



Assessing BEPS: Origins, Standards, and Responses

Citation

Allison Christians & Stephen Shay, General Report, in 102A Cahiers de Droit Fiscal International: Assessing BEPS: Origins, Standards, and Responses 17 (Int'l Fiscal Ass'n 2017).

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International Fiscal Association

2017

Rio de Janeiro Congress

cahiers

de droit fiscal
international

VOLUME 102

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



1938-2017

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The reporters are grateful for extensive research support from Jake Heyka (McGill 2017) and Ian Attema (McGill 2017) and for financial support from IFA Canada.

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Summary

The G20/OECD's multi-year campaign to combat base erosion and profit shifting (BEPS) marks a critical step in the evolution of the international tax regime and the roles of the institutions that guide it. This General Report provides a snapshot of the international consensus regarding the outcomes of the G20/OECD's BEPS project by comparing domestic responses to key BEPS mandates, recommendations and best practices to the end of October 2016, based on the branch reports. We are very grateful to the IFA branch reporters, whose work representing the perspectives of 48 jurisdictions around the world forms the basis for the analysis in this General Report of the origins, standards and responses to BEPS to date. 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, the branch reports provide a rich cross-section of perspectives on BEPS.

One of the objectives of this General Report is to gain insights from the BEPS project on how to improve the outcomes of future tax cooperation efforts. Addressing that question, the branch reports reveal that the impact of the BEPS initiative on a particular jurisdiction corresponds to at least three key factors. The first is the extent to which domestic law is already in substantial compliance with BEPS outcomes. The second is the degree to which implementation of BEPS outcomes appears capable of delivering positive revenue or economic results, or both, relative to a jurisdiction's experiences and perceptions prior to BEPS. The third is the type and degree of involvement of a jurisdiction in the formative stages of the initiative preceding the release of the final BEPS action plans.

Accordingly, 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. They are reasonably similar economically and constitute the OECD's core membership; they had the opportunity to participate in the formation and development of the BEPS initiative from the outset of the process; and they viewed BEPS as a means of "coaxing" (with the leverage of peer pressure) other countries to replicate their own domestic policy preferences. For these jurisdictions, the branch reports reveal that the use of the BEPS process to effectuate the international transfer of tax law norms is largely a matter of self-interest.

However, not all jurisdictions (and not even all OECD members beyond the CFA bureau) are similarly described. Even for some aligned with the G20/OECD consensus, resource constraints are an impediment to BEPS participation and implementation. 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 (which currently includes 94 jurisdictions).

Finally, the branch reports that indicate caution or reticence toward BEPS implementation often describe a general lack of participation in the BEPS process, a lack of expected benefit from the proposed reforms relative to the cost of implementation, the desire to wait for norm leaders or peer countries to adopt reforms for fear of losing ground in terms of their competitiveness in attracting global trade and

investment flows, or a combination of these factors. Branch reports for jurisdictions that have a significant sector providing services as an intermediary jurisdiction are particularly concerned with preserving what is described as a “level playing field” in order to retain their intermediary role.

On a parallel track to BEPS, the European Union (EU) has moved to harmonize BEPS compliance and implementation within the EU, using Council directives and other guidance. All reporting EU Member States see these EU actions as bedrocks to their future BEPS compliance. Responding to mandatory EU measures is expected to be a primary method through which EU Member States operationalize their BEPS compliance. Some members had already taken measures to adapt to the BEPS final reports prior to the EU’s prescriptions. The EU implementation process is critical to aligning EU Member State responses to BEPS within the dictates of the EU freedoms under the Treaty on the Functioning of the European Union (TFEU) and European Court of Justice (CJEU) interpretations of those freedoms, as well as EU standards for state aid (within the TFEU).

Going in the opposite direction, the perceived change in stance of the United States in relation to BEPS has created some concerns in the international community. The initial enthusiasm for BEPS by the United States moderated as the project reached completion with issuance of the final reports without a number of US tax objectives achieved. At the same time, many of the BEPS actions are already embedded in US law, the new US model treaty adopts strong BEPS protections, and there has been no sign to date of the United States backing away from country-by-country reporting (CbCR). Many therefore conclude that the United States is already largely BEPS compliant. 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.

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 include lack of sufficient domestic technical expertise, lack of resources to properly implement reforms, and worries about maintaining competitiveness and attracting foreign investors. It will be important for these concerns to be addressed if the OECD BEPS project is to succeed in a worldwide overhaul of tax systems.

The scope of change embedded in the BEPS final reports cannot be expected to be implemented immediately, and nor can it be expected to be painless during what will be a period of transition and change. Common expressions of concern regarding the outcomes of BEPS focus on increased compliance costs, increased uncertainty and increased litigation risk for taxpayers and tax administrations. These concerns stand against a backdrop of broader global economic as well as tax law uncertainty. The issue is whether the BEPS actions, which were intended to be targeted at abuses and the use of intermediary jurisdictions for base erosion, will result in broad collateral damage to economic activity.

It is therefore still too early to reach judgements on the success or lack thereof of the BEPS project. Indeed, at this point it is difficult to gauge the full extent to which jurisdictions in fact will adhere to or defect from the rules. However, it is not too early to consider how the project proceeded and to make observations for work

going forward and future efforts at global tax cooperation. 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 fora may be housed institutionally.

This leaves a series of open questions. What will be the institutional formalization of the global standard-setting of tax policy? How will future agendas be set and will they be set by jurisdictions that are beyond the narrow group in the CFA bureau? How will emerging, lower- and middle-income economies be involved? What will be the role for the EU and other regional entities? As we conclude this interim snapshot of the origins, standards and responses to BEPS to date, we look to future IFA congresses for answers to these questions and a final assessment of the BEPS project.

1. Introduction

This General Report aims to provide a snapshot of the international consensus regarding the outcomes of the G20/OECD’s BEPS project by comparing domestic responses to key BEPS mandates, recommendations and best practices to the end of October 2016, based on branch reports.¹ We are very grateful to the IFA branch reporters, whose work representing the perspectives of 48 jurisdictions around the world forms the basis for the analysis in this General Report.²

1.1. Global tax cooperation and the BEPS project

The BEPS project is the second major post-financial crisis effort at global cooperation relating to taxation. The first project, which was primarily inter-governmental, involved transparency. The G20 and OECD recently initiated work on tax policy to achieve strong sustainable growth, which may become the next tax

¹ Among the 15 topics associated with the BEPS initiative, some provide for actions that are to be carried out by governments domestically, among themselves or in the future, while others do not directly call for governmental response with a minimum standard, recommendation or best practice. The implementation of these items is difficult to track, and they are accordingly of lesser emphasis in this General Report. The affected action plans include Action 1 (addressing the tax challenges of the digital economy), Action 5 (countering harmful tax practices more effectively, excepting the substantial activity minimum standard), Action 11 (measuring and monitoring BEPS), Action 12 (mandatory disclosure rules), Action 14 (making dispute resolution mechanisms more effective) and Action 15 (developing a multilateral instrument to modify bilateral tax treaties).

² All references herein to branch reports are to those produced for subject 1 of IFA *Cahiers* 2017. The branch reports are not uniform in their response to the guidelines for branch reporters. Each report reflects the perspective of the branch reporter or reporters and the General Reporters have not researched the laws of individual jurisdictions in preparing this report. We caution readers that, except where other sources are cited, the discussion in this General Report relies on the branch reports and the individual knowledge of the General Reporters. Moreover, the figure and tables in the appendix are based on a reading of the branch reports. These tables should be viewed as anecdotal and not as a statistically valid representation of the information they present.

cooperation project.³ The timing and trajectory of these projects is important to understanding the context in which BEPS arose and the stage it sets for future international tax relations.

In the immediate aftermath of and in response to the financial crisis of 2008, the OECD relaunched the Global Forum on Transparency and Exchange of Information for Tax Purposes as a globally inclusive organization that agreed on enhanced information exchange standards. The Global Forum has been extremely effective at achieving peer-review driven adherence to the standards for exchanges on request, but governments have meanwhile sought increasingly fluid information exchanges. A second leg of the transparency project therefore emerged to expand cooperation to include the automatic exchange of certain financial information. This transparency-related work responded to concerns about revenue loss in the context of post-financial crisis austerity, public outcries over disclosures of unreported financial accounts and the desire for enhanced information sharing to combat financial support for global terrorism and criminal activity.

In July 2016, the G20 tax policy conference at Chengdu, China initiated a third tax cooperation initiative on pro-growth tax policies and certainty.⁴ Governments articulated their recognition that in an increasingly linked global economy, domestic and cross-border tax policies are intertwined, and that ongoing efforts in all policy areas are needed to attain “strong, sustainable and balanced growth” across the global economy.⁵ This is an emerging arena for international coordination, though it is unclear where this initiative ultimately will go and how it will affect ongoing efforts to distinguish between welfare-enhancing versus harmful tax competition. One of the objectives of this General Report is to gain insights

³ Para. 11 of the 2016 Chengdu G20 Finance Ministers’ Communiqué provides: “We recognize the important role of tax policies in our broader agenda on strong, sustainable and balanced growth and of a fair and efficient international tax environment in diminishing the conflicts among tax systems. As highlighted in our discussion at the G20 High Level Tax Symposium, we emphasize the effectiveness of tax policy tools in supply-side structural reform for promoting innovation-driven, inclusive growth, as well as the benefits of tax certainty to promote investment and trade. In this regard, we ask the OECD and the IMF to continue working on the issues of pro-growth tax policies and tax certainty.” Communiqué, G20 Finance Ministers and Central Bank Governors Meeting, Chengdu, China, 24 July 2016.

⁴ The OECD reports from the Chengdu meeting that “There was a general willingness within the G20 membership to broaden the tax agenda to tax policy issues. The OECD has been asked, jointly with the IMF, to continue working on pro-growth tax policies and tax certainty.” OECD, G20 Finance Ministers and Central Bank Governors Meeting, 23–24 July 2016, Chengdu, China: OECD’s Secretary-General’s Activity Report, <https://www.oecd.org/g20/summits/hangzhou/g20-meeting-23-24-july-2016-chengdu-secretary-general-activity-report.htm>. The IMF and OECD accordingly collaborated on a report on tax certainty which they presented to the G20 Finance Ministers, March 2017 meeting in Baden Baden, Germany. The communiqué developed at that meeting stated: “We acknowledge the report on Tax Certainty submitted to us and encourage jurisdictions to consider voluntarily the practical tools for enhanced tax certainty as proposed in that report, including with respect to dispute prevention and dispute resolution to be implemented within domestic legal frameworks and international tax treaties. We ask the OECD and the IMF to assess progress in enhancing tax certainty in 2018.” The G20 also acknowledged the OECD’s work on digitization under this same rubric. OECD and IMF, Tax Certainty, IMF/OECD Report for the G20 Finance Ministers (March 2017).

⁵ OECD G20 Finance Ministers and Central Bank Governors Meeting Report; see note 4.

from the BEPS project on how to improve the outcomes of future tax cooperation efforts, including the as yet undefined effort to cooperate on “pro-growth” tax policies. The work undertaken by the OECD on BEPS has laid the groundwork for those efforts.

1.2. Changing boundaries for global tax competition

To combat BEPS, the OECD articulated a vision for international tax relations that (a) mitigates corrosive tax competition between governments in favour of greater tax cooperation and coordination; (b) fosters a coherent approach to cross-border income taxation that authorizes a jurisdiction to deny tax relief where necessary to protect its tax base (as well as to yield tax base to avoid double taxation);⁶ and (c) reduces cross-border information asymmetry between taxpayers and governments through measures to enhance transparency.⁷ With critical support from G20 heads of state,⁸ in 2013 the OECD set out key elements of BEPS that potentially could be addressed and arranged for 15 “action items” to be studied by domestic representatives in BEPS working groups.

While the BEPS project was initiated by the OECD, non-OECD G20 members and other jurisdictions were invited to participate in work on it as the process evolved. Over a remarkably ambitious two-year time frame, OECD working groups published consultation drafts, established processes to engage relevant stakeholders and, by the end of 2015, agreed final reports on the action items.⁹ The final reports represent BEPS participants’ contemporary collective consensus on how governments ought to or may respond to BEPS. The outcomes of the BEPS final reports varied from “binding” minimum standards, to recommendations, to best practices, to discussions of items that would require additional work (such as on the digital economy and a multilateral legal instrument (MLI) to modify double

⁶ These rules would permit rational distinctions between resident and non-resident taxpayers without running afoul of formal discrimination claims, but would apply on a non-discriminatory basis to non-resident taxpayers.

⁷ OECD, *Addressing Base Erosion and Profit Shifting* (OECD, 2013), available at www.oecd.org/tax/beps.htm. The OECD serves as a standards-setting body for its member countries. The Centre for Tax Policy and Administration (CTPA) is responsible for taxation and provides the secretariat for the OECD’s tax work, supporting the member jurisdictions’ representatives from finance ministries and tax authorities. As with other international organizations, membership of the OECD is contingent on meeting certain criteria, primarily legal and economic, to ensure that all members are understood to have met certain baseline standards; 20 members were founders on 14 December 1960 and 15 have since joined. Details on membership can be found at OECD, “Members and partners” (accessed on 23 March 2017), available at <http://www.oecd.org/about/membersandpartners/>.

