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The OECD-G20 BEPS Project and the Challenges ahead

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The OECD-G20 BEPS Project's goal is ciclopeous: Making the global tax environment fairer than ever by closing loopholes and adopting rules of international law which would be domesticated simultaneously and uniformly by all participating Nations; and all of that with the aim of making the global enterprise accountable for taxes at source (markets) and home, without altering existent inter-nation equity, and all of that within a tight schedule (2 years).

Not easy: listening to so many diverging voices on the same table – including low-income countries invited to participate in an equal footing –, overcoming different viewpoints, and reaching workable and effective outcomes.

The BEPS Project is subject to internal (inherent) risks (tight schedule, quality of outcomes, jurisdictional overlapping) as well as external risks (potential breach of the Nations' compact behind a common goal due to competing interests, and misaligned, premature and unilateral actions by States) which might conspire against the coherence and effectiveness of the final outcomes.

Among the first is notably the friction between an overambitious schedule, on one hand, and the quality of the outcomes, on the other. At instances, after one year of heavy work, this friction originates outcomes which are either deceptive or below expectancy, notably the interim outcomes on DE and PE under Actions 1 and 7; not to mention the Actions that at present are still empty boxes (e.g., CFC rules), or the conceptual and procedural question marks still surrounding the *catch-all* multilateral agreement that, at the very end, will embrace all proposals affecting the current DTT network. This is still an untested instrument in the tax field which would be conditioned upon not only the final Nations' willingness to execute it and a common consent on its content, but to the domestic political vicissitudes inherent to the internal approval of international treaties.

Even if the BEPS Project is kept well afloat and in the right path under the OECD-G20 leadership (something that we all expect to happen for the well-being on the international tax system), unintended distortions on trade and investment might arise. Leading heads of the OECD/G20 BESP project (including CFA Chief Pascal Saint-Amans) have for the first time publicly recognized, on occasion of the Brisbane Meeting in November, 2014, that the end result of the whole process may not be so neutral, and that jurisdictional tax overlapping (double or multiple taxation) might occur for years to come, until countries harmoniously consent to the allocation of the new (potentially greater) global tax basis.

Let's now turn to externalities. Under heavy domestic pressure for a business-friendly tax reform, aligned with tax trends in the EU, the Giant from the Americas still appears to look hesitant to fully and unconditionally embrace the BEPS Project. As we all know, if the compact of industrialized Nations breaks because of the US or another large player's defection, there is a potential risk that the monolithic will behind BEPS collapses, leaving room for a fierce competition on the global tax basis, and an aim of self-protection of each player's MNEs *vis-a-vis* foreign MNEs. Although this possibility appears most unlikely nowadays – The Istanbul G20 Meeting of Ministers of Finance and Central Bank deputies has recently renewed its strong support to the BEPS project – the existence of countries' discrepancies as the implementation stage approaches might be more likely; hence, it would become a matter to be aware of and be prepared to face by OECD-G20 leaders.

Finally, as I envision it, technically misaligned, premature, and unilateral actions by the States might end up in international tax chaos. If that trend, already followed by some countries, spreads, the risk of overlapping would certainly maximize and become out of control.

Let's take an example: The controversial taxation of the DE outputs and, out of dissatisfaction, a unilateral initiative to tax the DE in the market jurisdiction by a radically different taxation paradigm from that followed thus far by Action 1 and 7 of the BEPS Plan.

It is undoubtedly true that – beyond their conceptual merits – any alternate paradigm aimed at taxing those outcomes in the market jurisdiction leaving aside the PE concept in its current formulation (e.g., using destination based taxation or *formulae* allocation), to the extent adopted on a unilateral or small groups basis, will produce grave distortions in the international scene.

For the reasons stated above it would be sound for governments not to expedite domestic changes. National time constraints and domestic political pressures should be properly handled as it is a fact that they do not get along well with the OECD holistic approach to BEPS and the need to harmonize the outcomes of the different Actions, something that it still at half-way and will require further work during 2015 to avoid overlaps, missed cross-references, mismatches and *lacunae*.

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