G20 INTERNATIONAL TAX SYMPOSIUM

— TOKYO, 9-10 MAY 2014 —

G20 International Tax Symposium

The G20 International Tax Symposium held in Tokyo on 9-10 May 2014 provided a unique opportunity for international and regional engagement on the international tax system. Stakeholders from government, business, international organisations, civil society and academia shared their views on the G20 tax agenda. Over 230 delegates from nearly 40 countries attended.

The Symposium was a key opportunity for the G20 to host inclusive discussions on all three elements of the tax agenda: base erosion and profit shifting (BEPS); transparency and the exchange of tax information; and tax and development. The Symposium complemented the OECD's consultations and was an important forum in which non-OECD and non-G20 countries could contribute their views.

Discussions at the Symposium demonstrated that there is widespread support for the G20/OECD tax agenda. Stakeholders supported the broad direction of the 2014 deliverables under the BEPS Action Plan and the new standard for the automatic exchange of tax information. It was clear, however, that the agenda raises a number of highly complex issues with clear tensions on some of the technical details. Considerable work and cooperation will be required to bring the agenda to completion. In doing so, it will be necessary to minimise compliance costs and ensure that businesses have certainty as to their obligations

A recurring theme throughout the Symposium was the need to deliver a truly global solution to the current deficiencies in the international tax system. This requires all countries to be part of an inclusive process and contribute to policy development. This is critical to ensure that there is broad-based buy-in to the reform process, that the reforms are appropriately calibrated to domestic circumstances and that they take into account the challenges faced by low income and developing countries. In addition, there was a clear recognition of the need to capitalise on the political support underpinning the G20 tax agenda and ensure that tangible outcomes are achieved.

The attached report highlights many of these themes in more detail. As we progress all elements of the tax agenda, we must be mindful of these messages.

The Presidency would like to thank the Japanese Ministry of Finance for supporting the event and the OECD for its strong participation and contribution.

Barry Sterland
Australian G20 Finance Deputy

Foreword

It is with great pleasure that I introduce this summary of the discussion and issues of importance to the participants at the G20 International Tax Symposium held in Tokyo on 9-10 May 2014. The Symposium was a key event for the Australian G20 Presidency and provided a unique opportunity for international engagement on the G20 tax reform agenda. A broad range of stakeholders shared their views on a range of policy and implementation issues, with delegates from nearly 40 countries attending and representing the views of government, business, international organisations, civil society and academia. The Symposium benefited from having these complex policy areas discussed and debated by experts in the field.

The key messages which participants delivered included:

- the need to update international tax rules given developments in the global economy;
- the need to act now and harness the strong political commitment to the reform agenda;
- the importance of an inclusive process which would ultimately underpin the effectiveness of the reform process; and
- the need to be alert to the effects of the reforms on different stakeholders and economies.

These are important messages that will continue to inform our approach as we look to deliver on this important agenda.

The tax agenda is an important part of the G20's priorities to support global economic growth and resilience. The critical need to reform and modernise the international tax system was recognised in 2013, with the G20's commitment to lend its combined political will, in partnership with the OECD's technical expertise, to this task.

Under Australia's Presidency, the G20 tax agenda is focused on three inter-related work streams: addressing tax base erosion and profit shifting (BEPS); promoting international tax transparency and the global sharing of tax information, for example through the development of a common reporting standard in the automatic exchange of information; and ensuring that low-income and developing countries benefit from the work being done on BEPS and information sharing.

Discussion at the Symposium focused on these areas, raising awareness of the key issues, exploring and drawing out the diverse views of participants, and highlighting areas of concern. The event was interactive with questions posed by the moderator to the seven panels as well as questions and comments from the floor, and lively exchanges on Twitter throughout.

The Symposium was proudly hosted by the Australian Government, supported by the Japanese Ministry of Finance, and we are grateful for the assistance provided by Deloitte, KPMG, PwC, the Global Accounting Alliance, Institute of Chartered Accountants Australia, and the Institute of Chartered Accountants in England and Wales. I would like to extend my thanks to our moderators, Ellen Fanning and Frida Lidwina, and our guest speakers, Tim Costello, Pascal Saint-Amans, Mike Callaghan, Satoru Araki and a distinguished list of panellists for their valuable contribution. I would also like to thank the OECD for its support for the event.

Barry Sterland, Australian G20 Finance Deputy

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The flaws in the current system and the BEPS Project

Session 1

Overview

The discussion set the stage for the Symposium by analysing the features of the current international tax rules that may encourage base erosion and profit shifting (BEPS) along with the driving forces behind the G20/OECD BEPS project, its expected outcomes and the mechanisms for engagement with stakeholders.

The session highlighted the broad support for the objectives of the BEPS Action Plan and noted the need for international tax rules to be updated to ensure they keep pace with developments in the global economy. In order to provide certainty for business, it was important that the reform process proceed quickly. Despite the challenging timeframe, the BEPS project is currently on track.

The growing challenge of BEPS

Tax avoidance strategies that seek to exploit the incoherence of the international tax system have been used by multinational enterprises (MNEs) for many years. However, the focus on such strategies has intensified in recent years and attracted significant political attention. BEPS challenges have largely been driven by globalisation, the increasingly cross-border nature of business and 'digitisation' of the global economy. These drivers have prompted changes in business models, as well as increasing the competitive pressures faced by businesses. It is clear that international tax rules, which were designed in the early part of the 20th century to reduce the likelihood of double taxation and promote international trade, have failed to keep pace with the changes in the business environment.

At the same time, growing pressure on governments' fiscal positions, combined with heightened scrutiny of the tax planning practices of some high profile MNEs, have all led to increased community focus on the integrity of tax systems and the equity of outcomes achieved. As a result, addressing BEPS has, for the first time, been placed on the G20 agenda and is a key priority for G20 nations. The main objectives of the BEPS project are to limit the opportunities for double non-taxation, to re-align taxation with economic activities and value creation, and to ensure a globally coordinated approach is taken to designing any solutions.

