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THE ESSENCE OF BEPS IN THE LIGHT OF THE OECD REFORM OF THE INTERNATIONAL TAX SYSTEM

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Purpose: The objective of this paper is to present the fundamental concepts and initiatives of the *Base Erosion and Profit Shifting* (BEPS) project, which is designed to reform the international tax system.
Design/methodology/approach: A critical analysis method was employed to review legislation, international reports and industry reports. The present paper employs a qualitative approach, underpinned by an extensive review of extant literature on the subject, in addition to pertinent OECD (Organisation for Economic Co-operation and Development) documents and reports concerning BEPS (*Base Erosion and Profit Shifting*) activities. The key elements of the reform of the international tax system are analysed, including the BEPS 1.0 actions and the so-called BEPS 2.0 initiatives, particularly Pillar I and Pillar II. The methodology also includes a critical analysis of the implications of the proposed solutions for the tax sovereignty of states and the operation of multinational companies. This article employs a qualitative legal and doctrinal analysis method. Primary data sources include OECD reports, international legal acts, and expert legal commentary. Comparative analysis is applied to selected jurisdictions (Austria, Italy, Poland) using the International Tax Competitiveness Index. A critical approach is adopted to evaluate the implications of the BEPS 2.0 regulations for tax sovereignty and policy efficiency.
Findings: The main objectives and activities of the *Base Erosion and Profit Shifting* project are presented, introducing the concept of a global minimum tax and the phenomenon of losses incurred by public finance systems. The essence of this initiative to prevent base erosion and profit shifting to low tax jurisdictions is outlined.
Social implications: The OECD's BEPS initiative represents a seminal contemporary project with the objective of reforming the international tax system. The initiative comprises a broad spectrum of actions and recommendations that are designed to establish a fairer and more efficient international taxation system.
Originality/value: The objective of BEPS is to establish mechanisms for states to respond to activities that result in a reduction of the tax base (*base erosion*) and the transfer of income to low-tax or non-taxing jurisdictions (*profit shifting*). This knowledge can be utilised by managers of multinational companies in the conduct of their business.
Keywords: Base Erosion and Profit Shifting, international tax system, global corporations, global minimum tax, Organisation for Economic Co-operation and Development.
Category of the paper: Conceptual paper.

1. Introduction

The reform of the OECD (Organisation for Economic Co-operation and Development) international tax system has had a considerable impact on global corporations, necessitating greater transparency, a change in tax strategies, adaptation to new rules and specific investment and operational decisions. The implementation of the aforementioned changes is associated with financial implications and challenges. However, the objective is to establish a tax system that is both equitable and efficient, thereby yielding benefits for both nations and commercial entities.

Recent attention has been directed towards transactions exhibiting characteristics of aggressive tax optimisation, facilitating full or partial avoidance of tax liability, by international organisations such as the OECD (Organisation for Economic Co-operation and Development). Multinational corporations with representative offices in countries that apply preferential tax regimes are attracting particular attention. A pivotal concern in this regard pertains to the issue of reciprocal non-taxation. The OECD has expressed concerns regarding the efficacy of prevailing international regulations, underscoring the necessity for consultation at the supranational level. The intricate interweaving of national tax provisions within global transactions has been identified as a primary concern, as it gives rise to loopholes that are being exploited by taxpayers. These loopholes frequently result in reciprocal non-taxation, thereby enabling multinational corporations to generate profits that are not subject to taxation in either the country of the company's headquarters or in the country where its operations are based. Consequently, considerable emphasis is placed on the issue of profit shifting to countries with low tax rates, as well as on the shifting of costs to countries offering the highest deductions or high tax rates.

