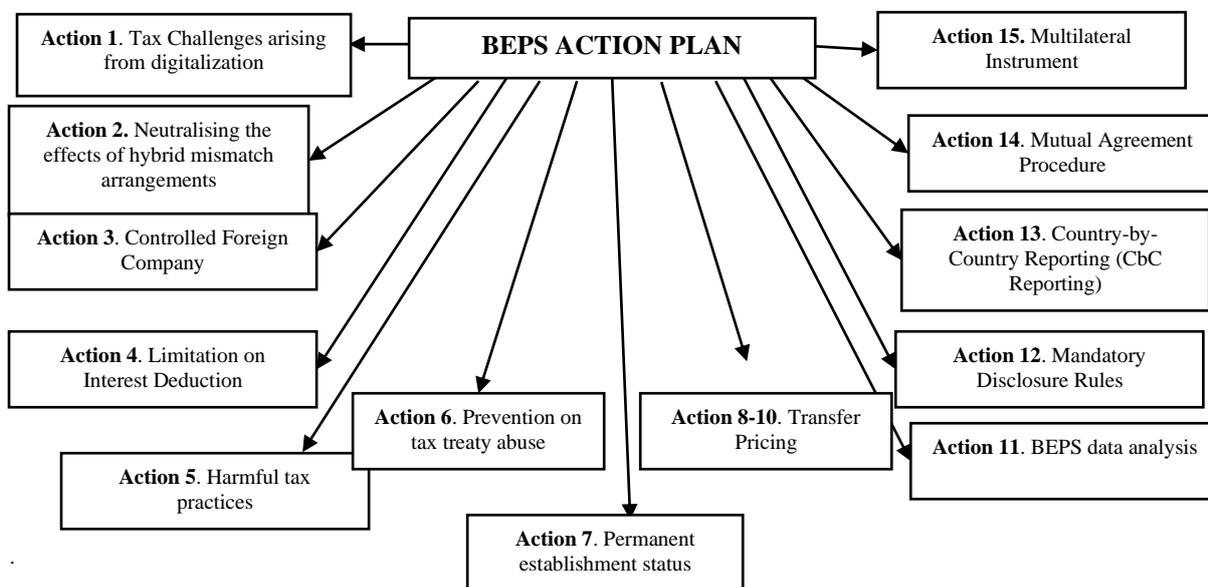


Figure 1 – BEPS Action Plan

Source: data processing according to <http://www.oecd.org/tax/beps/beps-actions/>

As we can see, the applicability of the measures or of the recommendations regarding the elimination of BEPS phenomenon - at a global level – it is wide open to a multitude of domains and aspects that the governments should consider in the elaboration of their national legal framework, when they decide to adopt the BEPS Action Plan. This can be made based on consensus and in a progressive way: in the first place, the implementation of a minimum standard – provided by actions 5, 6, 13 and 14 - is mandatory and in the second place, the other actions can be implemented simultaneously or successively, according to the national particularities and needs (MIHICTEPCTBO, 2017). According to a OECD report, over 135 countries worldwide are members of the OECD/G20 Inclusive Framework on BEPS till now (<https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>), fact that highlights the significant role of the Action Plan in the fight against BEPS phenomenon and the global awareness that it is the right time for action, not just for talks and complaints.

Starting from the BEPS Action Plan, an entire international framework – standards, guidelines, recommendations - regarding this subject was formed, making possible a more efficient implementation trough the available information on why, how and when this needs to be done. Therefore, governments and companies – especially multinational companies – have at their disposal a huge source of information, they just need to learn how to put it in practice, fact that it is not easy at all because a multitude of problems and barriers could arise, aspects that will be detailed in the following section.

