

# **Analysis of stakeholder comments on OECD/G20 BEPS Action Plan**

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## **Abstract**

This paper analyzes 1873 stakeholder comments on BEPS (Base erosion and profit shifting plan) Action Plan. The goal of my research is to provide evidence that different stakeholders have a varying interest in developing further global norms on taxation and contributing to the institutional discussion, based on their type or geographical location. This statistical analysis provides insights on how the stakeholders commented on the 52 discussion drafts published by March 2020 and what characteristics do the stakeholders have. Results with 1873 entries show more than 90% of the comments come from the ‘global economic core’ countries. Businesses tend to support less regulation. Comments of expert firms contain the highest share of tangible proposals and tend to be more analytical than the rest.

## **Keywords**

Tax avoidance, base erosion and profit shifting, global tax governance, corporate income tax

## **JEL Classification codes**

C11, F53, H25, H26

## **Introduction**

Organization for Economic Cooperation and Development described in its report (2013) one of the world’s most pressing problems: the issue of tax base erosion and profit shifting to lower-tax jurisdictions, away from the location of real value creation. The estimated government revenue losses were estimated to be 100-240 billion USD yearly. The loss is achieved due to advanced international tax planning schemes of transnational corporations (TNCs) - mostly within the scope of the respective laws, thus named as tax avoidance. Most of the activities and losses are virtually invisible, however - some scholars attempt to quantify the amount. To name one research, I was a part of the team of Janský (2018a) once we collected publicly available data on country-by-country (CbCR) corporate tax paid worldwide. The overview of findings has been published in Janský (2018b).

The objective of this paper is to prove the stakeholders take varying stances in taking part in the ongoing discussion on how the future global tax system should look like and what kind of reform is needed (if needed), in order to reach a system as fair as possible, based on their type and/or geographical location. We compare theoretical expectations to the analyzed data.

## **1 Research Topic: BEPS action plan**

BEPS Action Plan was proposed by the OECD and approved by G20 (OECD 2015) with the latest measures being developed by the work groups of OECD's Centre for Tax Policy and Administration, and transformed into real norms through the representatives of countries and jurisdictions who joined the so-called 'BEPS Inclusive Framework'. As of March 2020, it joins 135 jurisdictions in the effort to find a common and most efficient solution to have a fair geography of sovereign tax systems, without flaws and loopholes, at the same time avoiding double taxation.

There are three main objectives of the BEPS actions (OECD 2018): coherence, substance and transparency, with Action 1 (digital economy) and Action 15 (Multilateral instrument) being horizontal topics. A deeper overview was previously offered by Procházka (2019).

Action 1. Address the tax challenges of the digital economy

Action 2. Neutralise the effects of hybrid mismatch arrangements

Action 3. Strengthen CFC rules

Action 4. Limit base erosion via interest deductions and other financial payments

Action 5. Counter harmful tax practices more effectively, taking into account transparency and substance

Action 6. Prevent treaty abuse

Action 7. Prevent the artificial avoidance of permanent establishment status

Action 8 - 10. Assure that transfer pricing outcomes are in line with value creation

Action 8. intangibles, Action 9. risks and capital, Action 10. other high-risk transactions

Action 11. Establish methodologies to collect and analyse data on BEPS and the actions to address it

Action 12. Require taxpayers to disclose their aggressive tax planning arrangements

Action 13. Re-examine transfer pricing documentation

Action 14. Make dispute resolution mechanisms more effective

Action 15. Develop a multilateral instrument

## 2 Underlying Theory

When it comes to the position of various governments, business representatives, civic society or NGOs, there are many (mis)conceptions on what their opinion towards the BEPS Action Plan actually is.

The traditional conception claims that **transnational corporations** have high stakes that motivate them to develop and invest in complex tax schemes, with little regard to the ethics. The main objective has been maximization of net profit while honouring respective laws of sovereign jurisdictions (Desai & Dharmapala 2006 or Dyreng, Henlon, Maydew 2008). Lately, however, the role of consumer opinion has been emphasized. TNCs need to present themselves positively and they reach it through good corporate social responsibility (CSR). According to further research (Gallemore, Maydew, Thornock 2014 or Huseynov and Klamm 2012), TNCs cannot afford to enter in suspicious or potentially harmful activities that would endanger some of vulnerable groups, like common people, least developed countries etc. Thus, they are pushed to act responsibly in order to maintain their profits.

