



OECD/G20 Base Erosion and Profit Shifting Project

2015 Final Reports

Frequently Asked Questions

Table of contents

A. BEPS Package	5
General questions	5
Action 1 Address the tax challenges of the digital economy	7
Action 2 Neutralise the effects of hybrid mismatch arrangements	8
Action 3 Strengthen controlled foreign companies rules	9
Action 4 Limit base erosion via interest deductions and other financial payments	10
Action 5 Counter harmful tax practices more effectively, taking into account transparency and substance	11
Action 6 Prevent treaty abuse	12
Action 7 Prevent the artificial avoidance of permanent establishment status	13
Actions 8-10 Assure that transfer pricing outcomes related to intangibles are in line with value creation	14
Action 11 Establish methodologies to collect and analyse data on BEPS and the actions to address it	17
Action 12 Require taxpayers to disclose their aggressive tax planning arrangements	19
Action 13 Re-examine transfer pricing documentation	20
Action 14 Make dispute resolution mechanisms more effective	23
Action 15 Develop a multilateral instrument	23
B. Engagement with developing countries	25
C. Engagement with stakeholders	26
D. BEPS implementation phase	26
E. Background on BEPS.....	27

A. BEPS Package

General questions

1. Which measures have been included in the BEPS Package?

A comprehensive package of measures has been agreed upon. Countries are committed to this comprehensive package and to its consistent implementation. These measures range from new minimum standards to revision of existing standards, common approaches which will facilitate the convergence of national practices and guidance drawing on best practices.

2. Has the BEPS Project delivered on its promise to put an end to double non-taxation?

The expectation is that once implemented, the measures restore taxation in a number of instances where income would otherwise go untaxed. Depending on the planning structure used, one or more of the measures developed will have an impact and ensure that income is taxed at least one time and not more than once. Rather than closing individual schemes, the measures go to their roots.

3. How will the BEPS measures be implemented?

Some of the measures may be immediately applicable such as the revised guidance on transfer pricing. Other measures require changes to bilateral tax treaties, something that can be done via the multilateral instrument under Action 15. Finally, other measures require domestic law implementation.

4. What is the nature of the BEPS outputs? Are they legally binding?

They are soft law legal instruments. They are not legally binding but there is an expectation that they will be implemented accordingly by countries that are part of the consensus. The past track record in the tax area is rather positive. Minimum standards were agreed in particular to tackle issues in cases where no action by some countries would have created negative spill overs (including adverse impacts of competitiveness) on other countries. Recognising the need to level the playing field, all OECD and G20 countries have committed to consistent implementation in the areas of preventing treaty shopping, Country-by-Country Reporting, fighting harmful tax practices and improving dispute resolution. In addition, existing standards have been updated and will be implemented, noting however that not all BEPS participants have endorsed the underlying standards on tax treaties or transfer pricing. In other areas, such as recommendations on hybrid mismatch arrangements and best practices on interest deductibility, countries have agreed a general tax policy direction. In these areas, they are expected to converge over time through the implementation of the agreed common approaches, thus enabling further consideration of whether such measures should become minimum standards in the future. Guidance based on best practices will also support countries intending to act in the areas of mandatory disclosure initiatives or CFC legislation.

5. Do the BEPS measures increase the risk of double taxation?

The aim of the measures is to realign taxation with economic substance and value creation, while preventing double taxation. The BEPS package represents the first substantial renovation of the international tax rules in almost a century. This renovation is necessary not only to tackle BEPS, but also to ensure the sustainability of a consensus-based system aimed at eliminating double taxation. As new rules always raise interpretation issues, Action 14 on improving dispute resolution is a key part of the BEPS Project.

6. Will MNEs have to restructure their business in light of the BEPS outputs?

This should not be the case for groups whose legal and tax structures reflect the underlying economic reality.

7. Will SMEs be impacted by the BEPS measures?

A number of measures have been crafted in a way that minimises the impact on SMEs with negligible BEPS risks, e.g. the measures on interest deductibility can exclude companies with interest below a certain *de minimis* threshold, and the new Country-by-Country Reporting template does not apply to groups with annual consolidated revenue in the immediately preceding fiscal year of less than EUR 750 million.

8. Will BEPS implementation be monitored?

Yes, it will. Monitoring the implementation of the BEPS measures includes targeted monitoring of the minimum standards on treaty shopping and on dispute resolution, the application of the criteria on harmful tax practices, as well as the implementation of the country-by-country reporting requirements. Monitoring will also focus on what countries have done to implement the BEPS recommendations and the measurement of the impact of BEPS and BEPS countermeasures.

9. Will there be other BEPS outputs in the future?

G20 and OECD countries will keep working on an equal footing to carry out follow-up work in 2016. This includes work on the transfer pricing aspects of financial transactions, finalising the guidance on the practical application of transactional profit split methods and the approach on hard-to-value-intangibles, clarifying the rules for the attribution of profits to permanent establishments in light of the changes to the definition, exploring solutions to the broader question of treaty entitlement of non-CIV funds, and finalising the details of a group ratio carve-out and special rules for insurance and banking sectors in the recommended approach for interest deductibility. Finally, the multilateral instrument to implement treaty changes is expected to be open for signature in 2016.

10. How will the success (or otherwise) of the BEPS Project be judged?

There are many ways to define the success (or otherwise). The first is whether consensus has been reached on the different measures, the second is whether the measures are actually implemented and applied according to the consensus, and the third is whether instances of BEPS still exist after implementation. The BEPS Project will also be a success if businesses do not have to comply with hundreds of different disclosure requirements or anti-avoidance measures and can therefore benefit from lower compliance costs.

Action 1 – Address the tax challenges of the digital economy

11. What is the digital economy?

The digital economy is the result of the widespread and transformative process brought on by Information and Communication Technology (ICT). All sectors, ranging from retail, financial services to education and broadcasting and media have been transformed by ICT technologies. So much so, that the digital economy is increasingly becoming the economy itself. It would therefore be difficult, if not impossible, to ring fence the digital economy from the rest of the economy for tax purposes.

12. How does this report address BEPS in the digital economy?

The report provides a detailed analysis of the digital economy, its business models, and its key features. While the digital economy does not create unique BEPS issues, some of its features exacerbate existing ones. These ones have been taken into account during the work on the definition of permanent establishment, transfer pricing and CFC rules. It is expected that these measures will successfully address BEPS issues in the digital economy once implemented.

13. Where should VAT be paid in the digital age?

In the country of consumption. The report outlines the challenges related to collection of VAT on cross-border B2C transactions. Building on the International VAT/GST Guidelines, it recommends that VAT on these transactions is collected in the country where the customer is located and provides mechanisms to do so in an efficient manner.

14. Are more fundamental changes needed to deal with the tax challenges of digital economy?

The report recognises that the changes brought about by the digital economy also raise more systemic challenges regarding the ability of the current international tax framework to ensure that profits are taxed where economic activities occur and where value is created. These challenges relate chiefly to nexus and to the role of data in the modern economy and cut across direct and indirect taxation, both in terms of the challenges and in terms of the potential solutions.