⁸ The G20 is a group of the 20 most economically powerful jurisdictions in the world. Formed in 2008 as a successor to the G8 to be able to respond effectively to the global nature of the financial crisis, finance ministers, central bank governors and heads of state from the 20 members meet on an annual basis to promote international economic cooperation at the highest level. For more general information, see G20, “The History of the G20 Summit” (accessed on 23 March 2017) available at https://www.g20.org/Webs/G20/EN/G20/History/history_node.html.

⁹ The OECD received over 12,000 pages of comments on the various BEPS discussion drafts and proposals.

taxation treaties). Governments have begun implementing BEPS outcomes to varying degrees in their domestic tax practices and treaty relationships.¹⁰

The BEPS project represents a concerted effort of participating governments to modify the terms under which they engage in tax competition with respect to multinational enterprises. The objective of this IFA General Report, at a still early stage of BEPS implementation, is to describe the project's processes and the state of their implementation as they have emerged to date. It is hoped that this work will inform the next steps in the BEPS process and contribute lessons relevant to proposals for similar projects in the future.

To study the development and implementation of the BEPS outcomes is to encounter several challenges. First, the scope of the 15 BEPS action items is very broad, covering intersecting areas of tax law, many of which involve technically complex concepts and rules, and many of which are politically sensitive. The desire of jurisdictions and stakeholders to advance various aspects of BEPS to further their own political and economic goals is ever present, even if the motivations in any particular case are not made overt. Detailed information about how the private and public sectors acted in furthering or responding to BEPS is not always complete or freely available to study: while transparency is a key theme of BEPS, many of the processes by which tax norms develop, whether within or beyond the state, are still characterized by obscurity. The effectiveness of distinct stakeholders is most often unclear.

The degree of consensus regarding BEPS outcomes is a moving target and similarly difficult to discern. While some jurisdictions have forged ahead on enacting several of the standards and recommendations, others have followed a wait-and-see strategy or quietly declined to act.¹¹ A number believe that their laws and rules are already largely or fully compliant with BEPS so that no action is required. The emergence of binding mandates at the level of the EU has introduced a parallel reform platform that has shaped some OECD outcomes and is in other cases not fully consistent with the BEPS outcomes. These variances are in some instances due to perceived constraints under the TFEU and in other instances represent a defection from the OECD consensus.¹²

Significant political changes in the United States with the election of President Trump and the United Kingdom's decision to leave the EU are expected to alter the terrain for the implementation of BEPS outcomes and the further development of unresolved items, but the extent of the impact of these events is at present unclear. In the United States, the Republican majority leadership in the House of Representatives has outlined a tax reform plan that includes a border tax adjustment mechanism. The proposal would radically alter the terms of international tax competition for multinational investment and business activity. The failure of the Republican healthcare proposal diminishes the prospects for this (already controversial) tax reform proposal, but significant changes in the United States in terms

¹⁰ Three broad categories of legal reform are laid out as the basic architecture of the BEPS consensus: those that generally require domestic legislative or administrative responses, those that generally require treaty-based responses and those focused specifically on transfer pricing and CbCR.

¹¹ See e.g. UAE/GCC report on Oman.

¹² See EU report at sections 4.3, 4.4 and 5.1–5.3.

of both tax reform and international relations may negatively impact the course for tax cooperation going forward, as they have done in the past.

1.3. Scope and limitations of branch reports

The branch reports represent 18 of the G20 members,¹³ 27 of 35 OECD members¹⁴ and 14 jurisdictions that are members of neither the G20 nor the OECD¹⁵ (see Figure 1). The reports deliver a high-level and detailed view of a cross-section of domestic circumstances, concerns and goals that contributed to the development of and responses to BEPS and together provide rich details about the contemporary international tax landscape. The snapshot they form, while undeniably hazy in parts, provides a baseline for the analysis of goals, methods and outcomes of ongoing international tax cooperation and coordination efforts.

As Figure 1 implies, the picture of BEPS implementation is less clear beyond the OECD and G20 members. The branch reports for the 14 jurisdictions that are members of neither the OECD nor the G20 provide a selection of perspectives and reflect attitudes and concerns towards BEPS from jurisdictions that diverge significantly from G20 and OECD members in terms of their tax law regimes, economic circumstances or global political clout. The perspectives and experiences of many jurisdictions are not represented in this General Report, however. An important question for the future is whether the OECD's efforts to engage with jurisdictions beyond the G20 and OECD membership through the OECD's inclusive framework (currently numbering 94) will result in a truly global approach to guiding the evolving international tax regime going forward and how it will intersect with the work of the United Nations.

The branch reports reveal that the impact of the BEPS initiative on a particular jurisdiction corresponds to factors that include first, the extent to which its law is already in substantial compliance with BEPS outcomes; second, the degree to which implementation of BEPS outcomes appears capable of delivering positive revenue or economic results, or both, relative to a jurisdiction's experiences and perceptions prior to BEPS; and third, the type and degree of involvement of a jurisdiction in the formative stages of the initiative preceding the release of the final BEPS action plans.

The jurisdictions comprising the bureau of the OECD's CFA, working with the CTPA secretariat, initiated and developed the agenda for the BEPS project. These appear most likely to adhere to the BEPS consensus because they are reasonably

¹³ Twenty-seven jurisdictions which produced branch reports are members of the OECD; seven which produced branch reports are members of the G20 but not the OECD. See appendix, Table 6. Branch reports were not available for China and Indonesia, which are members of the G20 but not the OECD.

¹⁴ The OECD membership spans 35 jurisdictions including the G7 members; the list includes all European countries plus Australia, Canada, Chile, Israel, Japan, Korea, Mexico, New Zealand and the United States. Of the members, 27 were represented with IFA branch reports for subject 1.

¹⁵ The 14 jurisdictions included in branch reports that are neither members of the OECD nor the G20 are Bahrain (in the UAE/GCC report), Chinese Taipei, Colombia, Kuwait (in the UAE/GCC report), Liechtenstein, Mauritius, Oman (in the UAE/GCC report), Peru, Qatar (in the UAE/GCC report), Singapore, Ukraine, the United Arab Emirates, Uruguay and Venezuela.



Figure 1. Jurisdictions represented by branch reports

similar economically and constitute the OECD's core membership; they had the opportunity to participate in the formation and development of the BEPS initiative from the outset of the process; and BEPS is a means of "coaxing" (with the leverage of peer pressure) other jurisdictions to replicate their own domestic policy preferences.¹⁶ For these countries, the BEPS attempt to effect the international transfer of tax law norms is largely a matter of self-interest.

However, not all jurisdictions (and not even all OECD members beyond the G7) are similarly described. Even for some jurisdictions aligned with the G20/ OECD consensus, resource constraints are an impediment to BEPS participation and implementation. For example, the reports from Estonia and Turkey clearly identify the problem of dedicating scarce administrative resources to initiatives that are not necessarily domestic priorities, even though both jurisdictions are aligned in general policy terms with the principles driving the initiative.¹⁷

The problem of resource and capacity constraints, noted by several of the branch reports, will continue to be a major obstacle to full participation by lower- and middle-income jurisdictions in any institutional arrangement, including the OECD's inclusive framework.¹⁸ Working in collaboration with international organization partners, the International Monetary Fund (IMF), the United Nations' Financing for Development Office and the World Bank, the OECD has attempted to mitigate this problem through the use of regional workshops and other forms of technical assistance.¹⁹

Branch reports that indicate caution or reticence toward BEPS implementation often describe a general lack of participation in the BEPS process, a lack of expected benefit from the proposed reforms relative to the cost of implementation, a desire to wait for norm leaders or peer jurisdictions to adopt reforms for fear of losing ground in terms of their domestic competitiveness in attracting global trade and investment flows, or a combination of these factors. Branch reports for non-OECD members that have a significant sector providing services as an

¹⁶ The current jurisdictions represented in the CFA bureau are reported to be Canada, France, Germany, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States. See France branch report, Summary. In other words, the bureau is comprised of the G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States) plus the Netherlands and Spain.

¹⁷ See Estonia report, section 2.1.1. ("[a]nalyzes to study and interpret action items have been limited due to the lack of resources"); Turkey report, section 2.3.4.4 ("Turkey has not had any industry-specific CbCR experience previously, unlike the United States and European Union countries. The lack of experience is a challenge for domestic implementation of CbCR").

¹⁸ See e.g. India report, section 3 ("A specific effort would be needed for 'capacity building' on BEPS conclusions among field tax officers across India"); Ukraine report, section 2.1.3 ("one of the problems with the tax law practice in Ukraine is that tax officers often lack the appropriate knowledge and skills. The more complex are the changes in the tax laws, the more difficulties they cause in practice due to a lack of understanding on the part of the tax authorities"); Turkey report, section 2.3.4.4 cited in note 17; Chile report, section 2.3.4 ("A challenge regarding CbCR is the technical expertise and resources of the tax administration for processing this information"); Estonia report, section 2.1.1 cited in note 17 and section 2.1.4 (Estonia confronts a "lack of human and financial resources ... in implementing a project of this size"); UAE/GCC report, Qatar, sections 7.1 and 7.2 ("The resources of the Qatari tax authorities are currently focused on the introduction of VAT and so do not expect any serious review at government level on the consequences of BEPS").

¹⁹ See OECD, Platform for the Collaboration on Tax Matters, available at <http://www.oecd.org/tax/platform-for-collaboration-on-tax.htm>.

intermediary jurisdiction are particularly concerned with preserving what is described as a “level playing field” in order to preserve their intermediary role.²⁰

Our review of the BEPS project starts with its origins. As will be seen below, the narrow high-tax jurisdiction origin of the BEPS work soon expanded to include non-OECD G20 jurisdictions and, after a course correction, the full range of jurisdictions willing to play a role in BEPS reforms. This broadening of jurisdictions engaged in the project marks an evolution towards a more inclusive international policymaking regime as economic activity is less confined to OECD members and competing potential sources of policymaking and norm setting forced the OECD to respond by extending its outreach beyond its members.

2. Phase 1: origins

The BEPS consensus developed through three distinct phases, the first phase being the articulation of a problem to be solved and culminating in the BEPS Action Plan encouraged by G20 heads of state;²¹ the second being consultations on action items and the drafting of solutions designed to achieve broad support from OECD and G20 members; and the third being implementation of the BEPS final reports’ mandates, recommendations and best practices (together, BEPS action items).

This section focuses on the first phase and explores, through the lens of the branch reports, how jurisdictions appear to have engaged with the OECD as an institution and with other jurisdictions on BEPS. For the most part, this engagement took place through OECD channels, but domestic and regional events also provided opportunities for various stakeholders to participate in the evolving discourse. The early ability to articulate positions regarding what should form the core foundations of the BEPS initiative appears to be related to subsequent responses to BEPS. The lack of engagement with developing countries through phase 1 raised questions regarding the ability of the OECD to serve as a facilitator for international tax cooperation going forward, to which it responded forcefully in phases 2 and 3 by expanding the jurisdictions involved in the BEPS project and engaging in substantial outreach with regional meetings and technical support. Examining how jurisdictions engaged at succeeding stages of the BEPS project and the effects of that engagement holds useful lessons for future international tax cooperation and coordination processes and projects.

2.1. Background

The BEPS project began with the announcement in 2013 that the OECD would embark on a project to combat BEPS. A select group of jurisdictions comprising

²⁰ Liechtenstein branch report at sections 2.1.3 and 3; Mauritius report at section 6.2; Singapore report at section 3.

²¹ See OECD, OECD Secretary-General Report to the G20 Leaders (5–6 September 2013) St Petersburg at 37, available at <http://www.oecd.org/ctp/beps/SG-report-G20-Leaders-StPetersburg.pdf>; for additional background, see the preceding report, G20, Communiqué (19–20 July 2013) Moscow Meeting of Finance and Central Bank Governors, available at <http://www.oecd.org/tax/exchange-of-tax-information/OECD-tax-report-G20.pdf>.

the bureau of the OECD's CFA,²² working closely with the OECD secretariat, encouraged the BEPS project to come into existence with the report on addressing base erosion and profit shifting, released in February 2013.²³ In July 2013, the OECD announced a 15-item Action Plan and in September 2013 presented it for approval to the G20 leaders at the St Petersburg G20 summit. This marks the end of what we refer to as phase 1 of the BEPS project.²⁴

Several branch reports suggest that negative media coverage of tax practices by multinationals was a major impetus for the G20 and OECD to initiate their work on BEPS. Eleven reports mention the role of the media in making international tax reform a priority for their jurisdiction,²⁵ while ten specifically mention the "Panama Papers" or "Lux Leaks" scandals as catalysts for global action on tax.²⁶ The OECD's work on BEPS preceded the Lux Leaks story (released in November 2014)²⁷ as well as the Panama Papers story (released in April 2016).²⁸ The Lux Leaks coverage added impetus to the BEPS work and probably played a role in the development of mandatory exchange of rulings under the OECD's final report on Action 5 and in the 2015 EU directive on exchange of rulings.²⁹ The negative media coverage of the tax affairs of high-profile multinationals as well as high net worth individuals is widely understood to have contributed to the G20 and OECD determination to address BEPS beginning in late 2012.³⁰

²² The current jurisdictions represented in the CFA bureau are Canada, France, Germany, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States. See above note 16.

