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RESEARCH ARTICLE

A STUDY ON PRACTICE AND IMPACT OF BEPS AND ITS ACTIONPLAN

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ABSTRACT

Base Erosion and Profit Shifting (BEPS)is the method used by multinational companies to shift their profits to low tax or no tax jurisdictions. The MNC's capabilities to successfully avoid tax motivated the G20 countries and OECD to launch BEPS Action Plans. BEPS action planshas attracted the attention of tax policy makers, practitioners and academics. By this research, we bring forth the importance of BEPS Action Plans among readers and howthese are acting as a support system in economic development of the nations by reducing Illegal/ Unaccountable Transfer of Profits into Tax Havens. Through this research we intend to give the readers an insight and understanding about the BEPS origin, its objectives and its future scope and how it may proceed in future. In our paper we do not aim to summarise in detail the work of each action plan rather we aim at giving brief knowledge of BEPS.

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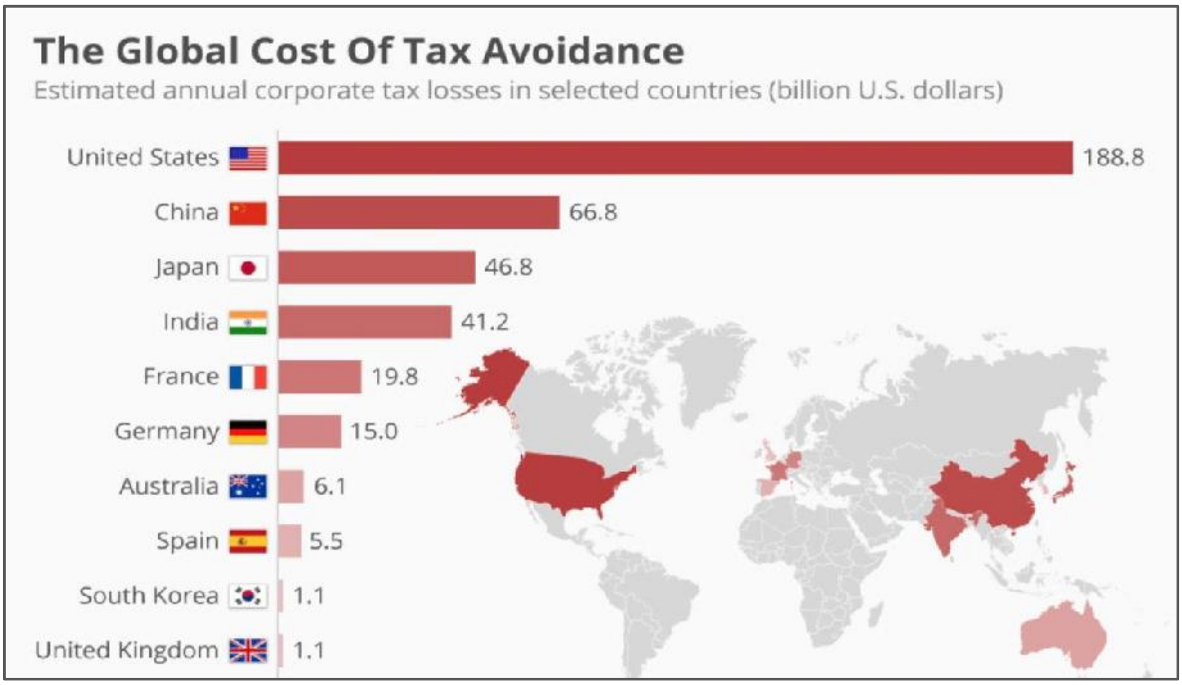
INTRODUCTION