III. INTERNATIONAL FRAMEWORK ON BEPS AND THE ISSUE OF HARMONIZING THE PRACTICES IN THE FIELD

As we mentioned earlier, huge amounts of money - that can be used for the good of the people - are lost through unethical and illegal practices and transactions of the multinational companies that obtain lots of profits in their activities. This situation cannot be considered a new one, because since the last century these problems were in the attention of the international organizations and organisms that, at their time, issued standards that tackled different individual aspects that are found today in the content of the BEPS Action Plan. All these actions of standardization and enactment are trying to create a uniform international system of reporting and exchange of financial and tax information that would simplify and make more efficient the global efforts to identify the situations of tax evasion, to control and manage them and to combat and reverse their effects, as much as possible. Even though many of these standards do not have a mandatory character, their stipulations are transposed in the domestic legislative systems of many countries around the globe, fact that gives them the authority of the law with the corresponding consequences in case of non-compliance and highlights the significance and the amplitude of the international movement against BEPS phenomenon.

Therefore, we can talk about a first form of the standards that tackle the tax transparency and the tax information exchange being represented by the *Standard Magnetic Format (SMF)* issued by OECD in 1992 and revised in 1997 (see <http://www.oecd.org/ctp/exchange-of-tax-information/40501917.pdf>). Today, the tax transparency is approached by two important international standards, namely: the *Standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI)* issued in 2014 and published in two editions (OECD, 2017) and the *Standard for Exchange of Information on Request (EOIR)* issued in 2000 (OECD, 2016). The level and the correctness of the implementation of these standards in the jurisdictions that adopted them is monitored, verified and reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes, an OECD organism (<http://www.oecd.org/tax/transparency/>). We can see that the content of these standards can be easily correlated with some of the actions presented in the BEPS Action Plan, which means that the role and the importance of its stipulations were strengthened and confirmed.

Starting with the 1963 year, we can talk about a more solid regulation regarding the avoiding of the double taxation for the contributors that carry out their activity on the territory of more states. In that time, the Tax Committee of the OECD issued the *Draft Double Taxation Convention on Income and Capital* (OECD, 2017) to be used by the countries that are interested in strengthening their bilateral international relations of tax nature. The last revision of this convention model was made in 2017, when its content was updated according to BEPS Action Plan stipulations. We can say that this convention has a significant role in ensuring a common denominator regarding the usual problems that manifest in this field of double taxation in the case of international transactions, fact that significantly simplifies the interstate negotiations and allows the removal of legislative and investments barriers. This convention can also be correlated with some of the actions mentioned in the BEPS Action Plan: Action no. 2, Action no. 6, Action no. 7 and Action no. 14, all of these referring to the establishment of the relations between jurisdictions through treaties, agreements, procedures or any other possible legal form.

We can also talk about the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument – MLI)*, signed by 95 countries from all over the world (<https://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>) whose purpose is to create a better economic environment through the avoidance of double taxation with respect to taxes on income (OECD, 2016: 2). This convention can be considered an implementation of the Action 15 – Multilateral Instrument of the BEPS Action Plan.

As we can see, the BEPS Action Plan - a quite “young” regulation - along with some other standards – including those presented above – form the international framework that supports the fight against BEPS phenomenon and bring together the main global tax evasion and financial information transfer problems, providing in the same time a series of solutions and updated instruments to better manage these kind of situations. However, having a legal framework is not the only part of the solution and not even the most important one, because if this it is not applied and put into practice, it cannot create effects and therefore it is losing its value and purpose. In our vision, the most difficult part is how to determine a multitude of states - that are different in the level of economic development and in the level of quality of life, in the social and cultural views, in the access to education and information and many other domains – to adopt and to put into practice in the same way the stipulations of the existing framework, because there are a lot of social and economic implications that cannot be simply ignored.

The harmonization of any domain implies a complex process that needs time, a good coordination and organization and not lastly, some lower or higher costs depending on the complexity of the process, this being valid for our situation too. Talking about international practices, it creates a wide image that highlights the amplitude and the implications of this harmonization objective that would be a great achievement for our modern society. Thereby, we can talk about the BEPS Action Plan that mobilized over 135 countries in the entire world, about the Global Forum on Transparency and Exchange of Information for Tax Purposes that involves over 160

countries for the implementation of AEOI and EOIR Standards, about the Multilateral Convention for Tax Transparency adopted and signed by 130 jurisdictions and about any other instruments that show the global interest for a harmonization of this domain.