**Governments** in general aim to protect their citizens. This was earlier achieved by maximizing the tax income which was consequently distributed. However, as the capital mobility increased and global economy opened, countries entered into fierce competition over investment and jobs (Devereux et al. 2008). This has caused corporate tax rates decrease steadily since the 1990s with increasing labour taxes and indirect taxes like VAT instead (Dyreng et al. 2017).

**Civic society representatives** and activist NGOs (to be distinguished from think-tank NGOs or associations formed by business representatives) have been traditionally skeptical towards any economic activity whose primary objective is not welfare of workers or environment.

**Expert groups and associations** understand their role while designing the global tax system and also compete for their customers by showing off their expertise (Seabrooke, Wigan 2016). These traditionally locate their headquarters in developed countries, in global cities or near them, to enable networking with their clients (Taylor et al. 2014).

On the contrary, **developing countries** have been experiencing every time higher losses from economic activities of TNCs and have been pressed every time more to open themselves for the activity, to get at least a small share of benefits arising from opening the global economy (Cobham 2005, Janský & Šedivý 2018).

As far as the research is concerned, no-one has publicly renounced the idea of strengthening tax cooperation and striving for a globally fair tax system that would at the same time avoid double taxation of the same profits - a luxury that some of the governments do not necessarily avoid in the meantime (e.g. various withholding taxes like UK Bank Levy or cases where taxation treaties are not in force). Nonetheless, many of the respective norms and recommendations set out by BEPS Action Plan have received criticism from various representatives of the public.

### **3 Research Method and Design**

While creating the recommendations, the OECD's Centre for Tax Policy and Administration (CTPA) works with a limited range of experts to design new rules efficiently. However, to provide a broader scope and get informed of potential flaws that the new rules might trigger, CTPA publishes discussion drafts on selected actions and their subtopics. All public have a chance to submit their comments within the deadline which is normally set at 3-4 weeks. These comments are subsequently published at the OECD website. When the round of comments is closed, a public consultation is held at the OECD Conference Centre. Up to date (March 2020), there have been 52 calls for input in 14 out of the 15 BEPS Actions and subsequent post-BEPS work that has been consolidated in two "Pillars". The only BEPS Action that has not included any discussion draft open to public comments was Action 5.

The purpose of this paper is to perform a statistical analysis of the inputs made by public. The public comments will be handled through a constructivist approach. I will classify the input according to its source:

- a) academia / businesses / civic society & NGOs / expert firms / government bodies
- b) country & continent
- c) individual / group submission

*(Group stakeholders are bodies or societies representing various entities.)*

The comments will then be organized and analyzed. Each of the inputs will be independently coded through method proposed by Elkins, Spitzer and Tallberg (2019) in their note on non-machine content analysis. Public input will be classified based on its content relating to the BEPS Action Plan:

- 1) stance on BEPS Action Plan in general: positive / negative / neutral
- 2) openness to increasing regulation: positive / neutral / negative



*(In the case of a 'negative' stance on regulation, the compliance burden of regulation is stressed throughout the comment. Otherwise, the regulation is welcome.)*

3) approach to comment: normative / analytical

*(Normative approach focuses more on demonstrating the position of the commentator, whereas analytical approach strives to understand the problem and contribute to a better solution.)*

4) tangible proposals: yes / no

*(Are there concrete recommendations on how OECD could improve the proposals?)*

I then intend to provide a classification of the comments and compare the various groups of public that shared their comments. In this paper, I provide results based on comments from 2013 - 2020 which relate to one or another BEPS Action and subsequent work. A total of 1873 entries are being analysed.

## **4 Results**

### **4.1 General remarks**

No matter the origin of the comment, there are some points that many opinions share:

- yes to regulation, but to a common approach
- no to unilateral norms that distort the open economy
- reduction of compliance costs and changes
- increase in transparency and predictability of the whole normative system
- no to illegal actions like tax evasion

### **4.2 Stakeholder types**

It is interesting to see that in their comments, businesses in general avoid commenting on tax avoidance schemes, complex international tax planning structures, and consequently on harmful tax regimes and tax havens jurisdictions.

The nature of the comments is generally very advanced and many of the businesses that entered in the discussions already had a clear idea what it takes to tackle the issues like transfer pricing, CbCR, harmful tax competition etc. Some of these global enterprises even have their own systems how to comply with various national legal requirements and would definitely welcome a global approach to reduce compliance costs, a focal concern for them.