Benefits of the BEPS project

Participants identified a number of significant benefits that would flow from the BEPS project. A cohesive and coordinated international process, which was inclusive of all countries and stakeholders, had the best chance for success. In circumstances where countries acted unilaterally, there was a significant risk that current deficiencies in the system would be amplified and new inconsistencies would emerge over time. In addition, the BEPS project would help underpin the continued growth of international trade and investment, and minimise uncertainty for taxpayers and revenue authorities by providing more clarity as to the 'rules of the game'.

"It's a mutual interest here for business and revenue authorities to actually have clear and certain rules. Because the last thing I want to do is spend all my time in disputes with major multinational enterprises."

Chris Jordan AO
Commissioner of Taxation, Australian Taxation Office

In recent times, there has also been significant cooperation between taxation authorities which, to date, have had a more limited overview of an MNE's global operations. They are now sharing intelligence to improve their understanding of industries, companies and BEPS risks, and to target their taxation audits more effectively. This work is an important complement to the policy reform process. It was noted that large MNEs could be subject to separate, multiple and uncoordinated audits from various revenue authorities at any one time. Cooperation amongst the authorities could significantly streamline these processes.

Business perspectives

The panel noted that businesses from both developing and developed countries support the general direction of the BEPS project. However, they have identified a number of concerns including the potential reemergence of double taxation, increased compliance and administrative costs, and increased risk of tax position uncertainty if the project is not executed in a timely manner and on a multilateral basis. Whilst supportive of the ambition, some of the business representatives wanted to make sure that 'the cure was not worse than the disease'.

It was suggested that currently there were far more instances of double taxation than stateless income and that issues of interpretation were already leading to more tax disputes around the world. However, it was noted that Action Item 14 of the BEPS Action Plan, calling for more effective dispute resolution mechanisms, was very deliberate and the broader work of the OECD was

> "Some think we don't have pressure or competition on the tax line. If that is true, that would mean that taxes are not subject to the law of competitive forces, which I don't think is true."

Tim McDonald
Vice President of Finance and Accounting, Global Taxes
Procter & Gamble Company

still focused on eliminating double taxation. In addition, it was suggested that more widespread adoption of a mandatory binding arbitration process would have a number of benefits including the elimination of double taxation.

Participants outlined that intense market and cost competition was driving some MNEs to pursue certain tax arrangements to ensure that their competitors did not have an unfair advantage. In addition, the relatively high tax rates in some countries can drive MNEs to take advantage of inconsistencies in tax rules to minimise their tax burden. It was also recognised that the domestic tax laws of some countries may encourage BEPS practices.

However, business participants noted that some businesses had gone too far in terms of their tax planning strategies, which were highly aggressive and exploited structural deficiencies between tax regimes. This was a threat to their reputation and sustainability.

Businesses are hopeful that the current focus on the BEPS agenda will provide the community with a clearer understanding about what constitutes acceptable tax planning. A key concern was that illegal tax evasion was not always clearly distinguished from routine tax planning. In particular, the community needs to be aware that the effective tax rate of a company may be low for a range of legitimate reasons. This could include tax incentives which are often provided by countries to attract capital investment. Participants noted that tax incentives are not problematic *per se*, but they need to be provided in a transparent way with a clear understanding of the costs and benefits to the country concerned. This is discussed further in session 7.

It was noted that the international system for taxing business profits and capital income is an imperfect system, and the fundamental principles of residence and source can be manipulated to create artificial tax outcomes. A tension that was discussed was that the BEPS project does not directly seek to address issues regarding the allocation of taxing rights between source and residence countries. Rather, it seeks to reach a consensus on the international tax framework for common interpretation of taxation principles. Each country may then determine the allocation of taxation rights via bilateral negotiations with its treaty partners.

Perspectives of developing and low-income countries

The importance of effectively engaging and involving developing countries in the policy development process was a key issue raised by developing and low-income country, and civil society representatives. For developing and low-income countries, the BEPS project offers a unique opportunity

to participate in renewing the international tax framework. As these reforms will affect all countries it is critically important that developing and low-income countries are engaged in the process. The OECD has provided representation on an equal footing to the non-OECD/G20 countries in the BEPS project. It has established consultation processes, including regional consultations and the involvement of other international organisations, such as the UN, to ensure that the BEPS project is inclusive. There are ongoing challenges in ensuring that all countries feel able to participate in the consultation process and, where feasible, the decision making process. These challenges are well recognised by the OECD.

"I do not see a world where those economic and tax incentives provided by governments are going to disappear. So they're going to be out there....is it OK to take advantage of government incentives that are being offered — yes or no?"

Dan Lange
Global Head of Tax
Deloitte

The way forward

The G20/OECD BEPS Action Plan is a two-year project with seven of the 15 action items scheduled for delivery this year. Discussions outlined that these outputs were on track, recognising that there is significant interdependency between all of the action items.

The G20 and the OECD have taken an inclusive approach to the BEPS process by consulting widely with businesses, civil society groups and developing countries and this consultation approach will continue over the course of the two-year project.

There were some concerns raised about the ambitious timeline that has been set and the pace at which this work is progressing. However, there was overwhelming acceptance of the need to move quickly with the reforms and minimise the risk for countries to act unilaterally. This could undermine the coherence of the international tax system and lead to the re-emergence of widespread double taxation and ongoing disputes.

While the need for swift action was agreed, it was also noted that the process to implement the outcomes of the Action Plan may extend well beyond 2015 as the BEPS Project presents recommendations in the form of soft law and collaboratively develops the instruments required for countries to incorporate the reforms into domestic tax law.

