Research Proposal

China and BEPS: Interactions between China and International Tax Norms

Base erosion and profit shifting (BEPS) is a phenomenon in international taxation that multinational enterprises adopt tax planning strategies that exploit the gaps and mismatches in tax rules between different countries to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The G20 and the OECD have taken the initiative to develop multilateral solutions to combat BEPS by releasing BEPS Action Plan (2013) and the 2015 Final Report. The solutions are expected to be integrated into the domestic tax law and tax treaties of countries around the world over the coming two years.

China encounters challenges of BEPS as well. Although China is not a member of the OECD, the OCED BEPS program has involved China into the discussion and development of the Final Report.

This research aims at analyzing the interaction between China and international tax norms, focusing on implications derived from BEPS in the context of international tax competition.

The main research question is

What are implications for both Chinese tax system and international tax norms through interactions between China and BEPS?

By analyzing China’s reaction to BEPS and to international tax norms of countering BEPS, the research aims at discovering BEPS’s implications for Chinese tax system and China’s role in influencing international tax norms.

The major methodologies adopted in the research are legal analysis, comparative studies, and historical analysis. The research will perform legal analysis and comparative analysis to the application of BEPS Final Report in China. Subsequently, if there are mismatches or tensions between Chinese tax circumstances and BEPS Final Report, the research will conduct historical and legal analysis to describe the origins for those tensions. Consequently, based on the previous analysis, the research will conclude with implications for both China and international tax norms against BEPS, thus answering the main research question.

The outcome of the research is expected to be in the form of a published English article in a high-ranking (tax) journal.

The results will benefit academia, policy makers, and practitioners. This research is rather novel and up to date. The OECD 2015 BEPS Final Report was released on 5 December 2015. Only a few authors have discussed the new report from the perspective of China. Therefore, the results of the research will be interesting not only for academia, but also for policy makers and practitioners. For academia, the research fills in the gap of the relationship between China and BEPS with the latest outcome. It is also sheds light on the development of establishing a new international tax system. For investors, it will be helpful for them to know better about the investment environment in China, and to make further decisions. For policy makers, the results will be useful for them to form an insight into the issue as well.
1. Aim of the research

This research aims at analyzing the interaction between China and the international tax norms with the focus on implications derived from BEPS in the context of international tax competition. By analyzing China’s reaction to BEPS and to international tax norms of countering BEPS, the research is with the purpose of discovering BEPS’s implications for Chinese tax system and China’s role in influencing international tax norms.

2. Research background and relevance of the research

With the development of globalization, multinational enterprises (MNEs) have more capabilities to employ and allocate resources all over the world. However, national tax laws have not kept pace, which results in gaps and mismatches that create conditions of double non-taxation for MNEs via tax planning.¹

Base erosion and profit shifting (BEPS) is a phenomenon in international taxation that MNEs adopt tax planning strategies that exploit the gaps and mismatches in tax rules between different countries to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid.² BEPS is not new in international taxation.³ Nevertheless, increased media exposure of specific MNEs’ tax planning strategies brought BEPS to the public attention, especially under the background of the financial and economic crisis.⁴ According to the statistics released by the Organisation for Economic Co-operation and Development (OECD), it is estimated that the annual loss of tax revenue caused by BEPS is 100 to 240 billion US dollars.⁵

As an international tax problem, BEPS requires international solutions. The G8, and subsequently, the G20 took the initiative urging the OECD to develop multilateral solutions to

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combat BEPS. Since 2013, OECD has released a detailed BEPS Action Plan for solutions. On 5 December 2015, the OECD released the 2015 Final Report for tackling tax avoidance worldwide. The proposals are expected to be integrated into the domestic tax law and tax treaties of countries around the world over the coming two years. As the OECD has announced, the Final Report is not only for solving problems of developed countries, but is also for the sake of developing countries. Over 80 developing countries are involved in the discussion of the BEPS package.

The BEPS package seems like an opportunity to establish a modern international tax framework, which means a new international tax norm. Since the promulgation of the 2015 Final Report, many countries reacted efficiently to embed or promise to embed certain BEPS action plans into their own tax systems.

