



# LIVE WEBCAST

## UPDATE ON BEPS PROJECT

26 May 2014  
1:00pm – 2:00pm (CEST)



# Speakers

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## **Pascal Saint-Amans**

Director, Centre for Tax Policy and Administration

## **Raffaele Russo**

Head of BEPS Project

## **Marlies de Ruitter**

Head of Tax Treaty, Transfer Pricing and Financial Transactions



## Join the discussion

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Ask questions and comment throughout the webcast



**Directly:** Enter your question in the space provided



**Via email:** [CTP.BEPS@oecd.org](mailto:CTP.BEPS@oecd.org)



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# **UPDATE & OVERVIEW**



# The BEPS Project

## Coherence

Hybrid Mismatch Arrangements (2)

Interest Deductions (4)

CFC Rules (3)

Harmful Tax Practices (5)

## Substance

Preventing Tax Treaty Abuse (6)

Avoidance of PE Status (7)

TP Aspects of Intangibles (8)

TP/Risk and Capital (9)

TP/High Risk Transactions (10)

## Transparency

Methodologies and Data Analysis (11)

Disclosure Rules (12)

TP Documentation (13)

Dispute Resolution (14)

Digital Economy (1)

Multilateral Instrument (15)



## Where are we?

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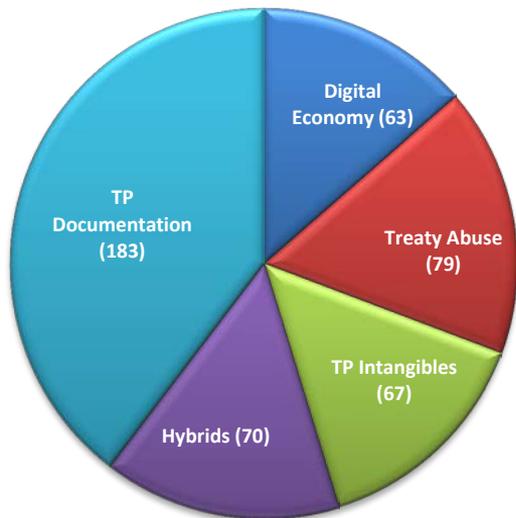
- Publication of Discussion Drafts
- Followed by 4 public consultations (*streamed live*) attended by business representatives, NGOs and academics
- Further work being done at level of working groups based on input received



# Stakeholders' input

**Total comments received: 462**

**Total number of pages: 3587**



## Source of comments:





**ENGAGEMENT  
WITH DEVELOPING  
COUNTRIES**



# Developing countries' input

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- Based on regional events and Global Fora – **G20 Developing Working Group Report** (8-9 May 2014)
- BEPS Project priorities:
  - excessive payments to foreign affiliated companies in respect of interest, service charges, management and technical fees and royalties;
  - supply chain restructuring that contractually reallocates risks, and associated profit, to affiliated companies in low tax jurisdictions;
  - significant difficulties in obtaining the information needed to assess and address BEPS issues, and to apply their transfer pricing rules;
  - use of techniques to obtain unintended treaty benefits; and
- Also, key for developing countries:
  - wasteful tax incentives designed to attract investment;
  - techniques used to avoid tax paid when assets situated in developing countries are sold.



# **DIGITAL ECONOMY**



# Discussion Draft and Public Consultation

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- Discussion draft issued 24 March 2014
- Public consultation held April 23 2014
  - Uniform agreement that digital economy cannot be ring-fenced
  - General agreement on description of digital economy and its key features and business models
  - Agreement that BEPS Action Plan will address BEPS in digital economy
  - Agreement that VAT options should be pursued
  - Concern about options proposed with respect to direct taxation, and about interaction with BEPS
  - Additional options suggested
- Comments discussed at 3rd meeting of Task Force 24-25 April



## Task Force: 26-28 May

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- Finalise description of the digital economy, key features, business models
- Finalise description of BEPS issues, how they will be tackled through work under Action Plan
- Identify specific features of the Digital Economy that warrant attention
- Describe broader tax challenges and perform initial analysis of options
- Reach conclusions on how to address interaction between work in the BEPS Project and broader tax challenges



# **HYBRID MISMATCH ARRANGEMENTS**



# Update

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- Discussion draft released for public consultation on 19 March; public consultation on 15 May.
- Recommendations for changes to domestic law (plus treaty rules)
  - Linking rules that seek to align the tax treatment of instrument or entity with the tax outcomes in the counterparty jurisdiction
  - Primary and secondary rule, plus need to avoid importation of mismatches.
- Some technical issues still under discussion