Designing international tax rules in the digital economy: the road ahead

Session 2

Overview

This session focused on understanding the consequences of digitisation for the way businesses operate, and the implications of these developments for the international tax system.

The session highlighted that the digitisation of the economy has wide ranging implications for the tax system and interacts with the full range of other action items within the BEPS Action Plan. It is not possible to 'ring-fence' the digital economy for tax purposes — increasingly even traditional industries are becoming more and more digitised. A clear message was that policymakers need to have a deep and evolving understanding of business in order to design effective and sustainable tax rules.

Can the digital economy be separately identified?

Digitisation has led to significant changes in the operations of all companies and their business models. At the same time these developments have placed increasing pressure on the international tax system that has not kept pace with the changing business environment.

Participants acknowledged that the use of data is a significant feature of the digital economy; however, companies from all sectors of the economy utilise customer data to develop new products and better target advertising.

In light of considerations such as these, the digital economy is not a separately identifiable sector and should not be 'ring-fenced' for tax purposes.

"The digital economy is the economy, and increasingly it will be so."

Raffaele Russo
Head of the BEPS Project
Centre for Tax Policy and Administration
Organization for Economic Co-operation and Development (OECD)

> "Understanding the business is the first step towards the right policy making."
>
> **Ti Zhong Liao**
> Director General of International Taxation
> State Administration of Taxation, China
> Vice-chair on the Task Force on the Digital Economy

Identifying the tax challenges of the digital economy

The increasing adoption of technology by business and digitisation creates significant challenges when applying conventional tax principles, and tax rules are often seen as lagging behind. For example, it is difficult for the authorities to apply existing tax rules to business models where there is limited or no physical presence of the business within their tax jurisdiction. It was noted that it would be useful for revenue authorities and policy makers to work cooperatively with business to gain a better understanding of modern business models.

Intangibles are a significant driver of value creation in the digital economy but the correct valuation of intangibles is also a major source of BEPS concerns. Digitisation has allowed firms to generate scale and scope without size, and greater flexibility regarding the location of functions, assets and risks relative to more traditional business models. Participants agreed that these factors may increase the risk of BEPS for digital businesses.

Concepts of 'economic activity'

Participants explored in some detail the declaration by G20 Finance Ministers and Central Bank Governors Meeting in February 2014 that "… *profits should be taxed in the place where the value is created and the economic activities occur*". It was argued that the terms 'value creation' and 'economic activities' needed to be better understood. Alternative interpretations of these concepts were discussed, as well as views about the location where value is created in the business model. Some participants suggested that the key location where value is created is the location where the entrepreneurial risks and activities are performed. Other participants argued that value in the digital economy is created by the interaction of demand and supply (that is, that value is jointly created by consumers and businesses). There was a general view that value may be created in multiple locations in the value chain of a business.

Addressing the tax challenges of the digital economy

Participants agreed that other action items of the BEPS Action Plan may help to address concerns about taxation arrangements in the digital economy. The actions on

addressing hybrid mismatches (Action Item 2), strengthening anti-deferral rules for controlled foreign companies (Action Item 3) and modernising transfer pricing rules, especially the rules for the transfer pricing of intangibles (Action Items 8, 9 and 10) will all contribute towards addressing the BEPS challenges of the digital economy.

There was considerable discussion about issues related to the artificial avoidance of permanent establishments (PE) status in the digital economy, which will be considered under Action Item 7 of the BEPS Action Plan. Some participants asserted that a new definition of a digital PE may be necessary in order to address the taxation issue of companies maintaining a significant digital presence in a country without becoming subject to corporate income taxation. However, other participants argued that the concept of digital or virtual PEs based on the location of customers would create immense practical challenges. These challenges include the allocation of fixed capital costs to all of the countries in the value chain, and the corresponding adjustments which may be required in every country in the value chain if any one taxation authority requests an adjustment to tax payable.

Some participants expressed a preference for a greater role for indirect taxation in taxing digital commerce, such as a destination-based consumption tax. The final report of the Digital Economy Taskforce in September 2014 will include analysis of possible indirect taxation options.

Discussions identified that the incidence of taxes (that is, whether they would eventually be passed on to consumers through higher prices, shareholders through lower returns or workers through lower wages) is an important consideration when evaluating responses to the challenges of the digital economy.

While technological advances have delivered significant benefits to business and consumers, some participants were concerned that measures to address BEPS would have a negative impact on innovation. BEPS reforms that impose new compliance costs may dampen innovation and entrepreneurship, particularly for small and medium enterprises. These firms are typically less capable of dealing with compliance burdens than large enterprises, yet are often a significant source of innovation and entrepreneurial activity.

Participants noted that countries acting unilaterally cannot address the challenges posed by the digital economy. The development of any new framework will require the collective effort of all countries to ensure that new tax rules can be applied in an equitable manner.

The way forward

Participants noted that due to the rapid pace of digitisation of the economy, it is important for the international community to base proposed reforms on a framework of sound principles of international taxation that should be flexible enough to be applied to future innovations by businesses. The G20/OECD BEPS project will continue to engage with civil society, non-government organisations and businesses to ensure that the solutions presented to G20 Leaders will be effective and flexible, noting that the report of the Taskforce on the Digital Economy will rely heavily on the outputs of several 2015 action items. Based on the preliminary work of the Taskforce, action items such as Action Item 7 on the artificial avoidance of PE status will be integral to provide guidance on whether a significant proportion of BEPS concerns in the digital economy can be addressed with the recommendations from relevant 2015 action plan deliverables.

Country-by-Country reporting: ensuring the right balance

Session 3

Overview

This session focused on the development of updated transfer pricing documentation, including a new country-by-country reporting requirement for MNEs, to assist revenue authorities in undertaking transfer pricing risk assessments.

