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Will BEPS help to counter unfair tax competition and is tax planning dead?

Jeffrey Owens

Director of WU Global Tax Policy Center at
the Institute for Austrian and International Tax Law

Foundation For International Taxation
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BEPS: 15 Actions – Final BEPS reports

Minimum standards

- ▶ Action 5 – Harmful tax practices
- ▶ Action 6 – Treaty abuse
- ▶ Action 13 – Country-by-country reporting
- ▶ Action 14 – Dispute resolution

Reinforced standards

- ▶ OECD Transfer Pricing Guidelines
 - ▶ Actions 8-10 (transfer pricing)
 - ▶ Action 13 (transfer pricing documentation)
- ▶ OECD Model Tax Convention
 - ▶ Action 2 (hybrid mismatch arrangements)
 - ▶ Action 6 (treaty abuse)
 - ▶ Action 7 (permanent establishment status)
 - ▶ Action 14 (dispute resolution)

Common approaches and best practices

- ▶ Action 2 – Hybrid mismatch arrangements
- ▶ Action 3 – Controlled foreign company (CFC) rules
- ▶ Action 4 – Interest deductions and other financial payments
- ▶ Action 12 – Mandatory disclosure rules

The output also includes analytical reports on Action 1 (digital economy, Action 11 (economic analysis) and Action 15 (multilateral instrument)

BEPS: 15 Actions – Impact of BEPS final reports

Immediate impact

- ▶ Action 8 – Transfer pricing for intangibles
- ▶ Action 9 – Transfer pricing for risks and capital
- ▶ Action 10 – Transfer pricing for other high-risk transactions
- ▶ Action 13 – Transfer pricing documentation and country-by-country reporting

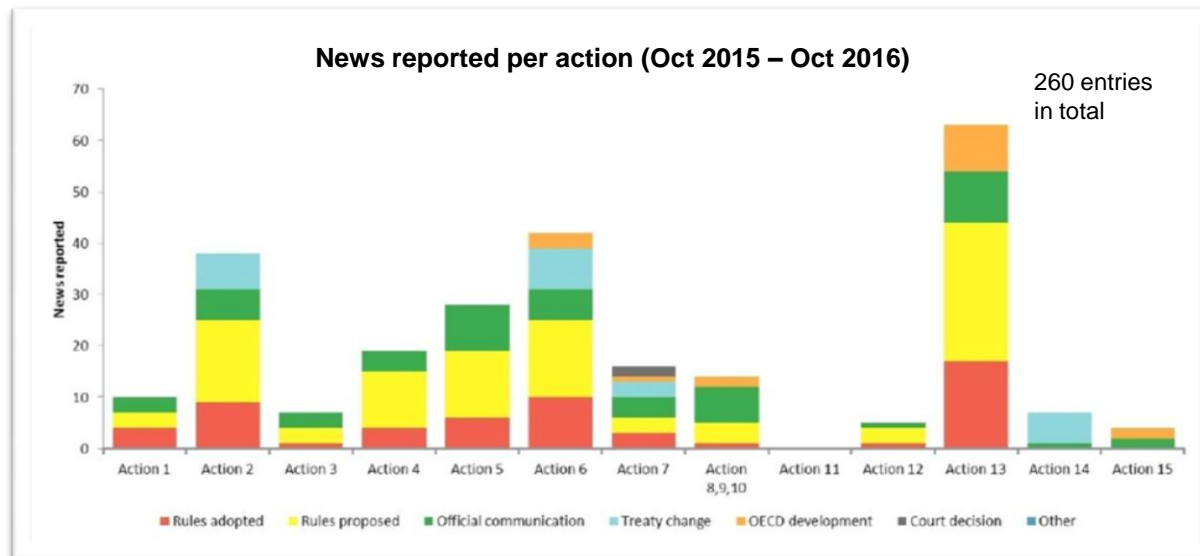
Treaty-based action

- ▶ Action 2– Hybrid mismatch arrangements
- ▶ Action 6 – Treaty abuse
- ▶ Action 7 – Permanent establishment status
- ▶ Action 14 – Dispute resolution
- ▶ Action 15 - Multilateral instrument

