


IFA Cahiers - The Key Takeaways

Aug 27,2017

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- **Assessing BEPS: origins, standards and responses**


IFA 2017 BEPS will occupy centre-stage at the 71st Congress of the International Fiscal Association starting at Rio de Janeiro. The first scientific session titled “**Assessing BEPS: origins, standards and responses**” will be discussed on Monday’s (August 28) plenary session. The background note to the panel states that it shall provide instigating comparative analysis of the implementation of BEPS in various regions. **Pascal Saint-Amans** (Director of the Center for Tax Policy and Administration at the OECD), **Akhilesh Ranjan** (Senior Officer from the Indian Revenue) and the speakers from Brazil, Singapore and Europe shall be part of the panel discussion which will be moderated by **Robert Danon** (Switzerland). **Stephen Shay** (USA) and **Allison Christians** (Canada) are the general reporters for this important topic of BEPS.

The panel discussion on the topic of ‘Assessing BEPS’ will look at the impact of BEPS for European Member States and their relations with third countries. The relation and consistency of BEPS with European law and developments such as the (re)evolution of state aid rules shall also be considered from a policy perspective. The national responses to BEPS in different jurisdictions such as US, Latin American countries, India and the Asian region shall also be analysed during the panel.

The 900+ pages Cahiers on the subject contains General Report, EU report and branch reports from 48 countries (representing 18 of the G20 members, 27 of the 35 OECD members and 14 jurisdictions that are members of neither the G20 nor the OECD) on the topic of “Assessing BEPS: origins, standards and responses”.



The General Report highlights that the jurisdictions comprising the bureau of the OECD’s Committee on Fiscal Affairs (CFA), which initiated and developed the agenda for the BEPS project, appear most likely to adhere to the BEPS consensus. These countries which are similar economically and constitute the OECD’s core membership, viewed BEPS as a means of “coaxing” other countries (with the leverage of peer pressure) to replicate their own domestic policy preferences, note the authors to the General Report. The general reporters observe that *“the problem of resource and capacity constraints will continue to be an obstacle to full participation by lower- and middle-income jurisdictions in any institutional arrangement, including the OECD’s inclusive framework”*.

As regards USA perspective on BEPS, the report states that many conclude that the United States is already largely BEPS compliant. On UK, the report comments that “Similarly, political changes taking place in the United Kingdom have raised concerns about a shift in policy, but the United Kingdom likewise views itself as already largely compliant with BEPS, and has even

gone beyond the consensus in some respects". With reference to the European Union (EU), the General Report comments that EU has moved to harmonize BEPS compliance and implementation within the EU, using Council directives and other guidance. The report adds that *"All reporting EU Member States see these EU actions as bedrocks to their future BEPS compliance"*.

The authors states that *"the reports of jurisdictions outside the G20 and OECD membership, many of which have a lower income than G20 and OECD members, while largely enthusiastic and supportive of BEPS, consistently expressed concern with the historical issues that face jurisdictions in their stage of development"*. These concerns include lack of sufficient domestic technical expertise, lack of resources to properly implement reforms, and worries about maintaining competitiveness and attracting foreign investors.

While the General Report concludes with several open questions, it adds that that *"In some respects, the clearest observation gleaned from the BEPS project is not "learning" but is a reality. The BEPS project has witnessed the transition of global tax governance from the OECD's province of the developed north to global fora, wherever those for a may be housed institutionally"*.

- **The Future of Transfer Pricing**



"Although optimists agree that the future world will be unique, most of them tend to disagree how to achieve it", says opening brief for the second plenary topic "The Future of Transfer Pricing", at the IFA Congress 2017. The panel scheduled on Tuesday (Aug 29) will present and debate^[1] (i) the foundations and problems of the current regime, (ii) the recent developments that such paradigms have brought in terms of transfer pricing methods as well as (iii) the main practical problems under debate and (iv) the divergent

proposals within different jurisdictions to solve them. The panel will be chaired by Luís Eduardo Schoueri (Brazil) with the speakers from USA, Australia, Belgium, Colombia. OECD's Head of the Tax Treaty, Transfer Pricing & Financial Transactions Division Jefferson Vanderwolk will also be part of the panel.

Yet another 900+ pages Cahiers on the subject provides General Report authored by Sergio André Rocha (Brazil), a separate EU report and branch reports from various countries across the world. The General Report acknowledges that the *"OECD transfer pricing guidelines are the most influential transfer pricing standard in the participating IFA branches"*. The report makes a note of developing jurisdictions referring to the OECD standard as the basis for their transfer pricing, or as a secondary support document but hastens to add the divergent transfer pricing practice followed by Brazil.

The General Report makes a significant observation that the jurisdictions apply a substance-over-form approach to transfer pricing – even though very few have specific rules on the matter. The report also adds that *"Even though a substance-over-form approach is part of the future of transfer pricing, there has not been a massive turn in the direction of the functional and risk analysis proposed by the OECD"*.

On the crucial aspect of intangibles, the General Report observes that the jurisdictions did not have specific rules for defining intangibles or transactions with intangibles. Further, on the vexed issue of “profit split method”, the author notes that based on the branch reports, *“even though the use of profit splits is possible in several jurisdictions, there are only a few that use the method customarily”*. The author however adds that there is a perception that the increase in the use of the profit split method will also increase litigation, and potentially double taxation.

The General Report outlines potential upsides from the BPES project and cites that companies will benefit from the overall improved and more thorough treatment of group economic information. The report also observes that *“the damage caused to companies’ images by tax scandals may start to be overcome by the perception that gaps that allow aggressive tax planning are being closed”*. In the European context, the General Report comments that the future of transfer pricing may hold some degree of harmonization, in the context of the debates revolving around the common consolidated corporate tax base (CCCTB).



The General Report concludes that there is a clear trend for the complete disregard of extreme business models and structures that rely only on a strict formalist transfer pricing approach and adds that *“Even though there is no indication that an extremely simplified approach, such as that found in Brazil, will become a global standard, there is some movement in the direction of simplification, as seen in the case of transactions with commodities and low value-adding services”*.

[1] Details from the scientific program note - <https://www.ifa2017rio.com.br/scientific-programme.php>