²³ See OECD, Addressing Base Erosion and Profit Shifting (12 February 2013). This report acknowledges G20 attention in the form of a single sentence in the 2012 G20 Los Cabos leaders meeting: "We reiterate the need to prevent base erosion and profit shifting and we will follow with attention the ongoing work of the OECD in this area." See G20 Leaders Declaration, ¶48 (Los Cabos, Mexico, 19 June 2012).

²⁴ From this point in time through to October 2015, which we refer to as phase 2 of the BEPS project, multiple discussion drafts on action items were published, public comments were solicited and consultations were held. During this phase 2, the BEPS project developed an initial norm set with the OECD's publication of final reports outlining its understanding of the participants' consensus with respect to the 15 action items. These reports were approved by the G20 leaders in November 2015. See section 3 of this report.

²⁵ See reports of Austria, Colombia, Denmark, France, Germany, Ireland, Italy, the Netherlands, New Zealand, the United Kingdom and the United States.

²⁶ Branch reports citing the Panama Papers as a catalyst for the BEPS initiative include Colombia, Denmark, Germany, New Zealand, Portugal, Ukraine, the United Kingdom and Venezuela. Branch reports mentioning Lux Leaks playing this role are Denmark and Germany.

²⁷ International Consortium of Investigative Journalists, "Luxembourg Leaks: Global Companies Secrets Exposed" (accessed on 15 March 2016). Available at <https://www.icij.org/project/luxembourg-leaks>.

²⁸ International Consortium of Investigative Journalists, "Panama Papers" (3 April 2016). Available at <https://panamapapers.icij.org/video/>.

²⁹ EU report at section 5.3.2.

³⁰ For a discussion, see e.g. Allison Christians, "Tax Activism and the Global Movement for Development through Transparency", in Miranda Stewart and Yariv Brauner (eds.), *Tax Law and Development* 288 (2013). See also US Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Government Affairs Hearing on Offshore Profit Shifting and the US Tax Code (20 September 2012); US Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Government Affairs, Hearing on Offshore Profit Shifting and the US Tax Code – Part 2 (*Apple Inc.*) (21 May 2013); House of Commons, Committee of Public Accounts, HM Revenue and Customs: Annual Report and Accounts 2011–12, Nineteenth Report of Session 2012–13 (HC 716, 3 December 2012).

Beyond these high-profile events and resulting political pressure, it is clear that the OECD's work on BEPS originated out of some jurisdictions' perceptions that they were suffering from the tax practices of others. Several of the jurisdictions that branch reports identified as strong supporters of the BEPS project are also those that explicitly identified themselves as susceptible to negative effects from the tax practices of other jurisdictions in some manner.³¹ These include G20 and OECD members such as France and Germany. For instance, the French report observes that:

"France is among the states with a high tax burden, which may be one reason why base erosion and profit shifting (BEPS) occurs. The French government has hence made the fight against aggressive tax optimization a top priority and strongly emphasizes its desire to implement the entire BEPS project under French law."³²

Indeed, at a critical point in the formulation of the BEPS project, a letter from the finance ministers of France, Germany and the United Kingdom, each with a governing party from a different point on the political spectrum, signalled strong support for cooperative anti-avoidance work through the OECD's proposed BEPS project.³³

Branch reports from non-G20 and non-OECD members, such as Colombia and Ukraine, which came into the process later, showed that concerns about tax base erosion from intermediary jurisdictions extended beyond OECD members to jurisdictions that reportedly did not participate in the development of the BEPS action items. Similar to France, the Colombia report observes that "[t]he main BEPS concern for Colombia has been confronting artificial schemes of base erosion for shifting profits to low-tax jurisdictions or to preferential tax regimes".³⁴

In general, jurisdictions that branch reports identified as focused on protecting their source-based tax appeared to have perceived the BEPS initiative to be a means to constrain the tax practices of those acting as financial intermediaries, many of which are subject to blacklisting by these jurisdictions. This view is presented in the reports for Australia, Colombia, Finland, and Mexico.³⁵ For instance, the Mexican report states that:

³¹ Branch reports indicating that their jurisdictions are strong supporters of the BEPS initiative include Australia, Brazil, Canada, Chile, Colombia, Denmark, Finland, France, Germany, Japan, India, Italy, Luxembourg, New Zealand, Norway, Sweden and the United Kingdom. (The inclusion of Luxembourg as a strong supporter possibly reflected the pressures generally from other EU jurisdictions regarding its rulings practices and the tax base erosion of EU neighbours. See e.g. Commission Decision of 19 September 2016, C(2016) 5612 final, SA.44888 (*Luxembourg – possible state aid in favour of GDF Suez*) (state aid investigation of rulings granted to GDF Suez initiated in 2013).) Branch reports indicating that their jurisdiction was a victim of BEPS-related phenomena include Australia, Argentina, the Czech Republic, Colombia, Estonia, Finland, France, Germany, Italy, Kuwait, Mexico, South Africa, the United Kingdom and the United States. France report, Summary.

³² G. Osborne, P. Moscovici and W. Schäuble, "We are determined that multinationals will not avoid tax", *Financial Times* (16 February 2013).

³⁴ Colombia report, Summary. See also Ukraine report, section 1.1.

³⁵ See Australia report at sections 2.1.1 and 3; see Colombia report at section 1.3; see Finland report at section 1.4.2; see Mexico report at section 2.1. All but Colombia participated in the development of the Action Plan items.

“[t]he main BEPS-related situations that concern the [Mexican tax authorities] derive from practices and structures that they have detected as common practice by multinational enterprises, including the transfer of functions, assets or risks from companies in Mexico to jurisdictions with little or no access to exchange of information and with low, or no, tax rates; the migration of intangible goods developed in Mexico to jurisdictions with low or no taxation and the use of structures aiming to avoid the existence of permanent establishments in Mexico.”³⁶

Jurisdictions including Argentina, Germany, Italy and the United Kingdom framed their relationship to BEPS in terms of their status as the residence states of major multinationals.³⁷ For these reporters, while the role of intermediary jurisdictions in perpetuating BEPS was identified as a concern, the focus seems as much or more on the potential loss of company operations and workforces to other residence jurisdictions that with BEPS planning would have lower effective rates, coupled with the concern about the inconsistent adoption of the BEPS project further complicating the global tax environment.³⁸

In contrast, some of the branch reports explicitly acknowledged the role of their jurisdiction in perpetrating or facilitating the kinds of practices that lead to BEPS.³⁹ For some of these, involvement in the initial development phase was viewed as helping to forestall tax base erosion. However, this evolved over time into being seen as necessary to influence the direction and limit the scope of certain of the BEPS initiatives. This appears most clearly to be the message from the United States report, which observes:

“Th[e] active, almost enthusiastic leadership stance of the United States has gradually been replaced with a much more defensive position that emphasizes the primary interest of the United States in the BEPS project – to protect its MNEs from being the primary target of the project to the detriment of the United States (presumably based on reasons of competitiveness). To some, BEPS became a tool for European and other countries to gain a competitive advantage over the United States. The United States continued therefore to be very active within the project, yet as a reluctant, almost skeptical player, focusing on the protection of its interests and the preservation of its current status.”⁴⁰

³⁶ Mexico report, section 2.1. Similarly, see Colombia report, section 2.1.1 (“In line with the recommendations of Action 5, the government is now proposing to prioritize the substantial activity requirement for any preferential regime and on improving transparency. Additionally, the Tax Reform Bill proposes to adopt a list of preferential tax regimes and of uncooperative jurisdictions, to replace the tax haven list. For all purposes, the term ‘tax havens’ is to be assimilated to the concept of uncooperative jurisdictions”).

³⁷ Argentina report at section 2.3.1; German report at sections 1.1 and 1.4; Italy report at sections 1.1, 1.4, 2.1.3 and 2.2.3; United Kingdom report at sections 1.2 and 1.3.

³⁸ See generally, Mauritius report and Singapore report.

³⁹ Luxembourg report at section 1.1; Mauritius report at section 2; United States report at section 1.

⁴⁰ United States report, section 1. The original strong US support for BEPS was based in part on the prospect that consensus could be achieved on strengthening CFC rules, treaty limitation-on-benefit (LOB) rules and dispute resolution mechanisms. With respect to CFC rules, this may have underestimated the constraints of the EU’s TFEU as interpreted by the CJEU, as well as the lack of support in the United Kingdom for such changes, which viewed them as anti-competitive. The highly articulated US LOB rules lacked support from many jurisdictions. Whether there is support for mandatory arbitration will be seen once the MLI bilateral agreements are publicly available.

In particular, the US report states that:

“CbCR... was conceded as something against which the United States could not fight within the BEPS project, and efforts were instead put into shifting the focus from the inclusion of the reporting requirement, to the content of the reports. United States representatives to the BEPS project are believed to have influenced the narrowing of the final recommendations’ scope from that which appeared in the original draft.”⁴¹

Similar themes are reflected in other reports,⁴² including from jurisdictions such as Ireland, Liechtenstein, Luxembourg and Mauritius, whose economies are more reliant on serving as intermediaries. Even so, many of these jurisdictions are, according to their branch reports, supportive of the development of the BEPS initiative, though presumably for varying reasons. The report from South Africa, a G20 member, perhaps most candidly captures the paradoxical challenge for jurisdictions that seek both to attract inbound foreign investment and to serve as an intermediary for investment in others:

“How a country responds and implements the various measures to address BEPS depends largely on whether it is predominantly a capital-exporting or a capital-importing country. As an emerging economy, South Africa displays both aspects. It is a residence state to many home grown multinational enterprises (MNEs) and it is a base country for many intermediary holding companies investing in the rest of Africa, which is why it needs protection against profit shifting. South Africa also relies heavily on foreign direct investment (FDI) from developed economies and has to protect itself against source tax base erosion arising from inward foreign investments.”⁴³

A number of jurisdictions present a mix of adherence to BEPS and non-adherence where history or self-interest dictates. Brazil was reported to be an active participant in BEPS, yet, in keeping with its history, it diverges and will continue to diverge from the BEPS consensus on transfer pricing.⁴⁴ Similarly, France is a strong adherent of BEPS yet it is not inclined to modify an R&D incentive that the EU believes is not in alignment with the new nexus standard under Action 5.⁴⁵ Argentina is generally expected to implement the consensus but may diverge in some respects, perhaps similar to Brazil.⁴⁶ Saudi Arabia and other Gulf Cooperation

⁴¹ United States report, section 2.3.1.2.

⁴² These include the reports from Austria, Bahrain (UAE/GCC report), Belgium, Ireland, Luxembourg, Mauritius, the Netherlands, Qatar (UAE/GCC report), South Africa, Switzerland, the United Arab Emirates, the United Kingdom, the United States and Uruguay.

⁴³ South Africa report, Summary.

⁴⁴ See Brazil report at section 2.3; see also the UN Transfer Pricing Manual (2017) (China country practice for electronic manufacturing services may use formulary analysis of contributions of assets and people).

⁴⁵ See France report at section 1.3.1.2.

⁴⁶ See Argentina report at section 3.

Council states diverge from BEPS because their primary revenue source is not income taxation.⁴⁷

Notwithstanding these differing perspectives, once the action items were identified, many jurisdictions participated in the work to reach the outcomes reflected in the final reports. As previously indicated, these varied in strength from minimum standards (the mandated items) to items for which outcomes were held open pending additional work.

3. Phase 2: reaching agreement on standards

Phase 2 of the OECD's BEPS project involved drafting a framework consensus surrounding the problems identified as leading to BEPS with a coalition of the key supporters described above. This phase culminated in the 15 action plans released in October 2015.

As is well known by now, the 15 BEPS action items are:

- Action 1: digital economy – addressing the tax challenges of the digital economy;
- Action 2: hybrids – neutralizing the effects of hybrid mismatch arrangements;
- Action 3: CFC rules – designing effective controlled foreign company (CFC) rules;
- Action 4: interest deductions – limiting base erosion involving deductions and other financial payments;
- Action 5: harmful tax practices – countering harmful tax practices more effectively, taking into account transparency and substance;
- Action 6: treaty abuse – preventing the granting of treaty benefits in inappropriate circumstances;
- Action 7: permanent establishment status – preventing the artificial avoidance of permanent establishment status;
- Actions 8–10: transfer pricing – aligning transfer pricing outcomes with value creation;
- Action 11: BEPS data analysis – measuring and monitoring BEPS;
- Action 12: disclosure of aggressive tax planning – mandatory disclosure rules;
- Action 13: transfer pricing documentation – transfer pricing documentation and CbCR;
- Action 14: dispute resolution – making dispute resolution mechanisms more effective;
- Action 15: MLI – developing an MLI to modify bilateral tax treaties.