Legislative action

- ▶ Action 2 – Hybrid mismatch arrangements
- ▶ Action 3 – CFC rules
- ▶ Action 4 – Interest deductions and other financial payments
- ▶ Action 5 – Harmful tax practices

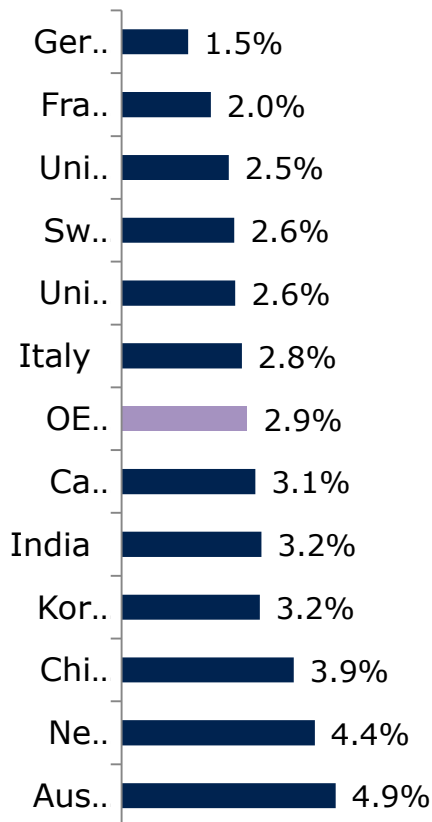
Implementation of BEPS measures



- Lots still to happen on the implementation of BEPS
- The IMF, UN, OECD and World Bank producing concrete joint outputs and deliverables under an agreed work plan
- Action is with individual countries to implement
- Toolkits for emerging countries
- Monitoring mechanisms in place for the 4 minimal standards under the inclusive framework
- Regular progress reports to G20

How the current tax mix breaks down across the globe?

Total corporate income tax receipts, expressed as % of country GDP , 2014



Tax as % of GDP (2014)