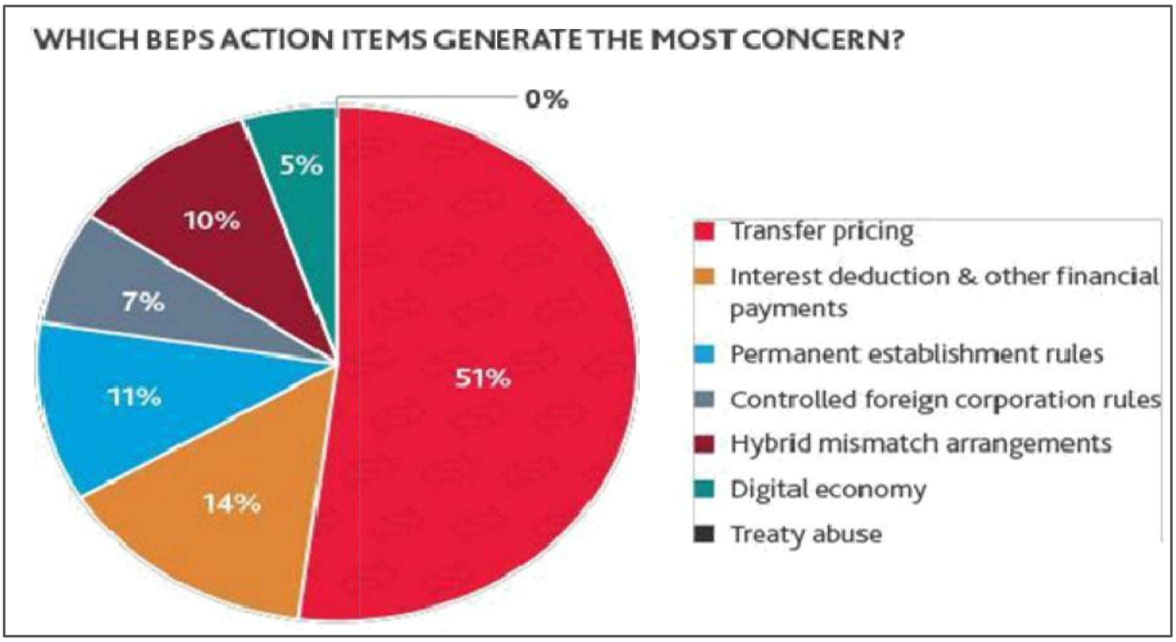
The need for BEPS aroused when Several Multi-National Companies adopted various techniques to evade Taxes by simply diverting/shifting their profits into Tax Havens. This Practice eroded the taxation base of many countries which caused huge losses for its government. A few major high-profile scams, Panama Papers scandal, Luxembourg Leaks fuelled the situation. Also, the Governments of different countries believed that BEPS resulted in massive losses as far as national taxation revenues were concerned. This promoted Organisation for Economic Cooperation and Development (OECD) and G-20 to launch BASE EROSIN AND PROFIT SHIFTING concepts/projects on 5th October 2015 (TAXMANN, 12 DEC 2018). According to OECD, BEPS refers to Tax planning strategies that exploit Gaps and Mismatches in Tax Rules to artificially shift profits to low or no tax locations where there is Little or no Economic Activities. BEPS strategies take advantage of the gaps between tax systems in order to achieve double non-taxation. BASE EROSIN AND PROFIT SHIFTING basically provides fifteen (15) Actions plans which try to block every possible loophole used by various Corporates of every country to minimise the tax load within the domestic country by diverting the funds to international countries especially the Tax Havens (OECD, 2013). G20 Countries and 34 OECD Countries among which U.S, U.K, Luxembourg and other Developing Countries have played an active role by helping OECD formulate an Effective BEPS Action Plan.

Each Action Plan requires amendment in either tax Treaties or the Domestic Tax Laws (KANABAR, 2017). According to the OECD reports BEPS Tools are Held responsible for tax losses. This amounted to Approx. \$100-\$240 billion per annum. Another Publication by National Bureau of Economic Research stated that half of the Foreign Profits made by U.S MNC's are shifted in Tax Havens. Especially considering Irelands stake at 18%, Switzerland, Bermuda and Caribbean's stake at 8%–9% each. These Countries were among the few major ones to Attract MNC's and Provoke them to book their profits at low tax or no Tax (WIKIPEDIA ,2016). By this Research, We Bring forth the importance of BEPS Action Plans among readers and how these are acting as a support system in economic development of the nations by reducing Illegal/ Unaccountable Transfer of Profits into Tax Haven.