The objective of this paper is to present the primary objectives and activities of the BEPS (Base Erosion and Profit Shifting) project and BEPS 2.0. The OECD initiative BEPS (Base Erosion and Profit Shifting) is regarded as one of the most significant projects in the field of international tax system reform. Its fundamental objective is to prevent the erosion of tax bases and the shifting of profits to low-tax jurisdictions. However, when examined in greater detail, the BEPS project has two overarching aims. Firstly, it seeks to identify and address any gaps and inaccuracies in tax laws that allow profits to be artificially shifted to low-tax countries. By increasing transparency, there should be improved exchange of tax information between countries to prevent multinational corporations from concealing income and profits. The establishment of uniform standards and guidelines to be applied globally, meanwhile, should provide greater legal certainty for both governments and businesses.

The present paper addresses the essence of the BEPS initiative in the context of the reform of the international tax system conducted under the auspices of the OECD. The research approach is founded upon normative and doctrinal analysis, utilising sources of international

law, OECD documents, expert commentaries, and existing national regulations implementing BEPS measures. The material scope of the work encompasses both the initial phase of the BEPS project (formally referred to as BEPS 1.0), which is centred on the mitigation of aggressive tax optimisation, and the subsequent phase (BEPS 2.0), which encompasses the establishment of new regulations concerning the allocation of taxing rights and the global minimum tax (Pillar I and Pillar II). The work is theoretically embedded in the framework of international tax law and theories of tax sovereignty and tax justice.

This article employs a qualitative legal and doctrinal analysis method. Primary data sources include OECD reports, international legal acts, and expert legal commentary. A critical approach is adopted to evaluate the implications of the BEPS 2.0 regulations for tax sovereignty and policy efficiency.

Identified research gap – lack of a unified approach to the effects of BEPS 2.0 on developing countries, allows to formulate research questions: How does the implementation of Pillar II affect the tax sovereignty of states? and "Is the QDMTT mechanism effective in counteracting tax avoidance?" The article reviews the literature on the OECD international tax system reform, presents the results of the introduction of the global minimum income tax - Pillar II regulation, discusses losses in public finance systems and presents conclusions.

2. Reform of the OECD international tax system – literature review

The OECD's reform of the international tax system has had a significant impact on global corporations. The recent advent of the Base Erosion and Profit Shifting (BEPS) (Webinar PwC, 2016) initiative is indicative of a concerted effort to address the issue of corporate tax avoidance through the strategic relocation of profits to low-tax jurisdictions. In addition, the issue of global minimum income tax is of particular pertinence. This was evidenced by a 2021 agreement which saw over 130 countries adopt a 15% tax on multinational corporations. Country responses and adaptation of national rules vary, as countries adapt their tax rules to maximise tax revenues in line with the new OECD standards. It will also be interesting to see how the new rules affect corporations' tax planning and profit optimisation strategies. It is imperative to consider the repercussions of the reform of the international tax system on developing countries, which may not possess the same resources as developed countries to pursue tax avoidance.

In the contemporary global context, characterised by the forces of globalisation and digitalisation, government tax policymakers worldwide are engaged in collaborative efforts to propose substantial amendments to international tax regulations. The G20/OECD project on the taxation of the digital economy was initiated in 2019, building on the findings of the final reports issued in 2015 under the earlier BEPS project.

The current project, referred to as BEPS 2.0, has two components:

- Pillar I on the new rules of nexus and profit allocation, which aim to attribute a greater share of tax rights on global business income to market countries, and
- Pillar II rules for a new global minimum tax, endorsed in December 2021 by the 141 jurisdictions participating in BEPS 2.0.

The Pillar 2 model rules stipulate a global minimum tax of 15%, applicable to multinational enterprise (MNE) groups with a global turnover of €750 million or more.

As part of the BEPS 2.0 initiative, a global reform in income taxes is being implemented. The fundamental principle underpinning this concept is the obligation to contribute an additional tax surcharge, known as a 'top-up tax', in instances where the effective tax rate within a specific tax jurisdiction falls below 15%.