The final reports for these 15 action items together articulated the BEPS consensus. However, all 15 final reports do not carry the same expectations; instead, the consensus has been articulated at three levels of commitment: (a) minimum standards that jurisdictions explicitly agreed to adopt (that is, in either domestic law or treaties) unless they already had consistent rules in place (and to which BEPS asso-

⁴⁷ See generally UAE/GCC report.

ciates must agree to participate in the inclusive forum);⁴⁸ (b) recommendations, to which BEPS associates and participating jurisdictions agree in principle and which are expected to result in convergence at the level of rules in the future; and (c) best practices to which BEPS associates and participating jurisdictions are invited to adhere should they so choose, and as to which the OECD will provide guidance. See Figure 2.

The OECD most recently articulated the four minimum standards (for the purposes of the inclusive forum) as follows:

- (a) “[a] revitalized peer review process to address harmful tax practices, including patent boxes where they include harmful features, as well as a commitment to transparency through the mandatory spontaneous exchange of relevant information on taxpayer-specific rulings which, in the absence of such information exchange, could give rise to BEPS concerns”⁴⁹ (Action 5);
- (b) “[m]odel provisions to prevent treaty abuse (including treaty shopping) by impeding the use of conduit companies to channel investments through countries and jurisdictions with favourable tax treaties in order to obtain reduced rates of taxation”⁵⁰ (Action 6);
- (c) “[s]tandardized Country-by-Country (CbC) Reporting that will give tax administrations a global picture of where MNEs’ profits, tax and economic activities are reported, and the ability to use this information to assess transfer pricing and other BEPS risks, so that they can focus audit resources where they will be most effective”⁵¹ (Action 13);
- (d) “[a]n agreement to secure progress on dispute resolution, with the strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure (MAP)”⁵² (Action 14).

The four minimum standards relate to treaty practice (anti-treaty abuse provisions and effective and timely dispute resolution under treaties), transparency (CbCR and spontaneous exchange by governments of taxpayer rulings) and administrative practice (peer review of harmful tax practices including patent box compliance with nexus standards).

None of the minimum standards affected substantive tax law rules, which were relegated to recommendations and best practices. Whether intended or not, this made it easier for intermediary jurisdictions to participate in the inclusive forum,

⁴⁸ “BEPS associates” are new non-OECD and G20 jurisdictions and jurisdictions which join the inclusive framework to participate in the CFA’s work on BEPS. The inclusive framework allows interested jurisdictions to work with OECD and G20 members on developing standards on BEPS-related issues, and to review and monitor the implementation of the whole BEPS package. To join the framework jurisdictions are required to commit to the comprehensive BEPS package and its consistent implementation and to pay an annual BEPS member fee (reduced when applied to developing countries). As of January 2017, 48 jurisdictions had joined the inclusive framework with the existing group of 46 jurisdictions (including OECD, OECD accession and G20 members), making the total number of jurisdictions participating 94. OECD, Background brief – inclusive framework on BEPS 11 (January 2017).

⁴⁹ OECD, Background brief – inclusive framework on BEPS 20 (January 2017).

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

tier 1

"Minimum standards"

"All OECD and G20 countries committed to consistent implementation"

Will be monitored via inclusive framework

1. Harmful tax practices (Action 5)
2. Treaty abuse (Action 6)
3. Country-by-country reporting (Action 13)
4. Dispute resolution (Action 14)

tier 2

"Recommendations"

"An agreed general direction"

Jurisdiction practices are "expected to converge over time"

Most are in the MLI or will be in revised OECD guidance

Some examples:

1. Adopt hybrid mismatch rules (Action 2)
2. Report IP regimes to OECD (Action 5)
3. Add double non-tax declarations and saving clauses to treaties (Action 6)
4. Adopt anti-PE avoidance rules (Action 7)
5. Revise transfer pricing allocation rules (Actions 8-10)

tier 3

"Best practices"

"An agreed general direction"

OECD to provide "guidance" to "support" implementation

Some examples:

1. Require uncertain tax position disclosure (Action 12)
2. Adopt mandatory binding arbitration (Action 14)

Figure 2. BEPS action items

since none of these actions impeded continuation as an intermediary jurisdiction (the breadth of CbCR virtually ensures that intermediary jurisdiction information would be reported whether or not the jurisdiction participated in the inclusive forum). This retained the broad involvement in the inclusive forum as standards for substantive rules are further developed.

The inclusion of jurisdictions that may be adversely affected by the BEPS outcomes achieves a similar dynamic to the Global Forum on Transparency and Exchange of Information for Tax Purposes. It ensures voices that demand a “level playing field” approach, but also coopts the affected jurisdictions. Moreover, with careful centralized direction of a large body through the secretariat and steering committees, a path dependency is created that makes successful opposition by a minority of less powerful jurisdictions very difficult.

The MLI ad hoc working group similarly is reported to have had over a hundred participants. The MLI itself reportedly is likely to have “at least 60” initial signatories, or roughly 60 per cent of the ad hoc group of countries.⁵³ The individual bilateral agreements will not be clear until publicly released, though it is likely that they also will not initially be ambitious.

As discussed in the next section, the branch reports’ identification of BEPS priorities partially aligns with the minimum standard items, generally indicates less emphasis on substantive items, and prioritizes transfer pricing. We expect that this will be consistent with the interest in the corresponding MLI provisions.

3.1. Identified priority areas

The guidelines to branch reporters did not specifically request responses in relation to BEPS action items 1 (digital economy), 11 (data reporting), 12 (mandatory reporting), 14 (dispute resolution) or 15 (MLI).⁵⁴ The reports of prioritized BEPS items, therefore, provide an indication of jurisdictions’ interests but should be considered anecdotal and not statistically representative.

Among the 15 action items, branch reporters most often identified four as priority areas for reform: Action 13 dealing with CbCR, Actions 8–10 dealing with transfer pricing, Action 6 dealing with treaty abuse, and, somewhat less frequently, Action 5 dealing with harmful tax practices. Actions 2–4, which involve hybrids, interest deductibility and CFC rules, comprised the next most frequently mentioned priority areas (though in a number of cases by jurisdictions that claimed their laws already were compliant), together with Action 7, which covers permanent establishment rules. Finally, the action items covering dispute resolution, the digital economy, the MLI, tax planning disclosure and BEPS data analysis were

⁵³ Alex M. Parker, “60 Countries Expected to Sign Tax Agreement: OECD Official” (BNA 14 March 2017), available at http://news.bna.com.eresources.law.harvard.edu/itdm/display/alpha.adp?mode=topics&letter=B&frag_id=107156755&item=27492&prod=itdm, last viewed 18 March 2017.

⁵⁴ This decision by the General Reporters was to focus branch reports on items for which there were mandated actions, recommendations or best practices that would affect taxpayers directly. Moreover, the text of the MLI was not available until after the deadline for submitting the branch reports. Nonetheless, the following discussion and Figure 3 includes references made in the reports to BEPS Actions 1 (digital economy), 11 (data reporting), 12 (mandatory reporting), 14 (dispute resolution) and 15 (multilateral instrument).

less frequently mentioned as priority areas (probably because of the scope of the guidelines to branch reporters). See Figure 3 in the appendix.⁵⁵

Some observations may be made regarding the identification of priority areas. First, the frequency of Actions 13, 6 and 5, with about half of the branch reports prioritizing these items, is not surprising. These action items were of importance to jurisdictions, achieved broad-based consensus, and resulted in clearly articulated minimum standards that are amenable to immediate adoption, whether unilaterally, as in the case of adopting CbCR and eliminating a jurisdiction's own harmful tax practices, or bilaterally, as in the case of adopting treaty abuse safeguards. As such, these items are the most significant outcomes of the BEPS initiative.

These prioritized items will also be subject to peer review and monitoring through the inclusive framework in the implementation stage of BEPS. Many branch reports noted that their jurisdiction had already proposed and in some cases adopted the legislation necessary to implement CbCR and that the EU had "swiftly" adopted a binding Council directive requiring the implementation of CbCR with an implementation date of 4 July 2017.⁵⁶ In our judgement, the degree of commitment and speed of implementation of CbCR support the view that its adoption is the most consequential outcome of the BEPS project to date.

The identification of transfer pricing reflects the fundamental importance of the issue generally and the expectation that this action item will result in changes to the OECD transfer pricing guidelines, to which most jurisdictions adhere. The changes to the transfer pricing rules, however, are nuanced and evolutionary as evidenced by the fact that 20 of the branch reports (42 per cent) indicate that their jurisdiction is already largely compliant with OECD transfer pricing standards and will not require major changes to domestic laws in order to implement any changes to the OECD transfer pricing guidelines.⁵⁷ The transfer pricing recommendations will not have the immediate impact on taxpayers that has already been observed with respect to large taxpayers' efforts to respond to CbCR and to anticipate tax authorities' responses to their CbCR disclosures.

Twenty-one branch reports indicate that treaty abuse (BEPS Action 6) is a priority. Note that alternative acceptable options may be used to satin LOB and a principal purpose test (PPT) rule, (b) a PPT rule alone, or (c) an LOB rule supplemented by rules for conduit financing arrangements.⁵⁸ The reasons why the item is identified as a priority vary from jurisdictions that report that they comply already⁵⁹ and are apparently concerned about protecting their own tax base⁶⁰ to those that do not assert compliance with the standard and in some cases are concerned with the reasonable application of the standard.⁶¹

⁵⁵ For a complete list of which jurisdictions identified which action items as priorities, please see Table 2 in the appendix.

⁵⁶ Council Directive (EU) 2016/881, 25 May 2016, amending Directive 2011/ 16/EU (mandatory automatic exchange of information in the field of taxation).

⁵⁷ See appendix Table 4, column D.

⁵⁸ OECD (2015), Preventing the granting of treaty benefits in inappropriate circumstances, Action 6: 2015 final report, p. 10.

⁵⁹ See appendix Table 4, column A.

⁶⁰ See e.g. Singapore and Mauritius reports.

⁶¹ See e.g. Mauritius, Luxembourg and Netherlands reports.

Likewise, 19 branch reports (44 per cent) assert their jurisdiction's pre-existing compliance with the OECD standards for harmful tax practices (BEPS Action 5).⁶² The Action 5 final report focuses on the adoption of a substance requirement, manifest specifically as a "nexus" standard for certain intellectual property (IP) or "patent box" regimes, and the transparency of harmful practices through required exchanges of tax rulings. This outcome of this action item was dominated by intra-EU political manoeuvring and a resulting code of conduct group compromise on a "modified nexus approach" to IP regimes.⁶³ The compromise was largely adopted by the OECD and the EU subsequently approved a Council directive requiring mandatory exchanges of tax rulings.⁶⁴

3.2. Participation in norm building

In response to past criticisms of its exclusive control over the development of the global tax policy norms that led to BEPS, the OECD invited selected non-members to participate in developing its initiative.⁶⁵ From the articulation of core issues in phase 1 of the BEPS initiative through the release of the action plans, participating jurisdictions worked on the various action items in their associated OECD working parties and global fora, and in other, informal or unspecified ways. The intersection of work by the EU Commission with that of the OECD, and how Member States played somewhat differing roles in each institution, will be discussed separately. Of the 48 jurisdictions surveyed for this report, 33 indicated that they had partici-

⁶² See appendix Table 4. column B. The term "harmful tax practices" has a variety of interpretations. This became evident in the review of the branch reports as some jurisdictions believe they are already compliant with Action 5, but have different measures in place that lead them to the same conclusion. Accordingly, Table 4 should not be relied upon as a precise and strict comparison point from which to reference the pre-existing compliance of the reporting countries to the prevention of harmful tax practices as defined by the OECD, given the varying interpretations of the breadth of the term "harmful tax practices".

⁶³ EU report at section 5.1; report of the code of conduct group (business taxation) of 11 December 2014, 16553/1/14 REV 1 LIMITE, FISC 225 ECOFIN 1166 (Annex 1). The code of conduct group addressed the rolling back of existing regimes and published draft guidelines for interpreting the nexus approach for new regimes. EU Member States will presumably seek to stay within these guidelines once they are made final.

⁶⁴ EU report at section 5.3.2; Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU (mandatory automatic exchange of information in the field of taxation).