15. Is there sufficient consensus on how to tackle the tax challenges of the digital economy? Is the report recommending the introduction of a virtual permanent establishment concept?

The work analysed potential options to deal with the broader challenges raised by the digital economy, including a new nexus based on a significant economic presence test. Under such potential option, an enterprise that generates significant revenues from in-country customers and has features indicating either targeting of customers in that country through digital means or substantial interaction with users in that country may be considered to have a taxable presence in that country based on substantial economic presence. The report is not recommending the adoption of such an option as an international standard but a country is free to do so if it considers that it is needed to tackle BEPS issues.

Action 2 – Neutralise the effects of hybrid mismatch arrangements

16. What are hybrid mismatches arrangements?

Hybrid mismatches are cross-border arrangements that take advantage of differences in the tax treatment of financial instruments, asset transfers and entities to achieve “double non-taxation” or long term deferral outcomes which may not have been intended by either country. A common example of a hybrid financial instrument would be an instrument that is considered a debt in one country and equity in another so that a payment under the instrument is deductible when it is paid but is treated as a tax-exempt dividend in the country of receipt.

17. How do the BEPS measures tackle hybrid mismatches?

The measures tackle hybrids by eliminating the tax benefit derived therefrom. The work sets out general and specific recommendations for domestic hybrid mismatch rules and model treaty provisions which will put an end to multiple deductions for a single expense, deductions in one country without corresponding taxation in another or the generation of multiple foreign tax credits for one amount of foreign tax paid. Once translated into domestic law and tax treaties, the recommended rules will neutralise the mismatch in tax outcomes and prevent these arrangements from being used as a tool for BEPS without adversely impacting cross-border trade and investment.

18. Do you expect difficulties in the implementation of the domestic law rules?

The model domestic rules are designed to co-ordinate with the rules in the other jurisdiction and the recommendations are now supported by guidance and examples illustrating how the rules should be applied. Once implemented, the rules should apply to taxpayers and arrangements automatically without the need for further intervention by the tax authority.

19. What happens if countries fail to introduce the measures?

That country will expose itself to the use of these arrangements but there will be no impact on the ability of other countries to protect themselves against them. Further, the effect of having both a primary and a defensive rule is that a country does not need to rely on the domestic laws of another country in order to neutralise hybrid mismatches. This also prevents more than one country applying the rule to the same arrangement and therefore avoids double taxation.

20. Will these rules address structures that use the US Check the Box Regulations?

Yes, it will. The rules are designed to neutralise the effect of hybrid entities. Therefore, once implemented by a country, they will neutralise the hybrid mismatch effects of check the box planning in those countries.

Action 3 – Strengthen controlled foreign companies rules

21. What is a CFC rule?

Controlled foreign company (CFC) rules are rules which respond to the risk that taxpayers with a controlling interest in a foreign low-taxed subsidiary can shift income into it and avoid taxation. CFC rules combat this by enabling jurisdictions to tax income earned by foreign subsidiaries without waiting for an actual distribution of the income, which may be postponed indefinitely.

22. Why do we need stronger CFC rules?

Groups can create low-taxed non-resident affiliates to which they shift income. Controlled foreign company rules can combat this by enabling jurisdictions to tax income earned by foreign subsidiaries where certain conditions are met. CFC rules can therefore ensure that income that would otherwise go untaxed is subject to tax but current CFC rules may not always capture all the types of income that gives rise to BEPS concerns.

23. Will countries be obliged to introduce CFC rules?

No they will not. The report identifies the building blocks necessary for effective CFC rules and recognises that the policy objectives of these rules vary among jurisdictions depending on the overall design of their tax system. As a consequence, the recommendations in this area are not minimum standards, they are best practices gathered from other countries' experience that can be used by countries willing to introduce such rules, or to strengthen them.

24. Do you need CFC rules if you have transfer pricing rules in place?

CFC rules act as a backstop to transfer pricing and other rules. In some situations, CFC rules may target the same income as transfer pricing, but it is unlikely that either CFC rules or transfer pricing rules in practice eliminate the need for the other set of rules because, for instance, transfer pricing rules determine the appropriate amount of CFC profits in relation to intra-group transactions, but may not re-allocate all of the income captured by CFC rules and vice versa.

25. Do CFC rules pose a risk of double taxation?

CFC rules may pose such a risk in certain distinct situations, for example where the attributed CFC income is also subject to foreign corporate taxes, where CFC rules in more than one jurisdiction apply to the same CFC income, or where a CFC distributes dividends out of income that has already been taxed under the CFC rules. For this reason the report recommends that CFC rules include provisions, such as foreign tax credits or dividend exemptions, to ensure that there is no double taxation.

26. Some countries have been moving away from more rigorous CFC rules. Is this a trend that is going to be reversed?

CFC rules can give rise to competitiveness concerns. At the same time, such rules have existed in the international tax context for over five decades, dozens of countries have implemented these rules and, other countries are considering doing so. This shows that CFC rules have a continuing role to play in combatting BEPS. The report sets out recommendations for the essential building blocks of a CFC regime and also options for defining the income subject to CFC rules. Countries that implement the recommendations will have rules that effectively prevent taxpayers from shifting income into foreign subsidiaries but will also be able to design rules that fit within the overall policy objectives of their tax system.

Action 4 – Limit base erosion via interest deductions and other financial payments

27. What is the extent of the problem with interest deductions on intra-group lending?

The use of third party and related party interest is one of the most simple of the profit-shifting techniques available in international tax planning. Added to this most countries tax debt and equity differently so that there is a tax-induced bias towards debt financing. Groups can easily multiply the level of debt in group companies via intra-group financing, as a result groups can generate intra- group interest deductions that are greatly in excess of the group's actual third party interest expense. They can also use this debt to fund the generation of tax exempt income.

28. What are the key elements of the recommended approach?

The approach includes a fixed ratio rule, which allows an entity to deduct net interest expense up to a benchmark net interest/EBITDA ratio, within a corridor of 10%-30%, and an optional group ratio rule which allows an entity to deduct net interest expense up to its group's net interest/EBITDA ratio, where this is higher than the benchmark fixed ratio. Targeted rules to support general interest limitation rules and address specific risks are also included in the report.

29. Will countries be obliged to introduce such limitations on interest deductibility?

A common approach on interest deductibility has been agreed to facilitate convergence of national tax practices over time, thus enabling further consideration of whether such measures should become minimum standards in the future. A country may supplement the approach in the report with other general or targeted interest limitation rules, either to address base erosion and profit shifting risks it faces or to achieve wider tax policy aims.

30. Will certain sectors be treated differently under these measures?

Generally no as the approach set out in the report is intended to apply to most businesses. However, it is recognised that the banking and insurance sectors have particular features and so further work will be undertaken on rules to address BEPS risk posed by companies in those sectors. In addition the report provides an optional exclusion for public benefit projects that meet specific conditions.