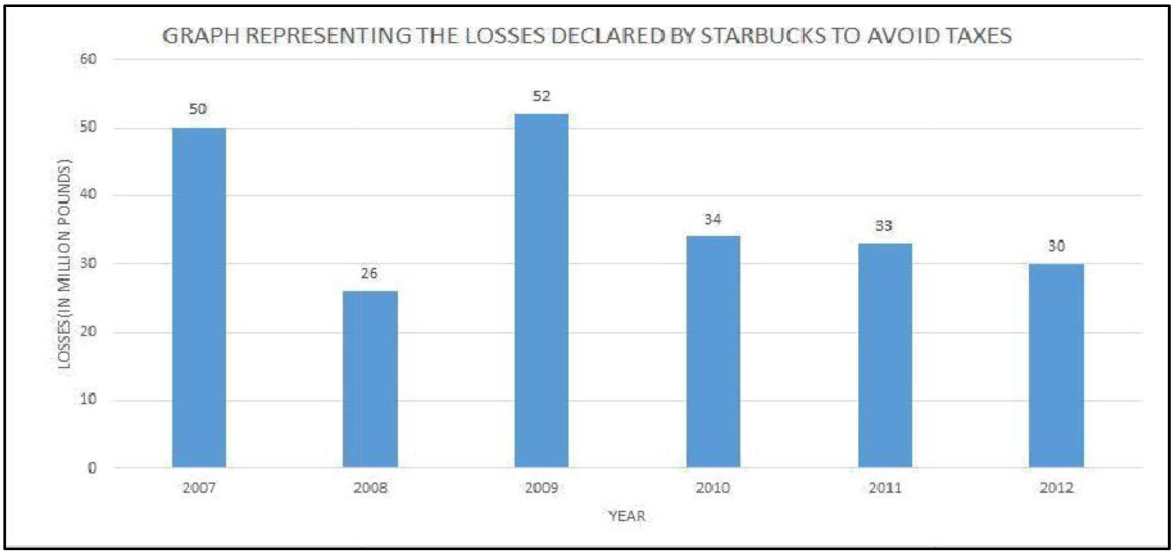
Review of Literature: A study conducted by Sabine Vollmer on How to get ready for BEPS tax reporting rule changes. It required Multinational Enterprises with annual revenue of \$830 to report income and Taxes. These Enterprise were required to report and Exchange Country to Country data and information. This Study highlighted on the statement that each Enterprise should take major steps and necessary actions to ensure that they have controls and processes in place for no further discrepancies. According to the study, Each Enterprise should have described their policies, procedures, people, and technology in place to be able to collect comparable cross-border tax and transfer-pricing information across its operations (Vollmer, 2016).



Source: McCarthy, 2017(www.statista.com)



Source: March, 2017 (www.bdo.com)



Source: Bergin, 2015 (www.reuters.com)

This report highlighted the reasons for the existence of tax havens and the need for BEPS project. Tax havens provide low tax rate as well as confidentiality of the financial information of the MNC'S which motivated them to conceal their profits and evade tax. These led to huge economic losses for the developing countries and hence the need to launch BEPS projects. From this report it was concluded that there are many powerful people for whom the privacy financial information is of utmost importance and the benefits that these tax havens received in return fuelled BEPS (Parmar & Vashishtha, 2018).
In this study, the authors tell us about the challenges faced for taxing the digital transactions. The reasons for the failure of DTAA is explained. The first BEPS action plan, Digital Economy is the high point in the article. The E companies evade tax in countries where they have notable presence. Hence, the steps taken by India are equalisation levy off 6% and 'Significant Economic Presence' [SEP]. The UK,Uruguay, Australia, Spain and Chile had committed to tax digital economy transactions with the help of BEPS Action Plans. According to the study, the foreign suppliers are accountable to pay tax on the digital services (Harlalka & Sarna ,2019).