The session highlighted that a single, consistent and coherent system would provide a useful tool for risk assessment and minimise the risk of duplication arising from multiple and separate reporting requirements across jurisdictions. However, in developing new country-by-country reporting, it will be necessary to ensure that the benefits of the system sufficiently outweigh any additional compliance costs. In addition, while some considered that there may be value in making public the information provided by business, others stated that the implications of doing so would need to be examined closely.

The benefits of country-by-country reporting for risk assessment

Country-by-country reporting will require MNEs to report to tax authorities on their activities by country in a standardised template. The template would provide relevant tax authorities with a standard set of information to conduct a high level transfer pricing risk assessment. This would help tax authorities to better target audit resources and significantly increase the information available to developing countries on MNEs operating in their jurisdiction.

The new country-by-country reporting template would include:

- a global master file describing the activities of the MNE in each country in which it operates;
- a local file detailing any material related party transactions of the taxpayer in a particular jurisdiction; and
- country-by-country reporting of high-level quantitative information on the operations of the MNE in each country in which it operates.

It was generally agreed that a high-level risk assessment tool is useful for tax authorities reviewing transfer pricing activity. It was noted that some tax authorities in particular would benefit from an improved understanding of MNE activities as a result of the proposed country-by-country reporting requirements.

A standardised template is expected to provide a greater degree of consistency of understanding and application of the information collected between treaty jurisdictions. However, tax authorities would

need the skills, resources and capacity to interpret and effectively use the information for high-level risk assessments. It was noted that this is a particular challenge for revenue authorities in developing countries, however having a common standard allowed for the design of common capacity-building training programs for tax authorities in these countries.

Compliance costs

While business representatives were supportive of the country-by-country reporting initiative, a number of participants noted concerns that the requirements will lead to additional compliance burdens, in particular:

"Shouldn't we have big picture information about taxes paid and activities performed in certain countries?"

Marlies de Ruiter
Head of the Tax Treaty
Transfer Pricing and Financial Transactions
Division Centre for Tax Policy and Administration
OECD

- the cumulative costs of multiple income, activity and tax reporting initiatives being proposed and the potential risk of being required to provide duplicate information;
- the level of detail of reporting especially in the absence of a materiality threshold; and
- costs of upgrading IT systems to collect the required data.

Participants argued that the costs of the new requirements should be proportionate to their benefits. In this respect it was important to strike the right balance between the objectives of tax authorities in accessing more information and the desire to keep compliance burdens to a minimum. One mechanism proposed by participants to help minimise compliance costs is to introduce a materiality threshold and there was a clear preference on the part of business for such an approach. It was further argued however, that this mechanism would raise challenges as the concept of materiality would invariably differ depending on the context.

Business representatives also raised concerns about the proliferation of inconsistent reporting requirements, noting that businesses with cross border activities are already subject to a range of jurisdiction-specific transfer pricing reporting requirements. Moving to standardised transfer pricing documentation was one way of addressing these concerns and represented an opportunity for governments to streamline reporting obligations and remove potential duplication.

It was noted by the OECD that they have already taken steps to reflect business concerns about compliance costs in the reporting requirements. This includes reducing the required amount of information to be reported and providing more flexibility in how certain information is reported, such as allowing some information to be reported in 'bands' rather than precise numbers. The OECD noted that it will continue engaging with

> "Business supports the concept, and we'll pay whatever it costs, and do it however difficult it is, as long as they are convinced that it's something worth doing."
>
> **William Morris**
> Chair and Senor International Tax Counsel and Director — Global Tax Policy
> The Business and Industry Advisory Committee to the OECD

stakeholders to ensure that the right balance is achieved.

Confidentiality

Views differed between business, government and civil society on whether the report should remain confidential or be made public.

Business representatives outlined their concerns about the rigour of confidentiality protections where taxpayer information is shared outside of the established exchange of information network, and the risk that commercially sensitive or tax-related information is revealed to competitors. They were also concerned that some tax authorities, for purposes other than risk assessment, might use information to unilaterally impose tax on some share of the global profits of an MNE without regard to the existing international tax frameworks.

On the other hand, civil society representatives strongly supported greater transparency. They argued that the only way to meet community expectations about the BEPS project and address concerns regarding the integrity of the international tax system is to increase public scrutiny of the tax affairs of MNEs. Other participants considered that the publication of country-by-county reporting information would not be useful to either civil society or developing countries without further context and the ability to follow up with the MNE to access more detailed information.

The way forward

This session valuably highlighted the tension that exists between the need for and the benefit of the availability of more taxpayer information. It also highlighted associated risks. These issues were discussed from the different perspectives of participants. The point was made that country-by-country reporting should be the 'highest part of the information hierarchy' to test if further investigation is warranted. Better targeting of audit activity based on the risk assessment that country-by-country reporting facilitates could ultimately lead to lower audit based compliance costs for many low risk, tax compliant businesses. It was highlighted that tax authorities would also encounter implementation challenges with the volume and type of taxpayer information being reported. To some extent their interests are aligned with those of corporate taxpayers in that the information needs to be not only simple to report but simple to use as well. This session highlighted the importance of taxpayers engaging with tax authorities to provide the necessary context to the taxpayer information being reported.

Tax treaties and tax treaty policy in the global economy

Session 4

Overview

The session highlighted the importance of bilateral tax treaties for international trade and investment, but noted the risk that they can be used as a vehicle to artificially avoid tax. It was clear that there is no one-size-fits-all approach that adequately addresses the full range of potential treaty abuses, and that any solution needs to balance the objectives of providing certainty for taxpayers and ensuring the integrity of the tax system. It was agreed that the BEPS project provided a unique opportunity to streamline international tax arrangements by allowing a multilateral approach to preventing treaty abuse and implementing treaty reform, but that this would require strong political will to become a reality.