31. What will be the treatment of excess interest expense?

Excess interest will not be deductible for tax purposes but a country can allow an entity to carry forward or carry back disallowed interest expense or unused interest capacity.

Action 5 – Counter harmful tax practices more effectively, taking into account transparency and substance

32. How is the BEPS Project addressing harmful tax competition?

The BEPS Project entailed a revamp of the work on harmful tax practices, with a priority and renewed focus on requiring substantial activity for any preferential regime and on improving transparency, including compulsory spontaneous exchange of information on certain tax rulings.

33. Has the work been coordinated with the European Commission work?

Yes, the European Commission participates in all the meetings of the FHTP and has also adopted the same approaches (such as the nexus approach for IP regimes) in respect of requiring substantial activity in preferential regimes.

34. Why is transparency important?

The lack of transparency in the operation of a preferential regime makes it harder for other countries to take defensive measures. The 2014 Progress Report included an agreed framework on the compulsory spontaneous exchange of rulings related to preferential regimes. The framework set out in the 2015 Final Report includes all rulings that could give rise to BEPS concerns in the absence of compulsory spontaneous exchange.

35. Does the BEPS Project address all types of rulings?

No because it is recognised that there needs to be a balance so that tax administrations are only required to exchange information that is likely to be useful to other tax administrations. The transparency framework agreed under action 5 therefore focuses on taxpayer-specific rulings, which could give rise to BEPS concerns in the absence of compulsory spontaneous exchange. In this context it identifies 6 categories of rulings on which information should be exchanged.

36. What is the expected timing for the exchange of rulings?

Where countries have the legal framework to start exchanging information covered by the report, they have until the end of 2016 to exchange information on past rulings. Future rulings are those issued on or after 1 April 2016 and they should be exchanged as quickly as possible and generally no later than three months after the date on which the ruling becomes available to the competent authority of the country that granted the ruling.

37. Are patent boxes harmful?

Not all patent boxes are harmful. Fostering innovation can be an important element of growth strategies because intangibles such as patents have become one of the key value drivers of many business models. A preferential regime may therefore be useful in supporting growth and innovation in a country if it attracts real activity. However if a regime merely encourages companies to shift profits from the location in which the value was actually created to another location where they may be taxed at a lower rate it may indeed be harmful.

38. How does the BEPS work address patent boxes?

It does so by requiring that these regimes only grant preferential treatment to income derived from substantial activities effectively carried out by the taxpayer obtaining the benefit. This has been achieved through the adoption of the “nexus” approach which is used to assess whether or not there is substantial activity in IP regimes.

39. What is the nexus approach for patent boxes?

The nexus approach uses expenditure as a proxy for substantial activity. More specifically, it is the proportion of expenditures directly related to development activities that demonstrates real value added by the taxpayer and acts as a proxy for how much substantial activity the taxpayer undertook.

40. How will the ongoing work on review of IP regimes be done?

The FHTP will continue to review and monitor preferential IP regimes and where necessary existing IP regimes will need to be amended to comply with the nexus approach. Future review and monitoring will also consider the introduction of new and amended regimes to ensure that they also comply with the agreed approach and agreed information reporting requirements.

41. How will the review of exchange of information on rulings be done?

An ongoing monitoring and review mechanism is being put in place to ensure countries' compliance with the obligation to spontaneously exchange information under the framework. This will involve an annual review by the FHTP in which countries that provide taxpayer-specific rulings that fall within the framework are expected to provide the following information: (i) the total number of spontaneous exchanges sent under the framework, (ii) the number of spontaneous exchanges sent by category of ruling, and (iii) for each exchange, which country or countries information was exchanged with.

42. Which regimes are harmful and what will happen to them?

16 Intangible Property regimes, listed in the 2015 Final Report, were considered under the criteria in the 1998 Report as well as the elaborated substantial activity factor and found to be inconsistent, either in whole or in part, with the nexus approach. Countries with such regimes will now proceed with a review of possible amendments of the relevant features of their regimes.

Action 6 – Prevent treaty abuse

43. What is “treaty shopping” and how can it be addressed?

“Treaty shopping” generally refers to arrangements through which a person who is not a resident of one of the two States that concluded a tax treaty may attempt to obtain benefits that the treaty grants to residents of these States. These strategies are often implemented by establishing companies in States with desirable tax treaties that are often qualified as “letterboxes” “shell companies” or “conduits” because these companies exist on paper but have no or hardly any substance in reality. It can be addressed through changes to bilateral tax treaties in line with the minimum standard agreed in the context of the BEPS Project.

44. What is the minimum standard on treaty shopping?

The minimum standard requires the adoption, at a minimum, of rules in bilateral tax treaties that effectively address treaty shopping. First, treaties should include, in their title and preamble, a clear statement that the States that enter into a tax treaty intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping. Second, countries will implement this common intention by including in their treaties: requires (1) a combination of a “limitation-on-benefits” rule (LOB, which is a specific anti-abuse rule) and of a “principal purpose test” rule (PPT, a general anti-abuse rule); (2) the inclusion of the PPT rule, or (3) the inclusion of the LOB rule supplemented by a mechanism that deals with conduit arrangements, such as a restricted PPT rule applicable to conduit financing arrangements

in which an entity otherwise entitled to treaty benefits acts as a conduit for payments to third-country investors.

45. Why does the report propose different anti-abuse rules?

Treaty abuse, like the abuse of domestic law, can be addressed through a combination of (i) specific anti-abuse rules, which provide greater certainty but can only deal with known abusive strategies, and (ii) general anti-abuse rules or judicial doctrines, which are less certain but offer protection against abusive transactions that have not previously been identified or addressed. Both of these approaches can be equally effective to address treaty abuse, but countries have different legal environments and policy preferences. Therefore, while the minimum standard guarantees that treaty abuse is targeted effectively, countries have some flexibility in deciding which rules to adopt.

46. When will the treaty anti-abuse rules be applicable?

Model provisions to curb tax treaty abuse have been developed for inclusion in bilateral tax treaties. Some, but not all, treaties already contain such provisions. About ninety countries have already started the negotiation of a multilateral instrument to implement the treaty-related BEPS measures and modify those bilateral tax treaties that do not yet include these measures in a synchronised and efficient manner. The multilateral instrument will be opened for signature in 2016.

47. What is the impact of the rules on CIVs and Pension Funds?

Since the investment decisions of CIVs, REITs and pension funds are typically not dictated by their beneficiaries, these investment vehicles do not raise the same treaty-shopping concerns as entities such as private companies. For that reason, special exceptions to the LOB rule have been developed for CIVs, and pension funds. Indeed some CIVs and pension funds are included in the list of "qualified persons" under the LOB rule (REITs fall under the definition CIVs as long as they are widely-held and regulated), e.g. pension funds that are residents of a Contracting State are entitled to treaty benefits if more than 50% of the beneficial interests in that pension fund are owned by individuals resident in either contracting State.