Some expert firms with varying stance on the proposed solutions use the public comments as an opportunity to showcase their expertise and add to the precision of the discussed norms. Level and depth of their comments is very advanced as well in vast majority of cases.

When it comes to the distribution among different types of entities (Figure 1), we see that majority of comments come from expert institutions and consultancies, mainly in the field of tax advising and similar topics, international law firms or general consultancies (like the Big Four). Large part comes from businesses themselves, or associations joining industry representatives. Contributions from university researchers, government bodies and NGOs are quite limited - as you can see in the following Figure 1. Individual comments submitted directly by the entities account for 61.3% and group comments from various associations accounted for 38.7% of total entries.

**Figure no. 1: Public comments based on type of commenting entity**

Stakeholder type	Number of entries	% of total
Academia	114	6,09 %
Businesses	938	50,08 %
Civic Society	38	2,03 %
Experts	750	40,04 %
Governments	33	1,76 %
<b>TOTAL</b>	<b>1873</b>	<b>100,00 %</b>

Source: Own based on data by OECD (2020).

### 4.3 Geographical distribution

Even firms that have global presence provide their comments from their headquarters in developed countries, in line with general notion that auxiliary advanced services like accounting, legal services and others concentrate in global cities (Sassen 1995) - this is the case even for example for Russian Gazprom, which has its media department based in London, UK. On the other hand, voice of stakeholders from developing countries has been formulated in very few cases. Despite their share of world's population, they have not participated yet in the discussions. The reason shall be that they have not reached fully-fledged economies and their businesses do not have extensive structures that would allow them to focus on these more marginal issues to the business. In case of auditing or consultancy, they might engage again large companies with global presence and headquarters in developed countries.

**Figure no. 2: Geographical distribution of the stakeholders' comments based on continent**

Stakeholder location	Number of entries	% of total
Africa	11	0,59 %
Asia	107	5,71 %
Australia	32	1,71 %
Europe	1294	69,09 %
Latin America	53	2,83 %
North America	376	20,07 %
<b>TOTAL</b>	<b>1873</b>	<b>100,00 %</b>

Source: Own based on data by OECD (2020).

As per Figure 2, from all the comments, full 89% come from Europe/North America. Full 40 % of the comments come from 3 biggest EU economies combined (UK, Germany and France) and slightly less than 1/5 is U.S.-based. Relatively low share of Asian comments is emphasised by the fact that all come just from developed economies, plus China and India.

#### 4.4 Analysing comments

It is a general habit of stakeholders to thank OECD working groups for their contribution they have made in regards to the BEPS Action Plan. Full 88% of commentators stated their support to the work that is being done in general, and only a few of 1873 openly denounced the efforts being done by the OECD.

However, just below 50% (consult Figure 3) support increasing number of norms and increasing complexity. There is a small share of stakeholders that did not clearly state their position, the rest is supporting in general a global simplification of rules. It is important to state that many of the comments openly criticize increasing regulation (for example by some national governments) and thus support OECD efforts to find one simple global norm. On the other side, there are several (although not many) comments that support increase in norm creation, but do not really agree with the proposals made by the OECD - I mean in general, particular disagreements on petty details are not taken into account in this category.

**Figure no. 3: Stakeholder comments supporting increasing regulation**

Position towards regulation	Number of entries	% of total
Positive	901	48,10 %
Neutral	60	3,20 %
Negative	912	48,69 %
<b>TOTAL</b>	<b>1873</b>	<b>100,00 %</b>

Source: Own based on data by OECD (2020).

More than three quarters of the comments have an analytical approach, openly contributing to the proposed ideas in drafts and helping to find a better common solution. Less than one quarter of comments is normative in its nature, focusing basically on showing the stance and not really adding to the proposals. Very few comments that have normative approach actually mention any tangible proposals and rather limit themselves to publishing the stance. Full 65 % of all the comments include some kind of idea, improvement, tangible proposal. So some of the analytical comments do not actually include a real proposal. It is important to repeat here that OECD comments are an important opportunity for expert firms to showcase their work and expertise on the discussed topics. When we look at the proportion of comments supporting increasing regulation, analytical comments and comments with tangible proposals across types of stakeholders and geographical distribution, we find some interesting results (Figure 4, Figure 5).