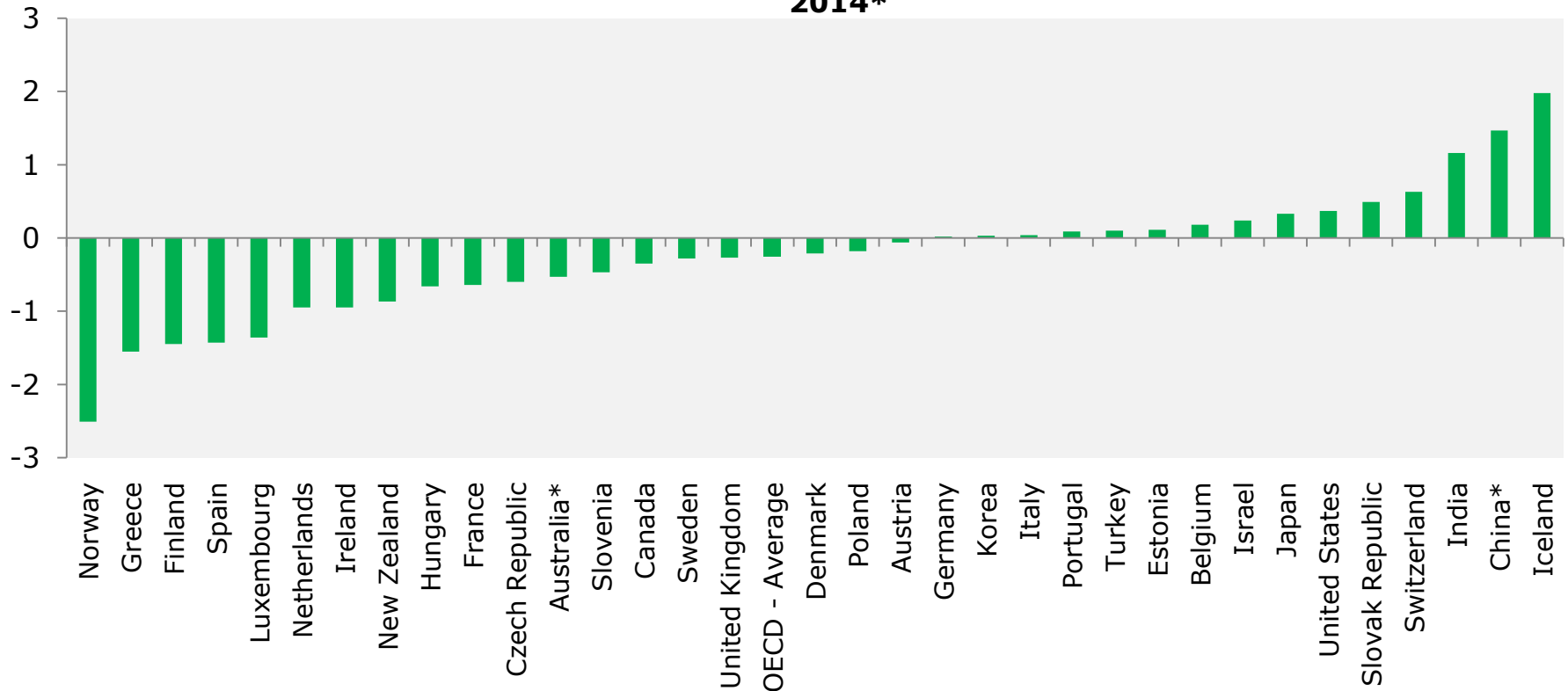


Source: OECD, China Statistical Yearbook 2014, Ministry of Finance, South African Revenue Service *data cover 2013; data on Social Security Contributions not available for India, China and Indonesia; Social Security contribution for Japan available for 2013

Why are we here?

Relative contribution of CIT declined over the last decade

Percentage point change in corporate tax revenue as % of GDP between 2004 & 2014*