Action 7 – Prevent the artificial avoidance of permanent establishment status

48. What is changed in the definition of permanent establishment?

Changes address techniques used to inappropriately avoid the existence of a PE, including via replacement of distributors with commissionaire arrangements or through strategies where contracts which are substantially negotiated in a State are not formally concluded in that State because they are finalised or authorised abroad, or where the person that habitually exercises an authority to conclude contracts in the name of a foreign enterprise claims to be an "independent agent" even though it is acting exclusively or almost exclusively for closely related enterprises. They also address strategies based on the specific exceptions in Art. 5(4) of the OECD Model Tax Convention by restricting these exceptions to preparatory or auxiliary activities and by addressing the fragmentation of business activities between closely related enterprises.

49. When will the rules included in the report become applicable?

The suggested changes require amendment of existing tax treaties. About ninety countries have already started the negotiation of a multilateral instrument to implement the treaty-related BEPS measures and modify bilateral tax treaties in a synchronised and efficient manner. The multilateral instrument will be opened for signature in 2016.

50. Will a subsidiary be considered as a permanent establishment under the new rules?

Not by itself. As under the current rules, however, it will be possible that a subsidiary will act on behalf of its parent company in such a way that the parent will be deemed to have a permanent establishment due to the activities of the subsidiary.

51. How will the changes affect digital companies?

The work took into account the key features of the digital economy in developing changes to the definition of PE. In particular, the changes address artificial arrangements where the sales of goods or services of one company in a multinational group effectively result in the conclusion of contracts, such that the sales should be treated as if they had been made by that company. The work also ensures that where essential business activities of an enterprise are carried on in a country, the enterprise cannot benefit from the list of exceptions usually found in the definition of PE.

52. Will the profit attribution rules need to be updated?

In order to provide greater certainty about the determination of profits to be attributed to the PEs that will result from the changes included in the report on Action 7 and to take account of the need for additional guidance on the issue of attribution of profits to PEs, follow-up work on attribution of profits issues related to Action 7 will be carried out. This work will be completed with a view to providing the necessary guidance before the end of 2016, which is the deadline for the negotiation of the multilateral instrument.

Actions 8-10 – Assure that transfer pricing outcomes related to intangibles are in line with value creation

53. How does transfer pricing lead to BEPS?

The arm's length principle has proven useful as a practical and balanced standard for tax administrations and taxpayers to evaluate transfer prices between associated enterprises, and to prevent double taxation. However, with its perceived emphasis on contractual allocations of functions, assets and risks, the existing guidance on the application of the principle has also proven vulnerable to manipulation.

54. Why has the BEPS Project only considered the “arm's length principle” for dealing with transfer pricing issues? Aren't other approaches like “formulary apportionment” more appropriate?

In most cases, particularly in contexts where two countries with broadly similar tax systems are involved, the arm's length principle effectively and efficiently allocates the income of multinationals among taxing jurisdictions. Conversely, the adoption of alternative bases for transfer pricing, like formulary apportionment, would require development of an international consensus on a number of key issues, which countries do not believe to be attainable in the short or medium term. Further, formulary apportionment would not be immune from manipulation and could not ensure that profits are truly aligned with value. Accordingly, it is most productive to focus on directly addressing the specific issues arising under the current arm's length system.

55. What are the main revisions in transfer pricing rules?

The work has focused on strengthening the guidance on applying the arm's length principle to ensure outcomes where profits are aligned with the value created through underlying economic activities. This work has focused on several key areas, such as:

- Transactions involving intangibles, since misallocation of the profits generated by valuable intangibles has contributed to BEPS;
- Contractual allocation of risks, and the resulting allocation of profits to those risks, which may not correspond with the activities actually carried out;
- The level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company;
- Recharacterisation of transactions which are not commercially rational; and
- Service fees and commodity transactions.

56. Have special measures been introduced?

The work under Actions 8-10 will ensure that transfer pricing outcomes are aligned with value creation of the MNE group. As a consequence, the goals set by the BEPS Action Plan in relation to the development of transfer pricing rules have been achieved without the need to develop special measures outside the arm's length principle.

57. When will the new guidance become applicable?

The revisions can be seen as shared interpretations of how article 9, paragraph 1 of the OECD and UN Model Tax Convention should be applied. This provision can be found in almost all tax treaties around the world. Therefore, these shared interpretations between countries will have immediate application through the existing treaties.

58. When will the Transfer Pricing Guidelines be updated?

The Report on Actions 8-10 represents agreement of the countries participating in the OECD/G20 BEPS Project. For countries that formally subscribe to the Transfer Pricing Guidelines (TPG), the guidance takes the form of agreed amendments to the TPG. These amendments will become part of the TPG after they have formally been adopted by the OECD Council. The process necessary for this approval is already underway and will be finalised as soon as possible after the delivery of the BEPS outputs. A consolidated version of the new TPG in book form, taking into account corresponding changes that are needed and further work in 2016 and 2017, should be available in 2017.

59. How does the guidance deal with the allocation of risk?

The revisions provide an analytical framework to determine which associated enterprise should be allocated risk for transfer pricing purposes. Tax planning strategies based on mere contractual allocations of risk unsupported by business operations are not sufficient to re-allocate risk. To assume a risk, the associated enterprise needs to exercise meaningful and specifically defined control over the risk as well as having the financial capacity to assume the risk. For example, if the associated enterprise does not in fact control the financial risks associated with its lending transaction (because, for example, it just provides the money when it is asked to do so, without any assessment whether the party receiving the money is creditworthy), then it will not be allocated the profits associated with the financial risk. It will be entitled to no more than a risk-free return or lower if, for example, the transaction is not commercially rational and the guidance on non-recognition applies.

60. Will intra-group contracts be respected?

The revised guidance requires careful delineation of the actual transaction between the associated enterprises by analysing the contractual relations between the parties in combination with the conduct of the parties. The starting point of this analysis will be the contractual arrangements between the parties. The conduct will clarify and supplement the contractual arrangements if the contracts are incomplete or are not supported by the conduct. In combination with the proper application of pricing methods in a way that prevents the allocation of profits to locations where no contributions are made to these profits, this will lead to the allocation of profits to the enterprises that conduct the corresponding business activities.

61. What has being done to tackle TP issues related to intangibles?

In order to tackle TP issues related to intangibles, the guidance clarifies that legal ownership alone does not necessarily generate a right to all (or indeed any) of the return that is generated by the exploitation of the intangible. The group companies performing important functions, controlling economically significant risks and contributing assets, as determined through the accurate delineation of the actual transaction, will be entitled to an appropriate return reflecting the value of their contributions. Specific guidance will ensure that hard to value intangibles are remunerated appropriately by ensuring that the analysis is not weakened by information asymmetries between the tax administration and the taxpayer. Moreover, it will also no longer be possible to use special contractual arrangements, such as a cost contribution arrangement, to inappropriately allocate profits.

