

Base Erosion and Profit Shifting ("BEPS") and the OECD

A Panel Discussion

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Milan

8th March 2014



Organisation for Economic Co-operation and Development

- Aim to stimulate economic progress and world trade
- Co-ordinate domestic and international policies of members
- Headquarters in Paris, France
- Secretary General – Angel Gurría, Mexico

34 OECD Member Countries

Australia

France

Korea

Slovenia

Austria

Germany

Luxembourg

Spain

Belgium

Greece

Mexico

Sweden

Canada

Hungary

Netherlands

Switzerland

Chile

Iceland

New Zealand

Turkey

Czech Republic

Ireland

Norway

United Kingdom

Denmark

Israel

Poland

United States

Estonia

Italy

Portugal

Finland

Japan

Slovak Republic



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OECD Timeline

- **19th July 2013** – Action Plan on Base Erosion and Profit Shifting (“BEPS”) was produced and introduced at the G20 Finance Ministers’ meeting in Moscow.
- **13th November 2013** – The OECD held a public consultation on transfer pricing topics at the OECD Conference Centre in Paris.
- **23rd December 2013** – Kazakhstan has become the 64th signatory of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- **30th January 2014** – Discussion Draft on transfer pricing documentation and country-by-country reporting released for public comment.

BEPS

What is it?



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Corporate tax avoidance by multinational firms

- Amazon
- Google
- Starbucks
- Apple



OECD's Current Position

- 15 point Action Plan
- Will roll out over two years, marking a turning point in the history of international tax co-operation. It will allow countries to draw up the co-ordinated, comprehensive and transparent standards they need to prevent BEPS (base erosion and profit shifting).
- The action plan aims to tackle the selling arrangements that are widely used by multinationals, including digital companies such as Google and Amazon to limit their tax bills in countries where they make sales. But broader issues around the taxation of the digital economy will be examined by a dedicated task force.

Summary of 15 Actions

Action	Description
1. Address tax challenges of the digital economy	Identify main difficulties that the digital economy poses for the application of existing international tax rules.
2. Neutralise the effects of hybrid mismatch arrangements	Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect of hybrid instruments and entities.
3. Strengthen CFC rules	Develop recommendations regarding the design of controlled foreign company rules.

Summary of 15 Actions continued

Action	Description
4. Limit base erosion via interest deductions and other financial payments	Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of excessive interest charges.
5. Counter harmful tax practices more effectively	Revamp the work on harmful tax practices with a priority on improving transparency and emphasis on substance.
6. Prevent treaty abuse	Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent granting treaty benefits in appropriate circumstances.
7. Prevent artificial avoidance of PE status	Develop changes to definition of PE.

Summary of 15 Actions - continued

Action	Description
8. Assure transfer pricing outcomes are in line with value creation: intangibles	Identify main difficulties that the digital economy poses for the application of existing international tax rules.
9. Assure transfer pricing outcomes are in line with value creation: risks and capital	Develop rules to prevent BEPS by transferring risks among or allocating excessive capital to group members.
10. Assure transfer pricing outcomes are in line with value creation: other high-risk transactions	Develop rules to prevent BEPS by engaging which would not or rarely occur between third parties.
11. Re-examine transfer pricing documentation	Develop rules regarding transfer pricing documentation to enhance transparency for tax administration.

Summary of 15 Actions - continued

Action	Description
12. Require taxpayers to disclose their aggressive tax planning arrangements	Develop recommendations regarding the design of mandatory disclosure rules for aggressive transactions.
13. Establish methodologies to collect and analyse data on BEPS and actions to address it	Develop recommendations regarding indicators of the scale and economic impact of BEPS.
14. Make dispute resolution mechanisms more effective	Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under the Mutual Agreement Programme ("MAP").
15. Develop a multilateral instrument	Facilitate the development of a multilateral instrument to enable jurisdictions to implement anti-BEPS measures.

Delivery Dates

September 2014

- Digital Economy Report
- Hybrids
- Review of HTP Regimes
- Preventing Treaty Abuse
- Addressing TP aspects of Intangibles (Phase 1)
- Addressing TP documentation
- Multilateral Instrument Report

September 2015

- CFC Rules
- Interest Deductibility
- Strategy on expansion of FHTP
- Addressing avoidance of PE status
- Addressing TP aspects of Intangibles (Phase 2)
- Addressing TP aspects of risks and capital
- Addressing TP aspects of other high risk transactions
- Report on Data and Economic Analyses
- Mandatory Disclosure Rules
- Dispute Resolution

December 2015

- Addressing TP Interest Deductions
- Revision of HTP Criteria
- Multilateral Instrument

