

# Base Erosion and Profit Shifting – Selected Issues

Amsterdam, 3 - 5 March 2014

## Overview and Learning Objectives

This intermediate-level course provides participants with an in-depth understanding of the current discussions around base erosion and profit shifting (BEPS). Participants of the course will gain a thorough understanding of the main issues involved in BEPS and be given the opportunity to discuss their concerns and potential responses.

The G20 economies, through the work of the OECD as well as the European Union, have identified base erosion and profit shifting (BEPS) as a serious risk to tax revenues, tax sovereignty and tax fairness internationally. The pressure areas identified include those related to:

- tax treatment of related-party debt financing, captive insurance and other intra-group financial transactions;
- the availability of harmful tax regimes;
- the effectiveness of anti-avoidance measures such as GAARs, CFC regimes, thin capitalization rules and treaty anti-abuse rules;
- international mismatches in entity and instrument characterization;
- application of treaty concepts to profits derived from the delivery of digital goods and services; and
- transactions involving intangibles.

Many tax professionals have asked themselves and their colleagues what BEPS means for their businesses and the businesses of their clients. This course is designed to facilitate such a discussion in a safe environment and explore appropriate responses and potential solutions in an objective manner. The tax director of a multinational enterprise (MNE) will be invited to share the MNE's concerns, like reputational risks, and possible actions, for instance adjustment of tax planning structures that are considered too aggressive as a result of BEPS considerations.

## Who should attend?

The course is suitable for practitioners in tax advisory firms, tax specialists in commerce and industry, and government officials.

## Course Level and Prerequisites

This is an intermediate-level course. Participants will be expected to have a basic knowledge of the tax system of at least one country.

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## **Day 1**

- 08.30 - 09.00      **Registration**
- 09.00 - 09.20      **Welcome and IBFD Overview**
- 09.20 - 10.40      **Current Trends in International Tax Planning**
- OECD report on Base Erosion and Profit Shifting
  - G20 and European Union work
  - Other international developments – FATCA and Exchange of Information
  - What is aggressive tax planning?
- 10.40 - 11.00      Break – refreshments
- 11.00 - 12.45      **The MNE's Business Perspective**
- Concerns
  - Actions (review of the structure, transparency, per-country reporting, adjustments of tax planning structures)
- 12.45 - 14.00      Lunch
- 14.00 - 15.40      **Tax Planning for Holding and Financing Activities**
- Goals and objectives of holding/finance companies
  - Examples of common holding/financing structures
  - Captive insurance companies
  - When is the use of a holding/finance/captive insurance company unacceptable?
  - Harmful tax regimes
  - Application of domestic and treaty anti-avoidance rules
    - CFC rules
    - thin capitalization rules
    - anti-tax haven rules
  - Examples and cases
- 15.40 - 16.00      Break – refreshments
- 16.00 - 17.00      **Case Study**

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## **Day 2**

09.00 - 10.40

### **Treaty 'Abuse' and Beneficial Ownership**

- Treaty shopping and 'abuse of treaty'
- Beneficial ownership – domestic or international concept?
- Examples of treaty anti-avoidance rules
- Recent trend and proposed changes
- Practical examples and recent case law

10.40 - 11.00

Break – refreshments

11.00 - 12.45

### **Tax Planning for E-Commerce**

- Different types of electronic commerce
- Electronic commerce under the OECD Model Tax Convention and some concluded tax treaties
- What is taxable?
- Which country gets to tax?
- When is tax planning for e-commerce considered aggressive?
- Some practical issues

12.45 - 14.00

Lunch

14.00 - 15.40

### **Permanent Establishments in Tax Planning**

- Recent OECD updates on PEs and their relevance in tax planning
  - fixed place of business PEs
  - agency PEs
- PEs in business restructuring
- PEs and e-commerce
- PEs and intangibles tax planning
- When are profits attributable to PEs?
- Attribution of profits to PEs under 2008 and 2010 OECD Models
- Practical examples and recent case law

15.40 - 16.00

Break – refreshments

16.00 - 17.00

### **Case Study**

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## Day 3

09.00 - 10.40

### **Tax Planning for Intangibles (and R&D Activities)**

- Different types of tax-efficient IP Models
  - royalty model
  - cost sharing model
  - principal model
- When is tax planning for intangibles considered aggressive?
- Migration of intangible property
- Choice of location in the creation and exploitation of intangibles
- Practical examples

10.40 - 11.00

Break – refreshments

11.00 - 12.45

### **Hybrid Instruments in Tax Planning**

- What are hybrid instruments?
- Taxation of hybrid instruments
  - classification under domestic tax rules: legal form v. economic substance v. specific debt-equity tests
  - examples of country approaches
  - treaty characterization of hybrid instruments
- Hybrid instruments as a tax planning tool – some examples
- Responses to hybrid instrument mismatches

12.45 - 14.00

Lunch

14.00 - 15.40

### **Tax Structuring through Hybrid Entities**

- What are hybrid entities?
- Common examples of hybrid entities
- Meaning of opaque v. transparent tax treatment
- International tax rules concerning partnerships and other hybrid entities
- Tax structures involving use of hybrid entities
- Possible ways to deal with potential conflicts
- Examples of treaty responses to hybrid mismatches
- Other responses to hybrid entity mismatches

15.40 - 16.00

Break – refreshments

16.00 - 17.00

### **Case Study**