62. Are the rules different for “hard-to-value” intangibles?

For a specific category of hard-to-value intangibles, for which at the time of their transfer no reliable comparable exist or valuation is highly uncertain, information asymmetry between taxpayer and tax administrations about how the pricing was determined may be acute. To address challenges due to information asymmetry, an approach to pricing hard-to-value intangibles has been developed. This approach ensures that tax administrations can consider ex post outcomes as presumptive evidence about the appropriateness of the ex ante pricing arrangements, and the taxpayer cannot demonstrate that the uncertainty has been appropriately taken into account in the pricing methodology adopted.

63. Does the guidance deal also with corporate synergies and location savings?

Yes, it does. The guidance ascertains that the benefits from corporate synergies are allocated to the group members that have contributed to these synergetic benefits and makes sure that these benefits cannot be isolated and allocated to an entity in a low tax environment. The guidance on locational advantages requires that it is clearly ascertained whether such benefits exist and if so, leads to an allocation of these retained advantages in a way that reflects the allocation between independent parties operating under similar circumstances.

64. How will the profits of “cash-boxes” be determined?

Capital-rich entities without any other relevant economic activities (“cash boxes”), and therefore unable to exercise control over investment and other risks, will not be entitled to any premium returns. The profits that the cash box is entitled to retain will be equivalent to no more than a risk-free financial return. Moreover, if this return qualifies as interest or an economically equivalent payment, then those already marginal profits will also be targeted by the interest deductibility rules of Action 4.

65. How will the arm's length principle be applied for low value-adding intra-group services?

The revised guidance provides for an elective simplified approach which specifies a wide category of common intra-group services, applies a consistent allocation key, and provides greater transparency through specific reporting requirements. In order to ensure that the simplified approach will not lead to base-eroding payments, it allows countries to implement it in combination with the introduction of a cap. In combination with the G20 Development Working Group mandate for the development of toolkits, this measure will protect the tax bases of developing countries from excessive service charges.

66. How does the new guidance deal with the pricing of commodity transactions?

The new guidance clarifies the application of the CUP method, a method which is generally appropriate for the pricing of commodity transactions. It states that quoted prices, such as those from a commodity exchange market, may be useful in determining arm's length prices. The new guidance also contains a provision to assist tax administrations in determining the pricing date for commodity transactions.

67. What did the work on transactional profit split methods conclude?

It concluded that the intended scope reflected in the report will form the basis for draft guidance to be developed during 2016 and expected to be finalised in the first half of 2017. More specifically, improved guidance needs to clarify the circumstances in which transactional profit splits are the most appropriate method for a particular case and to describe what approaches can be taken to split profits in a reliable way. The guidance on transactional profit splits also needs to take into account changes to the transfer pricing guidance in pursuit of other BEPS Actions, as well as the conclusions of the report on *Addressing the Tax Challenges of the Digital Economy*. In addition, the guidance should reflect further work being undertaken to develop approaches to transfer pricing in situations where the availability of comparables is limited.

Action 11 – Establish methodologies to collect and analyse data on BEPS and the actions to address it

68. What are the revenue losses and economic effects caused by BEPS?

Although measuring the economic and revenue effects of BEPS is challenging given the complexity of BEPS and existing data limitations, there is a large and growing body of evidence of the existence of BEPS and its effects. This evidence stems from hundreds of empirical analyses and an increasing amount of specific information relating to the tax affairs of certain MNEs that has emerged from numerous legislative and parliamentary enquiries. Recognising the existing data and estimation limitations, the Action 11 report estimates the annual global revenue losses from BEPS to be between USD 100 billion and 240 billion at 2014 levels. This represents 4-10 percent of global corporate tax revenues. In addition, the empirical studies find that BEPS tilts the playing field in favour of tax-aggressive MNEs, exacerbates the corporate debt bias, misdirects foreign direct investment, and reduces the financing of needed public infrastructure.

69. How was the revenue loss from BEPS estimated?

The report on Action 11 discusses several approaches to estimating the scale of the revenue losses resulting from BEPS. The USD 100 to 240 billion range presented is based upon an examination of the effects of profit shifting due to differences in tax rates, which are not otherwise explained by the available measures of real production activity. This approach is similar to the approach adopted in many academic studies. It also includes an estimate of the loss resulting from

mismatches in tax systems by comparing effective tax rates of large MNEs to comparable domestic only companies. This approach is based on available firm-level data, in combination with tax rate differentials and national corporate tax revenues to estimate an overall global range of corporate revenue lost from BEPS. Any estimate relies on the available data, the methodology used, and various assumptions, which are spelled out in the report. Given the data limitations, a range is presented, and only a global estimate is made rather than an estimate for individual countries. The report also provides guidance to help government officials to draw upon their own tax rules and available data to estimate the effects of different BEPS Actions or countermeasures for their own countries.

70. What do the BEPS Indicators show?

A "dashboard of BEPS indicators" highlights BEPS behaviours using different data sources, employing different metrics, and examining different BEPS channels. The six indicators provide indirect measures of BEPS and are designed to be used to track changes in BEPS over time and in the future to monitor the effectiveness of BEPS measures adopted by individual countries. The indicators show the disconnect between financial and real economic activities, profit rate differentials within top global MNEs, tax rate differentials between MNEs and comparable non-MNEs and profit shifting through intangibles and interest. No single indicator is capable of providing a complete picture of BEPS, but when taken together, these BEPS indicators give a strong indication of the existence of BEPS and the likelihood that it has been increasing over time. These indicators are complemented by the more than one hundred academic empirical analyses that also find evidence of BEPS.

71. Can Country-by-Country (CbC) data be used to assess and monitor the scale of BEPS and BEPS countermeasures?

CbC data may be used where appropriate for economic and statistical analysis. While the use of CbC data will be restricted to governments and in some countries to qualified researchers under strict confidentiality rules, statistical analyses based on the data included in the CbC report have the potential to significantly improve the data available for the future analysis of BEPS. Statistical analysis in the form of aggregated and anonymised tabulations will ensure that the confidentiality of taxpayer information is preserved, while providing governments with a more complete view of the global activity of the largest MNEs. These statistical analyses would not disclose individual taxpayer specific information.

72. How will the BEPS Project improve the data and tools for monitoring BEPS in the future?

The BEPS Action Plan called for the development of recommendations to ensure that new data and tools are available to monitor and evaluate the effectiveness and economic impact of BEPS Actions in the future. Action 11 makes recommendations on how governments can make better use of the data that is already collected, plus the important new data that will be collected as a result of the BEPS Project, including CbC data, for improved public reporting of business tax revenue statistics, particularly for MNEs. Governments are encouraged to support more research on MNE activity within tax administrations, tax policy offices, national statistical offices, and by academic researchers with the new data. Additional and more in-depth analysis of BEPS and the publication of statistical results and tabulations of MNE taxes and activities will be important advances in monitoring BEPS.

