

# ***The Future of Inter-Governmental Cooperation on Value Added Tax Avoidance and Evasion. What's to be done?***

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## **Text of Abstract**

This paper reviews the current initiatives on design and application of anti-avoidance and related rules in a VAT context. It focuses on discussions within the OECD membership about alignment of measures to control evasion of value added taxes; avoidance of value added taxes; and “abusive practices” in a VAT context. It places this debate within the context of the BEPS initiative. It considers the feasibility of; and questions the desirability of alignment of practices within domestic jurisdictions undertaken with a view to developing global means of combatting various forms of tax minimisation through international cooperation.

## **Introduction**

Australia is experiencing an unusually acute focus on tax policy in recent months. This has taken two forms, the one being the focus in the media<sup>2</sup> and politics<sup>3</sup> on tax minimisation by multinational entities; and the other being the raised awareness of the need to undertake tax reform.<sup>4</sup> The Australian Goods and Services Tax is not immune to the influences imposed by these two sources of emphasis. This attention to GST coincides with a growing focus in the Organisation for Economic Development (OECD) on Value Added Tax (VAT) and the VAT rules that operate in OECD member states.

The OECD Global Forum on VAT in November 2015 the delegates welcomed<sup>5</sup> the fact that the OECD's Committee on Fiscal Affairs (CFA) had approved a complete set of International Guidelines

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<sup>2</sup> See for example Heath Aston “ATO widens its multinational tax avoidance net to 80 companies”, *Sydney Morning Herald* 7 October 2015.

<sup>3</sup> See Australian Federal Treasury “Tax Evasion and Multinational Tax Avoidance” at <http://www.treasury.gov.au/Policy-Topics/Taxation/TaxLaws>. (Accessed 6 January 2016).

<sup>4</sup> See the Federal Treasury Tax Reform website at <http://bettertax.gov.au/problem/tax-system/> (Accessed 6 January 2016).

<sup>5</sup> OECD Global Forum on VAT 2015 “Statement of Outcomes on VAT” at <http://www.oecd.org/tax/consumption/statement-of-outcomes-on-vat-gst-guidelines-2015.pdf>. (Accessed 7 January 2016).

on VAT.<sup>6</sup> As might be expected, the Guidelines reflect (inter alia) the current concerns associated with the integrity of the tax system. They thus have sections that include “... recommended rules and implementation mechanisms for the effective and coherent VAT treatment of supplies of services and intangibles to private consumers (B2C) , which will facilitate the efficient collection of VAT due on these transactions, thus helping jurisdictions to prevent distortion of competition between domestic and foreign suppliers”.<sup>7</sup>

And they include “...Guidelines on the application of VAT to cross-border supplies of services and intangibles in the Base Erosion and Profit Shifting (BEPS) package that was endorsed by the OECD Council on 1 October 2015 and that was delivered to G20 Finance Ministers on 8 October 2015”.<sup>8</sup>

But they are by no means complete when it comes to general principles concerning anti-avoidance. Indeed the announcement of outcomes from the Global Forum anticipated more being done in this respect and they looked forward to further work:

“...on areas that are not yet covered by these Guidelines. ...[Which] ... could include research and analysis of approaches to improve neutrality and overall performance of VAT systems, such as through the design and implementation of efficient VAT refund mechanisms and risk assessment processes. This work could also include the development of a possible framework for the exchange of information and enhanced administrative co-operation in the area of VAT. Future work could also focus on the application of VAT to cross -border trade in goods, including on the collection of VAT on low value imports, and on good practices to address compliance issues.

Work might also need to be developed on the interaction between VAT and the international direct tax framework, notably in the area of transfer pricing;”<sup>9</sup>

This suggests that the OECD has work ahead of it that will involve securing agreement on what measures jurisdictions can introduce to control evasion and avoidance and what some term “abusive practices”. This paper discusses some of the opportunities and challenges associated with this work.

## **Defining the problem or the problem of defining**

One of the greatest challenges facing the OECD in the context of developing guidelines is that of defining what forms of tax minimisation are to be regulated. Readers would be aware of the debate associated with separating a taxpayer’s efforts to pay only the correct amount of tax into categories constituting what is acceptable and what is not. To this author’s mind the distinction between the various forms of activity possible is fairly clear but it may not be clear to everyone and this lack of clarity possibly becomes more pronounced across national cultural boundaries. The late Prof Tiley once noted that no-one “seems to have a very precise idea of what is meant [by the terms tax

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<sup>6</sup> The Guidelines may be downloaded at <http://www.oecd.org/tax/consumption/international-vat-gst-guidelines.pdf> (Accessed 6 January 2015).

