

The EU and BEPS: Quo Vadis?

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Luxembourg, 14 January 2016

Answer, outline and key issues

Answer: towards a cross-border consistent exercise of taxing jurisdiction

In principle, this is a positive development for the EU, but how is it achieved?

Focus: impact assessment of BEPS on EU and vice versa, i.e.

- The influence of the BEPS project on the exercise of taxing sovereignty of Member States in the European Union
- The compatibility of the BEPS project with European Union law

Positive impact of BEPS on EU

- Stronger fight against BEPS enhances level-playing field within internal market in the framework of a transparent competition among States
- Trend for transparency and reporting has given new impetus to EU action within the internal market and in relations with third countries
- Coordination under BEPS actions 2, 4 and 5 removes exploitation of cross-border tax disparities within internal market, and...perhaps more (juridical double taxation?)

Negative impact of BEPS on EU

- Negative = legal uncertainty on following areas
- Deterrent effects and quasi-automatic application without analysis of substance
 - Action 3 – CFC legislation
 - Partly wholly artificial arrangements
 - CFC and aggressive tax planning
 - Need for coordination with Action 5
 - Action 6 – anti-abuse
 - LoB clauses (reasoned opinion 19.11.15 on NL-JPN DTC)
 - PPT
 - Relations with aggressive tax planning outside specific clauses

National tax sovereignty in the post-BEPS era

- BEPS coordinates the exercise of taxing jurisdiction
- Dynamics of multilateralism and essence of tax sovereignty: a possible disconnection between form and substance
- Problems of legitimacy and contribution to technical solutions and their technical implementation
- Is there an obligation for States to implement BEPS?
 - For States that have not contributed to set the standard?
- Can there be a BEPS *à deux vitesses*? An EU-compliant BEPS
- The role of EU and its law to enhance BEPS in the world

Conclusive remarks

- BEPS and global tax transparency: desirable for European Union law, since they achieve tax coordination, enhance level-playing field and remove some cross-border disparities
- BEPS project brings about uncertainty in grey zones as to its implementation
- EU Member States can strengthen their reaction, but not use the BEPS project to do what is prohibited under EU law
- Dubious compatibility with Union law until CJEU states on it
- Structural issue: how can we get an ex ante assessment of compatibility with Union law?

Thank you!

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