Action 12 – Require taxpayers to disclose their aggressive tax planning arrangements

73. What is a mandatory disclosure regime?

It is a regime that requires promoters and/or taxpayers to disclose upfront to the tax administration the use of schemes presenting certain features or hallmarks. This provides tax administrations with early information on aggressive or abusive tax planning schemes and the users of those schemes enabling earlier counteraction.

74. What does the report recommend regarding these regimes?

The report provides a series of options that enables countries to design a regime that fits their need to obtain early information on aggressive or abusive tax planning schemes and their users. It includes recommendations on i) who should have the obligation to report, ii) on the type of hallmarks, iii) when the obligation to disclose should be triggered and iv) the introduction of penalties to ensure compliance with mandatory disclosure regimes.

75. Will taxpayers have to disclose all their tax planning arrangements?

No they will not. It is impractical for a mandatory disclosure regime to target all transactions that raise tax avoidance concerns. Taxpayers will be obliged to disclose transactions that fall within the descriptions or hallmarks set out in a regime. Hallmarks act as tools to identify the features of schemes and are generally divided into two categories: generic and specific. Generic hallmarks target features that are common to a promoted scheme. Specific hallmarks target particular areas of concern such as use of losses.

76. What will tax administrations do with the information received?

There are several ways in which tax administrations can use the collected information to change behaviour and to counteract tax avoidance schemes. These include counteraction through legislative change; through risk assessment and audit; and through communication strategies.

77. Will countries be obliged to introduce these regimes?

No, they will not. The recommendations in this report do not represent a minimum standard and countries are free to choose whether or not to introduce mandatory disclosure regimes. Where a country wishes to adopt mandatory disclosure rules, the recommendations provide the necessary flexibility to balance a country's need for better and timely information with the compliance burdens for taxpayers.

Action 13 – Re-examine transfer pricing documentation

78. What information will be included in the TP Master File and Local File?

The guidance on transfer pricing documentation requires MNEs to provide tax administrations high-level global information regarding their global business operations and transfer pricing policies in a “master file” that would be available to all relevant country tax administrations. It also requires that more transactional transfer pricing documentation be provided in a “local file” in each country, identifying relevant related party transactions, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations they have made with regard to those transactions.

79. What is Country-by-Country (CbC) reporting?

Country-by-Country Reporting is a tool intended to allow tax administrations to perform high-level transfer pricing risk assessments, or to evaluate other BEPS-related risks. The country-by-country reporting template will require multinational enterprises (MNEs) to provide annually and for each jurisdiction in which they do business, aggregate information relating to the global allocation of the MNE’s income and taxes paid together with certain indicators of the location of economic activity within the MNE group, as well as information about which entities do business in a particular jurisdiction and the business activities each entity engages in.

80. Will this information be made public?

The information must be provided to the relevant governments; to protect the confidentiality of potentially sensitive information, it will not be made publically available. This is consistent with the treatment of most other taxpayer information.

81. How will the information be provided to tax authorities?

The master file and the local file will be delivered by MNEs directly to local tax administrations. Country-by-Country Reports should be filed in the jurisdiction of tax residence of the ultimate parent entity and shared between jurisdictions through automatic exchange of information, pursuant to government-to-government mechanisms such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties, or Tax Information Exchange Agreements (TIEAs). In limited circumstances, secondary mechanisms, including local filing can be used as a backup.

82. How will the information be used?

Taken together, the three documents (the Country-by-Country Report, TP master file and TP local file) will require taxpayers to articulate consistent transfer pricing positions, and will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, commence and target audit enquiries.

83. Will developing countries also obtain this information?

Certainly. Countries which fulfil the conditions of confidentiality, consistency, and appropriate use, may obtain the data provided by MNEs in their country-by-country reports under exchange agreements, or in certain circumstances through local filing. At the same time, it is recognised that developing countries may require support for the effective implementation of country-by-country reporting. Developing countries will be also involved in the elaboration of a toolkit on transfer pricing documentation, as requested by the G20, in order to implement the results of the work in this area. This additional work will be completed by June 2016.

84. When will the first Country-by-Country Reports be available?

According to the Action 13 Report all MNE groups that fall under the criteria for providing a Country-by-Country Report should start collecting the information for fiscal years starting on or after 1 January 2016. The new Country-by-Country Reporting requirements are to be implemented by countries as quickly as possible after adoption of the Report to enable them to require MNE groups to provide the Country-by-Country Report for fiscal years starting on or after 1 January 2016 and to enable them to disseminate this information to other countries through automatic exchange of information. The Report acknowledges that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. Already a number of countries have introduced legislation or otherwise started to implement Country-by-Country Reporting.

As MNE groups will need time to process this information regarding the 2016 fiscal year, the Country-by-Country Reports will be provided to the tax administrations of the ultimate parent country before the end of 2017 and will be disseminated by these countries through automatic exchange of information in 2018.

85. What happens if a country does not require the filing of the Country-by-Country reporting?

The Action 13 Report contemplates the risk that this situation could arise. This may be the case for countries that do not wish to introduce the obligation in their country, for example a country that is not a BEPS associate country and that therefore did not commit to its introduction. This may also be the case where countries wish to implement the Country-by-Country Reporting requirements, but for example the political situation or unexpected difficulties in the legislative processes prevent them to get the necessary law (including regulations) in place swiftly enough. When the ultimate parent company is not (yet) obliged to file in its jurisdiction, a secondary mechanism is provided, which will be available for countries that do have the legislation in place that allows them to require the Country-by-Country Reports. Tax administrations of these countries can request local filing by an entity having a taxable presence in their country. It is recognised that local filing generates more compliance costs for businesses. For this reason an alternative to local filing was developed. There is a possibility for MNE groups to elect a group entity in a country that does have the legislation in place as a surrogate parent. That surrogate parent would provide the Country-by-Country reports to that country, with the result that the country where that surrogate parent is located will disseminate the information through automatic exchange of information. This combination of available measures will ensure that all countries that wish to receive the Country-by-Country reports will have the means to obtain this information for fiscal years as of the fiscal year 2016, regardless of whether the ultimate parent country has decided to or has been able to introduce the legislation and other necessary regulations or guidance and conclude the relevant Competent Authority Agreements.

86. Will there be a risk of an unlevel playing field if one or more countries do not introduce the relevant legislation (in time) or do not conclude the relevant Competent Authority Agreements?

Given the mechanism described in the previous question, a level playing field will be achieved. Countries will not be able to favour MNE groups headed in their country over others by not introducing the relevant Country-by-Country reporting legislation or by not concluding the Competent Authority Agreements that are necessary to enable them to exchange the Reports, since these MNE groups will then be obliged to provide the reports directly to the countries entitled to this information, through the surrogate reporting process or through local filing.

87. Can the Country-by-Country information be used to issue a transfer pricing assessment?

No. The information included in the country-by-country report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the country-by-country report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. Specifically, the information should not be used by tax administrations to propose adjustments based on an income allocation formula.