China encounters challenges of BEPS as well. As a major recipient of foreign direct investment (FDI) and a major source of outbound FDI, China is even deemed as a main victim of BEPS. In different political declarations, China has expressed strong support for the BEPS initiative as a G20 member. BEPS provides China an opportunity to participate in the creation

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6 Originally, The Group of Seven (G7) is a forum composed of 7 top wealthy countries in the world with respect to the GDP. In 1997, Russia joined the group and G7 became the Group of Eight (G8). The G8 includes Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. The G20 aims to be a forum for cooperation and consultation with respect to the international financial system. It consists of Argentina, Australia, Brazil, Canada, China, the European Union (EU), France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, and the United States. See Peter Essers, *International Tax Justice between Machiavelli and Habermas*, 68 Bull. Intl. Taxn. 2 (2014) 56.


10 Ibid.

11 It is a major objective of the BEPS package to lay the foundations of a modern international tax framework under which profits are taxed where economic activity and value creation occur. See ibid.


of the international tax law norm. Although China is not a member of the OECD countries, the BEPS program has involved China into the discussion and development of action plans.\textsuperscript{15} Moreover, on the 2016 G20 Summit held in Shanghai, China proposed to implement the outcome of the BEPS program and advocated for more participation of developing countries. A main advocate was to realize equal implementation of BEPS among all the participated countries.\textsuperscript{16} Meanwhile, China has launched its own measures to tackle BEPS problems, including transferring the outcome of the OECD BEPS Action Plan to domestic laws, and promulgating its own BEPS measures.\textsuperscript{17} For instance, as Li (2015) summarized, Chinese BEPS measures adopted from the OECD include the general anti-avoidance rule (GAAR), the offshore indirect transfers circular (2015), beneficial ownership circulars, the outbound payments notice (2015), and special tax adjustment measures (2009).\textsuperscript{18} They are considered as localization of the BEPS initiative in China.\textsuperscript{19}

With respect to the Final Report, China’s reaction towards it is not only an issue of its own tax authorities, but concerns also international investors. Moreover, it reflects China’s attitude towards the international tax norms. After the 2015 Final Report, the Chinese State Administration of Taxation (SAT) is working on reactions to the Final Report.\textsuperscript{20}

However, there are concerns about the application of the BEPS Final Report to China. The BEPS program was initially designed by OECD countries with the objective of attributing more profits to the jurisdiction where intangibles are generated, most of which are developed countries.\textsuperscript{21} Nevertheless, the problems China face can differ from the developed countries. In addition, compared to most developed countries that have already formed a free market economy system, China has its own political, economic, and legal systems. Are there tensions if directly

\textsuperscript{17} Jun Wang, Chinese Taxation on the Move, 70 Bull. Intl. Taxn. 9 (2016) 519.
“transplanting” the international tax norms to China? If so, are there possibilities to alleviate the tensions? Therefore, the research aims at analyzing China’s reactions towards the OECD 2015 BEPS Final Report in the context of international tax competition and discovering both implications of the BEPS for China and China’s role in shaping international tax norms.

This research does not only have academic values, but can also be of interest for policy makers and practitioners. Firstly, it will be a contribution to the body of knowledge on the specific issue of China’s reaction to BEPS and implications for international tax norms. Moreover, considering China’s position in the world economy, this research provides insights for policy makers and practitioners as well. China is a major destination of FDI at present and predictably in near future.22 Considering its position in the arena of international tax competition, it is significant to find out China’s attitude towards BEPS and international tax norms, and the rationale behind them. If there are tensions between China and international tax norms, the research can contribute to the implications for both China and international tax norms to alleviate the tensions. It can also shed light on establishing a new international tax system, which provides prospects on further actions against BEPS. Thus, it is not only an added value to the academia, but could also be useful for policy makers and practitioners.