<sup>7</sup> OECD Global Forum on VAT 2015 “Statement of Outcomes on VAT” at <http://www.oecd.org/tax/consumption/statement-of-outcomes-on-vat-gst-guidelines-2015.pdf>. (Accessed 7 January 2016).

<sup>8</sup> See n 7.

<sup>9</sup> See n 7.

evasion and tax avoidance]”<sup>10</sup> and The Hon Denis Healey UK Chancellor of the Exchequer once explained that “the difference between evasion and avoidance was the thickness of a prison wall.”

The OECD has voiced the difficulty in the International Guidelines as follows:

“There are no common OECD definitions of the terms evasion and avoidance. However, these concepts are covered in the *OECD’s Glossary of Tax Terms*, as follows:

**Evasion:** A term that is difficult to define but which is generally used to mean illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from tax authorities.

**Avoidance:** A term used to describe an arrangement of a taxpayer’s affairs that is intended to reduce his liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow.”<sup>11</sup>

But the OECD recognises that at a national level there may not be complete agreement and adds that: “In the context of the Guidelines, the foregoing definitions are used for illustrative purposes only. They might not reflect the specific definitions that may exist in a national context or beyond the application of rules based on an interpretation of the Guidelines.”

### **The difference between tax avoidance and tax evasion**

Despite this it does venture to suggest a distinction that in this author’s opinion is workable, albeit that it is expressed in tentative terms. The suggestion in the OECD’s VAT Guidelines is as follows:

#### **“D.2 Illustration of the concepts of evasion and avoidance in a VAT context**

4.27 Evasion could include the falsification or suppression of evidence or making false statements that result in VAT not being remitted to governments or that lead to inappropriate refunds being obtained from governments.

4.28 Avoidance could include situations resulting in a VAT advantage that is contrary to the intention of a law that is consistent with the Guidelines. Indications of VAT avoidance could include transactions that have been entered into solely or primarily to avoid VAT, or to gain a VAT advantage, and that are artificial, contrived, or lack economic substance. However, advantages provided for by law would not be deemed avoidance unless they are exploited to achieve an unintended result.”

For this author the difficulty is mainly at the boundaries. In straight forward cases and for operational purposes the rule of thumb is that tax evasion is illegal, and tax avoidance is not. When it comes to boundaries however, tax planning and/or mitigation is sometimes seen as a subset of avoidance, although often it exists as an independent category. How it is regarded depends on the context. What is clear is that tax planning and tax mitigation are never the same as, or part of, evasion. Evasion attracts criminal sanctions, tax avoidance that is unacceptable may attract civil

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<sup>10</sup> Tiley, J., *Revenue Law*, 4th edition, Hart Publishing, Oxford, 2000 at 85.

<sup>11</sup> OECD “International VAT/GST Guidelines” Nov 2015, para 4.25.

penalties, and tax minimisation will be disregarded by the tax authorities unless it is found to be avoidance.

It is perhaps to resolve some of these boundary issues that the Australian Tax Office has used the term “aggressive tax planning” to refer to types of tax avoidance it regards as unacceptable.

## Abuse of tax law

The national and cultural differences that can arise are evidenced by the essentially European concept of “Abuse of Law” which can encompass both tax avoidance and tax evasion. The distinction between the two is recognised only in relation to what consequences might follow a taxpayer’s having engaged in it. According to the French Tax Administration “French law allowing the administration to claim VAT amounts that have been avoided doesn't make differences among between [sic] avoidance and evasion”.<sup>12</sup> Furthermore the “...difference between avoidance and evasion only concerns the sanction that will be inflicted (i.e. administrative sanction and/or criminal complaint)” and, more significantly:

“French law enforce [sic] a general anti-avoidance rule

– Article L.64 of the French tax proceedings book

– Two types of situations targeted

Abuse of law by *fraus legis*

Abuse of law by simulation.”

Abuse of law by *fraus legis* (fraudulent use of law) is the use of a legal construction with the dominant purpose of tax minimisation.<sup>13</sup> The abuse of law by simulation is the equivalent of sham in common law.<sup>14</sup> This analysis does somewhat over simplify the position, however, as demonstrated by De la Feria<sup>15</sup> who explains that the European Court has embraced concepts of “abuse” as grounds for sanctions against perpetrators but that the concept of an abuse of rights is not known in all Member states.