# **PREVENTING TAX TREATY ABUSE**



# Update

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- Discussion draft issued **14 March 2014**
- Public consultation held **14/15 April 2014**
  - Agreement that LOB alone will not address all situations of treaty abuse and treaty shopping (especially not conduit financing situations)
  - Concerns about combined approach (LOB/Main Purpose Test)
  - Design issues related to the LOB rule
    - Treatment of CIVs, pension funds and dual listed companies
    - Derivative benefits
    - Discretionary relief
  - Interaction domestic anti abuse rules and treaty anti abuse rules



## Next steps

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Redraft of treaty abuse paper by WP1's Focus Group on Treaty Abuse is finalised:

- Addresses design issues LOB
- Issues around inclusion derivative benefits rule clarified
  - Hybrids, preferential regimes and EU compatibility if not included
- Need for flexibility because of interactions with other work streams is recognised (e.g. introduction of new domestic rules following from the work on hybrids, interest deductibility, transfer pricing)

Next steps: approval by WP1 and by the CFA



# **TRANSFER PRICING ASPECTS OF INTANGIBLES**



# Update

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- Public releases:
  - **6 June 2012**: discussion draft on TP aspects of Intangibles
  - **30 July 2013**: revised discussion draft on TP aspects of Intangibles
- Public consultations in **November 2012** and **November 2013**
- Following the 2013 consultation, extensive WP6 meetings took place in **March 2014** and from **12-17 May 2014**



# Status of work/Next steps

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## **Status:**

- Agreement within WP6 on the revised text of Chapter I and Chapter VI
- Chapter VI: up-to-date approach to identifying intangibles and how arm's length considerations should be determined
- The strong interaction between Section B and the work on risk, re-characterisation, capital and the related special measures is recognised in the paper

## **Next steps:**

- Formal approval by WP6 and approval by CFA
- Work on risk, re-characterisation, capital and the related special measures will be addressed by WP6 with priority.
  - This work stream together with the work on Intangibles will provide guidance on the most challenging TP issues, including excessive capitalisation, low functionality and mere contractual assumption of risk, and will develop approaches to deal with hard to value intangibles
  - The public release of a full draft report on these issues is expected in December 2014



**TRANSFER PRICING  
DOCUMENTATION &  
CBC REPORTING**



# Update

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- White paper on TP documentation released for public comments on **30 July 2013**
- Consultation on TP documentation and initial consultation on country by country reporting held in **November 2013**
- Discussion draft on TP documentation and CbC reporting released on **30 January 2014**
- More than 1400 pages of public comments received
- Public comments discussed by WP6 in **March 2014**
- Developing countries consulted during the Annual Meeting of the Global Forum on Transfer Pricing in **March 2014**. More than 300 delegates from approximately 110 jurisdictions and international organisations participated in the event. The final day of this year's Global Forum meeting was jointly held with the Task Force on Tax and Development.
- Public consultation meeting held on **19 May 2014**
- WP6 discussions from **20-23 May 2014**



# Status

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- Consensus in WP6 that the new approach will greatly improve the access for governments to relevant information for transfer pricing purposes
- Agreement on a three tier approach (CbC template, Masterfile and Local File)
- As these are new tools, experience needs to be developed to assess the effectiveness and efficiency of the tools. WP6 is uniformly of the view that a monitoring mechanism is needed to assess whether the focus of the mechanism can or should be improved in the future
- There is also broad recognition within WP6 that a structured and careful implementation is necessary to guarantee:
  - consistency in the approaches by governments
  - that the relevant information is available to governments for which it is relevant on a timely basis
  - that commercially sensitive information is treated confidentially
  - that the costs for both taxpayers and tax administrations are balanced
  - to secure that the information is used as intended
- WP6 will finalise the document shortly. After that it will be sent to CFA for formal approval



# **THE MULTILATERAL INSTRUMENT**



# Multilateral Instrument

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- Focus is on feasibility of use of a multilateral instrument
- To address treaty-based BEPS issues efficiently while respecting sovereign autonomy in tax matters and preventing uncertainty
- Multilateral Instrument is not only feasible but also desirable (numerous benefits, also for developing countries)
- Targeted instrument that coexists with bilateral tax treaties
- Negotiation through an International Conference and ratification pursuant to national laws
- Report and technical annex to the G20 Finance Ministers in September 2014



**NEXT STEPS**



# Next Steps

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## ➤ Internal

- Working Party 11 (May 2014)
- Task Force on Digital Economy (May 2014)
- Working Party 2 (June 2014)
- Committee on Fiscal Affairs (June 2014)

## ➤ External

- G20 Cairns Finance Ministers (September 2014)
- G20 Leaders Brisbane Meeting (November 2014)



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**JOIN THE  
DISCUSSION**



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## Further Information

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**Website:** [www.oecd.org/tax/beps.htm](http://www.oecd.org/tax/beps.htm)



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