Tax treaties and the problem of treaty abuse

Bilateral tax treaties promote closer economic cooperation between treaty partners by reducing taxation barriers to investment caused by the double taxation of income derived by residents of either country. They also improve tax system integrity by providing a legal framework through which tax authorities can cooperate to prevent tax evasion.

There is currently no multilateral mechanism to address concerns about the double taxation of income and, instead, countries agree through treaty arrangements who will exercise the right to tax in circumstances where double taxation might otherwise occur.

Treaty benefits are designed to be used by residents of the treaty partners. However, in some cases MNEs structure their affairs so that income is channelled through countries with favourable treaty arrangements. This can result in treaties being used to reduce or avoid tax and treaty benefits being provided in circumstances in which they were not originally intended.

Treaty abuse is not new and different approaches have been adopted by countries to deal with the concern.

During the discussion, there was broad agreement on the need to prevent treaty abuse but participants noted that this was a difficult process and reaching a consensus would be challenging. Traditionally, countries have either favoured including a limitation on benefits (LOB) or a main purpose test in their treaty provisions to deal with potential treaty abuse.

The OECD, as a central part of its work on Action Item 6, has proposed an approach that combines elements of both tests. Views differed on whether this was an appropriate compromise. A particular concern was that this approach risked incorporating the disadvantages of both tests without adding any significant improvements. However, given the divergence of views on this topic, participants considered that this was the only realistic way to achieve a global agreement.

Comparing the LOB and main purpose tests

Discussions outlined the relative merits of these two approaches. Generally, the LOB approach is considered a clearer test. It is based on a set of objective criteria that are applied to determine whether a company should be properly considered a resident of a particular country, and therefore able to access treaty benefits. However, it is difficult to address the full range of possible treaty abuses through such a test without adding considerable complexity or introducing some discretion into its application.

The LOB test also raised concerns because the criteria can be rigid and exclude certain types of legitimate businesses from accessing treaty benefits. The OECD's proposed approach draws on the LOB test typically used by the United States (US) in its bilateral tax treaties. Although this test contains a discretionary provision to address situations where the objective criteria lack sufficient flexibility, it was observed that in the US this discretion is rarely, if ever, used. As a result, participants noted that there was a risk that other countries would adopt a similar approach to the US, thereby preventing legitimate businesses from accessing treaty benefits in circumstances where this may be warranted.

Participants noted that the main purpose test is more flexible in its ability to address the range of possible circumstances in which treaty abuse can take place. However, some participants were concerned that the main purpose test provides less certainty to business, as different revenue authorities may interpret, administer and enforce the test in different ways. Participants also expressed concern about how a main purpose test would interact with existing domestic general anti-avoidance rules.

Others argued that as main purpose clauses are common in non-US treaties, (and in general anti-avoidance rules in some countries), many businesses are already familiar with these provisions. In addition, participants suggested

> The limitation of benefits approach is a "sledgehammer that somehow still misses the peanut".
>
> **Steve Towers**
> Asia-Pacific Leader International Tax for Deloitte Singapore

> "It requires ... the conjunction of two events which don't occur very often. A determination amongst the technical and policy people in countries to bring it about and the political will."

Professor Richard Vann
Challis Professor of Law at the University of Sydney in Australia

ways to mitigate any uncertainty such as by providing further examples in the commentary, or providing taxpayers access to tax authority rulings.

There was significant debate over whether the main purpose test should be changed from addressing situations where obtaining treaty benefits is *one of* the main purposes of setting up the arrangement, to instead apply only when it is *the* main purpose. The latter test reduces flexibility for governments but may provide more certainty for business.

Implementation

Further work is being undertaken to explore how changes to prevent treaty abuse will be implemented. Although changing the Model Tax Convention is an important first step, it does not affect existing treaty law until it is adopted in bilateral tax treaties. The panel discussed two implementation methods: parties can individually amend their bilateral tax treaties; or they can accede to the multilateral instrument to be developed under Action Item 15 of the BEPS Action Plan which would amend all existing tax treaties between its signatories.

Relying on countries to renegotiate their bilateral treaties on the basis of the changes to the Model Tax Convention would make achieving consensus easier because countries have more flexibility to tailor the treaty to their individual circumstances, including through the use of reservations. However, this would be an extensive process and, due to the use of reservations, may not significantly improve uniformity.

The way forward

There was strong support from many participants for the development of a multilateral instrument (Action Item 15) to implement treaty reform. The use of a multilateral instrument could result in a more seamless and faster implementation process compared to amending bilateral treaties one at a time, even allowing for the complexity of multilateral negotiations. In addition, a multilateral instrument would result in more uniform rules between the parties, although it was recognised that it would not necessarily lead to common interpretation of the provisions.

It was acknowledged however, that the broad adoption of a multilateral instrument would be a significant challenge, and that strong political will would be required to bring this to fruition.

There is significant interaction between the work on treaty abuse and the other BEPS Action Items, and participants agreed on the need for a consistent and holistic outcome from the OECD's work. Important areas of interaction that were highlighted included harmful tax practices and hybrid mismatch arrangements.

From Bank Secrecy to Automatic Exchange of Information: the end of offshore tax evasion?

Session 5

Overview

In 2009, the G20 declared the era of bank secrecy over and called for the rapid shift towards transparency and exchange of information on tax matters.

The session highlighted that there was broad support for the objectives of automatic exchange of tax information between tax authorities. Importantly, there was agreement on the benefits of a single common reporting standard (CRS) and the efficiencies it would deliver over separate reporting requirements imposed by individual countries. However, there were concerns about the impacts of the CRS, including the additional costs it will impose on financial institutions. Business representatives encouraged policymakers to engage with them early in the process to ensure that the practical implications are well understood as the standard is implemented.