“Some domestic legal systems include the principle, others do not; ... some give the principle a broad scope of application, others a more restrictive one. Overall, it can be said that civil law systems generally accept the principle of abuse of rights to some degree. In France, where the principle is believed to have been developed, the principle has very wide application, whilst in other civil law countries, such as Germany, the application of the principle is more limited. Conversely, common law systems, namely those of the United

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<sup>12</sup> B. Llorca Session Material “Parallel Session F” OECD Global Forum on VAT Nov 6 2015 <http://www.oecd.org/ctp/consumption/session-material-global-forum-vat-2015.htm> (Accessed 7 January 2016).

<sup>13</sup> See F. Vanistendael, in *Tax Law Design and Drafting Vol 1*, V. Thuronyi (Ed) IMF 1996, at 39.

<sup>14</sup> See V. Thuronyi, *Comparative Tax Law*, Kluwer International 2003, at 157.

<sup>15</sup> R. De la Feria “Prohibition of Abuse of (Community) Law: The Creation of a New General Principle of EC Law Through Tax”, (2008) 45 *Common Market Law Review*, 395-441.

Kingdom and Ireland, do not recognize the principle; the same applies to Denmark and other Nordic systems, which follow the common law approach.”<sup>16</sup>

She adds that the European Court has further confused the terminology in tax cases and she explains that it has

“...not always adopted a coherent approach regarding the terminology used to describe abusive practices. In fact, for many years the Court used words such as “avoidance”, “evasion”, “circumvention”, “fraud” and “abuse”, in an apparently interchangeable fashion. Moreover, two of those words were sometimes used in the same sentence, separated solely by the conjunction “or”, and thus implicitly indicating that the Court considered these terms to be synonymous.”<sup>17</sup>

As the European Commission is a participant in the work of the OECD,<sup>18</sup> and twenty EU member countries are also OECD members, the influence of European jurisprudence in this area is likely to be significant and thus De la Feria’s comments suggest that there might be obstacles to reaching a common understanding of the boundaries of permissible and impermissible tax structuring in order to establish a common approach to countering activities that are seen as harmful.

There are other challenges associated with countering unacceptable tax avoidance, one of which is the character of VAT/GST in that unlike many other taxes the tax treatment in one party’s hands is matched by a reflex treatment in the hands of another party. This feature is shared to some extent with the allowable deduction rules in income tax and will be discussed further below.

## **The characteristics of VAT/GST inputs and outputs and adjustments**

One of the features of a value added tax such as VAT or GST is that a taxable supply in the hands of one participant in the tax system will often provide an input tax credit in the hands of another if that other is not the final consumer of the taxable item supplied. This means that a decision to the effect that a supply is taxable or not, or that an input is creditable or not, may have implications for another party. In order to recognise this and allow adjustments to be made the Australian GST anti avoidance rules afford the Commissioner a general power to adjust the GST outcomes for other parties.

Section 165-45 allows the Commissioner of Taxation to reduce an entity’s GST liability in order to compensate for having negated the GST benefit an entity gets from a tax scheme if the Commissioner considers that some other entity suffers a disadvantage under the scheme and that it is fair and reasonable to negate or reduce that disadvantage. The discretion may be exercised on

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<sup>16</sup> R. De la feria, n 15, at 395.

<sup>17</sup> R. De la feria, n 15, at 395 - 396

<sup>18</sup> The OECD explains that “Supplementary Protocol No. 1 to the Convention on the OECD of 14 December 1960, the signatories to the Convention agreed that the European Commission shall take part in the work of the OECD. European Commission representatives participate alongside Members in discussions on the OECD’s work programme, and are involved in the work of the entire Organisation and its different bodies. While the European Commission’s participation goes well beyond that of an observer, it does not have the right to vote and does not officially take part in the adoption of legal instruments submitted to the Council for adoption.” See <http://www.oecd.org/about/membersandpartners/> (Accessed 7 January 2016).

application<sup>19</sup> or on the Commissioner's own volition. The exercise of the discretion is conditional upon the Commissioner making an adjustment that negates a benefit that another entity (the avoider) obtained<sup>20</sup> and the result of the adjustment is not to exceed the benefit the GST "loser" would have had were the scheme not entered into.<sup>21</sup>

The challenge that the wider community of OECD members faces in relation to adjustments of this nature is that where an adjustment might affect parties dealing across national borders that adjustment would need to be made by a foreign tax authority. The circumstances in which this might be necessary will be relatively few because VAT/GST is to a great extent interrupted by borders in that, as a general rule, VAT/GST on exports is usually zero rated (in VAT language) or GST-free (in Australian GST terminology) and imported items are usually subjected to VAT/GST at the border where the tax is borne by the resident business in the importing jurisdiction. Thus the supplier and acquirer are not so closely linked as domestic parties which are both subject to the consumption tax. But situations where the VAT/GST status of the item supplied has an effect on both parties either side of a border could arise – indeed, possibly in circumstances where the supply in question is not regarded as having been truly exported/imported.