As previously stated, the objective of this initiative is to prevent corporations from avoiding tax by shifting profits to low-tax jurisdictions. Following the publication of the OECD Anti-BePS Report in 2013, the term has become synonymous with the OECD and G20 global project. The 15 actions proposed by the OECD (often referred to as the BEPS Project) are intended to implement uniform international taxation rules adapted to the challenges of the 21st century.

A series of reports have outlined 15 actions that countries should take in order to prevent unfair tax avoidance and the shifting of profits to tax havens:

1. **The digital economy**: Addressing tax challenges related to the digitalisation of the economy.
2. **Hybrid mechanisms**: Elimination of the effects of hybrid structures used for tax avoidance.
3. **CFC (Controlled Foreign Companies)**: Rules on the taxation of foreign controlled companies.
4. **Interest deductions and other financial payments**: Limiting the deductibility of interest and other financial payments that can be used to carry forward profits.
5. **Estimating profits**: Create rules to ensure that profits are taxed where the actual economic activity takes place.
6. **Financial instruments**: Principles on transparency and reporting of financial instruments used.
7. **Tax treaties**: principles to prevent abuse of tax treaties.
8. **Risk management**: Creating a framework for corporate tax risk management.
9. **Transparency and reporting**: Introduction of Country-by-Country Reporting (CbCR).
10. **Transfer pricing documentation**: Rules on transfer pricing documentation and monitoring.
11. **Profit issues**: Defining rules for profits that are the result of artificial structures.
12. **Anti-abuse rules**: Implementation of general anti-abuse rules in national legislation.
13. **Transfer pricing documentation and reporting by country**.
14. **Dispute procedures**: Introduction of tax dispute resolution mechanisms.

15. **Legislative effectiveness**: Ensuring that legislative changes are effectively implemented.

For instance, the Action 13 Report establishes novel documentation standards and instigates a model form for reporting by country the value of revenues, profits, taxes paid and other measures of economic activity to be completed by multinational enterprises (MNEs) (Janowski, 2017). In this particular instance, the OECD proposes the implementation of a three-tiered reporting system:

- *master file* - designed to provide general information on global business activities and the group's transfer pricing policy (this report would be intended by the OECD to be available to any tax administration),
- *local file* - documenting in detail the transactional transfer prices applied by each country in the group, in particular the parties to the transaction, the amount of the transaction and the analysis of the determinants of transfer prices,
- *Country-by-Country Report* - an annual report provided for the largest multinational corporations with revenues in excess of €750 million presenting to each tax jurisdiction in which the group has any operations the amounts of sales revenue, pre-tax profits, income tax, number of employees, amount of capital, retained earnings and value of assets in each tax jurisdiction (OECD, 2015).

It is vital to consider all three reports when analysing transfer pricing. This will allow taxpayers to demonstrate a consistent picture of the items subject to transfer pricing. In turn, this will provide tax administrations with useful information for assessing transfer pricing risks. Furthermore, it will facilitate the identification of aggressive tax optimisation policies during audits. Such policies are those which involve the transfer of significant amounts of income to tax-advantaged environments (OECD, 2015).

3. Results

The calculation of corporate income tax liability for companies is determined by the provisions set out in the Corporate Income Tax Act of 15 February 1992, as subsequently amended, in addition to various EU regulations (Dz.U.2023.2805). By the end of 2023. Poland was obliged to enact legislation implementing the EU Directive on ensuring a global minimum level of 15% taxation of domestic and international capital groups (the so-called Pillar II Directive) (OJ.EU.L.2022.328.1). It is recommended that these provisions extend to capital groups with consolidated revenues of a minimum of EUR 750 million, with the initial period potentially subject to settlement commencing in 2024. In a manner consistent with the majority of other EU countries, Poland will opt to implement a national top-up tax that will satisfy the minimum requirements of the directive (classifying it as a qualifying top-up tax). In essence,

this signifies that any Polish company or group bound by the stipulations of Pillar II is obligated to compute its effective tax rate and arrive at a settlement with the relevant Polish tax authorities in accordance with domestic regulations. This obligation stands irrespective of any supplementary responsibilities that may be incumbent upon the group's foreign headquarters with regard to this matter (https://www2.deloitte.com, 2024).