⁶⁵ The agenda for the OECD BEPS project was first set in 2013 at the meeting of the G20 in Russia. At that time, all G20 members were invited to participate and all confirmed except for Indonesia (see OECD, OECD Secretary-General Report to the G20 Leaders (5–6 September 2013) St Petersburg at 37, available at <http://www.oecd.org/ctp/beps/SG-report-G20-Leaders-StPetersburg.pdf>). This is what the General Reporters refer to as the beginning of phase 2. This same phase had a second major milestone in early 2015 with the OECD Secretary-General's report in Istanbul. It identified the increase in participation in the development of the OECD BEPS project from the G20 minus Indonesia to a total of 61 jurisdictions, including developing countries which were not members of the OECD or G20 Central Bank Governors (February 2015) Istanbul at 3, 13, available at <http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-february-2015.pdf>). By the end of 2015, approximately 60 jurisdictions had been accounted for as "directly participating" in the development of the BEPS project (see Lisa Pinchin, "OECD update", 11 February 2016 presentation to the International Fiscal Association USA New England branch). It is important to note the stages of agreement and which jurisdictions were present at each stage to properly understand who set the BEPS project agenda through to its development to the present day.

pated in OECD work to develop the BEPS final reports in some form, while 9 indicated that they had not. See Table 3 in the appendix.

However, a smaller subset of the 33 jurisdictions specified having worked in a particular working party or forum.⁶⁶ Of those jurisdictions reported to have participated, a group of eight core countries indicated their participation in all working parties. These were Australia, Belgium, Brazil, Canada, the Netherlands, South Africa, Turkey and the United States.⁶⁷ Others indicated their participation in fewer working parties. Working parties 1 (tax conventions and related questions),⁶⁸ 2 (tax policy analysis and tax statistics),⁶⁹ 6 (taxation of multinational enterprises)⁷⁰ and 11 (aggressive tax planning)⁷¹ attracted the most participation, with 10 to 12 countries indicating participation in each.⁷² A select few jurisdictions reported participating in the Forum on Harmful Tax Practices as well.⁷³

The EU report sets out by action item the work of the EU in respect of each item as well as relevant history. It is important to recall that the OECD's BEPS project is a successor to its 1998 report on harmful tax competition,⁷⁴ which in turn followed the EU Ecofin Council 1997 adoption of a code of conduct for business taxation.⁷⁵ The OECD harmful tax competition project was sidelined by the US Bush administration's curtailment of the project, but the EU's work continued with the code of conduct group (business taxation)⁷⁶ and the expanding application of state aid doctrine to taxation.⁷⁷

In several areas of BEPS, including harmful tax practices, hybrid mismatches, interest limitation and CbCR, the EU and OECD work are observed intersecting, converging, diverging and occasionally leapfrogging each other. The OECD and EU Commission have objectives in relation to direct taxation that align in many cases but diverge in circumstances where the different memberships or constitutive documents (particularly the TFEU) so require.⁷⁸ Moreover, jurisdictions that are members of both the OECD and the EU have differing levels of power and lever-

⁶⁶ See appendix Table 5.

⁶⁷ Although not mentioned in the UK report, it is understood that the UK participated in all working parties. This is illustrative that the branch reports are informative but their coverage on particular points is not necessarily parallel and uniform for comparative purposes.

⁶⁸ Working party 1 included Australia, Belgium, Brazil, Canada, Finland, the Netherlands, Poland, Russia, South Africa, Sweden, Switzerland, Turkey and the United States.

⁶⁹ Working party 2 included Australia, Belgium, Brazil, Canada, the Netherlands, Poland, Russia, South Africa, Sweden, Switzerland, Turkey and the United States.

⁷⁰ Working party 6 included Australia, Belgium, Brazil, Canada, Finland, the Netherlands, Poland, Russia, South Africa, Sweden, Switzerland, Turkey and the United States.

⁷¹ Working party 11 included Australia, Belgium, Brazil, Canada, Finland, Italy, the Netherlands, Poland, Russia, South Africa, Sweden, Switzerland, Turkey and the United States.

⁷² Note that the numbering of OECD working parties under the CFA does not correspond to the numbering of BEPS action items.

⁷³ Participants in the Forum on Harmful Tax Practices included Australia, France, Japan, Poland and Russia.

⁷⁴ OECD (1998), Report on Harmful Tax Competition: An Emerging Global Issue.

⁷⁵ EU report section 2.3; conclusions of 1 December 1997 Ecofin Council Meeting on taxation policy – Resolution of 1 December 1997 on a code of conduct for business taxation, OJ C 2, 6 January 1998.

⁷⁶ EU report, section 2.3.

⁷⁷ EU report, sections 2.2, 3.5, 4.5, 5.2.2 and 5.3.3.

⁷⁸ See Lilian V. Faulhaber, "The Luxembourg Effect: Patent Boxes and the Limits of International Cooperation" (29 June 2016), *Minnesota Law Review*, forthcoming.

age in each institution and differing relations with the OECD Secretariat and the EU Commission Taxation and Customs Union Directorate.

The United Kingdom is a particularly complex example of these interactions. It has adopted a strategy of tax competition for investment while adopting strong anti-BEPS domestic law provisions to protect its tax base in a manner that does not adversely affect its tax competition economic strategy.⁷⁹ The United Kingdom appears to punch above its weight in the OECD consensus environment due in part to the diplomatic skill and expertise of its representatives and its strong historic relations with the United States, with former commonwealth countries and with EU Member States. The United Kingdom's Mike Williams chaired the ad hoc group that developed the MLI. The United Kingdom has also had a seat at the EU table, though its standing in that forum has no doubt diminished following the "Brexit" vote.

In contrast to the United Kingdom, Germany has followed a different strategy of maintaining a high domestic tax rate, eschewing special tax reliefs (including for R&D) and relying on anti-avoidance and anti-BEPS rules to preserve its tax base.⁸⁰ It has strong sway in the OECD and the EU, but is more aligned with the Commission's DG Taxation and Customs Union staff than is the United Kingdom and has strongly supported the anti-tax avoidance actions there as well as in the OECD. In 2017, Mr Martin Kreienbaum of Germany took over as the chair of the OECD's CFA. France has pursued a strategy broadly similar to that of Germany. Former French Finance Minister Moscovici is the Commissioner for the Commission's DG Taxation and Customs Union.

While these key players and the United States jostled at the OECD, other non-OECD countries, including Brazil, China and India, joined the discussion to address and protect their interests.⁸¹ Moreover, following some criticism, the OECD reached out to invite additional participants and ultimately involved approximately sixty jurisdictions in phase 2 of the BEPS process. Following the completion of the BEPS final reports (in what this report refers to as phase 3), many more jurisdictions have joined the inclusive forum⁸² and the ad hoc group for the development of a multilateral instrument.⁸³ This development is, from an institutional perspective, perhaps the most consequential outcome of BEPS to date. It will probably no longer be acceptable for important international tax reforms to be developed without seats at the table being available on a global basis.

⁷⁹ United Kingdom report, section 1.2.

⁸⁰ Johannes Becker and Joachim English, *A European Perspective on the US Plans for a Destination Based Cash Flow Tax*, 20 (10 February 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2924313 (last viewed 19 March 2017).

⁸¹ Mr Jianfan Wang from China is the deputy chair of the inclusive forum. Mr Cheikh Ahmed Tidiane from Senegal and Mr Mike Williams from the United Kingdom are also deputy chairs.

⁸² As of February, 2017, the OECD listed 94 jurisdictions as participants in the inclusive forum. See <http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>, last viewed 19 March 2017.

⁸³ As of 2 March 2017, the OECD listed 106 jurisdictions as participants in the ad hoc group for the development of an MLI. See <http://www.oecd.org/tax/treaties/multilateral-instrument-for-beps-tax-treaty-measures-the-ad-hoc-group.htm>, last viewed 19 March 2017. The group appointed Mr Mike Williams of the United Kingdom as chair, and Mr Liao Tizhong of the People's Republic of China and Mrs Kim S. Jacinto-Henares of the Philippines as vice-chairs.

4. Phase 3: responses to BEPS outcomes

4.1. BEPS implementation processes

The third and current phase of the BEPS project involves the OECD's effort to build global support for BEPS actions and further develop consensus with harmonized implementation and convergence toward a consensus on action items that are not yet minimum standards. This implementation phase began with the issuance of the final reports in October 2015 and their approval by G20 leaders in November 2015.⁸⁴ The implementation phase of the BEPS project continues through to the present.⁸⁵

The tools for encouraging BEPS implementation include the expansion of BEPS participants to include a broad range of countries drawn in by the prospect of mutual advantage from engagement through the inclusive framework in development of further guidance on action items and in the BEPS action item peer review process. All non-OECD and non-G20 nations that agree to the BEPS minimum standards have been invited to become BEPS associates in the implementation stage. BEPS associates will participate, purportedly "on an equal footing", in the technical work at working parties and other bodies⁸⁶ and, through their senior officials, in the CFA consensus decision-making process.⁸⁷

Over a hundred jurisdictions have joined the inclusive framework⁸⁸ and the ad hoc group for the development of an MLI.⁸⁹ These include non-G20 and non-OECD countries whose involvement ranged from serving in a leadership role (Senegal), to intermediary jurisdictions that have had active treaty programmes to enhance their attractiveness (Mauritius, Qatar, Seychelles), to jurisdictions with fast growing but developing economies (Kenya), to jurisdictions without a

⁸⁴ G20 Leaders' Communiqué, 15–16 November 2015, at https://www.g20.org/Content/DE/_Anlagen/G7_G20/2015-g20-abschlusserklaerung-eng.pdf?__blob=publicationFile&v=3 ("To reach a globally fair and modern international tax system, we endorse the package of measures developed under the ambitious G20/OECD Base Erosion and Profit Shifting (BEPS) project").

⁸⁵ The branch reports were completed before the end of 2016. Discussion in this section of developments from late 2016 to the present are not based on these reports.

⁸⁶ The OECD technical bodies involved in the inclusive forum BEPS work are: working party 1 on tax conventions and related questions: Actions 6, 7, 14 and parts of Action 2; working party 2 on tax policy analysis and tax statistics: Action 11; working party 6 on taxation of multinational enterprises (e.g. transfer pricing issues): Actions 8, 9, 10 and 13; ad hoc group on CbCR: Action 13; working party 11 on aggressive tax planning: Actions 2, 3, 4 and 12; the task force on the digital economy (TFDE): Action 1; the Forum on Harmful Tax Practices (FHTP): Action 5; the Forum on Tax Administration and Mutual Agreement Procedure (FTA MAP forum): Action 14. OECD, Background brief: inclusive framework on BEPS, Annex 2.

⁸⁷ OECD, Background brief: inclusive framework on BEPS Actions 11–12.

⁸⁸ As of February 2017, the OECD listed 94 jurisdictions as participants in the inclusive framework. See <http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>, last viewed 19 March 2017.

⁸⁹ As of 2 March 2017, the OECD listed 106 jurisdictions as participants in the ad hoc group for the development of a multilateral instrument. See <http://www.oecd.org/tax/treaties/multilateral-instrument-for-beps-tax-treaty-measures-the-ad-hoc-group.htm>, last viewed 19 March 2017. The group appointed Mr Mike Williams of the United Kingdom as chair, and Mr Liao Tizhong of the People's Republic of China and Mrs Kim S. Jacinto-Henares of the Philippines as vice-chairs.

treaty programme engaging in information gathering and knowledge development (Marshall Islands).⁹⁰

The programme of work for the inclusive framework initially includes the following items:

- peer review under terms of reference agreed to by the inclusive framework and monitoring of the implementation of the four minimum standards;
- standard-setting in respect of BEPS issues other than minimum standards;
- engaging in monitoring processes for the digital economy (Action 1) and the economic impact of BEPS (Action 11);
- data gathering on other aspects of implementation; and
- implementation support, guidance and toolkits for low-capacity developing countries.⁹¹

Additionally, as part of a separate workstream, all jurisdictions were invited to participate in the ad hoc group for the development of the MLI, which was published at the end of 2016 and opened for initial signature in June 2017. Jurisdictions are invited to use the MLI as a mechanism to align bilateral treaties with BEPS action items.

On a parallel track, the EU has moved to harmonize BEPS compliance and implementation within the EU, using Council directives and other guidance.⁹² All reporting EU Member States see these EU actions as bedrocks to their future BEPS compliance.⁹³ Responding to mandatory EU measures is expected to be a primary method through which EU Member States operationalize their BEPS compliance. Some members have already taken measures to adapt to the BEPS final reports prior to the EU's prescriptions.⁹⁴ The EU implementation process is critical to aligning EU Member State responses to BEPS within the dictates of the EU freedoms under the TFEU, and ECJ interpretations of those freedoms, as well as EU standards for state aid.

Among the branch reports, six indicated that their jurisdiction was likely to “go beyond” the BEPS consensus by adopting rules that were more strict or comprehensive than the minimum standard parameters. Branch reports identified the diverted profits tax regimes adopted by Australia and the United Kingdom as

⁹⁰ Kenya and the Marshall Islands are not the subject of branch reports, but are listed as participants in the inclusive forum on the OECD website.

⁹¹ OECD, Background brief: inclusive framework on BEPS Actions 13–14.

⁹² See Directive 2016/1164/EU (ATAD); see amendments to Directive 2016/1164/EU on 21 February 2017 (ATAD2); see generally, EU report.

