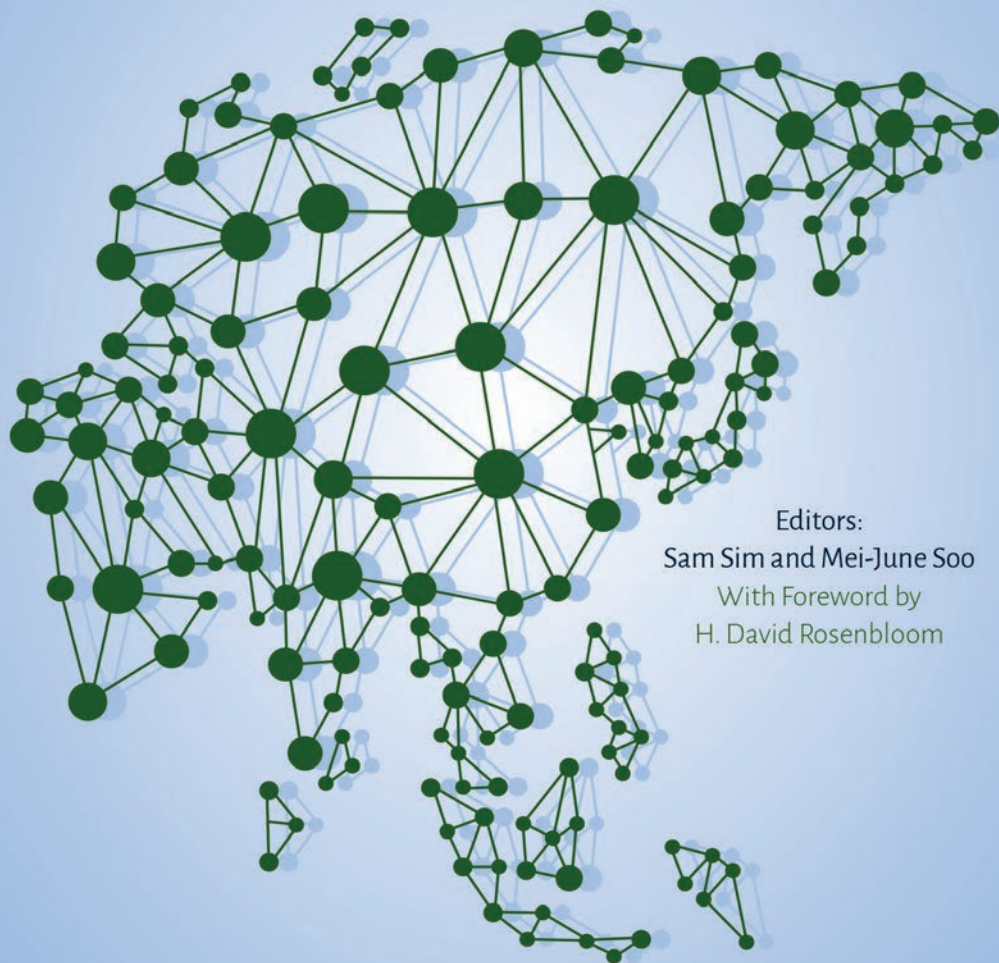


Asian Voices: BEPS and Beyond



Editors:
Sam Sim and Mei-June Soo
With Foreword by
H. David Rosenbloom

IBFD

Asian Voices: BEPS and Beyond

Why this book?

The OECD/G20 Base Erosion and Profit Shifting (BEPS) Project has, thus far, mostly been an OECD-driven project. Nevertheless, its efforts in involving representatives from developing and emerging countries in the Asia-Pacific region have been encouraging and are laudable, given the tremendous challenges of achieving global consensus in a highly technical field and the tight time frame of the BEPS Project. The Asia-Pacific region poses unique challenges in its great diversity of economic development, as well as cultural and legal traditions. Australia, Japan, New Zealand and Korea, as OECD members, are at the forefront of tax innovation and development, while China, India and Indonesia are at the table as members of the G20. However, the majority of the countries in the region are non-OECD, non-G20 developing countries. For these developing countries, the BEPS changes will bring added challenges at a time when their economies are rapidly transforming and they are in the midst of absorbing and legislating pre-existing international tax principles and modernizing their tax administration.

The purpose of this book is to enrich the current discourse on the work of the OECD, by drawing on the top minds in tax and transfer pricing across Asia-Pacific. It aims to fill a void in the BEPS debate where the Asian perspective and the impact of the unique conditions in the region on the outcome of the BEPS Project may not have been adequately articulated or considered.

This book takes the form of a series of analyses, commentaries and case studies, grouped along geographic, industry and thematic lines, critically examining the implications of the BEPS Project for the region. The approach taken is multifaceted, encompassing perspectives from key tax administrators and policymakers, leading academics and thought leaders in the advisory space, balanced with industry views and practical case studies applying the BEPS recommendations to business models common to the region.

Foreword by H. David Rosenbloom

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Foreword

The voices of Asia are eloquent here.