Does this potential need for an adjustment mechanism that is operational across international boundaries pose an insurmountable problem? At one level the answer may be that it does not because such effects can simply be ignored. A better answer may, however, be to consider how similar situations are dealt with in international tax. In many jurisdictions transfer pricing adjustments made by the revenue authority are undertaken in such a way as to alleviate consequences for related parties.

Corresponding adjustments are sometimes made under laws that give a revenue authority the power to adjust the price related to intercompany transactions so as to clearly reflect income of an appropriate amount. Generally, when the relevant revenue authority finds that intercompany transactions are inappropriately priced, it will impose or propose an adjustment increasing that party's income. This increase in taxable income is usually referred to as the 'primary adjustment'. Thus if in 2015 X Co resident in X purchases goods from its solely owned subsidiary Y Co. resident in Y for \$100 in circumstances where the correct arm's length value of the goods is \$125 a review by the tax authority in Y may seek to recognise the correct arm's length price of \$125. The adjustment upwards of Y Co's income by \$25 would be the primary adjustment. Left unchallenged, Y Co has income of \$125 but X Co has a deduction of only \$100. The result is double taxation.

To avoid this outcome the authorities in X may agree to an adjustment to increase the deduction available in X. If the authorities in X so agree, the adjustment will be made. This adjustment is known as a correlative or corresponding adjustment. Usually such an adjustment will be made by seeking competent authority assistance from the relevant revenue body in country X.

The effect of the primary and corresponding adjustments is to shift the income from X Co to Y Co in so far as tax liability is concerned. However, the cash accounts of X Co and Y Co will still show that X

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<sup>19</sup> Section 165-45(5) *A New Tax System (Goods and Services Tax) Act 1999*.

<sup>20</sup> Section 165-45(1) *A New Tax System (Goods and Services Tax) Act 1999*.

<sup>21</sup> Section 165-45(4) *A New Tax System (Goods and Services Tax) Act 1999*.

Co received \$125 worth of goods for only \$100. This may necessitate the excess value transfer to X Co by Y Co to be appropriately recharacterised for income tax purposes.

The characterisation of the excess profit will generally take one of two forms:

1. deemed distribution or dividend, or
2. capital contribution.

A similar lack of symmetry might arise in situations involving a VAT/GST liability. Assume a set of circumstances in which a Y Co claims to have exported goods from Y to X Co in country X. Under usual VAT/GST treatment the export will result in no tax being paid in the exporting country and VAT/GST (and possibly Customs duty) being paid on entry of the goods into country X unless some form of relief applies such as that the goods are to be used in the carrying on of an enterprise by X Co and thus the availability of an input tax credit obviates the need to pay consumption tax. If the tax authority in Y were of the view that for whatever reason the goods had not been, in a proper legal sense, exported (perhaps because they had been reimported into Y for consumption there, or some or other legal condition had not been met) the VAT/GST exemption on their purported export would be denied. If the tax were required to be recovered from X Co (perhaps by a contractual arrangement between the two companies) it would likely request to be allowed to recognise that tax payment as a credit towards any consumption tax liability on the import into country X, without such a facility, double taxation/input taxation would arise.

To avoid such double taxation it would be desirable for countries X and Y to have some mechanism to alleviate and resolve such mismatches. The OECD Model Convention does not extend to VAT/GST and thus cannot assist in a direct way through the Mutual Agreement Procedures normally available where Transfer Pricing mismatches arise.<sup>22</sup>

If the general support of multinational; enterprises is to be obtained, the OECD will need to develop mechanisms for dealing with VAT/GST mismatches of this sort and the lack of ready machinery in the Model Convention will make this challenge even more difficult. As things stand there are criticisms of the Mutual Agreement Process (MAP), which appears to be under some stress.