⁹³ Austria report at sections 1, 3.1.2 and 3.1.3; Belgium report at section 2.1.1; Czech Republic report at section 1.1 and 2; Denmark report at section 2.1.1; Estonia report at sections 1.2 and 2.1.1; Finland report at sections 2.1.1 and 3; France report at sections 1.1, 1.2.4, 2.1.1, 2.1.3 and 2.1.4; Germany report at sections 2.1 and 2.2.2; Ireland report at sections 1.1, 2.1.1, 2.1.2.1.4 and 3; Italy report at sections 2.1.1, 2.1.3, 2.1.4, 3; Luxembourg report at sections 1.1, 1.4, 2.1.4 and 3; Netherlands report at sections 1.1, 1.4, 2.1.1.1 and 3; Poland report at sections 2.1.1, 2.1.4 and 2.2.1; Portugal report at sections 1.4, 2.1.1.3 and 2.2; and Sweden report at sections 2.4 and 2.5.

⁹⁴ See e.g. Denmark report at section 2.1.1 (“the Danish Ministry of Taxation states that it supports the ATA Directive, as this includes the implementation of elements of work in the OECD regarding corporate taxation, which Denmark has also supported. The memo also states that the Ministry considers most of the Danish rules regarding anti-avoidance already to be in line with the ATA Directive. This also implies that the Danish Ministry of Taxation finds the Danish rules in accordance with the BEPS action items covered by the ATA Directive”).

already within this category; Australia is also described as exceeding the BEPS consensus with its multinational anti-avoidance measures (MAAL) regime.⁹⁵ Reports from the Czech Republic, Germany, India, and Mexico also indicate political intentions and moves to go beyond BEPS in certain respects.⁹⁶

4.2. Actions 2–5 implementation

Actions 2–5 have received considerable attention but are not priority items for most EU members. The lack of prioritization of these items is probably due to the coverage of these action items through the EU’s Anti-Tax Avoidance Directive (ATAD).⁹⁷ With the directive dictating the parameters to follow for BEPS compliance, EU Member States need only incorporate the provisions into domestic law if their domestic law does not already make provision for the rule.

It is still to be seen whether the United Kingdom will follow the EU ATAD after “Brexit”. However, the UK branch report expressed that:

“[w]ith respect to Action 4, the obvious obstacle (as discussed above) is that the ‘fixed ratio’ test recommended under Action 4 may have a significant impact on a number of important sectors in the UK economy, in particular, capital markets, securitization and other forms of structured finance, and real estate

⁹⁵ Australia branch report, section 2.2.1 (“Australia determined to go further than the current OECD progress on this item by the introduction of specific anti-avoidance rules in the form of a [diverted profits tax/multinational anti-avoidance measure] into the domestic law of Australia. The MAAL [is] designed to counter the erosion of the Australian tax base by multinational entities using artificial or contrived arrangements to avoid a taxable presence in Australia”); United Kingdom report at section 1.3 (“A specific example of BEPS planning affecting the UK, and thus the UK government’s attitude towards the BEPS project, involved exploitation of permanent establishment and transfer pricing rules to ensure that profits arising from UK activity fell outside the scope of UK tax. The importance of this topic to the UK is reflected in the UK’s introduction of the [diverted profits tax] in 2015, i.e. in advance of publication of OECD recommendations and guidance on relevant action items (such as Action 7 regarding permanent establishments and Actions 8–10 regarding transfer pricing), which was motivated by both a political desire to be seen to be targeting multinationals with UK tax burdens perceived as disproportionately low and the knowledge that the relevant BEPS project workstreams might take some time to be developed in full”).

⁹⁶ Czech Republic report, Summary (“Globally, it can be concluded that the Czech Republic deals with BEPS issues in a very responsible way; many amendments to the legal framework have been carried out and many others are expected until 2020 under the approved [Anti-tax Avoidance Directive]. In addition, it must be highlighted that most of the measures go even further than the proposed BEPS measures”); Germany report, section 2.2.1 (“With respect to Action 3, Germany introduced CFC rules more than forty years ago. The general perception is that these rules are relatively strict, especially when compared to other countries’ CFC regimes and even when compared to the Action 3 recommendations. Accordingly, there was no demand to change Germany’s CFC rules in order to comply with the BEPS recommendations. Rather, Germany’s government was interested in having other jurisdictions introduce (sufficiently tight) CFC rules”); email correspondence from the Mexico reporter (“The proposed regulations on CbCR reporting published last October are a proof that the Mexican tax authorities agree with the OECD minimum standards but do not regard them as a ceiling for their actions and proposals. In other words, unless OECD members agree to set some limits to the BEPS minimum standards, the Mexican tax authorities will try to push for a harsher interpretation of such minimum standards”).

⁹⁷ See e.g. Luxembourg report at section 2.1.4; Ireland report at sections 2.1.3, 2.1.4 and 3; Italy report at sections 2.1.1, 2.1.4 and 3.

investment. As a financial centre, it will be important that the UK achieves a satisfactory balance between encouraging these sectors and avoiding BEPS.”⁹⁸

This could hint at an area in which the UK (and possibly other jurisdictions) will diverge from BEPS standards in hopes of maintaining prominence as a financial centre.

Outside the EU, Actions 2–5 were identified as priorities for jurisdictions such as Korea and Japan; however, neither has made significant domestic law changes as of the time of submitting their branch report. Korea’s only reaction to the OECD BEPS project apart from reviewing its tax system has been to change its thin capitalization rules in line with Action 4.⁹⁹ Japan is reviewing its tax system as well but reports that it did not have a system prone to permitting aggressive tax planning to begin with, highlighting the fact that it never had a patent box.¹⁰⁰ Furthermore, in Japan, an “obligation of voluntary information exchange on tax rulings that includes unilateral advance pricing agreements has already been carried out within the existing framework”.¹⁰¹

On the other hand, New Zealand has been active in responding to these action items. CFC rules have existed since 2009 and New Zealand does not have preferential regimes like those described in Action 5, but Actions 2 and 4 have received attention.¹⁰² New Zealand was proactive on these topics, beginning an internal review as early as December 2012.¹⁰³ This signalled significant foresight on the part of the government before the BEPS project formally began, but New Zealand is also engaged in OECD BEPS project implementation.¹⁰⁴

4.3. Actions 6 and 7 implementation

The MLI is the principal vehicle for implementation of BEPS treaty-related items, providing a mechanism for the bilateral amendment of existing treaties. As stated above, the MLI is open for signature, with the initial signing scheduled for June 2017. A jurisdiction that becomes a party to the MLI proposes to amend a “covered tax agreement” with another party to the MLI that is the other party to the covered tax agreement in accordance with the MLI. The MLI provides a series of alternatives for amending a covered agreement that in essence require the adoption of rules necessary to bring a covered agreement into conformity with the minimum standards of Action 6 on preventing treaty abuse. As for other BEPS treaty-related issues, the MLI permits opting into and opting out of various additional rules.

⁹⁸ UK report at section 2.4.

⁹⁹ Korea report at section 2.1.4.

¹⁰⁰ Japan report at section 2.1.1.

¹⁰¹ *Ibid.*

¹⁰² New Zealand report at section 2.1.1.

¹⁰³ New Zealand report at section 2.1.1.1. The continued dedication to these action items, as they are now called, was identified clearly and publicly by a May 2016 report by officials to the Minister of Revenue and Cabinet outlining New Zealand’s plan to stay current with the recommendations of these action items.

¹⁰⁴ New Zealand report at section 2.1.1.1. The local revenue authority has confirmed that New Zealand will begin exchange of tax rulings for those dated after 1 April 2016 (New Zealand report at section 2.1.1.3.2).

The MLI is a remarkable technical achievement; however, it is by its nature extremely complicated to implement. If the other party to the covered tax agreement agrees to the proposed amendments, the amendment must satisfy each jurisdiction's law governing treaties (or international agreements) to allow the amendment to enter into force. While certainly faster than separate bilateral negotiations for each covered tax agreement, it is not a panacea regarding the implementation of the BEPS standards in treaties.

The first concrete visibility of jurisdictions' responses to items within the scope of the MLI will emerge in June 2017, with the initial signing of the MLI. Each jurisdiction will then need to apply its own legal processes necessary to bring the MLI into force and, as necessary, each bilateral amendment of a covered tax agreement.

It has been reported that at least 60 jurisdictions will become a party to the MLI. If each jurisdiction that is a party modified ten covered tax agreements, as many as 540 agreements would be modified out of the 3,000 bilateral income tax treaties currently estimated to be in force in the world. Even assuming that all of these amendments ultimately entered into force, the extent of change would depend on the scope of each jurisdiction's change to prior law in the amendments that enter into force. For example, if the modifications only brought treaties into conformity with the BEPS minimum standard on Action 6, the effect would be substantially less than if in each case all alternative BEPS changes were adopted. It is known that a number of jurisdictions will not be adopting the changes recommended in Action 7, principally because of concerns regarding how income is attributed to a permanent establishment.¹⁰⁵ While there is potential through the MLI for implementation of Actions 6 and 7, the full extent of changes is not known as of the writing of this General Report.

4.4. Actions 8–10 and 13 implementation

The transfer pricing related action items were reported in branch reports to be of highest priority, with 23 reports identifying Actions 8–10 as a priority, and 24 reports identifying Action 13 as a priority.¹⁰⁶ This is true even for jurisdictions that indicated that it would be difficult to implement the BEPS project overall, as for example is the case described in the Italy report.¹⁰⁷

This pattern of response could be due to the EU's initiatives to address these action items (in some ways consistent with BEPS and in more unique approaches in state aid cases) and the number of EU Member States within the dataset.¹⁰⁸ The European Commission has taken an aggressive approach to its application of the arm's length standard in recent EU state aid investigations of Apple in Ireland, Fiat and Amazon in Luxembourg, and Starbucks in the Netherlands.¹⁰⁹ The EU report indicated that:

¹⁰⁵ The United States and the United Kingdom have announced that they do not intend to adopt the associated enterprises tests for finding a permanent establishment of a taxpayer with no direct presence in the source jurisdiction.

¹⁰⁶ See appendix Table 2.

¹⁰⁷ Italy report at section 2.3.4.

¹⁰⁸ See e.g. Luxembourg report at section 1.4.

¹⁰⁹ See EU report at section 8.2.

“The [Commission’s] objective seems to be to oblige both taxpayers and tax authorities to be much more rigorous in their transfer pricing analyses, in line with BEPS Actions 8–10.”¹¹⁰

In addition, the Ecofin Council has asked the code of conduct group (business taxation) to clarify its standards and their relationship to Actions 8–10.¹¹¹ Regardless, the EU is actively addressing Actions 8–10 directly and indirectly through the Commission, the CJEU, and with its directive on CbCR to mandate an EU-wide approach to Action 13.¹¹² The combination will dictate the compliance of the EU Member States at large given the unique structure of the organization.¹¹³

Notably, the United Kingdom has authorized its revenue authority to go beyond the confidentiality standards for Action 13: “Finance Act 2016 gives the right to require public disclosure of CbCR within the context of rules requiring the publication of a multinational group’s tax strategy”.¹¹⁴ The European Commission has proposed a directive mandating public disclosure of CbCR.¹¹⁵ Other jurisdictions, such as Turkey, which has already implemented CbCR, are concerned that despite Action 13’s priority, the government does not have the capacity to undertake the process of ensuring correct implementation.¹¹⁶

4.5. Costs and consequences of changing legal standards

The scope of change embedded in the BEPS final reports cannot be expected to be implemented immediately, nor can it be expected to be painless during what will be a period of transition and change. Perhaps, from this perspective, it is appropriate to note that just 20 per cent of the branch reports indicate that rule changes associated with BEPS will increase litigation within or among jurisdictions due to the increased incidence of double taxation, with transfer pricing frequently listed as a likely catalyst for disputes.¹¹⁷ Relatedly, increasing compliance costs were specifically cited by a quarter of the branch reports as of major concern for both governments and taxpayers.¹¹⁸

Not surprisingly, as stated above, some branch reports noted the likelihood that resource constraints would prevent their jurisdictions fully implementing the BEPS consensus.¹¹⁹ Resource constraints may be more likely to affect jurisdictions

¹¹⁰ See *ibid.* for a further discussion of state aid cases.

¹¹¹ EU report at section 8.3.

¹¹² EU Directive 2016/881.

¹¹³ EU report at section 8.

¹¹⁴ UK report at section 1.1.

¹¹⁵ Proposal for a Directive of the Council and of the European Parliament amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, COM/2016/0198 final.

¹¹⁶ See e.g. Turkey report at section 2.3.4.4.

¹¹⁷ See reports of France, Germany, India, Ireland, Japan, Liechtenstein, Mauritius, Mexico and Switzerland.

¹¹⁸ See reports of Canada, Colombia, Chinese Taipei, the Czech Republic, Japan, Liechtenstein, Luxembourg, Mauritius, Mexico, Singapore, Ukraine and South Africa.

