Base Erosion and Profit Shifting ("BEPS")

Thanks to technology, free capital movement, gradual removal of trade barriers, the integration of national economies and markets is increasing. That trend is extending to corporations, enabling multinational enterprises (MNEs) identify lucrative opportunities worldwide. That allowed companies to develop one global business model that works everywhere.

International tax standards are reflecting this intensified integration, gaps and friction occur when sovereignty issues arise between parties operating in different countries. Increased accounting sophistication in tax planning and tax avoidance schemes and also complicate cross-border tax payments.

Illegal practices exploit ambiguity from the interaction of different tax rules and Double Tax Treaties (DTTs). These Base Erosion and Profit Shifting (BEPS) avoidance strategies enable MNEs to minimize their tax burden, eroding government revenue bases by strategically transfering profits.

BEPS schemes lead to "double non-taxation" outcomes when income is not taxed at all or at minimal rates failing to reflect the firm's economic reality at the jurisdictional site of created value.

Recently, the pervasiveness of BEPS has come under intensified scrutiny, especially in high-tax jurisdictions. Accordingly, tax authorities and international bodies like the OECD are advancing changes to existing rules. The modifications aim to address weaknesses in the current global system.

In 2013, G20 finance ministers asked OECD to develop a unified action plan to address BEPS issues. The resulting program provides governments with domestic and international instruments better aligning taxation with economic activity and value creation.

Coordination is the main objective of the BEPS project, which is a new-nexus of rules designed for taxation coherence. The BEPS project aims to complement existing standards, such as provisions under DTT agreements and local laws.

The BEPS action plan is a 15 point mechanism designed to tackle vital international tax issues.

The changes are immense; requiring international transparency, effective and simultaneous implementation. Countries need to implement these changes in parallel to eliminate exploitable tax code gaps that have in the past caused frictions between governments.

Realizing the importance of a global coordination in plan implementation, the OECD and G20, in 2016, developed the BEPS inclusive framework which allows additionally for non-OECD countries to benefit from the pact. Once signed, the concerned country must satisfy four basic requirements. They stop harmful tax practices, preventing treaty abuse, and ensure transfer pricing documentation among others. Over 125 countries signed the BEPS inclusive framework, including Egypt.

The OECD developed the Multilateral Instrument (MLI). It aims to modify the application of thousands of DTT agreements to effectively eliminate double taxation, counter treaty abuse, and improve dispute resolution mechanisms. MLI also provides flexibility to accommodate specific tax treaty policies introducing BEPS into DTTs without having to revisit each.

Accordingly, MLI signatories must automatically adopt the changes into their respective DTTs, without renegotiating. Egypt has approved the MLI, entailing that changes brought by the BEPS project would impact many of its DTTs.

There is no obligation to adopt BEPS, but given its impact; countries that do not adopt it, or fail to work on changing tax regulations to reflect global norms will lag behind global standards and likely suffer adverse consequences.

With BEPS, there have been significant changes introduced into the taxation world. For businesses, aggressive tax avoidance techniques will no longer pass muster under the BEPs rules.

Businesses in Egypt and all over the world are challenged, and even denied benefits under DTTs agreements when they are abused. Reported transactions must reflect economic and commercial reality so that levied taxes are in line with the value they create in the domestic economy. Tax authorities are exchanging information about taxpayers and implementing other mechanisms to ensure that commercial arrangements reflect economic reality.

Therefore businesses in Egypt need to thoroughly understand how such changes can impact their day to day operations and business activities.

As the BEPS project is applied globally, countries, taxpayers, and MNEs are all changing procedures. Responsive businesses are modifying revenue reporting structures and international capital transfers certifying that they report actual transactions of economic substance and avoid designing accountancy practices mainly to evade taxes.