88. What happens if a country breaches its obligation to keep the information confidential?

When appropriate safeguards are not in place or when there has been a breach in keeping the information confidential and the situation has not been appropriately resolved, information exchange partners may suspend the exchange of information and therefore deny the exchange of CbC information.

89. How can countries conclude the relevant Competent Authority Agreements?

The Competent Authority Agreements that are necessary to enable automatic exchange of the Country-by-Country reports can be based on any legal instrument that provides for exchange of tax information between countries (bilateral tax treaties, TIEAs, the MAC). The Competent Authority Agreements can be concluded multilaterally or bilaterally. The first signing of the Multilateral Competent Authority Agreement for automatic exchange of Country-by-Country Reports has taken place on 27 January 2016.

90. Will the implementation of these documentation requirements be monitored?

Mechanisms will be developed to monitor jurisdictions' compliance with their commitments and to monitor the effectiveness of the filing and dissemination mechanisms. The outcomes of this monitoring will be taken into consideration in thorough review planned for 2020, which will also reassess whether modifications are required to the content of the reports.

Action 14 – Make dispute resolution mechanisms more effective

91. How can dispute resolution be made more effective?

Recognising the need to do better in this area, countries have agreed on a minimum standard and a number of best practices in relation to dispute resolution. The minimum standard will ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that administrative processes promote the prevention and timely resolution of treaty-related disputes. A number of best practices, 11 in total, are also identified.

92. Is there a time limit to solve treaty disputes through the mutual agreement procedure?

The minimum standard for dispute resolution provides that Countries commit to seek to resolve MAP cases within an average timeframe of 24 months. Countries' progress toward meeting that target will be periodically reviewed.

93. How will compliance with the minimum standard be monitored?

The implementation of the minimum standard will be evaluated through a monitoring mechanism in order to ensure that the commitments embodied in the minimum standard are effectively satisfied. The reviews will evaluate the legal framework provided by a jurisdiction's tax treaties and domestic law and regulations, the jurisdiction's MAP programme guidance and the implementation of the minimum standard in practice.

94. Will mandatory arbitration be introduced?

A large group of countries has committed to adopt and implement mandatory binding arbitration as a way to resolve disputes that otherwise prevent the resolution of cases through the mutual agreement procedure. A mandatory binding MAP arbitration provision will be developed as part of the negotiation of the multilateral instrument and included in there for countries willing to sign to it.

Action 15 – Develop a multilateral instrument

95. What is the goal of the multilateral instrument?

In the context of the BEPS Project, the goal of a multilateral instrument is to expedite and streamline the implementation of the measures developed to address BEPS, in particular by modifying bilateral tax treaties. Developing such a mechanism is necessary not only to tackle BEPS, but also to ensure the sustainability of the consensual framework to eliminate double taxation.

96. Is it possible to amend the network of bilateral treaties via a multilateral instrument?

Yes, it is. Although there is no exact precedent in the international tax field, there are several precedents in various other areas of public international law where bilateral treaties have been modified via a multilateral instrument. This was analysed in the report, which added that a multilateral instrument was not only feasible but also necessary.

97. Which BEPS-related measures will be included in the multilateral instrument?

The multilateral instrument will modify existing bilateral tax treaties in order to swiftly implement the tax treaty measures developed in the course of the OECD-G20 BEPS Project. Treaty measures that will be included in the multilateral include those on hybrid mismatch arrangements, treaty abuse, permanent establishment, and mutual agreement procedures.

98. Which countries and international organisations participate in the work?

There are at the moment about ninety countries participating in the development of the Multilateral Instrument. The ad hoc Group formed to develop a multilateral instrument is chaired by Mike Williams of the United Kingdom, with Mr. Liao Tizhong of the People's Republic of China, Mr. Mohammed Amine Baina of Morocco and Mrs. Kim S. Jacinto-Henares of the Philippines acting as Vice-Chairs.

99. Will stakeholders be able to provide input?

Yes. It will be important to engage stakeholders in the work and obtain feedback. Requests for input will be issued for comments and discussed at public consultations.

100. When will the multilateral instrument be opened for signature?

The Group will conclude its work and open the multilateral instrument for signature by 31 December 2016.

B. Engagement with developing countries

101. Have developing countries been involved in the work?

Over 80 developing countries and other non-OECD/non-G20 economies have been consulted in the first year of the Project through four in-depth regional consultations and five thematic global fora meetings. In November 2014, the OECD launched a new structured dialogue process based on three pillars: (1) the direct participation of developing countries and of Regional Tax Organisations in the Committee on Fiscal Affairs and all technical working groups; (2) the set-up of Regional Networks of tax policy and administration officials on BEPS in five regions to ensure the participation of countries that are not able to regularly attend the Paris-based meetings; (3) capacity building support, including the development of toolkits, to assist countries implement solutions to tackle BEPS.

102. What are the BEPS priorities put forward by developing countries?

Limiting base erosion via interest deductions and other financial payments (Action 4), preventing tax treaty abuse and the artificial avoidance of PE status (Actions 6 and 7), transfer pricing, in particular base eroding payments (Actions 8, 9 and 10), and transfer pricing documentation and country-by-country reporting (Action 13). The lack of transfer pricing comparables and the granting of wasteful tax incentives were also identified as areas of particular concern. These two issues are being addressed in the context of the G20 Development Working Group work.

103. How will developing countries benefit from BEPS measures?

BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises (MNEs). Therefore, the BEPS measures once implemented will benefit developing countries and provide them with tools to mobilise domestic resources. In addition, specific challenges faced by developing countries and identified by them during consultations are currently being addressed through the work on the toolkits. These toolkits will be practical and based on real-life cases to facilitate the work of tax administrations.

104. Has the input from developing countries helped to shape any the final BEPS measures?

Developing countries have participated in the work and influenced the outputs of the BEPS Project through written comments and contributions during the technical working group meetings. For example, relevant input has been provided to the work on transfer pricing, the limitations to interest deductibility, as well as tax treaty measures. The successful implementation of a Technical Committee on Cross Border taxation set up by ATAF allowed effective input of African countries into the BEPS process. CREDAF has also set up a working group on BEPS to provide input in the BEPS Project including the work on the toolkits.

C. Engagement with stakeholders

105. Were businesses and civil society involved in the work?

During the course of the work, stakeholders have been consulted at length. Discussion drafts released during the course of the work so far have generated more than 12,000 pages of comments, and have attracted a large number of participants at 11 public consultations.

106. How many submissions were received from stakeholders?

About 1,400 contributions were sent by stakeholders, commenting on a total of 23 discussion drafts and working documents related to the different action items. Many of them have been presented by their authors and discussed by all stakeholders with the OECD Secretariat during public consultations.