¹¹⁹ See reports of Estonia, India, Qatar (UAE/GCC report), Turkey and Ukraine.

outside the G20 and OECD membership, but among the reporters expressing this concern, two jurisdictions (India and Turkey) are G20 members while a third, Estonia, is an EU Member State and a member of the OECD.

About a third of the reports expressed concerns that the implementation of BEPS would negatively affect trade, investment or economic outcomes in their jurisdiction.¹²⁰ Among these, about half are OECD members, and two are jurisdictions that express strong and enthusiastic support for the BEPS initiative.¹²¹ The Mexico report provides a good example of this view, where it observes that the Mexican tax authorities have “been criticized for proposing BEPS-inspired tax provisions without a consensus or joint implementation of the rules with other OECD members, such as the United States or the EU, which are Mexico’s major trade partners”.¹²² Further, the Mexico report notes that “[t]he uncoordinated implementation of responses to BEPS may create undesired effects between major trade partners”.¹²³

In the same vein, the United Kingdom report states:

“The potential tension between the UK’s support of the OECD BEPS project and domestic measures designed to attract domestic investment may become particularly pronounced in the light of any steps taken to implement a ‘Brexit’ from the EU, as the UK will be especially keen to maintain its status as a leading international financial centre and business hub.”¹²⁴

Further, the United Kingdom report continues:

“It is worth noting that the UK government is cognizant of the need to attract inward investment, especially following the outcome of the ‘Brexit’ referendum, and it will therefore be interesting to see whether the UK government is willing to take any measures (either the introduction of new rules or amendments to existing rules) that are not compliant with the OECD’s anti-BEPS recommendations.”¹²⁵

These expressions of concern regarding the outcomes of BEPS stand against a backdrop of broader global economic as well as tax law uncertainty. The issue is whether the BEPS actions, which were intended to be targeted at abuses and the use of intermediary jurisdictions for base erosion, will result in broad collateral damage to economic activity. This seems doubtful since the most uniform and consequential changes involve CbCR and transparency. These will affect how businesses arrange the footprint of their activity and will almost certainly reduce use of intermediary havens, at least for companies with highly visible consumer

¹²⁰ See reports of UAE/GCC, Colombia, Luxembourg, Mauritius, Mexico, the Netherlands, New Zealand, Peru, Portugal, Singapore, Turkey, the United Kingdom, Uruguay and South Africa.

¹²¹ See reports of Mexico and the United Kingdom.

¹²² Mexico report, section 1.

¹²³ Mexico report, section 3.

¹²⁴ UK report, Summary.

¹²⁵ UK report, section 1.3.2.

brands. Some increased tax burden on jurisdictions and revenue to governments will probably result, but the overall tone of the branch reports suggests that the effects are not predicted to be epochal.

The other minimum standards are limited in effect and the extent of adoption of action items that are not minimum standards remains to be seen. This alone is a source of uncertainty, but whether tax uncertainty is undesirable from an overall welfare perspective depends on whether the actions not taken in the face of uncertainty would have advanced welfare or not. If tax avoidance is reduced, welfare generally would be enhanced. If socially and economically productive investments are inhibited, welfare generally would be reduced.

In response to a G20 request, OECD and IMF staffs recently prepared a joint report to G20 finance ministers on tax certainty in the context of OECD and G20 members. The report describes sources of tax uncertainty and reports based on survey responses about its potential effects on business decisions. It also outlines approaches to help policymakers and tax administrations shape a more certain tax environment.¹²⁶

4.6. The case of the United States

This General Report has made note of the importance of the EU in the development and implementation of BEPS; a parallel discussion of the role or relative absence of the United States at the implementation stage is likewise useful for an overall understanding of the current implementation landscape. The perceived change in stance of the United States in relation to BEPS reflects the particularities of its domestic political divisions. The initial enthusiasm for BEPS moderated as the BEPS project reached completion with issuance of final reports without a number of US tax objectives achieved. These included more robust CFC rules, treaty LOB rules and, particularly in the eyes of the US business community, broader acceptance of mandatory arbitration in treaty-based dispute resolution.

These outcomes left little for the US multinational community to applaud as many of the other BEPS-related rules appear likely to increase multinationals' foreign source jurisdiction tax burdens.¹²⁷ At the same time, assertion by the EU of state aid cases, which the United States views as disproportionately aimed at US companies and employing transfer pricing theories believed by some to be inconsistent with OECD standards, with retroactive consequences, appeared to genuinely upset representatives of the Obama administration. This unfolded as the Obama administration sought to increase unilateral measures to tamp down aggressive US multinational avoidance, particularly in the case of so-called inversions and use of related party debt.

These developments risked attracting a more vocal opposition by the US business community and a threat of congressional involvement. This in turn brought a discernible change in US rhetoric and apparent downward level of commitment to

¹²⁶ OECD and IMF, Tax Certainty, IMF/OECD Report for the G20 Finance Ministers (March 2017).

¹²⁷ The US view is that its law already includes provisions to protect its own source tax base. See e.g. US report at sections 2.1.1, 2.2.1 and 3.

the BEPS process.¹²⁸ It was believed that the US had no plans to sign the MLI because most provisions of interest were already in US treaties (and it was unlikely that a Republican-controlled Senate would support and act on the treaty). Leaving rhetoric to the side, however, the United States report demonstrates that many of the BEPS actions are already embedded in US law, the new US model treaty adopts strong BEPS protections,¹²⁹ and there has been no sign to date of the United States backing away from CbCR.¹³⁰ Many therefore conclude that the United States is already largely BEPS compliant.

4.7. Non-OECD members and unaddressed policy concerns

Reports of countries outside the G20 and OECD membership, many of which have a lower income than G20 and OECD members, consistently expressed concerns with the historical issues that face jurisdictions at that stage of development. These include lack of sufficient domestic technical expertise, lack of resources to properly implement reforms and worries about maintaining competitiveness and attracting foreign investors.¹³¹ It will be important for these concerns to be addressed if the OECD BEPS project is to succeed in a worldwide overhaul of tax systems. Further, addressing the needs of non-OECD jurisdictions appears critical to the future viability of the institution as a platform for building consensus on sustainable growth and certainty, as envisioned in the most recent G20 communiqué discussed in the introduction to this General Report.

Therefore, as the BEPS implementation phase continues, it is notable that a number of reports pointed out shared policy issues that were of concern in their jurisdictions but were not addressed in BEPS:

- maintaining competitiveness: how lower-income jurisdictions may attract foreign investors and maintain competitiveness upon the implementation of BEPS action plan items;¹³²
- insufficient government resources: how difficulty in administering the proposed changes based on lack of resources, experience or technical expertise will be addressed;¹³³

¹²⁸ “[The] almost enthusiastic leadership stance of the United States has gradually been replaced with a much more defensive position that emphasizes the primary interest of the United States in the BEPS project – to protect its MNEs from being the primary target of the project to the detriment of the United States.” US report at section 1.

¹²⁹ “The introduction of the 2016 model had a much wider impact than that of BEPS despite its position as a United States response or an attempt to influence the BEPS process.” US report section 2.2.6.

¹³⁰ “The CbCR portion was conceded as something against which the United States could not fight within the BEPS project, and efforts were instead put into shifting the focus from the inclusion of the reporting requirement, to the content of the reports. United States representatives to the BEPS project are believed to have influenced the narrowing of the final recommendations’ scope from that which appeared in the original draft.” US report section 2.3.3.

¹³¹ See reports of Chile, Colombia, Uruguay and Venezuela.

¹³² See reports of Colombia, South Africa, Turkey, Uruguay and Ukraine.

¹³³ See reports of Chile, India, Turkey and Ukraine.

- inconsistent and uncertain application: lack of consistency in the application of rules between jurisdictions, and uncertainty in how the BEPS action plans will be applied by different countries;¹³⁴
- high compliance burdens for taxpayers;¹³⁵
- domestic tax evasion: jurisdictions may prefer to focus on domestic tax evasion as a more important source of base erosion and revenue loss;¹³⁶
- maintaining domestic legislation: the ability to maintain domestic legislation that might conflict with OECD BEPS guidance but is not meant to be used as an instrument of tax base erosion.¹³⁷

The OECD and its partners in the platform for collaboration on tax have committed to develop “toolkits” relating to issues of interest to lower-income jurisdictions, which cover the first item listed above as well as parts of others.¹³⁸ It remains to be seen how other ongoing issues will be addressed.

5. Conclusion

The G20/OECD BEPS project has been extraordinary in the speed and technical competence with which it has developed complex operational cross-border tax rules, developed an infrastructure to modify a global network of bilateral income tax treaties, and built wholly new tax administration coordination and transparency systems. All of this has been directed at the demonstrated ability of multinational enterprises to exploit international tax regimes to avoid taxes in degrees that are broadly viewed as harmful rather than welfare enhancing.

But it is still too early to reach judgements on the success or lack thereof of the BEPS project. Indeed, at this point it is difficult to gauge the full extent to which jurisdictions will in fact adhere to or defect from the rules. The branch reports for EU Member States show that actions of the EU are powerfully supporting BEPS implementation, even though domestic implementation of directive rules remains incomplete. The MLI (now referred to as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS), whose initial

¹³⁴ See reports of Colombia, Mauritius, Mexico and Turkey.

¹³⁵ See reports of Mexico and Venezuela.

¹³⁶ See Colombia report.

¹³⁷ See Brazil report.

¹³⁸ The United Nations *Handbook on Protecting the Tax Base of Developing Countries* reviewed the major BEPS issues from the perspective of developing countries, but also identified issues of importance to developing countries that were not addressed in the BEPS Action Plan. In addition to the issues mentioned in the text, it highlighted the cross-border taxation of technical services and offshore (or indirect) sales of assets. The issues are expected to be the subject of a “toolkit” prepared by the OECD, IMF, World Bank and UN Platform for Collaboration on Tax. The toolkits will include: (a) options for low income countries’ effective and efficient use of tax incentives for investment; (b) a toolkit for addressing difficulties in accessing comparables data for transfer pricing analyses; supplementary material: Addressing the information gaps on prices of minerals sold in an intermediate form; (c) a report on indirect transfers of assets; (d) a toolkit on transfer pricing documentation requirements; (e) a toolkit on tax treaty negotiation; (f) a toolkit on base eroding payments; (g) a toolkit on supply chain restructuring; and (h) a toolkit on assessment of BEPS risks. The first two have been completed and are available.

signing ceremony will take place as this report is published, is a powerful tool for implementing treaty-related BEPS items, but it will take considerable time for even initial signatories' agreements to enter into force and years for the convention's mechanism to have full effect.

At the same time, it is not too early to consider how the project has proceeded and make observations for work going forward and future efforts at global tax cooperation. The BEPS project began as a "top down" effort developed by the largest developed jurisdictions that comprise the CFA working closely with the OECD secretariat. Consequently, the agenda for the project was focused on developed jurisdictions.

Following the playbook used to launch the Global Forum on Transparency and Exchange of Information for Tax Purposes, to obtain global credibility and political backing, the OECD sought to obtain the backing of the G20 for the work and to add major non-OECD G20 countries to the project. This led to criticism (including from the United Nations and the G20 development working group) that the concerns and involvement of low- and middle-income jurisdictions were lacking.

Commendably, the OECD thereafter engaged in substantial outreach and invited additional countries to participate in the BEPS project. It formalized collaboration with the United Nations, IMF and World Bank through the Platform for Collaboration on Tax. Finally, the inclusive framework and the ad hoc group to develop the MLI have been creative responses that potentially allow all jurisdictions to participate in the work while sidestepping for the moment the political, resource and institutional capacity issues presented by the greater institutional involvement of the United Nations.

The politics of the process drove timing that strained the ability to have greater and more meaningful stakeholder input to the process (substantial as that input has been). Moreover, a strict schedule has put pressure on domestic resources to engage with the process as well as to implement the outcomes. The stress on jurisdictions and taxpayers is evident in the branch reports. It also is why important elements of the project were incomplete, in some cases technically (e.g. Action 7 (artificial avoidance of permanent establishments) relating to income attribution), and in other cases achieving consensus (e.g. Action 1 (digital economy)). These rough edges will be addressed through future work, but the longer-term issue is whether the process will have affected the sustainability of the outcomes.

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 fora may be housed institutionally.

This leaves a series of open questions. What will be the institutional formalization of the global standard setting of tax policy? How will future agendas be set and will they be set by jurisdictions that are beyond the narrow group in the CFA bureau? How will emerging, lower- and middle-income economies be involved? What will be the role for the EU and other regional entities? We look to future IFA congresses for answers to these questions and a final assessment of the BEPS project.

Appendix

For the purposes of this report and the following tables the European Union, a G20 member, is treated as a branch and/or a jurisdiction as the circumstances require.