The article titled 'Deliverable Neutralising the Effects of Hybrid Mismatch Arrangements and its compatibility with the non-discrimination provisions in tax treaties and the Treaty' illustrates Action Plan 2. It proposed the necessity of solving the issue of Mismatch Agreements. It focused more towards the exemption / non-inclusion, double deduction schemes. It also analysed and made sure that these proposals go Hand on Hand with the non-discrimination Provisions contained in Tax Treaties (Rust, 2017). BEPS Action Plan 3, Controlled Foreign Company (CFC) had accounted for the foreign company which was controlled by resident of a country. CFC rules helped in preventing the shifting of profit to low tax jurisdiction and also avoided double non taxation. The six blocks of functional CFC rules were explained. The tax law of India did not contain the CFC rules. If CFC rules are adopted by India then it would boost the economy. The author has focused on the importance of the CFC rules (Kanabar, 2017). The author in this study has expressed his opinion on the new sec 94B of The Income Tax Act, 1961 which was proposed by the Honourable Finance Minister in the union budget for the FY 17-18 whether it is in accordance to the action plan 4 of the BEPS project. This provision provides for tax deductibility on interest and not dividends persuaded the companies to structure their capital with more debts than equity. Action plan 4 limits base erosion through interest deductibility. Countries like USA, Greece, Spain, Portugal had already made provisions for interest deductibility before the recommendations of OECD. (Shah, 2017). This article explains action plan 5 and how this plan deals with countering harmful tax practices. The main focus of the plan was to bring transparency which was bought by ensuring substantial activity in the preferential regime and also by exchange of information of certain rulings. Through this article he has highlighted on the requirements for substantial activity to take place IP and non-IP regime. The focus should be more on the income and the expenditure of the tax payer while exploiting the IP asset for IP regime and for non-IP regime the focus should be on the core activities necessary to earn income. These were concluded to be the requirement for substantial activity to take place (Ved, 2015). Shyam Nori in the report explains the BEPS Action Plan 7, preventing the artificial avoidance of Permanent Establishment. The change in the definition of Permanent Establishment was elaborated. The problems with Commissionaire Arrangement and article 5(4) was made clear. The deemed to be Permanent Establishment conditions were conveyed. Multilateral Instrument and Indian DTAA are affected by Permanent Establishment. If a company carries out promotion and marketing activity then it is not a Permanent Establishment according to action plan (Nori, 2017). The Focus of the study lied on the Action Plan relating to Transfer Pricing for Intangibles and Cost Contribution Arrangements. The Article made strong points which showed that Base Erosion and Profit Shifting (BEPS) made very minimal Progress on the Transfer Pricing, thoughit holds a very Significant and prominent Position on the list of Action plans. Being Specific, it clearly mentioned that it achieved little but created a lot of confusion and incoherence in context of a few rules and policies of Cost Contribution Arrangements (Brauner, 2016). OECD in the explanatory statement discussed about the Action Plan 12, Disclosure of aggressive tax planning arrangements. The information about the tax planning arrangement of the MNC's was not issued to the tax authorities of various countries. This might lead to aggressive tax planning. The author states that the Action plan will ensure that the tax planning information is shared and they can be aware of the risk involved. This helped in preventing tax evasion. This report also tells that disclosure of tax planning strategies lead to a multilateral instrument for various countries (OECD, 2015).

Research problem: A Study on the Practice and Impact of BEPS and Its Action Plans. By far one of the greatest concerns for any government is the development of the country and welfare of the citizens. The major source of revenue for the government is Tax. Government faced huge Losses when Large MNC's started diverting their Profits into Tax Havens. This loss effected the development in many ways especially the infrastructural development. To avoid these losses, development of every country and blocking every loophole OECD developed BEPS action plans.

Need for the study: Tax paying is essential for the development of a country and also for the welfare of its people. Many MNC's across the world have escaped themselves from paying taxes through Base Erosion and Profit Shifting (BEPS). This had led to huge losses for its government. This stems the need to study BEPS and its action plan which serves as a solution for BEPS. It was founded that many people were not aware about BEPS and the importance of its action plans. The need for this study is to create awareness about BEPS and the importance of the action plans and to notify the common man how these MNC's have evaded tax and why this needs to be stopped. By the knowledge of the action plans many losses faced by the government can be saved and therefore transparency can be bought about in the system.

Research objectives

- To create awareness about Base Erosion and Profit Shifting (BEPS) and its action plan among the readers.
- To differentiate between the before and after effects of the implementation of BEPS action plans.
- To understand the loop holes of the tax laws and how MNC'S are shifting their profits to tax havens.

RESEARCH METHODOLOGY

The research paper is a result of Basic and explanatory research based on the secondary data sourced from E-books, journals, articles and reports.

Qualitative data is used for gathering the data related to the impact, the reaction of MNC's towards the implementation, Development status etc. The gathered Quantitative data is also been helpful in preparation of the graphs and these are analysed to meet the objectives of the study.