Markham has identified some of the considerations at play noting that the OECD has acknowledged the need to improve means of dispute resolution and that disputes have increased in recent years and under *Base Erosion and Profit Shifting (BEPS)* initiatives they will increase further.<sup>23</sup> In her work Markham noted that "...at the end of 2013, there were 4566 open MAP cases in OECD member countries in ending inventory, representing a 12.1 per cent increase compared to the 2012 reporting period, and a startling 94.1 per cent increase compared to the 2006 reporting period...".<sup>24</sup> Although

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<sup>22</sup> From the point of view of the revenue authorities the situation appears more optimistic as Article 26 on Exchange of Information and Article 27 on Assistance in Collection of Taxes apparently extend to every kind of tax (if that is agreed by the parties) and are not necessarily limited by the references to "income" and "capital" in Article 2 and elsewhere.

<sup>23</sup> Michelle Markham "Mandatory binding arbitration—is this a pathway to a more efficient map?" (2015) *Arbitration International*, 1-22.

<sup>24</sup> Markham n 23, at 2. The author noted that MAP cases involving two OECD member countries were double-counted here – but the number and increase are nevertheless significant.

sometimes complaints may seem exaggerated,<sup>25</sup> there are many criticisms of the MAP system, mainly associated with delay and lack of the opportunity on the part of the taxpayer to be heard.<sup>26</sup> That it will come under further stress and criticism under *BEPS* cannot be doubted.

## Information sharing

Although tax conventions seem to be somewhat unhelpful in the context of double taxation arising from mismatches and adjustments to tax and input credits, the OECD has made rather more progress assisting jurisdictions to share information and encouraging compliance. The author has elsewhere described some of the mechanisms that have been developed for exchange of information and checking of information so as to enable revenue authorities to identify irregularities.<sup>27</sup> These initiatives mainly address evasion – but could also identify avoidance activities that are of concern. They principally involve managing information and checking it so as to assist in the identification of irregularities.

The main instruments involved are the *OECD Convention on Mutual Administrative Assistance in Tax Matters*;<sup>28</sup> and the model *OECD Tax Information Exchange Agreement*. The former of these is a product of the OECD together with the Council of Europe and is open for signature by all countries, not only OECD or EU members.<sup>29</sup> As has been said elsewhere

“The Convention is aimed at combating loss of revenues, including VAT revenues, caused by both legal and illegal tax minimization activities by, inter alia, exchanging, on request or spontaneously, information concerning particular persons or transactions; simultaneously investigating the tax affairs of a person within both jurisdictions; and permitting tax officials of one state to be present at the appropriate part of a tax examination in the other state.”<sup>30</sup>

It is perhaps too soon to see clearly how effective the Convention will be, it entered into force in Australia on 1 December 2012.<sup>31</sup>

The *OECD Tax Information Exchange Agreement (TIEA)* model agreement has spawned widespread signing of *TIEAs* around the world. Whereas the Convention on Mutual Assistance is multilateral the

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<sup>25</sup> See Brian Kovak, Lindsay Oldenski, Nicholas Sly, (2015) “The Labor Market Effects of Offshoring by U.S. Multinational Firms: Evidence from Changes in Global Tax Policies” - Working paper ([http://www.contrib.andrew.cmu.edu/~bkovak/Kovak\\_Oldenski\\_Sly.pdf](http://www.contrib.andrew.cmu.edu/~bkovak/Kovak_Oldenski_Sly.pdf)), state that “Statistics reported from competent authorities across the OECD indicate that the overwhelming majority of requests by multinational firms do result in a reduction in tax liabilities.”

<sup>26</sup> See for example the discussion in Peter A. Barnes, Michael J. Bernard, Carol A. Dunahoo, David Swenson and Hal Hicks (2009) “Controversy and Dispute Resolution—Developments, Trends and Practical Solutions” *The Tax Magazine*, June 2009 at 59 – 70.

<sup>27</sup> M. Walpole “Tackling VAT Fraud” (September/October 2014) *International VAT Monitor* 258-263.

<sup>28</sup> OECD/Council of Europe, *Convention on Mutual Administrative Assistance in Tax Matters*, 25 Jan. 1988

<sup>29</sup> See M. Walpole n 27 at 262.

<sup>30</sup> M. Walpole n 27 at 262.

<sup>31</sup> The Convention came into force in Australia on 1 December 2012. See <http://www.treasury.gov.au/Policy-Topics/Taxation/Tax-Treaties/HTML/Convention-on-MAA-in-Tax-Matters>



TIEAs are bilateral. Australia has signed 36 TIEAs<sup>32</sup> and they also cover VAT. Whereas the *Convention on Mutual Assistance in Tax Matters* can result in voluntary sharing of information, information can be shared under a TIEA on request. The state making the request must have exhausted all the means of obtaining the information within its own jurisdiction first, and has to confirm that it has done so before making a request under the TIEA. Another limitation to the TIEA is that the tax authorities of one state may carry out tax examinations in the other state or be present at tax examinations in that other state only with written consent of the persons concerned.

