

# OECD/G20 Inclusive Framework on BEPS

Progress report July 2017-June 2018





LIMA - PERÚ



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“We will continue our work for a globally fair and modern international tax system and welcome international cooperation on pro-growth tax policies. We remain committed to the implementation of the Base Erosion and Profit Shifting (BEPS) package and encourage all relevant jurisdictions to join the Inclusive Framework.”

G20 Leaders, Hamburg Communique, July 2017

## Overview

In November 2015, two years after the G20 Leaders endorsed the ambitious Action Plan on Base Erosion and Profit Shifting (BEPS), the BEPS package of 15 measures to tackle tax avoidance was agreed by all OECD and G20 countries and endorsed by G20 Leaders. It was designed to stop countries and companies from competing on the basis of a lack of transparency, artificially locating profit where there is little or no economic activity, or the exploitation of loopholes or differences in countries' tax systems. The OECD/G20 BEPS Project is focused on preventing double non-taxation without creating double taxation and it was meant to be as inclusive as possible so that all countries and jurisdictions can benefit from a multilateral approach to tackling tax avoidance and harmful tax practices.

That is what the OECD/G20 BEPS Project is achieving. It is making tax planning more transparent to all tax

authorities concerned, requiring substance from both companies and countries (i.e. restoring taxation to the place where economic activities and value creation occur), and closing off cross-border tax loopholes. It is doing so within a multilateral forum – the OECD/G20 Inclusive Framework on BEPS – that now has 116 members representing over 95% of global GDP. In the past year, the OECD/G20 Inclusive Framework on BEPS welcomed 15 new members – Anguilla, Bahamas, Bahrain, Barbados, Maldives, Mongolia, Oman, Qatar, Saint Kitts and Nevis, Saint Lucia, Serbia, Trinidad and Tobago, Tunisia, United Arab Emirates and Zambia.

It is almost trite at this point to say that globalisation has made the world a smaller, interconnected place and one in which things happening on one side of the globe have an impact around the world. Unilateral action is no longer a practical, first best solution. This is nowhere

more true than in the international tax world, where a patchwork of uncoordinated rules and procedures would be anathema to a smoothly operating global financial system. OECD/G20 Inclusive Framework members have come together to develop and put into practice the collective, consensus-based solutions that only a global approach can deliver.

The past year has also been witness to major developments in the OECD/G20 BEPS Project, including the delivery of an interim report to the G20 Finance Ministers in March 2018 on the tax challenges arising from the digitalisation of the economy, taking stock of the issues and agreeing to work on a consensus-based long-term solution.

The Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent BEPS (“the MLI”) already covers 82 jurisdictions and more than 1 360 tax agreements. Following ratification by five countries – Austria, Jersey, Isle of Man, Poland, and Slovenia – the MLI entered into force on 1 July 2018, with the first MLI modifications having effect as from 1 January 2019. New Zealand, Serbia, Sweden, and the United Kingdom have also ratified the MLI and many more ratifications are expected through the year. Ultimately, the MLI will make its mark on a network of more than 2 500 bilateral agreements worldwide.

Crucially, the past year has seen delivery of the first results of the peer reviews of the BEPS minimum standards:

- **Action 5** – preferential tax regimes: 175 regimes have been considered by the Forum on Harmful Tax Practices (FHTP) against the standard for harmful tax regimes, of which 31 have already been changed; 81 require legislative changes which are in progress; 47 do not pose any BEPS risks in practice; 4 have harmful or potentially harmful features and 12 regimes are still under review.
- **Action 5** – tax rulings: Over 17 000 rulings have already been identified and information is now being exchanged between OECD/G20 Inclusive Framework members, on the key issues contained in such rulings, which can then be used by tax authorities for risk assessment.

