

MEDIA ADVISORY

**ICRICT** 

Independent Commission for the Reform  
of International Corporate Taxation

## THE FIGHT AGAINST TAX AVOIDANCE

BEPS 2.0 : What the OECD BEPS  
Process has achieved and what real  
reform should look like

## EXECUTIVE SUMMARY

By not collecting the revenue that is being lost through tax avoidance schemes by multinationals, governments are failing in their obligation to mobilise all available resources towards the realisation of economic, social and cultural rights.

The most shocking aspect of multinational tax avoidance is the fact that it is legal. Multinationals fix the prices of transactions between their subsidiaries to guarantee that their revenues are taxed in countries where tax rates are lower – and not where their economic activity and the creation of value really take place. It is called the “**transfer pricing system**”. This way, they are able to concentrate enormous profits in just a handful of tax havens thanks to a powerful industry of intermediaries – banks, consultants and law firms.

These taxes that are dodged are compensated for with higher contributions from the middle and working classes. It is toxic for democracy and contributes to the kind of populist backlash that allows authoritarianism to flourish, as we see today.

## WHAT THE G20/OECD BASE EROSION AND PROFIT SHIFTING PROCESS HAS ACHIEVED

In 2012, the G20 called on the Organization for Economic Cooperation and Development (“OECD”) to reform the international corporate tax system through the **Base Erosion and Profit Shifting (“BEPS”)** initiative and associated processes. In 2015, a package of reforms was unveiled by the OECD. The reform process was only afterwards open to non-G20 countries, including developing economies, within what is called the “**Inclusive Framework**”.

BEPS has resulted in helpful solutions for some of the most shocking tax avoidance mechanisms. For example, it introduced country-by-country reporting of profits and taxes paid by the largest multinationals, and an exchange of information among countries. But the project failed to address the core problem, which is **the transfer pricing system** itself. This still allows companies to move their profits wherever they want and to take advantage of very low tax jurisdictions.

As a Commission, we believe that the OECD BEPS Process has achieved what it could, within the constraints of politics driven by big corporations. We therefore urge governments represented in the Inclusive Framework, the UN Tax Committee and all multilateral institutions involved in efforts to reform the international tax system, to evaluate alternatives to the transfer pricing system.

## OUR ALTERNATIVE APPROACH TO TAXING MULTINATIONAL

As outlined in our previous report [A roadmap to improve rules for taxing multinationals](#), the fairest and most effective approach is for multinationals to be taxed as single firms doing business across international borders.

A simple, **formulaic approach** would ensure that global profits and associated

taxes could then be allocated according to objective factors such as the sales, employment, resources (and even digital users) used by the company in each country, rather where they locate their different functions (procurement, marketing, funding, etc) and claim their Intellectual Property.

If **multinationals paid taxes as single, unified companies**, the use of transfer prices to shift profits would disappear, because their global income would be consolidated and they would not be able to shift profits through internal transactions.

In turn, all countries would obtain fiscal revenues from the multinational group in proportion to the real economic activities that take place in each territory.

This proposal, combined with a **global effective minimum tax of 20-25%** would drastically reduce the financial incentives for multinationals to shift profits between jurisdictions and for countries to cut their tax rates.

## THE LEGITIMACY OF THE PROCESS

Today's reality is that the OECD is playing the leading role in shaping tax standards. In addition to our concerns on the legitimacy of the OECD vis a vis the United Nations, we are worried about the way developing countries are prevented from engaging in the shaping of global tax standards.

The OECD BEPS process was developed by developed countries for developed countries. Most developing countries do not have the capacity to assess and reap the benefits of it. Yet, the BEPS outcomes are being implemented as the new global standard applicable to all countries.

Developing countries should therefore carefully evaluate the opportunity cost of engaging in the Inclusive Framework, and the practicability of signing up to and implementing the BEPS outcomes that may not address their needs.