Dr Liao Tizhong, Director General of International Taxation for China, declares that “[a]s much as China values the importance of international cooperation, the Chinese tax authority stands by the notion that it should not be achieved at the expense of national sovereignty”. Dr Parthasarathi Shome, Adviser to the Finance Minister of India, states that in his personal view “India has to ... have some confidence in the process, and accept the binding or compulsory nature of MAP as recommended by Action 14”. Kim Jacinto-Herares, the former Commissioner of the Bureau of Internal Revenue of the Philippines, reports that “[w]hen I learned that the signatures of 44 OECD countries have the equivalent of a binding effect on whatever has been discussed, I felt that developing countries were intended to be witnesses and not participants, with no other purpose than to make it appear that developing countries are actively participating and have been consulted ...”. Mark Konza, Deputy Commissioner of the Australian Tax Office, points to the Study Group on Asian Tax Administration and Research (SGATAR) as a regional institution “in a unique position to assist in the implementation of BEPS and coordination of the capacity building needs in the Asian region”.

These are only some of the salient views of some of the tax officials contributing to this volume. Information pours forth here in a series of reports, reactions, observations and predictions of authors writing from a variety of perspectives on the OECD/G20’s Project on Base Erosion and Profit Shifting (BEPS). There are writings by tax administrators and policymakers, academics, practitioners and tax professionals from multinational companies. Even a cursory review reveals an impressive wealth of detail and a range of opinions.

Yet a review tends to uncover something important of a broader nature as well, something captured in the insightful Introduction by Sam Sim. Mr Sim, who first conceptualized and then supervised the preparation of this volume, suggests clearly that the reach of the BEPS Project may have exceeded its grasp – that there are regional peculiarities in Asia which an attempt to address international taxation on a worldwide scale does not and cannot encompass.

The relationship between taxpayer and tax authority is not necessarily the same in Asia as it is in Europe, for example, or as it is in the United States. Neither are the dispute resolution mechanisms of a similar nature, nor the

level of respect for the rule of law. Some fundamental and widely accepted aspects of the “international tax architecture” – such as the arm’s length principle – may not be so familiar here, and suggested rules and amendments of rules that assume familiarity may only result in disparities in their application. One cannot take for granted that English language subtleties will be comprehended, especially in places where English is not the *lingua franca*.

Mr Sim persuasively makes the case that countries in Asia are likely to have their own regionally influenced views on how the BEPS Project should be implemented and how it will play out. (That there are special considerations at work in Asia is, after all, the justification for adding these pages to the growing accumulation of BEPS commentary.) If that is true for Asia, perhaps it is true for other regions as well. The lesson seems to be that the BEPS recommendations will inevitably be filtered through a regional mesh, and that it will be re-interpreted in accordance with local and regional attitudes, cultural heritage, and political and economic traditions.

This is not, of course, to say that the BEPS Project has been a failure, or that it has been oversold. On the contrary, it is surely the grandest development in international taxation for at least the past 50 years.

Mr Sim cogently presents in brief compass the views of “the pessimist”, “the optimist” and “the realist” on the likely consequences and legacy of the BEPS Project. Regardless of which, if any, of these points of view proves to be most accurate, the BEPS Project’s achievement is not, and is not likely to become, coterminous with the BEPS promise. A coordinated and relatively transparent worldwide taxation system is not in the cards. What the BEPS Project did, however, was to raise worldwide awareness of a subject that had been developing for decades in the policy shadows, understood at best by a small coterie of experts. The BEPS Project has brought international taxation into the light and made its existence unavoidable and its importance indisputable in many, if not most, countries of the world. This is a dramatic development. The real-world consequences, however, are both unknown and unknowable at this stage.

It is bracing to hear these Asian voices express generally a receptivity to the BEPS Project, but as they understand it in light of their experiences and those of the countries of which they write. The message that comes through is worthy of careful evaluation by anyone, and certainly any business or

investor, having a stake in international taxation, whether in Asia or elsewhere.

H. David Rosenbloom
Washington, DC
28 November 2016

Contributors

Contributors

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Steve Towers is a senior international tax advisor, with over 30 years of experience in international tax planning for multinational corporations. Steve has worked in Sydney, Melbourne, London, New York and Singapore. He has substantial experience in advising multinational corporations on corporate structuring and restructuring, real estate investment structuring, mergers and acquisitions, hybrid instruments, transfer pricing, use of double tax treaties, PE issues and tax aspects of supply chain planning. A large part of his current practice involves the leadership of Asia-Pacific regional tax projects. He is a frequent public speaker on international tax issues affecting investment within the Asia-Pacific region. He has been listed (since 1997) in the current edition of *Euromoney's Guide to the World's Leading Tax Advisers*. Currently, he is also listed therein as one of Singapore's leading tax advisers. Steve is a member of the Institute of Chartered Accountants in Australia. He is also a member of the board of directors of the Tax Academy of Singapore. He is currently an Adjunct Professor with Nanyang Technological University. He is a former Chairman, and is currently a member of the Executive Committee, of the International Fiscal Association (Singapore branch). Steve has Bachelor of Economics and Bachelor of Laws degrees from the Australian National University, and a Master of Laws (First Class Honours) degree from the University of Sydney.

Anita Tsang has over 10 years of experience in Hong Kong and international taxation. She provided corporate tax and business consulting services to a broad range of local and multinational companies at another Big Four firm before joining the PwC National Tax Policy Services team. Currently, Anita focuses on providing in-house tax technical support and training at PwC Hong Kong as well as producing the firm's tax publications. She is a regular speaker at professional tax seminars. She is a member of the Tax Policy Committee and International Tax Committee of the Taxation Institute

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