107. Which action item triggered most submissions?

Transfer pricing has definitely been the most discussed topic amongst stakeholders. Action 13, related to transfer pricing documentation and country-by-country reporting, received 183 written comments from stakeholders. Actions 8, 9 and 10, all dealing with transfer pricing and that form part of a single final report, received in total about 400 comments.

108. Will the OECD continue to welcome stakeholders' input after the release of the BEPS Package?

Yes it will. The follow-up work as well as the work to monitor and support the effective implementation of the measures agreed upon in the course of the BEPS Project will benefit greatly from stakeholders input.

D. BEPS implementation phase

109. How will the inclusiveness during the BEPS implementation phase be ensured?

The BEPS Project triggered important changes to the working methods and composition of the OECD Committee on Fiscal Affairs. It has seen the involvement of major economies on an equal footing, with all G20 non OECD countries participating as BEPS Associates. Going forward an inclusive mechanism will be designed for the monitoring work, with countries participating on an equal footing.

110. Will the engagement with developing countries continue?

Developing countries and regional tax organisations have participated in the standard setting discussions as well as in extensive consultation mechanisms designed to elicit their views and concerns. This engagement will continue beyond 2015.

111. When will the new Model Tax Convention and Transfer Pricing Guidelines be released?

The Model Tax Convention and Transfer Pricing Guidelines require revisions as a result of the BEPS Project. It is anticipated that these revisions will be completed and released by 2017.

112. How can domestic implementation of the measures be supported?

Ensuring that countries can practically implement the measures to counter BEPS is critical. Capacity building support, including toolkits, is therefore a necessary element to guarantee effectiveness. The toolkits, mandated by the G20 DWG, will be key in this respect and are being developed by the OECD, United Nations, International Monetary Fund and World Bank Group, and regional tax organizations in co-operation with developing countries.

E. Background on BEPS

113. What is BEPS?

Base erosion and profit shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear’ for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid.

114. Are BEPS strategies illegal?

Although some schemes used are illegal, most are not. Largely they just take advantage of current rules that are still grounded in a bricks and mortar economic environment rather than today’s environment of global players which is characterised by the increasing importance of intangibles and risk management.

115. What causes BEPS?

Corporate tax is levied at a domestic level. When activities cross border, the interaction of domestic tax systems means that an item of income can be taxed by more than one jurisdiction, thus resulting in double taxation. The interaction can also leave gaps, which result in income not being taxed anywhere. BEPS strategies take advantage of these gaps between tax systems in order to achieve double non-taxation.

116. Why should we be worried about BEPS if it is legal?

First, because it distorts competition: businesses that operate cross-border may profit from BEPS opportunities, giving them a competitive advantage over enterprises that operate at the domestic level. Second, it may lead to inefficient allocation of resources by distorting investment decisions towards activities that have lower pre-tax rates of return, but higher after-tax returns. Finally, it is an issue of fairness: when taxpayers (including ordinary individuals) see multinational corporations legally avoiding income tax, it undermines voluntary compliance by all taxpayers.

117. Is public outcry about the tax affairs of corporate giants the driving force behind the OECD’s work on BEPS?

The OECD has been providing solutions to tackle aggressive tax planning for years. The debate over BEPS has now reached the highest political levels in many OECD and non-OECD countries. The OECD does not see BEPS as a problem created by one or more specific companies. Apart from some cases of egregious abuses, the issue lies with the tax rules themselves. Business cannot be faulted for using the rules that governments have put in place. It is therefore governments’ responsibility to revise the rules or introduce new rules.

118. What is the OECD's role in addressing BEPS?

Many BEPS strategies take advantage of the interaction between the tax rules of different countries, which means that unilateral action by individual countries will not fully address the problem. In addition, unilateral and uncoordinated actions by governments responding in isolation could result in double – and possibly multiple – taxation for business. This would have a negative impact on investment, growth and employment globally. There is therefore a need to provide an internationally coordinated approach which will facilitate and reinforce domestic actions to protect tax bases and provide comprehensive international solutions to respond to the issue.

119. What is the role of the G20 in the BEPS Project?

Since its launch by the OECD, the work on BEPS received strong and consistent support by the G20 and it is a key item on the Finance Ministers' and Leaders' agendas. Furthermore, all G20 countries have participated as equal partners in the development of the work. Their continued participation and endorsement at the highest levels of government have been critical to guarantee a level playing field and prevent inconsistent standards.

The delivery of the BEPS package is concrete evidence of how OECD and G20 members working together can achieve consensus on important reforms with a worldwide impact. Non-OECD G20 countries are Associates in the BEPS Project and participate on an equal footing in the decision making process, at the level of both the OECD Committee on Fiscal Affairs and of its subsidiary bodies carrying out the technical work. In addition, other countries and stakeholders have engaged in regular and fruitful dialogues throughout this process.

120. Is the BEPS Project meant to stop tax competition?

Taxation is at the core of countries' sovereignty, and each country is free to set up its corporate tax system as it chooses, including charging the rate it chooses. The work is not aimed at restricting the sovereignty of countries over their own taxes; instead, it is aimed at restoring and strengthening sovereign taxing rights by ensuring that countries can tax the profits arising from the economic activities undertaken there. The project achieves this in a number of ways such as by addressing regimes that apply to mobile activities and that unfairly erode the tax bases of other countries, potentially distorting the location of capital and services.

121. What is the risk of not addressing harmful tax practices?

The dangers of not addressing harmful tax practices can be felt both by governments and business. Firstly, harmful tax competition can introduce distortions and an unlevelled playing field between businesses operating at domestic level and those that operate globally and have access to preferential regimes. Secondly, countries have long recognised that a "race to the bottom" would ultimately drive applicable tax rates on certain sources of income to zero for all countries, whether or not this is the tax policy a country wishes to pursue.

122. How will the BEPS Project affect "tax havens"?

The BEPS Project aims to end the use of shell companies used to stash profits offshore or unduly claim tax treaty protection and neutralise all schemes that artificially shift profits offshore. Though the BEPS Project is not about dictating whether countries should have a specific corporate income tax rate, it will have an impact on regimes that seek to attract foreign investors without requiring any economic substance.

123. Is the BEPS Project effectively a tax increase on multinationals?

The BEPS Project is not about increasing corporate tax rates. Non- or low-taxation is not itself the concern, but it becomes so when it is achieved through practices that artificially separate taxable income from the activities that generate it. These strategies may increase tax disputes as countries fight against tax strategies that defy common sense. Implementation of the recommendations coming out of the BEPS Project will reduce those disputes, giving business greater certainty, and reinforcing the fairness and consistency of international tax system.

124. Will the BEPS Project put an end to offshore tax evasion?

The work on BEPS focusses largely on legal tax planning techniques rather than offshore tax evasion, which is illegal. However, other work being carried out by the OECD and the OECD Global Forum on Transparency and the Exchange of Information is focused on combatting offshore tax evasion. More information about this work can be found on line at www.oecd.org/tax/exchange-of-tax-information/.

www.oecd.org/tax/beps.htm

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