Research analysis and interpretation: The above graph depicts the data of the estimate corporate tax losses suffered by ten major countries across the globe. Reports suggest that around $600 billion dollars is lost every year due to profit shifting made by the MNC's across the globe. Upon the analysis of the graph it is noted that the USA faces the highest tax loss of approximately $189 billion dollars whereas South Korea and United Kingdom face a loss of $1.1 billion dollars being the least among the above-mentioned countries. China has the second highest annual losses of $66.8 billion dollars while Japan is also affected with an annual loss $46.8 billion dollars. India being the fourth on list records an annual loss of $41.2 billion dollars while France accounts for an annual loss $19.8 billion dollars. As we move towards the remaining countries Germany Australia and Spain record annual corporate losses of about $15, $6.1 and $5.5 billion dollars respectively. The MNC's of these countries have the capacity of profit shifting as the governments of these respective MNC's have no knowledge about their profits, tax paid, companies or names under which these MNC's operate. These countries due to profit shifting lose approximately 2-3% of their annual tax revenue which is an alarming rate and this in turn hampers the development of these countries (Mccarthy, 2017). This pie chart depicts the percentage of concern that each action plan generates towards BEPS. Among them Transfer pricing constitutes 51%.

Action plans 8,9,10 and 13 provides guidelines towards Transfer pricing. These plans provide basic guidance on transactions involving valuable intangibles and allocation of risk to prevent misallocation of profits, recharacterizing transactions and maintaining appropriate documents such as master files, local files, country by country report. 14% of the pie chart concerns towards Interest deduction and other financial payment (Action plan 4). This plan conveys methods by which the tax base can be prevented from erosion by using the interest expenditure. Multinational enterprises (MNE's) structure their capital in a way that helps them to claim excessive interest payment. 11% of the pie chart concerns towards Permanent Establishment rules (Action plan 7). It tries to prevent the commissionaire arrangements and other such strategies. Commissionaire arrangements involves a local enterprise selling a foreign enterprise's products in its state and under its name. 7% of the concern lies towards Controlled foreign corporation rules (Action plan 3). Blocks are developed under this plan to prevent shifting of income to foreign subsidiaries located in low tax jurisdictions. 10% concern lies in hybrid mismatch arrangements (Action Plan2). Hybrid instruments and hybrid entities are used in this plan to counter to counter multiple deductions or double non taxation. 5% concerns towards Digital Economy (Action Plan 1).

Treaty Abuse does not show any major concern as it constitutes 0% in the Pie Chart. (Heiselmann, 2017). The above graph represents the losses made by Starbucks in UK from 2007 to 2012. In the year 2007, Starbucks CEO Martin Coles said that UK profits will fund them for global expansion. in spite of the above statement, UK showed a loss of 50 million pounds. they paid 0% corporate tax. In the year 2008, The CEO Schultz was so happy with the business in UK that he wanted to use the same strategy in US. But the losses as per the financial statement showed a loss of 26 million pounds. For the year 2009, CFO Alstead stated that the UK firm was highly profitable. The financial statement showed a loss of 52 million pounds. In 2010, Starbucks said to its investors that the sales in UK showed a growth but the losses reported were 34 million pounds. In 2011, Starbuck president Jhon Culver said that they are delighted with the performance of Starbucks in UK. Their financial report recorded a loss of 33 million pounds. In the year 2012, the loss had reduced to 30 million pounds. Starbucks used many arrangements like payment of interest, royalty, etc to avoid the tax rate in UK. The company paid a total of 8.6% of total corporate tax from 2007 to 2012. They used Netherland and Luxembourg to shift their profits in order to avoid the tax. The public in UK revolted against and boycotted Starbucks. Hence, they agreed to pay the tax fairly. (Bergin, 2013)

Further scope of study: In this study of Base Erosion and Profit Shifting (BEPS) and its action plan we have majorly focused on its impact and the awareness about BEPS that one needs to have about BEPS. Base Erosion and Profit Shifting is a wide topic and hence there are many unexplored areas. The further scope of study could be the engagement of developing countries in the BEPS project so far, recent developments in international taxation and to further study various examples of companies that have resorted to tax avoidance.

Limitations of the study: While conducting the study, lack of study material caused a hindrance to the study. The deadline provided to us caused a time constraint in conducting a thorough research. Lack of Awareness and visibility of this topic caused an issue in gathering informative information.

Conclusion

From this study we can conclude that the topic selected has very less visibility and awareness. The analysis conducted gave a brief description of BEPS and its action plans and also showed us the countries who adopted them. The adoption of BEPS by countries made it difficult for many major MNC's (mentioned above) to avoid Tax. Through this study we provide the readers with the basic information and require them to understand the importance of BEPS and its action plan. Not just understand but also inculcate and conduct further thorough analysis of BEPS as a whole or any Action plan which interests the

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