In December 2022, the Council of the European Union adopted a directive, obliging Poland, in line with other EU countries, to implement the new regulations.

The Republic of Poland is implementing a top-up tax at a national level. This means that any Polish company or group subject to Pillar II requirements will have to calculate its effective tax rate and pay the top-up tax in Poland, regardless of any additional obligations on the parent company in this respect.

The objectives of Pillar II will be realised through two main principles of income taxation:

1. The *Income Inclusion Rule* ((IIR) and
2. The principle of *under-taxed* profits - the so-called *Undertaxed Profit Rule* (UTPR).

The IIR Rule is considered to take precedence over the UTPR Rule, and its application is focused on parent entities, with the initial focus being on the Ultimate Parent Entity (UPE).

The IIR principle, as outlined in the Directive, stipulates that the UPE is responsible for regulating the top-up tax on all low-tax constituent units, both within and outside the European Union.

In the event that the UPE elects not to implement the IIR Principle with regard to its constituent units, Member States are responsible for ensuring the collection of the top-up tax in accordance with the UTPR Principle. It can thus be posited that the UTPR principle functions as a backstop mechanism for the IIR principle.

The fundamental principle of the UTPR is to allocate compensatory tax amounts to other component units in the group, thereby ensuring that taxation is minimised at the appropriate level.

In accordance with the recently implemented regulatory framework, the following two tax regulations will come into effect: STTR and QDMTT.

STTR (Subject To Tax Rule) is otherwise known as the taxability rule. The introduction of this convention into double taxation treaties will be achieved by means of a multilateral convention. In accordance with the stipulated regulation, specific payments to associated entities overseas will be liable for taxation, should the recipient be subject to insufficient taxation.

Conversely, the QDMTT (Qualifying Domestic Minimum Income Tax) constitutes a mechanism that enables the payment of a top-up tax in the jurisdiction where the income was generated. In certain situations, the QDMTT has been shown to neutralise the application of the IIR principle at the UPE level (https://kpmg.com/pl).

However, the regulation of the minimum corporate income tax structure fulfils the task of sealing the tax system with different effects depending on the country. Z. Klimaszewska's comparative analysis of the subjective scope of the regulation, the tax rate, the manner of its calculation and the exemptions applied in Austria, Italy and Poland indicates fundamental differences in the area of function, efficiency and the manner in which the tax corresponds to the realities and challenges posed by the free market to state tax systems (Klimaszewska, 2022). The author draws attention to the specific features of the regulations of the analysed systems, such as the wide scope of subjects in the Austrian system, the narrower scope of subjects and the higher tax rate in the Italian system, as well as the problem of introducing a new regulation in the Polish system. The utilisation of the International Tax Competitiveness Index 2021, a metric developed by the Tax Foundation, facilitated the conclusion that the solution implemented in Austria exhibits limited utilisation of the potential offered by this particular tax instrument. In contrast, the Italian system appears to employ this potential more effectively, though it grapples with tax avoidance on a more extensive scale. With regard to the Polish minimum CIT, the paucity of data hinders a comprehensive analysis. Nonetheless, the index suggests that the challenge of fortifying the tax system is less pronounced in this instance, thereby creating an opportunity to refine the tax structure and achieve the delineated objectives with greater efficacy (Klimaszewska, 2022).

