



OECD ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING



OECD Work on Taxation

- Focus has historically been on the development of common standards to eliminate double taxation for cross border investments
 - Model Tax Convention, which serves as the basis for over 3,000 bilateral tax treaties
 - Transfer Pricing Guidelines, which provide common standards for allocating income among members of a multinational group
- Prevention of double taxation remains core work but there is now recognition that the issue of double non-taxation due to base erosion and profit shifting (BEPS) should also be tackled



Increased Attention to BEPS

- Increased attention of mainstream media to corporate tax affairs
- Spreading perception that MNEs dodge taxes all around the world and in particular in developing countries
- Debate on BEPS issues has reached a high political level
 - G20 Leaders in Los Cabos, 19 June 2012
 - G20 Finance Ministers in Mexico City, 5 November 2012



Report: Addressing BEPS



- *Addressing Base Erosion and Profit Shifting* published on 12 February 2013
 - identifies main pressure areas leading to opportunities for BEPS
 - calls on governments to address these areas: in a nutshell, if governments are not happy with the results under the laws, they must change the laws
- Sent to and discussed at G20 Finance Ministers meeting in Moscow on 15-16 February 2013:



“[W]e welcome the OECD report on addressing base erosion and profit shifting and acknowledge that an important part of fiscal sustainability is securing our revenue bases. We are determined to develop measures to address base erosion and profit shifting, take necessary collective actions and look forward to the comprehensive action plan the OECD will present to us in July”



Key Tax Principles and Opportunities for BEPS

- In practice any structure aimed at BEPS incorporate a number of co-ordinated strategies, which often can be broken down into four elements
 - minimisation of taxation in a foreign operating or source country either by shifting gross profits via trading structures or reducing net profit by maximising deductions at the level of the payer
 - low or no withholding tax at source
 - low or no taxation at the level of the recipient (via low-tax jurisdictions, preferential regimes, hybrid mismatch arrangements) with entitlement to substantial non-routine profits via intra-group arrangements
 - no current taxation of the low taxed profits at level of ultimate parent. Further, effective cash repatriation strategies and “permanent” foreign reinvestment of low taxed cash
- The Report identifies a number of pressure areas e.g. hybrids, preferential regimes, anti-avoidance rules, etc.



Developing the Action Plan on BEPS

- Following the February report, the work focused on the development of an action plan
- The development of the action plan was also informed by engagement with business and civil society (consultations with BIAC, TUAC and NGOs)
- The action plan was approved at the meeting of the Committee on Fiscal Affairs on 25 June 2013. All G20 countries participated.
- It was published on 19 July 2013 on the occasion of the G20 Finance Ministers meeting



The BEPS Action Plan



- The action plan calls for 15 actions organised around the following *three* main pillars:
 - The **coherence** of corporate tax at the international level
 - A realignment of taxation and **substance**
 - **Transparency**, coupled with certainty and predictability
- It also calls for targeted work in the area of the **digital economy**, which presents a number of specific features, and for the development of a **multilateral instrument** to implement the measures developed under the action plan



- G20 Finance Ministers Meeting, 18-19 July 2013, Moscow
- G20 Leaders Meeting, 5-6 September 2013, St. Petersburg



An Inclusive Project

- OECD/G20 BEPS Project launched: all eight non-OECD G20 countries on an equal footing with OECD Members
- Developing countries involved through several mechanisms
 - The UN participates in the tax work of the OECD and will provide insights regarding the particular concerns of developing countries
 - Task Force on Tax and Development
 - OECD Global Relations Programme
 - Global Fora on Tax Treaties, on Transfer Pricing, on VAT and on Transparency and Exchange of Information for Tax Purposes



Organisation of Work

- Work on the actions is primarily to be done by CFA subsidiary bodies, incl.
 - New Working Party 11 on Aggressive Tax Planning
 - New Task Force on Digital Economy
 - Informal expert group on developing a multilateral instrument
- A high-level policy dialogue with all interested parties will be organised on an annual basis
- Consultation with non-governmental stakeholders is also key. Business and civil society representatives will be invited to comment on the different proposals developed in the course of the work. Consultations will be held in 2014 and 2015
 - Business and Industry Advisory Committee (BIAC)
 - Trade Union Advisory Committee (TUAC)
 - Non-governmental organisations, think tanks, and academia



Expected Outcomes (Actions 1 - 9)

Action Item	MTC	TPG	Domestic Rules	Other
1. Address the tax challenges of the digital economy				√
2. Neutralise the effects of hybrid mismatch arrangements	√		√	
3. Strengthen CFC rules			√	
4. Limit base erosion via interest deductions and other financial payments		√	√	
5. Counter harmful tax practices more effectively, taking into account transparency and substance				√
6. Prevent treaty abuse	√		√	
7. Prevent the artificial avoidance of PE status	√			
8. Assure transfer pricing outcomes are in line with value creation/intangibles	?	√		
9. Assure transfer pricing outcomes are in line with value creation/risks and capital	?	√		



Expected Outcomes (Actions 10 - 15)

Action Item	MTC	TPG	Domestic Rules	Other
10. Assure transfer pricing outcomes are in line with value creation/high-risk transactions	?	√		
11. Establish methodologies to collect and analyse data on BEPS and actions to address it				√
12. Require taxpayers to disclose their aggressive tax planning arrangements			√	
13. Re-examine transfer pricing documentation		√	√	
14. Make dispute resolution mechanisms more effective	√			
15. Develop a multilateral instrument				√



Deadlines

September 2014	September 2015	December 2015
Report to address the tax challenges of the Digital Economy	Recommendations on how to strengthen CFC rules	Changes to the TPG to limit base erosion via interest deductions
Domestic and treaty rules to neutralise the effects of hybrid mismatch arrangements	Recommendations re the design of domestic rules to limit base erosion via interest deductions and other financial payments	Revision of existing criteria to identify harmful tax practices
Finalise review of member country regimes to counter harmful tax practices	Strategy to expand participation to non-OECD members to counter harmful tax practices	Development of a multilateral instrument to implement measures developed in the BEPS Project
Domestic and treaty rules to prevent treaty abuse	Changes to the MTC to prevent the artificial avoidance of PE status	
Changes to the TPG and possibly to the MTC to assure that TP outcome are in line with value creation for intangibles (phase 1)	Changes to the TPG and possibly to the MTC to assure that TP outcome are in line with value creation on intangibles (phase 2)	
Changes to TPG and recommendations re the design of domestic rules to on TP documentation	Changes to the TPG and possibly to the MTC to assure that TP outcome are in line with value creation - risks and capital	
Report identifying public international law and tax law issues in order to develop a multilateral instrument	Changes to the TPG and possibly to the MTC to assure that TP outcome are in line with value creation - high risk transactions	
	Recommendations re data to be collected and methodologies to analyse them	
	Recommendations re the design of domestic rules requiring taxpayers to disclose their ATP arrangements	
	Changes to the MTC to make dispute resolution mechanisms more effective	