The Digital Economy

- First meeting of the Task Force in October 2013
 - Analysis of business models and identification of special features of digital economy players (such as mobility, reliance on data, network effects, multi-sides business models)
 - Effects of these features on BEPS strategies
 - Actions to tackle BEPS in the digital economy
 - Broader, systemic issues raised by the digital economy and options to address them
- Second meeting in February 2014
- Discussion Draft out for comments in March 2014
- Public Consultation in April 2014
- Report to be finalised by September

Treaty Abuse

- **Aim:**
 - Restore full effects and benefits of international standards
- **Tools:**
 - Anti treaty abuse provisions in treaty and domestic law
 - Clarify tax treaties not intended to generate double non-taxation
 - Clarify policy considerations before entering into a bilateral tax treaty
- **Process:**
 - Scoping by Working Party 1 in September 2013
 - Full discussions by Working Party 1 in February/March 2014
 - Discussion draft will be released in March 2014
 - Public consultation meeting will take place in April or May 2014

Hybrid Mismatch Arrangements

- Action item requires development of model treaty provisions and recommendations for domestic rules by September 2014.
- First meeting held in October 2013, followed by a meeting in December.
- Consideration of hybrid mismatch arrangements that give rise to either:
 - a double deduction
 - or a deduction with no matching income inclusion.
- This includes scenarios involving
 - a hybrid financial instrument
 - a hybrid transfer and
 - a hybrid entity (whether it receives or makes payments)
- A discussion draft will be issued for comments in early April with a public consultation in May.

Addressing TP aspects of intangibles

- Major media attention on transfer pricing (especially intangibles)
- Conclusion BEPS Action Plan: the current transfer pricing system leads to serious BEPS concerns, but replacing the arm's length principle is not the solution. Special measures may be necessary. 4 Action Points on TP.
- **Aim:** assure that transfer pricing outcomes are in line with value creation
- **Process intangibles:**
 - Project started in 2010 and scoping included various consultations
 - First discussion draft was published in June 2012. A public consultation was held in November 2012
 - A revised discussion draft was published in July 2013. A public consultation was held in November 2013
 - Finalisation will take place during the Working Party 6 meetings in March and May 2014

Harmful Tax Practices

- First meeting following the publication of the BEPS action plan held in December. Follow up meetings in February and May 2014.
- By September 2014 need to review member regimes, with a priority on transparency, including compulsory exchange of information on rulings, and on requiring substantial activity for preferential regimes.
- Review of G20, non OECD members regimes also to be started before September 2014.
- A report on the outcome of the Forum's review to be published by September 2014.

Transfer Pricing Documentation

- Tax administrations need for ‘big picture’ information on the global value chain versus compliance burden MNEs
- Action Point includes: Country-by-Country reporting of income, economic activity and taxes to governments
- **Process:**
 - TP documentation: one of five work streams targeted at TP simplification
 - White paper on TP documentation published in July 2013
 - Questionnaire on Country-by-Country reporting published in October 2013
 - Public consultation held in November 2013
 - February 2014: release of a discussion draft of Chapter V of the Transfer Pricing guidelines, including a Country-by-Country reporting template
 - March 2014: public consultation
 - May 2014: finalisation by WP6

The Multilateral Instrument report

- First phase of the work being carried out by the Secretariat with input from eminent public international and tax law experts and in consultation with Working Party 1 of the CFA
- Focus is on feasibility of use of a multilateral instruments to implement BEPS measures and amend bilateral tax treaties
- Several difficult issues but none appears unsurmountable
- Report to be finalised by September 2014

The OECD

What Else?

- **13th February 2014** – Background information on Automatic Exchange of Financial Account Information released.
- Automatic exchange of information involves the systematic and periodic transmission of bulk taxpayer information by source country of income to the country of residence of the taxpayer concerning income or asset information.
- The new standard incorporates progress made within the European Union, as well as global anti-money laundering standards.
- Anti-money laundering financing are governed by 40 recommendations drawn up by the Financial Action Task Force (FATF).
- The recommendations cover areas such as: true ownership of companies, customer due diligence and record keeping.

OECD's Future

- Main reform - Tax should be paid where the economic activity takes place.
- Align tax with substance – ensuring taxable profits cannot be artificially shifted away from countries where the value is created through the transfer of risk, capital or intangibles such as patents or copyrights.
- Multinationals transferring high-value "intangible" assets, e.g. brands and intellectual property rights, to tax havens will be targeted.

Issues for us as Tax Advisors

- Pressure from tax authorities
- Client understanding of global disclosure
- Possible double taxation?
- How artificial – substance, economic reality?

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