Adopting and applying the BEPS Action Plan - or any other regulation or standard in the field - has a huge impact in many aspects of the economic and social life of a multinational company, involving many structural and organizational changes and new approaches on financial, tax, communication and reporting matters. They also need to focus their attention on the intragroup transactions, especially on those referring to financing and transfer pricing, whose practical aspects are detailed in the *Transfer Pricing Guidance on Financial Transactions* (OECD, 2020). All these aspects must be governed by strong ethical and equity principles, because this is what BEPS Action Plan is all about: making the world a better place, where every subject to taxation – wherever it is – is treated fairly and equally by the law and where, on their turn, they prove transparency and openness in each of their transaction and activity, so that their real profits are taxed, rewarding this way the society for the resources it provides for their activity. This situation can be seen as a cyclical process, because when a multinational company proves - with facts - financial and tax transparency and social responsibility, it influences in a positive way the customers behavior, fact that considerably contributes to their sales, image and reputation, essential aspects for their growth and development. In other words, the more a multinational company gives to the society, the more it receives from it.

As we mentioned, applying the provisions of the BEPS Action Plan is not an easy process, especially in the cases of multinational companies that carry out their activity on the territory of many states, fact that means real communication and information gathering challenges. According to a multinational survey made at the initiative of OECD in 2018 on 447 respondents from 39 countries from all over the globe, many people in leadership positions (tax, finance and executive managers), identified the implementation of BEPS Action Plan as a difficult and complex responsibility that financially and organizationally burdens their activity and that it makes them to focus more on the compliance matter, rather than on an active tax planning (Deloitte Global, 2018: 43). Some of their concerns and opinions regarding the BEPS Action Plan implementation and the tax changes that it brings can be observed in the Figure 2 below.

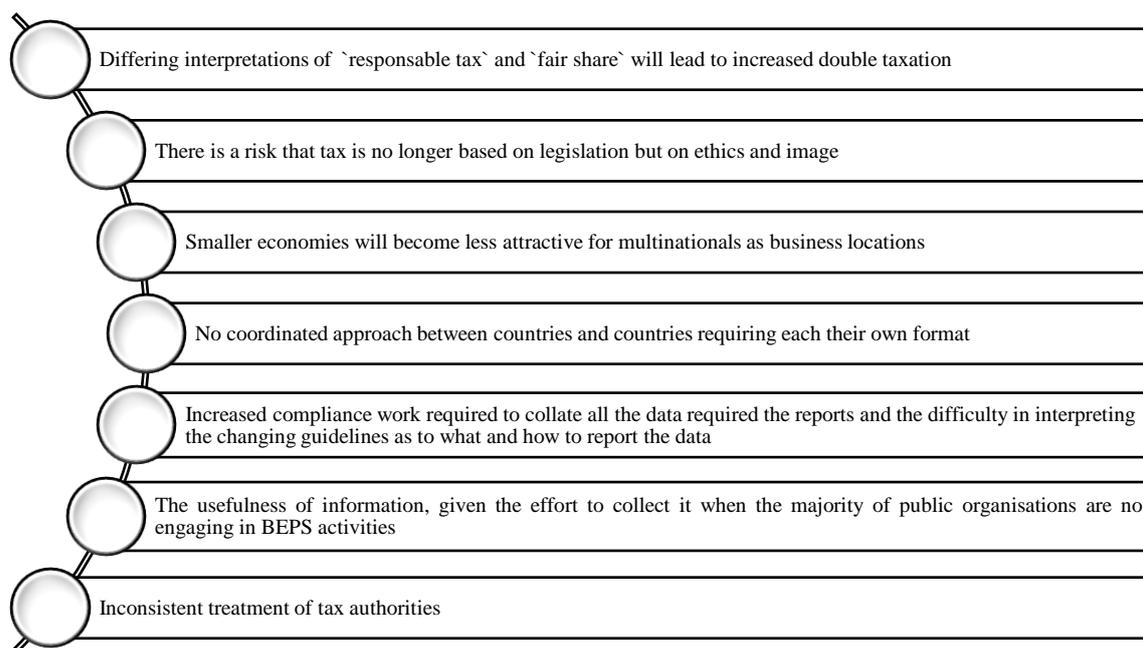


Figure 2 – Concerns and opinions of managers and executives on BEPS Action Plan implementation