### Corporate Tax avoidance by multinationals: key facts

- IMF's Fiscal Affairs Department estimates annual total corporate tax losses associated with profit shifting [at more than \\$500bn](#), with \$400bn for OECD member states and around \$200bn for lower-income countries per annum.

- Tax Justice Network researchers estimate annual corporate tax [losses of \\$500bn per annum due to profit shifting](#).

- Profit shifting by MNEs is estimated to cost EU member [states €50-70bn per annum](#).

- Latest research indicates that a move to global formulary apportionment will benefit both developed and developing countries ([Cobham & Janský](#), and [Zucman](#)) to the detriment of tax havens.

## Examples of tax avoidance by multinationals:

- Facebook [paid just £7.4million of UK corporation tax in 2017](#), despite revenues of £1.3billion in the country and global profits before tax of 50%.
- Amazon [paid just €16.5m \(£15m\) in tax on European revenues](#) of €21.6bn (£19.5bn) reported through Luxembourg in 2016.
- Google [moved 19.9 billion euros \(\\$22.7 billion\)](#) through a Dutch shell company to Bermuda in 2017, as part of an arrangement that allows it to reduce its foreign tax bill, according to documents filed at the Dutch Chamber of Commerce.
- Starbucks Coffee Company UK Limited [recorded a profit of £4m on turnover of £372m in the UK](#), but that profit is reduced by an intra-group royalty and licence fees of £26m, more than 5 times the value of profit.
- Vodafone, the first big multinational to voluntarily publish country by country data in its financial statements for 2016/2017, [shows that nearly 40% of its profits are allocated to tax havens](#), with Eur1,4bn declared in Luxembourg, where the company provides intra-group services and funding, and is taxed at an effective tax rate of 0.3%.
- Since 2015 there has been a dramatic increase in companies using Ireland as a low-tax or no-tax jurisdiction for intellectual property (IP) and the income accruing to it, via a nearly 1000% increase in the uptake of a tax break expanded between 2014 and 2017, measures are estimated to have reduced Irish companies' tax liabilities by up to €3.3bn, just from tax allowances on the intellectual property moved into Ireland in 2015. On top of that, [figures released in July 2017](#) show that corporate groups are channelling interest payments on at least €70bn of related-party debt through tax-free Irish special purpose vehicles.
- Four pharmaceutical corporations—Abbott, Johnson & Johnson, Merck & CO (MSD), and Pfizer— appear to deprive developing countries of more than \$100 million every year through tax avoidance techniques, [according to 2018 research by Oxfam](#).

## The OECD BEPS process - A review of what has been achieved

### POSITIVE STEPS

- A number of egregious base erosion and profit shifting techniques have been largely addressed (e.g. hybrid mismatches arrangements and treaty abuse).
- The exchange between tax administrations of country-by-country reports is a major step forward, although accessibility by the tax authorities of developing countries must be improved. Country by country reporting can play an important role in ensuring that profits are declared and taxes are paid where each MNE has a real economic presence. It is critical that the threshold for country-by-country reporting be lowered to apply to a large majority of MNEs and that these reports be made public as part of the 2020 review process.
- Following a string of tax scandals and resulting public pressure, countries are now establishing procedures to ensure transparency to each other of tax preferences they grant, albeit in some cases slowly and reluctantly. The 16,000 plus tax rulings identified to date shows the sheer scale of secrecy exploited by multinationals.

### CURRENT FAILINGS

- The BEPS project clearly failed to deliver agreement on the key issue of criteria for allocating multinationals profits and to move away from the arm's length principle.
- The failure to reach consensus on many key issues within the scope for the BEPS process and in particular the failure to reach consensus on Action 1 on the digital economy have led to a number of unilateral measures, most notably the US tax reform, UK and Australia diverted profits taxes and the introduction of taxes based on turnover targeted at digital multinationals in many countries (e.g. India, Israel).
- The process has failed to meaningfully deal with "vanilla" forms of tax avoidance, such as excessive intra-group payments of royalties and interest on intra-group funding.