Early indications are that TIEAs are effective in reducing income tax and corporate tax avoidance. In one paper from Germany the authors have suggested that compared with a control group, multinational enterprises operating in tax havens decreased by 46% after Germany entered into TIEAs with those havens.<sup>33</sup> This finding, if representative, does not necessarily have implications for VAT/GST but the authors take it as an indication that tax havens are valued by investors not only for their lower tax rates but also for the secrecy available to investors operating in those havens.

In the context of Transfer pricing at least, there seems to be general consensus amongst commentators that information sharing will dampen efforts by multinational enterprises to minimise income tax.<sup>34</sup> There does not seem to be much information yet on the subject of consumption taxes and the impact of information exchange on such taxes. It would seem likely, however, that if the loss of secrecy does indeed lead to better collection of income tax, it may also result in greater integrity for indirect taxes. This prediction is made, however, on the basis of likely behaviour. It remains to be seen whether the power of TIEAs and the *Convention on Mutual Assistance in Tax Matters* will be realised. This is because what these agreements indicate a revenue authority could do may not always reflect what they are successful in doing. As one writer puts the situation:

“A warning — looking at international regulation gives a very much a one-sided perspective — human rights and civil liberties do not feature at that level.”<sup>35</sup>

The point that must be remembered is that there may be judicial remedies to prevent or at least delay the actions of a revenue authority in obtaining information under an exchange agreement or in using that information. That having been said, it may be that many taxpayers will be averse to engaging in activities that will end up in their having to defend their privacy.

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<sup>32</sup> See <http://www.treasury.gov.au/Policy-Topics/Taxation/Tax-Treaties/HTML/TIEA> (Accessed 12 January 2016).

<sup>33</sup> Julia Braun and Alfons Weichenreider, “Does Exchange of Information between Tax Authorities Influence Multinationals’ Use of Tax Havens?” (2015) *Centre for European Economic Research* Discussion paper 15-115. (<http://ftp.zew.de/pub/zew-docs/dp/dp15015.pdf> Accessed 12 January 2016).

<sup>34</sup> See for example Jingyi Wang, “Does a more transparent international tax environment provide the same outcomes as transfer pricing would but in a less arbitrary way?” (2015) 30 (2) *Australian Tax Forum* 265-298; Michelle Hanlon, Edward I. Maydew, and Jacob R. Thornock, “Taking the Long Way Home: U.S. Tax Evasion and Offshore Investments in U.S. Equity and Debt Markets” (2015) LXX (1) *The Journal of Finance* 257-287.

<sup>35</sup> Tom Lowe, QC “Cross-border tax investigations and the OECD’s Tax Information Exchange Regime” *Trusts & Trustees* (2015) 21 (9) 1012-1026 at 1013.

## Conclusion

It would seem that the OECD has gone a considerable distance in assisting to establish an environment where tax evasion and even tax avoidance involving VAT/GST in an international context is unattractive to taxpayers. The loss of the secrecy that that may have been present before has now left taxpayers (or perhaps they should be termed “non payers”) exposed to possible investigation either on request, under a *TIEA* by a tax authority that is investigating their activities, or under the *Convention on Mutual Assistance in Tax Matters* which may involve a request or not. If taxpayers are risk averse and disinclined to have to argue about their tax position, they may be less likely to engage in aggressive VAT/GST structuring to derive a tax benefit. On the other hand the operation of such treaties will not, on their own, give tax authorities *carte blanche* in analysing the affairs of such taxpayers and acting on their conclusions. There remain some legal remedies, perhaps more in some jurisdictions than others.

In addition, the discovery of suspicious tax minimisation is not the end of the story. The OECD has still to tackle the irksome question of what tax structuring is indeed unacceptable – especially as there is likely to be disagreement between jurisdictions on this point – let alone disagreement between taxpayer and revenue authority. In addition, even if this mismatch of perspectives might be resolved, it will be necessary to establish machinery between jurisdictions that ensures that taxpayers are not subject to double taxation and to ensure that entities that are involved in a transaction which is restructured under some or other anti-avoidance remedy are not left disadvantaged by the replacement of the transaction with the revenue authority’s substitute. The Mutual Agreement Procedure in International tax is flawed as it is and faces new pressures under the *BEPS* initiatives – to superimpose the indirect taxes on the existing system will not assist in its improvement.