A step closer to ending bank secrecy

Enhanced cooperation between tax authorities, including through the exchange of information, helps tax administrators build a comprehensive picture of the financial arrangements of their residents, identify risks of non-compliance and ensure that taxpayers comply with their tax obligations.

The implementation of exchange of information on request has been very effective, with the Global Forum on Transparency and Exchange of Information for Tax Purposes monitoring progress via a peer review process. In 2013, G20 Leaders endorsed the OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information. Further, they asked the OECD to develop the CRS for the automatic exchange of information by February 2014 and to finalise its technical details by mid-2014.

While there has been considerable progress in lifting transparency in recent years, it was noted that more needs to be done to truly address concerns about bank secrecy. The exchange of information on request has proved useful when a tax authority is investigating a taxpayer's tax liability for specified tax years and requests particular information from a tax authority in another jurisdiction. However, its limitation is that it does not assist in the detection of cases of non-compliance when tax administrations have no previous indication of non-compliance.

Participants also noted that although many tax authorities currently exchange information automatically, they only exchange information that is readily available to them — that is, information they already collect for domestic purposes. This information is not tailored to identify non-compliance with the tax rules of other countries and, as a result its usefulness to other tax authorities is more limited.

The CRS will address many of the limitations with the current exchange of information arrangements.

The effectiveness of the CRS will ultimately depend on the breadth of its adoption by jurisdictions. The wider the CRS net is cast, the fewer opportunities there will be to conceal income offshore. While the CRS will not fully eliminate tax evasion, it will make it increasingly more difficult to park money in undeclared offshore accounts without being detected. In addition, the prospect of tax authorities automatically exchanging information can provide a strong incentive for taxpayers to voluntarily disclose their financial activities. Participants noted that there are already signs of taxpayers voluntarily coming forward to disclose their tax arrangements in anticipation of the introduction of the CRS.

Confidentiality

Confidentiality and integrity of data are key concerns underlying the CRS due to the large amount of personal tax information that will be exchanged. The OECD has undertaken a significant amount of work on data privacy and protection. This includes ensuring that countries have in place:

- relevant legal frameworks, for example, exchange of information must be undertaken pursuant to a treaty and only be for the purposes described in the treaty and relevant domestic law;
- appropriate policies and procedures to implement legal safeguards and obligations; and
- mechanisms to monitor potential breaches, the ability to impose domestic sanctions in the case of a breach as well as requirements to notify relevant authorities which may result in the suspension of the relevant exchange.

Participants highlighted that the enforcement of these safeguards will be particularly important, and where appropriate sanctions should be imposed for any breaches of confidentiality.

Implementation and compliance costs

Participants noted that financial institutions are subject to a number of regulatory reporting regimes in addition to the CRS such as the Foreign Account Tax Compliance Act regime (FATCA) which many countries are currently implementing.

Representatives from the banking sector suggested that the scale and cost of implementing the CRS is at least as large as that of FATCA. The CRS has wider application and significant IT upgrades will be necessary to collect and report the required data. The costs involved are not recoverable, so ultimately these will fall on shareholders or domestic customers. While many banks have minimised these costs by using systems 'patches' for FATCA, the scale of the CRS means that a more comprehensive solution is required.

It was noted that the CRS was modelled on FATCA so as to reduce compliance costs. However, some participants noted that there are a number of differences between the two reporting regimes (92 differences were suggested) that largely reflect the challenges of adapting the US focused FATCA framework to a globally applicable model. These differences result in additional compliance

"We have identified 92 differences between FATCA and CRS ... in principle it [CRS] is a good thing but there is more work to be done."

Sally Scutt
Managing Director
International Banking Federation

costs, on top of those that financial institutions have already incurred to implement FATCA.

Other concerns raised by participants included the impact of customer due diligence and reporting, and the possibility of incurring sanctions where customer information is reported incorrectly. The CRS may push financial institutions to re-evaluate risks involved in providing certain financial products or services which, on balance, may be too costly for them to provide to non-residents.

In response to concerns about compliance costs, the participants did note that the CRS would limit the proliferation of independent and inconsistent reporting regimes, which themselves place a significant cost burden on business. The introduction of the CRS will be positive in this respect.

The way forward

G20 Finance Ministers and Central Bank Governors are expected to outline an implementation plan for the CRS at their meeting in September. An Early Adopters Group proposes to implement the CRS in their jurisdictions from 1 January 2016.

Business representatives indicated that implementation would take time, and the process could not commence until the final details of the CRS were known. It was also noted that any conflicts between CRS obligations and privacy laws will need to be resolved before the collection of new information could take place.

Some participants suggested that a single implementation date may reduce compliance costs, especially for global financial institutions. However, it was acknowledged that not all countries would be ready to implement on an early timetable.

Representatives from the banking sector highlighted the importance of domestic consultations so that changes stemming from the implementation of the standard could be aligned with any upcoming changes, such as IT upgrades.

Snapshots of the Symposium

.@LowyInstitute @G20SC 's Mike Callaghan at the #g20tax breakfast: transparency is essential, it is why we are here pic.twitter.com/Y0Zcd2ZcGN

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Automatic Exchange of Information — the perspective of developing countries: challenges and opportunities

Session 6

Overview

Building on the previous session, this session focused on the unique perspectives of low-income and developing countries in relation to automatic exchange of information.

It was clear that exchange of information is not only beneficial for developed countries — it can also provide significant benefits for developing countries by improving transparency and lifting voluntary compliance. Developing countries will face considerable challenges in implementing the standard, but over time, these could be addressed. It will be critical to engage with and assist developing countries to develop the fundamental building blocks of their tax systems.