**Figure no. 4: Analysing comments based on stakeholder type**

Stakeholder type	Supports regulation	Analytical comments	Includes tangible proposals	[N]	% of total
Academia	76,99 %	91,15 %	83,19 %	113	6,03 %
Businesses	28,78 %	75,37 %	54,90 %	938	50,08 %
Civic society	83,72 %	65,12 %	62,79 %	43	2,30 %
Experts	64,26 %	87,82 %	73,23 %	747	39,88 %
Governments	87,50 %	75,00 %	87,50 %	32	1,71 %
<b>TOTAL</b>	<b>48,10 %</b>	<b>81,05 %</b>	<b>64,66 %</b>	<b>1 873</b>	<b>100,00 %</b>

Source: Own based on data by OECD (2020).

We can see in Figure 4 that indeed, businesses show lower support to growing tax norm complexity. On the other hand, expert / consultant firms record high affinity towards tax system and are the group with highest proportion of analytical comments with a number of tangible proposals.

**Figure no. 5: Analysing comments based on stakeholder location**

Stakeholder location	Supports regulation	Analytical comments	Includes tangible proposals	[N]	% of total
Africa	81,82 %	45,45 %	45,45 %	11	0,59 %
Asia	46,73 %	81,31 %	66,36 %	107	5,71 %
Australia	56,25 %	84,38 %	78,13 %	32	1,71 %
Europe	49,19 %	81,13 %	62,41 %	1 293	69,03 %
Latin America	67,92 %	79,25 %	62,26 %	53	2,83 %
North America	40,16 %	81,65 %	71,54 %	376	20,07 %
<b>TOTAL</b>	<b>48,10 %</b>	<b>81,05 %</b>	<b>64,66 %</b>	<b>1873</b>	<b>100,00 %</b>

Source: Own based on data by OECD (2020).

When it comes to location of the stakeholder (Figure 5), we see a large difference in the support to growing regulation between European and North American commentators: the latter, as the notion follows, aim for liberalization of rules. It could also be influenced by the fact that OECD is a European-based organization and European stakeholders might feel more familiar with the proposed solutions. The proportion of analytical comments with proposals is generally higher in Europe and North America as well.

## Conclusion

The contribution of this paper was to quantify and objectivize the various notions of key stakeholders in the area of global tax system that are medialisised and do not necessarily have to be correct. However, we have come to conclusions similar to the expectations: highest proportion of entities that commented come from the ‘global cores’. Comments by expert/consultant firms tend to be more analytical and with tangible proposals than the average. Businesses oppose more often the idea of a more complex global tax system. *‘The issue of base erosion and profit shifting is one of the pressing problems of global tax governance of today. The BEPS Action Plan as proposed by OECD and endorsed by G20 is one of the biggest efforts that managed to mobilize an important portion of global economy players and led them to a consensus - one with a solid and considerably detailed measures in most of the actions and not only vague in its nature.’* (Procházka, 2020)

When it comes to comparing expectations based on literature review and results based on the database analysis, we can see most of the expectations were matched. Transnational corporations indeed, at least in their official statements, showcase their contribution to the society and impact they make. Still, they are the least likely to support ongoing reforms towards more regulation of the global tax system. Governments, on the other hand, are the group with highest support of regulation – as expected. The same, for expert groups, the share of analytical comments (along with academia) and comments with tangible proposals was the highest of all group – also here, it matched the expectation. Civic society representatives also showed a high support of regulation, yet with a lot of normative comments not grounded on a deep analysis. Regarding the developing countries, just the number of submissions from Africa, Latin America and Asia (apart from some “core” countries) indicate the global periphery still persist. Their comment are more likely to support regulation, but lack more of a constructive contribution.

Every discussion draft and call for input is followed by a public consultation, normally held in Paris in OECD Conference Centre, where all interested parties who commented meet

and selected speakers get a chance to ponder upon the topic to moderate a fruitful discussion, so OECD can understand the stance of various groups of stakeholders. Not being present in the commenting process or public consultation thus means not having a chance to take part in the norm creation. It is important that underrepresented stakeholders are supported to take their part as well so their voice is heard and proposed solutions are as close as possible to an ideal solution, representing world's economy. Especially more members of the public, governments, and stakeholders from outside the 'global economy cores'. The next step would be to dive deeply into the comments and understand what is behind the respective positions of the stakeholders and how much of what they say is meant 'honestly' and what is only an official position to calm down their shareholders and opponents.

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