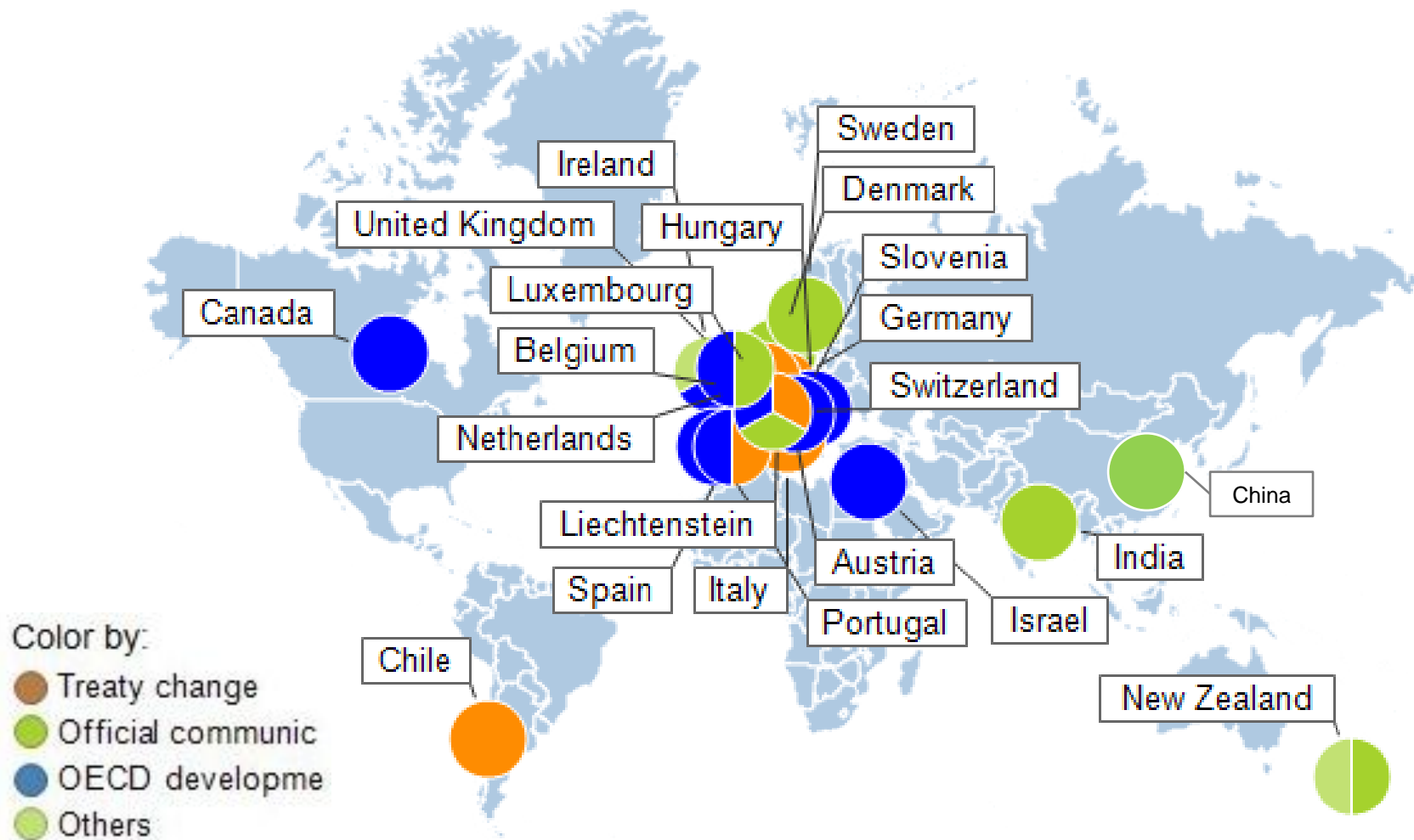


*Data until 2013

The beginning or the end of Tax Competition?

- BEPS will intensify tax competition for real value generating activities
- We will see a "***race to the bottom***" on CIT rates especially in a Trump era
- Preferential regimes especially for intangibles will spread
- Governments will not resist using tax incentives and SEZ
- But the good news is: all these pressures may lead to a complete reassessment of the CIT.

Harmful tax practices: preferential regimes



Harmful tax practices – Action 5

Ruling information – OECD Action 5 vs. EU Directive

	OECD action 5-rulings	EU directive on rulings
	Compulsory spontaneous exchange of information	Mandatory automatic exchange of information
What will be exchanged	<p>Summaries of rulings</p> <ul style="list-style-type: none"> ▶ Issued on or after 1 January 2010 and still valid on 1 January 2014 (past rulings) ▶ Issued on or after 1 April 2016 (future rulings) 	<p>Summaries of rulings</p> <ul style="list-style-type: none"> ▶ Issued between 1 January 2012 and 31 December 2013 and still valid on 1 January 2014 (past rulings) ▶ Issued between 1 January 2014 and 31 December 2016 regardless if valid or not (past rulings) ▶ Issued after 1 January 2017 (future rulings)
Legal Basis	<p>Treaties and tax information exchange agreements</p> <p>Article 7 of Multilateral Convention on Mutual Assistance</p> <p>Article 9 of EU Mutual Assistance Directive</p>	Article 8a of EU Mutual Assistance Directive
By whom	Jurisdiction that issued ruling	Jurisdiction that issued ruling
With whom	Jurisdiction of (i) direct parent (ii) ultimate parent, (iii) related parties with which taxpayer entered into transaction covered by ruling, and (iv) related parties if ruling gives rise to income from these parties benefiting from preferential regime	All EU Member States
When	<p>Past rulings – by end of 2016</p> <p>New rulings – generally within 3 months after competent authority of issuing state becomes aware of ruling</p>	<p>Past rulings – by end of 2017</p> <p>New rulings – within three months after June or December, depending on when ruling was issued</p>