Automatic exchange assists in development

Discussions in this session highlighted that the automatic exchange of tax information has the potential to deliver significant benefits to developing countries. It will provide tax authorities with timely information on the tax affairs of its residents and help detect cases of non-compliance in circumstances where no previous indications of non-compliance are apparent. It can improve the credibility of tax authorities in the eyes of citizens and the overall equity of the system. By exchanging tax information, tax authorities can ensure that those taxpayers that have assets overseas still pay their fair share of tax.

Participants discussed how exchanging information not only results in a potential increase in revenue, but also has a deterrent effect, discouraging taxpayers from 'playing games' with tax authorities. This is particularly important for developing countries where there are often low levels of voluntary compliance with tax rules.

More fundamentally, however, participants discussed that taxation is a crucial tool for state-building and, ultimately, the social contract. A common mantra is "no representation, no taxation"; that is, governments have no moral right to tax their citizens if they do not adequately represent the interests of their citizens. Participants discussed the corollary of this — it is essential that there is a sound and effective tax system

> "We talk about no taxation without representation, but it also works the other way around as well, no representation without taxation."
>
> **Caroline Malcolm**
> Tax and Development Secretariat
> OECD

that is capable of supporting a well-functioning government that can serve its citizens. The tax transparency agenda is central to this objective.

Challenges for developing countries

While there are clear benefits, exchanging tax information presents enormous challenges for many developing countries, particularly automatic exchange under the CRS.

For some developing countries, their administrations are still paper based and transitioning to electronic platforms requires substantial work and time. In others, there is a need for extensive modernisation of IT infrastructure to underpin the automatic exchange of information and, at the same time, ensure a degree of compatibility with systems in other countries. Developing countries also face a number of other constraints, with tax authorities under-resourced both in terms of staff numbers and appropriate skills. Geographical challenges, with the work of tax administrations spread across large areas, can make domestic coordination on the exchange of information very difficult. Moreover, strong legal frameworks are needed to govern the exchange of information under the CRS. Similar to developed countries, ensuring the confidentiality of information is critical. In many cases, this requires substantial resources to develop and implement changes to domestic laws.

In addition to these challenges, a number of participants noted that developing countries face more pressing issues than dealing with exchange of information, and related requirements to protect data and privacy. These include fundamental issues such as securing the domestic revenue base by dealing with large informal sectors.

The way forward

Participants recognised the depth and breadth of challenges developing countries face in automatically exchanging information. It is clear that that the international community has a central role to play in supporting developing countries to address these challenges. What is less clear, however, is how best to support developing and low-income countries. Many international organisations are already assisting developing countries, including through pilot programs, advice on legal systems and technical advice for specific compliance projects. Given the challenges that remain, it is clear that further solutions are needed, and they must be pragmatic. One option discussed was for advanced economies to automatically exchange information with developing countries on a non-reciprocal basis as a pilot – at least for a transitional period. This would involve developing countries receiving

information but being under no obligation to immediately provide information in return.

It was suggested that this approach could deliver immediate benefits to developing countries and provide them with time to put systems in place and build technical expertise before moving to reciprocal exchange. However, similar challenges would arise with this approach such as the need to have in place adequate safeguards to maintain the confidentiality of information received. In addition, developing countries would still require assistance so that they can effectively use the information and realise its benefits.

"AEOI will be a very big step for us .... PNG would agree to AEOI, but currently we are limited to the nine treaty partners we are able to exchange information with. So we need guidance to understand how to get to the adoption of AEOI."

Alois Daton
Commissioner of Taxation for Papua New Guinea

BEPS — the perspective of developing countries: challenges and opportunities

Session 7

Overview

The session highlighted that developing countries are acutely impacted by BEPS, which significantly undermines their long-term development. Many developed countries lack the skills, institutional capabilities, information and frameworks to counter BEPS. Again, support for capacity building in developing countries is critical. The discussion also highlighted the importance of active involvement by developing countries in the BEPS project.

Developing countries and BEPS

The diverse and unique circumstances faced by developing countries mean that in many cases, building a tax base can be a higher priority than working to defend it against erosion. Despite this, BEPS practices significantly undermine the tax base of developing countries. With the heavy reliance on corporate tax revenue, this can often mean that developing countries are disproportionately affected by BEPS. A key benefit in addressing BEPS is the increase in corporate tax revenue that could be realised.

Participants noted how BEPS can affect developing countries. In particular, transfer pricing and the avoidance of PE status through the use of aggressive tax planning, as well as excessive financial payments or thin capitalisation were identified as particular areas of concern for developing countries. These are far bigger issues for developing than developed countries who largely already have effective general anti-avoidance measures in place.

Developing countries noted that concerns about BEPS are compounded by a lack of information on the operations of MNEs. Even where information is made available to tax administrations, their capacity to effectively analyse and act on this information through domestic legal frameworks can often be limited.

The use of tax incentives also attracted considerable discussion and is an issue that has been identified in the OECD's regional consultations as a key base erosion concern for developing countries, although it is not specifically part of the BEPS Action Plan. The granting of tax incentives of themselves was not considered problematic and some participants noted that tax incentives could bring substantial benefits. However,

difficulties arise where tax incentives are given without an appropriate and transparent governance framework, and in the absence of a proper cost-benefit analysis. It is in these circumstances that tax incentives have the potential to significantly damage a country's revenue base. Participants noted that many tax regimes in Southeast Asia and Africa are driven by tax competition to attract investment and there is evidence that tax incentives can lead to significant erosion of public finances that otherwise would have been used to build infrastructure and provide services.

Engagement with developing countries on policy development

There was broad consensus on the importance of involving developing countries in the policy development and decision making processes. This would go a long way to ensuring their buy-in to the process and commitment to the outcomes of the BEPS Action Plan. It would also assist in minimising incentives for unilateral action or 'cherry picking' of reforms. It was suggested that the G20 and OECD should 'think of developing countries first' when designing new rules. The OECD outlined the wide-ranging consultation process that it has undertaken to promote the inclusiveness of the reform program, including its work through the Global Forums and regional consultations.