3. State of the art

Many publications have introduced and analyzed BEPS problems and the OECD BEPS initiative from different perspectives since 2013. Brauner (2014) systematically analyzed the OECD BEPS Action Plan and provided an interim evaluation. He advocated international cooperation rather than competition to solve the problem, and also claimed for more innovations in establishing international tax norms.23 Baker (2013) also argued that the OECD program could only succeed by conducting meaningful reform and achieving consensus among developed and developing countries.24 After the publication of the 2015 BEPS package, some authors focused on the implementation of the Action Plan. Cooper and Stewart (2015) generalized some countries’

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fast reactions to BEPS and analyzed challenges for those countries’ full implementation of the BEPS package.\textsuperscript{25} Saint-Amans and Russo (2016) introduced details of the 2015 BEPS package and concerns for its implementations.\textsuperscript{26} With the further implementation of the BEPS package in different countries, more actions are expected, especially by developing countries.

As to the relationship between China and BEPS, some authors have introduced BEPS problems in China and argued for China’s own position towards combating BEPS. Li (2015) maintained that BEPS provided China the opportunity turning from a norm-taker to a norm-shaker by actively participating in the OECD programs.\textsuperscript{27} Jiang (2015) pointed out the current problems of the global value allocation in the OECD BEPS Action Plan from Chinese tax authority’s perspective, and suggested China to gain a reasonable share of the global value allocation.\textsuperscript{28} Tang (2015) also analyzed the distinctions between Chinese rules on hybrid instruments and the OECD approach under the BEPS initiative.\textsuperscript{29} Wang (2016) introduced the current tax reform in China, and its prospect on further reform on BEPS.\textsuperscript{30} Nevertheless, there is no research covering systematic analysis on the interaction between China and international tax norms after the 2015 Final Report.

4. Research questions and methodology

4.1 Research questions and sub-questions

The main research question is

What are implications for both the Chinese tax system and international tax norms through the interactions between China and BEPS?

The sub-questions are

What are China’s reactions towards the OECD 2015 Final Reports?

How can the BEPS Final Reports address BEPS problems in China?

\textsuperscript{27} Jinyan Li, China and BEPS: From Norm-Taker to Norm-Shaker, 69 Bull. Intl. Taxn. 6/7 (2015).
Are there tensions between China and the BEPS Final Report? If so, are there possibilities to alleviate the tensions?

What is the prospect for China to address BEPS problems? What is China’s role in shaping international tax norms by adopting or not adopting BEPS?

In order to answer the research questions, it is necessary to establish a benchmark first. In order to evaluate the influences of BEPS to China and China’s role in shaping international tax norms, it is suitable to build up a benchmark based on the common objectives and purposes of Chinese taxation and the international tax norms towards BEPS.

4.2 Methodology

The major methodologies adopted in the research are legal analysis, comparative studies, and historical analysis.

The research will perform legal analysis and comparative analysis as to the application of the BEPS Final Report in China. According to these methodologies, the research aims at discovering whether there are mismatches and possibilities of embedding the BEPS Final Report in China.

Subsequently, if there are mismatches or tensions between Chinese tax circumstances and the BEPS final reports, the research will conduct historical and legal analysis to describe the origins for those tensions, with an emphasis on China’s political and economic systems.

Consequently, based on the previous analysis, the research will conclude with implications for both China and international tax norms against BEPS, thus answering the main research question.

5. Limitations

It is not the purpose of the research to debate on whether or not China should be categorized as a developing country. It only aims at presenting differences between the Chinese tax system and the international tax norms, which are majorly established by developed countries. Thus, the research distinguishes China from OECD countries.

6. Expected results

It is the aim of the research to answer the research questions, i.e. providing implications for both China and international tax norms through the interactions between China and BEPS. The outcome
of the research is expected to be in the form of a published English article in high-ranking (tax) journal.

The results will benefit academia, policy makers, and practitioners. Obviously, this research is rather novel and up to date. The OECD 2015 BEPS Final Report was released on 5 December 2015. Only a few publications have discussed the new report from the perspective of China. Therefore, the result of the research will be interesting not only for academia, but also for policy makers and practitioners. For academia, the research fills the gap in analysis on the relationship between China and BEPS with the latest outcome. It is also important to further the development of establishing a new international tax system. For investors, it will be helpful for them to know better about the investment environment in China, and to make further decisions. For policy makers, the results of the research will be useful to form an insight into the issue.

7. References


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