Source: Deloitte Global, 2018: 42-46

As we can see, the problems indicated by the subjects refer to an instability and interpretability of the international reporting rules and recommendations, to a lack of global coordination regarding the manner and the time of reporting or implementation, to the possibility of an inappropriate or aggressive attitude from the tax authorities and to the difficulty in collecting the data needed for the reporting activity, questioning it's utility. Also, due to the fact that smaller economies have a lower bargaining power of the bilateral treaties in tax matters and that they have a lower level of digitalization of economy, so lower security of transactions and slower speed of the information exchange infrastructure, it could be considered by multinational companies as an unattractive destination for investments.

This kind of issues can be generated by some gaps regarding the level of implementation of the existing regulation, by the fact that not all the countries have committed in the same time to adopt the BEPS Action Plan and that every country has its own level of promptness and efficiency that is highly influenced by some domestic factors as: the society answer to this initiative, the financial and psychological disponibility of the taxable subjects to accept it, the level of professionalism of the specialists, the clarity of internally transposed regulation and others. In addition, we are witnessing significant changes of the rules regarding transfer prices practices and unilateral anti-avoidance measures that can affect all the international businesses. The growing interest of the tax authorities regarding the transfer prices matter is confirmed by the multitude of resources dedicated to this domain and through the numerous public debates regarding the tax structures of the multinational companies (Austin, Alamuddin & Bedford, 2019). We can consider all these issues being part of an incipient phase of implementation, given the fact that BEPS Action Plan is a relative new regulation.

As we can see, there are a lot of obstacles and fears regarding the international BEPS practices harmonization, but the most important fact is that we make progress and that every difficult situation or every conflict is an opportunity to learn new and better ways to manage them. If every involved country or jurisdiction would give their best to correctly and efficiently manage all the conflict of interest situations in tax matters, we would assist to a faster harmonization, fact that highlights that every subject has its role and contribution to a better world. Even though is a long and a full of obstacles way until we can talk about a consistent legislative and procedural harmonization of this domain, we are looking with confidence to what the future holds for us.

IV. CONCLUSION

After years of public debating and projecting, the OECD was able to issue the BEPS Action Plan that became - in a short period of time – the most significant and maybe the most adopted regulation regarding international tax matters, through the accessibility and the professionalism of its stipulations. This should be considered an opportunity by all governments and jurisdictions to strengthen their national supervision and control system regarding the tax matters and to win more bargaining power for bilateral or multilateral negotiations and also, international recognition.

Of course that all of these cannot be obtained at once and for free, but in a progressive way and with much work and implication that can involve many costs and resources. Therefore, using this opportunity has its advantages and disadvantages, which can, however, create a fair balance that is worth obtaining. On the one hand there are the inevitable costs for the administrative problems, for the new computer programs and the software that need to be installed and implemented and for the documentation and training process. We didn't mention the difficulties in the correct and real transposition from the international regulation – that are always changing - to the domestic law, the problems met in its national implementation, the perception of the society on these changes and so many more. On the other hand, we can talk about the vision, the protection and the law authority that are coming in the same time with BEPS Action Plan implementation, facts we consider that are outweighing the possible disadvantages.

After all these information, we can correctly affirm that BEPS phenomenon is on the top list of the current tax problems of the world, being a permanent source of new conceptual and situational challenges for the international community that gives its best to deal with them, receiving in the same time the support of the jurisdictions, communities, non-profit organizations and activists that began to wake up, rise their voice and take action to call and to preserve their rights and interests that are in accordance with the law. They are also calling for justice and fair treatment: those who evaded from paying the right amount of taxes to be hold accountable for it, because many countries are experiencing the side effects of the BEPS phenomenon, especially the poor and developing ones that significantly rely on corporate income tax.

Regarding the future development of the BEPS Action Plan, we can be sure that its content will be gradually improved and updated in order to be appropriate for the ever-changing society, but keeping always the same main objective: to eliminate the BEPS phenomenon.

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