

The OECD's Base Erosion and Profit Shifting ("BEPS") Project

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For tax geeks like me, the [OECD's BEPS project](#) has been fascinating to watch and participate in the debate. On February 12, 2015, I attended [2015 BEPS Symposium – A Canadian Perspective](#), jointly presented by the [Canadian Tax Foundation](#) and [International Fiscal Association Canada](#). The session was very interesting, exceptionally well presented, and a reminder that it is a great time to be a tax advisor despite (or because of) the crush of new developments.

So what is the OECD's BEPS project? Well, this is what the OECD says on its website:

Base erosion and profit shifting (BEPS) is a global problem which requires global solutions. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises (MNEs).

In an increasingly interconnected world, national tax laws have not always kept pace with global corporations, fluid movement of capital, and the rise of the digital economy, leaving gaps that can be exploited to generate double non-taxation. This undermines the fairness and integrity of tax systems. Fifteen specific actions are being developed in the context of the OECD/G20 BEPS Project to equip governments with the domestic and international instruments needed to address this challenge...

When the OECD announced its BEPS project, it disclosed 15 [Action Plans](#). Many practitioners, myself included, reviewed the Action Plans and were struck by the substantive ambition of the project and the breathless timeline for it. For example, here is a link to the OECD's latest [calendar](#) (which, of course, will soon be out of date). I do not intend to spill much ink on the details of BEPS in this short article since there is no shortage of commentary and there are certainly much more qualified than me to analyze BEPS. However, I thought it would be useful to try to summarize some of the messages from the Symposium and provide some short concluding commentary.

The following are some of the highlights that I took away from the Symposium:

1. The government of Canada is understandably concerned about tax treaty shopping on a principled basis (see Action Plan Item Number 6). We can expect the Department of Finance to take action on this issue in the future. This will not come as a surprise to tax specialists who have been following this issue, as the Department of Finance released a [consultation paper](#) on treaty shopping in 2013. In addition, the Department of Finance announced its intention to create a domestic treaty shopping solution in the 2014 Federal Budget, but later announced that it was suspending further work on such a solution pending progress on BEPS;

2. The OECD's work on Permanent Establishment Status (Action Plan Item Number 7) is fascinating and very thorough. Some of the latest [discussion drafts](#) have suggested changes that are very disturbing and could have a significant impact on clients if countries like Canada, US and many European countries adopt such proposals;
3. The panelists were very concerned about the material released in the [discussion draft](#) for Action Plan Item #4 on interest deductions and ultimately seemed to all agree that such proposals will never see the light of day. While well intentioned, such proposals appear to be overly ambitious and unrealistic;
4. The transfer pricing portions of the Action Plans are ambitious. One panelist called portions of the proposals in the released discussion drafts draconian. Another panelist said: "...let's be serious...if the US will not support the transfer pricing initiatives then this will not fly..." However, another commentator noted that if the proposals do get adopted, that US companies will undergo significant changes in their tax and organizational affairs. All of the panelists agreed that transfer pricing is one area that will require global consensus and adoption in order to be successful;
5. The "country by country" reporting initiatives as laid out in the [discussion draft](#) for Action Plan Item Number 13 will likely heighten the concerns of governments. Some panelists called the country by country reporting initiative "concerning" and some noted the reporting would "...inform the world how huge mobile income is"; and
6. Some panelists expressed the view that the OECD is overly concerned about achieving good tax policy but such ambitions should be tempered to ensure that capital flows into countries (and other economic considerations) are not adversely impacted by such tax policy objectives.

So what does all of this mean for the tax advisory profession and, more importantly, to our clients? Well, there are no shortage of commentators who have expressed their views and vaunted their expertise on BEPS. In light of the proposal's substantive ambition, short timeline for implementation, and uncertainty regarding domestic adoption, I don't think any of us has a strong grip on what all of this means. In order to divine deeper understanding I've consulted my 1975 Magic 8-Ball regarding the following two questions:

1. *Magic 8-Ball will Canada adopt many of the recommendations of BEPS into new law?*
"Cannot Predict Now."

But it is certainly not a stretch to assume that Canada will likely adopt some of the recommendations given that Canada is an active member of the OECD.

2. *Magic 8-Ball will the US support many of the BEPS recommendations?*
"Don't count on it."

A simple Google search about the commitment of the US to BEPS reveals a significant number of commentators' views with many of them pointing out that the US does not support much of BEPS. Many of the panelists at the Symposium agree with such views. It appears obvious that the success of BEPS will be measured against how strongly the US supports or does not support it.

Although BEPS seems largely driven towards multi-national corporations, tax advisors who do not work with multi-national corporations still need to be apprised on BEPS. The spillover effect on private

corporations and individuals will be inevitable in many ways that are beyond even the powers of the Magic 8-Ball to predict. However, advisors who are just now starting to get caught up on BEPS may experience “future shock” – a personal perception of “too much change in too short a period of time” as described by one of my favorite social scientists, Alvin Toffler, in his landmark book “[Future Shock](#)” written in 1970. There is a plethora of information available about BEPS and the challenge is to wade through all of the material and make sense of it.

Magic 8-Ball, is it a great time to be a tax advisor?
“Yes – definitely.”