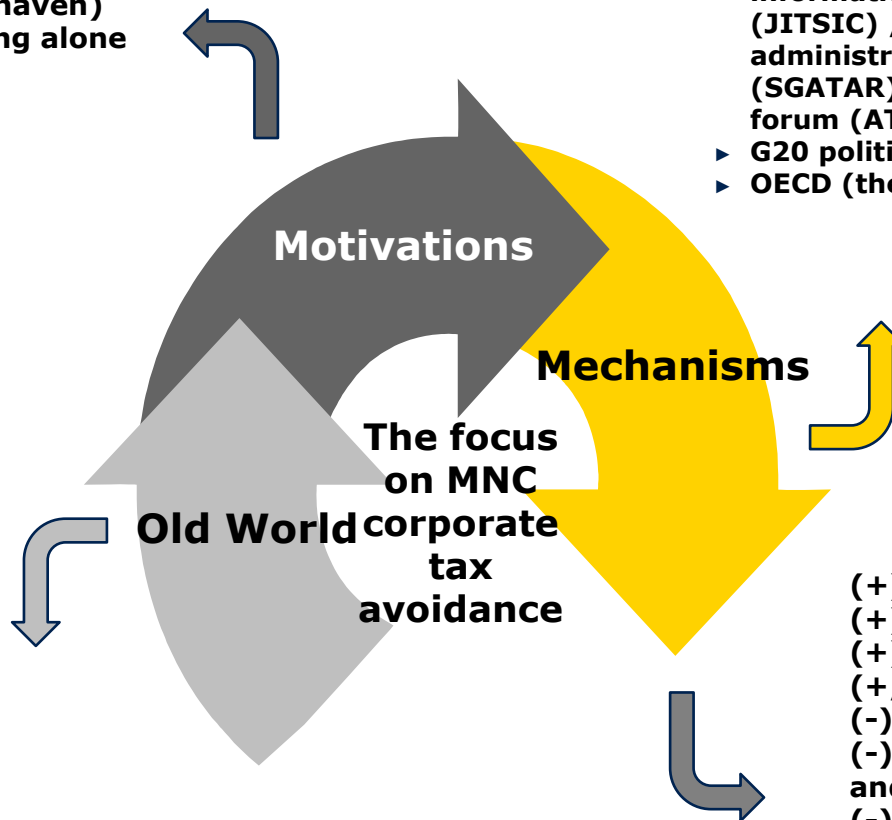
Back to the 1998 report on harmful tax competition : Curbing aggressive "Tax planning" by governments

- The " first " BEPS report
- Four main criteria and 9 subsidiary criteria to identify what is harmful
- Key relevant criteria today are "Ring fencing" and "Substance"
- Will non-OECD countries in the inclusive framework signed up to the 1998 report?
- And if so, will they try to strengthen or weaken the criteria?

The focus on MNEs avoidance: How we got here ...

- ▶ Shared agenda (crisis)
- ▶ Public outrage
- ▶ Prize for acting together (revenue in tax haven)
- ▶ Benefits for acting alone (reduced)

- ▶ Public transparency exchange of information country-by-country reporting (CBCR)
- ▶ Joint international tax shelter information collaboration network (JITSIC) / Study group on Asian tax administration and research (SGATAR) / African tax administration forum (ATAF)
- ▶ G20 political interest
- ▶ OECD (the place)?
 - ▶ Tax Controversy (Improving the existing mutual agreement procedure (MAP) process and Supplemental Dispute Resolution)



- ▶ Independent
- ▶ Isolation
- ▶ Tax Competition
- ▶ State aid / rulings

- (+) Shared plans
- (+) Political support
- (+) No special deals
- (+/-) Tax competition
- (-) BEPS a la carte
- (-) Uncertainty: State aid and WTO subsidies
- (-) Fear of rulings

How have MNEs and their advisors reacted?

- Tax strategies are now decided in "C" Suite
- Tax directors and their advisors now accept that they must :
 - Have globally consistent information flows
 - Learn how to "tell a story" of their approach to tax
 - Align tax with where value is created
 - Reassess they need to have operations in " red light " jurisdiction
- Learn to live with more tax uncertainty: at least during a transitional period

"Tax planning is alive, but hopefully more "healthy" and aligned, not just with letter, but also the spirit of the law"