### NEGATIVE STEPS

- The BEPS work on harmful tax practices has resulted in the normalisation and proliferation of "acceptable incentives" (e.g. Patent Boxes, special economic zone (SEZ) or export processing zone (EPZ) regimes) which countries therefore come under pressure to adopt. The creation of norms for acceptable incentives removes the threat of collective counter-measures.
- The United States refusal to sign up to the Multilateral Instrument, which was concluded with the aim of swiftly implementing the tax treaty measures resulting from the BEPS Actions, and its selective adoption by other OECD members shows the reluctance of these countries to accept or to go beyond minimum standards in the fight against tax avoidance.
- The emphasis that has been accorded to dealing with disputes, which many expect will rise even more sharply, and to do so through procedures which completely lack transparency, such as arbitration, builds compromised legitimacy into the BEPS reforms.

## Quotes of ICRICT commissioners (Please feel free to use them)

### **José Antonio Ocampo, Chair of ICRICT, said:**

“The existing system of international taxation has been exploited by multinationals. They even threaten their governments not to bring back any economic activity unless they implement a corporate tax they agree with. Tax avoidance and the push to governments to reduce corporate taxes are effectively preventing sustainable development”.

“The critical issue is where the value is created, and how difficult it is to identify this as we move into a more complex global economy”.

payments on at least €70bn of related-party debt through tax-free Irish special purpose vehicles.

### **Joseph Stiglitz, Professor at Columbia University and ICRICT Commissioner, said :**

“Tax evasion and tax avoidance are particularly important for developing countries. But the big issue is who is in charge of the process of rethinking the global tax structure? There were various attempts to say that it should be in the United Nations, rather than in the OECD. Sadly, they put the fox in charge of the hen house”.

### **Eva Joly, ICRICT Commissioner and member of the European Parliament, said:**

“States must reject the artifice that a corporation’s subsidiaries and branches are separate entities entitled to separate treatment under tax law, and instead recognize that multinational corporations act as single firms conducting business activities across international borders.”

### **Wayne Swan, a former Treasurer and Deputy Prime Minister of Australia and a member of ICRICT, said:**

“The lopsided society that permits multimillionaires and multinationals to hold 10 percent of global GDP in tax havens foments the kind of populist backlash that allows authoritarianism to flourish. By continuing their race to the bottom on corporate tax, governments run away from their democratic responsibilities and hurtle headlong into the next global crisis.”

### **Leonce Ndikumana, ICRICT Commissioner and Professor of Economics at the University of Massachusetts, said:**

“The empirical evidence is crystal clear: nations continue to bleed massively through illicit financial flows. The ‘Paradise Papers’ only shine light on the faces of the elites and multinationals behind this phenomenon, unmasking how they channel their wealth through tax havens and secrecy jurisdictions.”

### **Magdalena Sepúlveda is a member of ICRICT, former United Nations Special Rapporteur on Extreme Poverty and Human Rights, said:**

“When multinationals do not pay the taxes that they owe, this means that States have fewer resources to invest in public services, such as education, health care, childcare services, access to efficient justice systems and access to public drinking water and sanitation systems. This dynamic exacerbates gender equality, because women are overrepresented among the poor and among the demographic group with precarious or low-paid jobs.”

**WATCH, AND PUBLISH IF YOU WISH:**

- [The declaration of Joseph E. Sitglitz](#), Professor at Columbia University, the winner of the 2001 Nobel Memorial Prize in Economics and member of ICRICT on tax competition.

- [This video of Gabriel Zucman](#), a professor of economics at the University of Berkeley, California, and an ICRICT member, on how to end tax havens.

*[ICRICT](#) is a non-profit [group of economists, tax experts, human rights specialists and former senior officials](#) which works to promote debate on reform of international corporate taxation, in the global public interest. Our latest report, "A roadmap to improve the rules for taxing multinationals" is [here](#).*

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