The notion of implementing a minimum tax on revenue in the real estate industry has been demonstrated to engender favourable outcomes. The assessment of the aforementioned regulatory measure has enabled researchers to formulate *de lege ferenda* postulates (Jamroży, Łożykowski, 2021). The authors posit that the imposition of a minimum tax, in the form of a tax on income derived from commercial buildings, does not constitute an excessive anti-abuse measure. A key objective of this tax is to prevent tax avoidance and profit shifting by large real estate companies owning commercial properties of significant value. It has been determined that approximately one third of taxpayers have not fully deducted the minimum tax due on commercial buildings from their corporation tax calculated on a general basis. The impact of the augmented tax obligation is mitigated, at least in the short term, by a series of measures designed to ensure the neutrality of this tax and the relatively modest level of the minimum tax.

4. Discussion

A significant challenge arising from the presence of inequitable tax competition pertains to the financial setbacks experienced by public finance systems. The diminution in the capacity to finance public expenditure from tax revenues signifies that an augmented amount of public debt must be incurred, and the cost of its servicing is elevated due to the escalating cost of money in recent years. In 2015, it was estimated that 36 per cent of profits made by multinational

corporations outside their country of domicile were transferred to tax havens (Torslov, Wier, Zucman, 2022). In the European Union, the countries that are most adversely affected by this situation are those that impose high taxes on corporate profits. A comparative analysis of the period 2015 to subsequent years reveals an increase in the scale of lost CIT revenue, calculated as a percentage of total CIT revenue, in most countries. The most substantial increase in lost revenue was observed in the UK (from 18 to 32 per cent), but the phenomenon is also significant in the largest EU economies: Germany, France, Italy and Spain, as well as Hungary. In the case of Poland, the lost revenue constituted 8 per cent of the total CIT revenue, and this figure remained stable.

It is evident that a select number of countries within the European Union are beneficiaries of inequitable tax competition and derive financial benefit from artificial profit transfers. In 2019, in comparison with the situation in 2015, tax revenue from artificial profit transfers increased in Ireland, Luxembourg and Belgium, reaching 59, 56 and 38 per cent of total CIT revenue in these countries, respectively.

The highest tax losses in terms of amount can be observed in Germany (USD 22.63 billion) or the UK (USD 20.83 million). The phenomenon has been found to result in a deficit of more than 20 per cent in the UK, Germany, France and Hungary. In Poland, the estimated annual financial losses resulting from this competitive tax environment amount to an average of approximately USD 1 billion, which corresponds to approximately 7 per cent of CIT revenues. This figure is lower than the average annual losses experienced during the 2015-2019 period, when losses reached 8 per cent on average. An analysis of the effects of tax competition on Poland reveals that in 2018, a total of PLN 82 billion (equivalent to 3.86% of Poland's GDP) flowed from Poland to other EU countries. This figure stands in contrast to the amount recorded in 2005, when a mere PLN 26.5 billion (equivalent to 2.7% of GDP) was recorded as flowing from interest mechanisms, royalties, dividends and certain services (including advisory services) (Jamroży, Janiszewska, Łożykowski, 2023). It is evident that there has been a shift in the methods employed for the transfer of profits. While in 2005 payments other than dividends accounted for 44.5 per cent of the total amount of transferred profits, in 2018 it was already more than 57 per cent. It is evident that transferred profits have been allocated to Poland's primary trading partners, namely Germany, France and the Netherlands. However, it is noteworthy that these profits have also been directed to Ireland and Luxembourg, despite the fact that Poland maintains comparatively weaker economic ties with these countries.

5. Summary

In summary, it should be stated that the BEPS (Base Erosion Profit Shifting) project under the G20/OECD convention, in the work on which Poland actively participated, is aimed at creating mechanisms for states to respond to activities that lead to a shrinking of the tax base (base erosion) and the transfer of income to low-tax or non-tax jurisdictions (profit shifting). These issues have been identified, particularly in the context of the operations of multinational corporations, where they have resulted in a reduction of government revenue and an increase in the tax burden on citizens and smaller businesses, consequently reducing their competitiveness against multinational corporations. The BEPS project is intended to achieve international harmonisation of measures aimed at countering the phenomena of aggressive tax optimisation and tax avoidance, and to create tools for tax administrations to combat these phenomena.