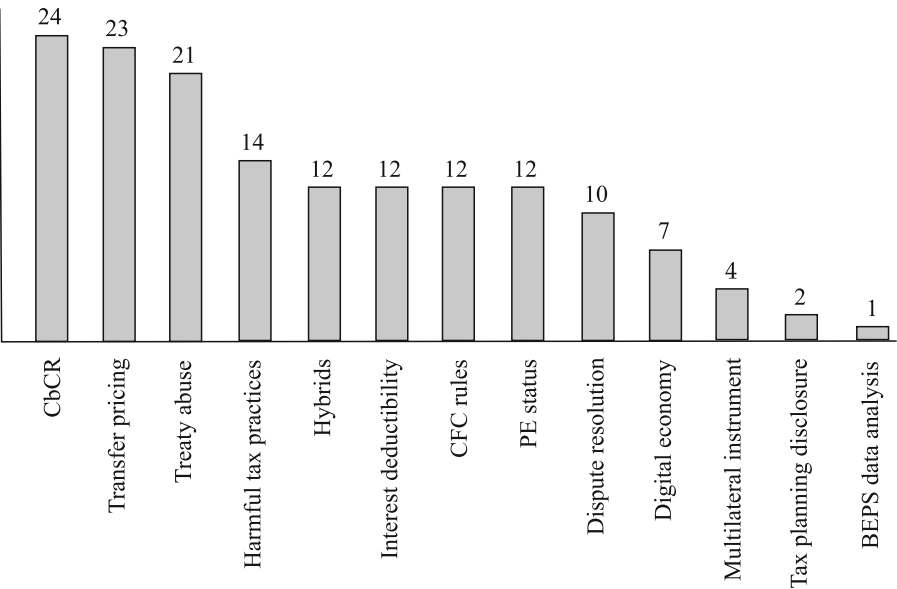


Figure 3. Number of jurisdictions indicating item action is a priority

Table 1. List of jurisdictions with reports			
Argentina	Estonia	Luxembourg	Saudi Arabia ^a
Australia	European Union	Mauritius	Singapore
Austria	Finland	Mexico	South Africa
Bahrain ^a	France	Netherlands	Sweden
Belgium	Germany	New Zealand	Switzerland
Brazil	India	Norway	Turkey
Canada	Ireland	Oman ^a	Ukraine
Chile	Italy	Peru	United Arab Emirates
Chinese Taipei	Japan	Poland	United Kingdom
Colombia	South Korea	Portugal	United States
Czech Republic	Kuwait ^a	Qatar ^a	Uruguay
Denmark	Liechtenstein	Russia	Venezuela

^a See under UAE/GCC report.

Table 2. Priority items where identified by branch reporters

	1	2	3	4	5	6	7	8–10	11	12	13	14	15
Argentina						×		×			×		
Australia	×	×				×	×				×		
Austria		×		×									
Bahrain ^a													
Belgium					×							×	
Brazil					×						×	×	×
Canada						×					×		
Chile		×	×			×							
Chinese Taipei			×				×						
Colombia	×	×			×	×		×		×	×		
Czech Republic		×	×	×				×			×		
Denmark								×			×		
Estonia	×							×			×		
Finland		×		×									
France	×	×	×	×	×	×	×	×	×	×	×	×	×
Germany		×			×		×	×			×	×	
India	×					×		×			×		
Ireland						×							
Italy	×	×			×		×						
Japan			×	×				×					
Korea (South)			×	×	×	×	×	×			×	×	
Kuwait ^a							×	×					
Liechtenstein													
Luxembourg						×							
Mauritius					×	×					×		×
Mexico					×	×					×		
Netherlands						×		×			×	×	
New Zealand		×		×		×	×	×					
Norway				×		×	×	×				×	

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Table 2. Priority items where identified by branch reporters (cont.)														
	1	2	3	4	5	6	7	8–10	11	12	13	14	15	
Oman ^a														
Peru			×					×			×			
Poland			×					×			×		×	
Portugal		×	×			×								
Qatar ^a														
Russia			×								×			
Saudi Arabia ^a							×	×						
Singapore					×	×		×			×	×		
South Africa				×		×	×	×						
Sweden														
Switzerland					×	×	×				×			
Turkey	×			×		×		×			×			
Ukraine			×	×	×			×			×			
United Arab Emirates ^a														
United Kingdom		×		×	×			×			×			
United States			×					×				×		
Uruguay					×	×					×	×		
Venezuela														
Total	7	12	12	12	14	21	12	23	1	2	24	10	4	

^a See under UAE/GCC report.

Table 3. Participation in BEPS Action Plan development

	Participated in BEPS reports	No participation	Participation not indicated
Argentina		×	
Australia	×		
Austria			×
Bahrain ^a		×	
Belgium	×		
Brazil	×		
Canada	×		
Chile	×		
Chinese Taipei		×	
Colombia		×	
Czech Republic	×		
Denmark	×		
Estonia		×	
European Union			×
Finland	×		
France	×		
Germany	×		
India	×		
Ireland	×		
Italy	×		
Japan	×		
Korea (South)	×		
Kuwait ^a			×
Liechtenstein	×		
Luxembourg	×		
Mauritius			×
Mexico	×		
Netherlands	×		
New Zealand	×		
Norway	×		
Oman ^a			×

Table 3. Participation in BEPS Action Plan development (cont.)			
	Participated in BEPS reports	No participation	Participation not indicated
Peru	×		
Poland	×		
Portugal	×		
Qatar ^a		×	
Russia		×	
Saudi Arabia ^a	×		
Singapore	×		
South Africa	×		
Sweden	×		
Switzerland	×		
Turkey	×		
Ukraine		×	
United Arab Emirates ^a			×
United Kingdom	×		
United States	×		
Uruguay	×		
Venezuela		×	
Total	33	9	6

^a See under UAE/GCC report.

Table 4. Jurisdictions already largely compliant with various aspects of BEPS			
A	B	C	D
Treaty shopping practices	Harmful tax deductibility	Interest	Transfer pricing
Australia	Argentina	Argentina	Argentina
Brazil	Australia	Brazil	Austria
Chile	Canada	Canada	Australia
Colombia	Chile	Chinese Taipei	Canada
Germany	Czech Republic	Colombia	Colombia

Table 4. Jurisdictions already largely compliant with various aspects of BEPS (cont.)			
A	B	C	D
Treaty shopping	Harmful tax practices	Interest deductibility	Transfer pricing
India	Denmark	Czech Republic	Chile
Japan	Germany	Denmark	Chinese Taipei
New Zealand	India	France	Czech Republic
Norway	Korea (South)	India	Denmark
Poland	Liechtenstein	Italy	France
Saudi Arabia	Mauritius	Norway	Germany
Singapore	New Zealand	Peru	India
South Africa	Norway	Poland	Italy
Sweden	Peru	Portugal	New Zealand
United States	Poland	United States	Norway
Venezuela	Portugal	Venezuela	Poland
	Singapore		Switzerland
	Sweden		United Kingdom
	United States		United States
			Venezuela

Table 5. OECD working party participation by branch report jurisdiction ^a														
	Involvement at the OECD												Not indicated	
	Focus groups	Working party no.												
		1	2	3	4	5	6	7	8	9	10	11		
Australia	×	×	×	×	×	×	×	×	×	×	×	×		
Belgium	×	×	×	×	×	×	×	×	×	×	×	×		
Brazil	×	×	×	×	×	×	×	×	×	×	×	×		
Canada	×	×	×	×	×	×	×	×	×	×	×	×		
Chile	×													
Czech Republic														
Denmark														
Finland		×					×					×	×	

Table 5. OECD working party participation by branch report jurisdiction ^a (cont.)													
	Involvement at the OECD												
	Focus groups	Working party no.											Not indicated
		1	2	3	4	5	6	7	8	9	10	11	
France													×
Germany													×
India													×
Ireland													×
Italy												×	
Japan													×
Korea (South)													×
Liechtenstein													×
Luxembourg													×
Mexico													×
Netherlands		×	×	×	×	×	×	×	×	×	×	×	
New Zealand													×
Norway													×
Peru													×
Poland		×	×				×				×	×	
Portugal													×
Russia		×	×				×					×	
Singapore													×
South Africa		×	×	×	×	×	×	×	×	×	×	×	
Sweden	×	×	×				×			×		×	
Switzerland		×	×				×					×	
Turkey		×	×	×	×	×	×	×	×	×	×	×	
United Kingdom													×
United States	×	×	×	×	×	×	×	×	×	×	×	×	
Uruguay													×
Total	7	13	12	8	8	8	13	8	8	9	10	14	16

^a The column “not indicated” refers to specified participation in a focus group or working party rather than overall OECD participation. Reports that did not indicate whether their jurisdiction participated in the OECD at all are omitted from the table.

Table 6. Branch report jurisdictions by membership of G7, OECD and G20

	G7 member	OECD member	G20 member
Argentina			×
Australia		×	×
Austria		×	
Bahrain ^a			
Belgium		×	
Brazil			×
Canada	×	×	×
Chile		×	
Chinese Taipei			
Colombia			
Czech Republic		×	
Denmark		×	
Estonia		×	
European Union			×
Finland		×	
France	×	×	×
Germany	×	×	×
India			×
Ireland		×	
Italy	×	×	×
Japan	×	×	×
Korea (South)		×	×
Kuwait ^a			
Liechtenstein			
Luxembourg		×	
Mexico		×	×
Mauritius			
Netherlands		×	
New Zealand		×	
Norway		×	
Oman ^a			

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Table 6. Status of branch report jurisdictions of G7, OECD and G20 (cont.)			
	G7 member	OECD member	G20 member
Peru			
Poland		×	
Portugal		×	
Qatar ^a			
Russia			×
Saudi Arabia ^a			×
Singapore			
South Africa			×
Sweden		×	
Switzerland		×	
Turkey		×	×
Ukraine			
United Arab Emirates ^a			
United Kingdom	×	×	×
United States	×	×	×
Uruguay			
Venezuela			
Total	7	27	17

^a See under UAE/GCC report.

Table 7. Jurisdictions with branch reports and involvement at the OECD regarding specific action items ^a															
	Involvement at the OECD – contributions/responses to action items														
	1	2	3	4	5	6	7	8–10	11	12	13	14	15	Not indicated	
Australia														×	
Belgium														×	
Brazil														×	
Canada		×		×		×									
Chile														×	
Czech Republic														×	

Table 7. Jurisdictions with branch reports and involvement at the OECD regarding specific action items (cont.)

	Involvement at the OECD – contributions/responses to action items														
	1	2	3	4	5	6	7	8–10	11	12	13	14	15	Not indicated	
Denmark								×							
Finland	×	×	×			×	×	×				×			
France	×	×	×	×	×	×	×	×	×	×	×	×	×		
Germany	×	×	×	×	×	×	×	×	×	×	×	×	×		
India														×	
Ireland				×		×									
Italy				×											
Japan														×	
Korea (South)													×		
Liechtenstein											×		×		
Luxembourg														×	
Mexico		×			×			×			×				
Netherlands														×	
New Zealand														×	
Norway	×	×	×	×	×	×	×	×	×	×	×	×	×		
Peru														×	
Poland														×	
Portugal	×	×	×	×	×	×	×	×	×	×	×	×	×		
Singapore														×	
South Africa														×	
Sweden	×	×	×	×						×			×		
Switzerland														×	
Turkey			×	×											
United Kingdom	×		×					×					×		
United States	×	×	×	×	×	×	×	×	×	×	×	×	×		
Uruguay					×	×					×	×			
Total	8	9	9	10	7	9	6	9	5	6	8	7	9	15	

^a The column “not indicated” refers to specified participation in a focus group or working party rather than overall OECD participation. Reports that did not indicate whether their jurisdiction participated in the OECD at all are omitted from the table.

Table 8. Jurisdictions with branch reports and their participation in public consultation on BEPS			
	Public consultation		
	Yes	No	Not indicated
Argentina		×	
Australia	×		
Austria			×
Bahrain ^a			×
Belgium		×	
Brazil	×		
Canada	×		
Chile	×		
Chinese Taipei	×		
Colombia	×		
Czech Republic	×		
Denmark			×
Estonia		×	
European Union			×
Finland	×		
France			×
Germany	×		
India			×
Ireland	×		
Italy	×		
Japan	×		
Korea (South)	×		
Kuwait ^a			×
Liechtenstein	×		
Luxembourg		×	
Mauritius			×
Mexico			×
Netherlands	×		
New Zealand	×		

Table 8. Jurisdictions with branch reports and their participation in public consultation on BEPS (cont.)			
	Public consultation		
	Yes	No	Not indicated
Norway		×	
Oman ^a			×
Peru			×
Poland	×		
Portugal	×		
Qatar ^a			×
Russia	×		
Saudi Arabia ^a			×
Singapore		×	
South Africa	×		
Sweden	×		
Switzerland	×		
Turkey	×		
Ukraine	×		
United Arab Emirates ^a			×
United Kingdom	×		
United States	×		
Uruguay		×	
Venezuela		×	
Total	26	8	14

^a See under UAE/GCC report.



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ISBN 978 90 12 40000 8



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