BEPS capacity building

A number of developing countries also raised the need for capacity building. It was suggested that channelling assistance to tax administrators and treasuries could substantially improve the ability of countries to build sustainable sources of revenue and reduce dependence on aid. In addition, 'empowering business' through mechanisms such as withholding tax has the potential to embed systems directly into the day-to-day operations of business which could substantially ease the burden on tax administrators and complement government and NGO-led capacity building initiatives.

The way forward

It was clear that a number of low-income countries faced challenges in adopting the legal and institutional frameworks to implement the BEPS reforms effectively. In addition, participants from developing countries noted that they currently have very limited tax bases from which to work and building cultures of voluntary tax compliance is difficult in the face of unique geographical, security and political challenges.

"The risk of BEPS is quite significant for Thailand. The most common issue is PE (Permanent Establishments) and the other issue is around the digital economy."

Nirandara Prachuabmoh
Deputy Director, Tax Policy Bureau
Revenue Department of Thailand

However, BEPS will be a growing concern for developing and low-income countries as MNEs seek to expand into new markets. It will be important to provide guidance and support for capacity building to ensure that tax systems and administrations in low income countries can accommodate the challenges that this will present.

"Whilst incentives are not bad per se, a stringent cost-benefit analysis is crucial."

Ruud de Mooij
Deputy Division Chief
Tax Policy Division
International Monetary Fund

Panellists and speakers

Session 1

- Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration, Organization for Economic Co-operation and Development ("OECD")
- Chris Jordan AO, Commissioner of Taxation, Australian Taxation Office
- Dan Lange, Global Head of Tax, Deloitte
- Tim McDonald, Vice President of Finance and Accounting, Global Taxes Procter & Gamble Company
- Srinivasan Pagalthivarthi, Senior Vice President, Corporate Taxation, Wipro

Session 2

- Raffaele Russo, Head of the BEPS Project, Centre for Tax Policy and Administration, OECD
- Liao Tizhong , Director General of International Taxation, State Administration of Taxation, China; Vice-chair on the Task Force on the Digital Economy
- Paul Morton, Head of Group Tax, Reed Elsevier Group, United Kingdom
- Edouard Marcus, Deputy Director Prospective and International Affairs, Tax Legislation Directorate, France; Co-chair on the Task Force on the Digital Economy
- Brad Silver, Global Technology Industry Tax Leader, PricewaterhouseCoopers, United States

Session 3

- Marlies de Ruiter, Head of the Tax Treaty, Transfer Pricing and Financial Transactions Division Centre for Tax Policy and Administration, OECD
- William Morris, Chair and Senior International Tax Counsel and Director – Global Tax Policy, The Business and Industry Advisory Committee to the OECD
- Mark Konza, Deputy Commissioner (International, Public Groups & International), Australian Taxation Office, Australia
- Ross Lyons, Global Head of Taxation, Rio Tinto, Australia
- Isabel Verlinden, Europe, Middle East, India and Africa Transfer Pricing Leader, PwC, Belgium

Session 4

- Manal Corwin, Head of US international Tax at KPMG
- Professor Richard Vann, Challis Professor of Law at the University of Sydney in Australia
- Steve Towers, Asia-Pacific Leader International Tax for Deloitte in Singapore
- Philip Kermode, Director for direct taxation and tax coordination in the European Commission in Ireland
- Jorge Ferreras, Assistant Deputy General Director for International Taxation in the Ministry of Finance and Public Administrations from Spain

Session 5

- Philip Kerfs, Co-Head of the International Cooperation Unit, OECD
- Michael Barbour, General Manager, Group Tax, Westpac, Australia
- Michael Croker, Head of Tax Policy, Institute of Chartered Accountants, Australia
- Eimon Ueda, Deputy Commissioner, International Affairs, National Tax Agency, Japan
- David Pitaro, Chair of AEOI Group, Special Advisor to the Director General of Finance, Italy
- Sally Scutt, Managing Director, International Banking Federation

Session 6

- Alois Daton, Commissioner of Taxation for Papua New Guinea
- Caroline Malcolm, from the Tax and Development Secretariat at the OECD
- John Hutagol, Director of Tax Regulations II, from the Directorate General of Taxes, Indonesia
- Pierre Habbard, Labour 20 Representative and Senior Economic Adviser at the Trade Union Advisory Council
- Richard Stern, Lead Tax Officer, World Bank

Session 7

- Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration, OECD
- Nirandara (Niran) Prachuabmoh, Deputy Director, Tax Policy Bureau, Revenue Department of Thailand
- Ruud de Mooij, Deputy Division Chief, Tax Policy Division, International Monetary Fund
- Warrick A. Cleine, Chairman and CEO, Vietnam and Cambodia, Head of Tax, Asia Pacific, KPMG
- Robert Hodgkinson, Head of Technical Strategy, Institute of Chartered Accountants in England and Wales
- Terry Yuen, Regional Head of Tax, Asia Pacific and Country President, BP Singapore

Guest speakers

- Tim Costello, Chair of the Civil 20 and CEO of World Vision Australia
- Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration, OECD
- Mike Callaghan AM, Chair of the Think 20 and Director, G20 Studies Centre, Lowy Institute for International Policy
- Satoru Araki, Regional and Sustainable Development Department, Asian Development Bank, The Philippines

The Symposium event team

L-R: Brendan McKenna, Brendan Reilly, Alex Maier, Sharon Traucki, Elena Kusta, Louise Perez, Kerstin Wijeyewardene, Ian South, Kate Phipps, Steven Fahey.

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