Despite the fact that OECD reports are not a source of universally binding law in the Polish legal system, they nevertheless constitute an important interpretative guideline for both the practice of international entrepreneurs and tax authorities. The BEPS project has been evaluated as a significant initiative with the potential to yield long-term tangible outcomes, particularly in establishing the foundations for effective activities at both the national and international levels, thereby preventing the loss of tax revenues.

It is evident that the BEPS project and its recommendations will have a substantial impact on the tax system in Poland, as well as in other OECD countries. It is indisputable that the initiative to tighten tax systems is of significant importance, and it is imperative that all stakeholders adapt accordingly. The BEPS project has been developed to address the global issue of tax base erosion and profit shifting, with the objective of contributing to the stabilisation of tax systems worldwide. This ambitious undertaking involves a wide range of activities and cooperative efforts at the global level.

In light of the solutions implemented into the Polish legal order, which find their source in BEPS, it is incumbent upon taxpayers to analyse their existing capital and organisational structures in terms of the identified mechanisms leading to the reduction of the tax base. Furthermore, taxpayers should be prepared to adapt to the changes in transfer pricing documentation, especially the development of comparative analyses and strategies for obtaining the necessary information from parent companies and the principles of liability in this respect.

In an effort to harmonise the taxation of MNE groups, tax fairness is aptly highlighted. In the majority of the countries under scrutiny, the average effective tax on companies operating within a nation is higher than the tax on MNE groups calculated at the level of the entire MNE group. This indicates that the financing of public needs is disproportionately achieved through taxes levied on domestic companies and individuals, and through debt incurred. The unification of the tax system at European level represents a significant opportunity to

address this issue. It is imperative that multinational enterprise groups, which generate substantial profits in multiple countries, contribute more significantly to the budgets of the countries whose infrastructure and market they utilise.

Multinational enterprises (MNEs) must closely monitor developments in their respective jurisdictions when implementing global minimum tax rules into their domestic legislation. The majority of prominent organisations have only recently embarked on the initial phase of their endeavour to implement a global minimum tax. Organisations will be required to calculate their new taxes, assess the impact on their financial statements and report to relevant tax authorities around the world. It is imperative that organisations adapt their internal processes and systems in order to manage the new calculations and data, calculate their tax liabilities, and meet their reporting obligations.

6. Conclusions

The BEPS project—led by the OECD and G20—has become a central pillar in the reform of the international tax system. It aims to prevent the erosion of national tax bases and the artificial shifting of profits by multinational corporations. This is particularly relevant in the digital economy, where traditional tax concepts such as physical presence and permanent establishment are no longer sufficient.

The implementation of BEPS recommendations is expected to have a long-term impact on Poland's tax system. New rules—such as the global minimum tax and improved transfer pricing standards—will require significant adjustments in corporate behavior and tax administration practices. While this transition poses challenges, it also offers the prospect of greater fairness, efficiency, and transparency in corporate taxation.

The analysis shows that MNEs tend to benefit from the current system by paying lower effective tax rates than domestic firms, which distorts competition and shifts the tax burden onto individuals and SMEs. This trend underscores the need for coordinated international action and a unified European approach to corporate taxation. Ensuring that companies contribute fairly to the countries in which they operate is essential for maintaining sustainable public finances and preserving trust in tax systems.

Going forward, MNEs must carefully monitor developments in their jurisdictions as global minimum tax rules are transposed into domestic law. The complexity of calculating top-up taxes, understanding QDMTT (Qualified Domestic Minimum Top-up Tax) provisions, and meeting enhanced reporting requirements necessitates internal process redesign and investment in tax technology and expertise.

Ultimately, the success of the BEPS initiative will depend on sustained international cooperation and the political will to enforce its principles. If effectively implemented, it has the potential to reshape the global tax architecture in a way that better aligns with modern economic realities and reduces the incentives for profit shifting.

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