- **Action 13** – Country-by-Country reporting (CbC reporting): The first annual peer review report, released in May 2018, contains a comprehensive examination of the implementation of the minimum standard by 95 jurisdictions, focusing mainly on their domestic legal and administrative frameworks. The second annual peer review, covering all members of the OECD/G20 Inclusive Framework, was launched in April 2018 and will focus on the exchange of information aspects of CbC reporting, as well as compliance with the confidentiality and appropriate use conditions.
- **Action 14** – improvement of mutual agreement procedures (MAP): 21 jurisdictions have already been subject to peer reviews with reports published that identify areas for improvement, 16 are currently underway, and 35 more have been scheduled through December 2019. In addition, MAP country profiles for more than 80 countries have been published to increase transparency of the MAP processes in those countries.

More broadly, countries are making significant progress in implementing the BEPS Actions, even beyond the minimum standards. A number of US tax reform measures encompass areas covered by the BEPS recommendations, including provisions against hybrid mismatch arrangements (addressed by BEPS Action 2), and limitation of interest deductibility (addressed by BEPS Action 4). In particular, it also includes enhanced controlled foreign corporations rules (CFC addressed by BEPS Action 3), through a tax on excess foreign profits, which provides that US multinational enterprises (MNEs) will pay a current combined foreign and US tax rate on such foreign source income of at least 13.125%. The Netherlands has also recently proposed a major reform that is aimed at upending its reputation as a facilitator of tax avoidance strategies and that would implement a number of BEPS measures, in some cases going beyond the minimum requirements. The EU has agreed important anti-avoidance directives (ATAD 1 and 2) that incorporate BEPS measures including on branch mismatch arrangements and limitation to interest deductibility and that are being put into effect by all the EU Member States with deadlines starting in 2019.

Developing countries have much to gain from implementation of the BEPS measures to protect their tax bases. The past year has also seen significant

advances in the OECD/G20 Inclusive Framework's capacity building and collaboration efforts to ensure that developing countries have the tools and resources needed to implement the BEPS package and to benefit from its global reach. The first global conference of the Platform for Collaboration on Tax (PCT) took place in New York in February 2018, where high-level delegates agreed an ambitious programme of work for the IMF, OECD, UN and World Bank to take forward including in relation to BEPS, with the continued work on toolkits to implement BEPS-related issues that are of priorities for developing countries.

Taken together, these developments show great progress. However, the implementation of the BEPS measures is still at an early stage, and more tangible results are yet to come. As recognised in the BEPS Action 11 Report on Measuring and Monitoring BEPS, a major challenge of assessing the scale and impact of BEPS is the scarcity

of relevant data and the significant limitations of existing data sources. As a step towards addressing this challenge and with a view towards providing more accurate monitoring of the impact of BEPS and the effect of the BEPS package over time, a series of new data collection processes and analytical tools have been developed and are now being put in place, including data in respect of Country-by-Country reports.

The OECD/G20 BEPS Project is the most ambitious multilateral international tax policy initiative ever undertaken. Ensuring fairness, coherence, transparency and that taxation is aligned with where economic activity takes place in the vastly complex space of international tax provisions covering virtually all of the world's economic activity requires an enormous effort and commitment. The work to transform these ambitions into reality has begun and is already having an important impact, but even deeper change is underway. ■



# Introduction

Base Erosion and Profit Shifting (or BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions where there is little or no economic activity (i.e. no substance). BEPS practices undermine the fairness and integrity of tax systems because businesses that operate across borders can use these gaps and mismatches to gain a competitive advantage over enterprises that operate only domestically. Moreover, when other taxpayers see MNEs legally avoiding income tax, it undermines voluntary compliance and trust in the tax system as a whole.

## A COMPREHENSIVE AGENDA

The BEPS Action Plan identified 15 action items along the following three fundamental pillars: (1) introducing coherence in the domestic rules that affect cross-border

activities; (2) reinforcing substance requirements in the existing international standards so that taxation occurs where economic activities take place and where value is created; and (3) improving transparency as well as certainty for businesses that do not take aggressive positions.

Table 1. BEPS Actions per objectives

Coherence	Substance	Transparency	Horizontal
<b>Action 2</b> Neutralise the effects of hybrid mismatch arrangements	<b>Action 5 – 1st component</b> Preferential tax regimes	<b>Action 5 – 2nd component</b> Exchange of information on tax rulings	<b>Action 1</b> Digital economy
<b>Action 3</b> Strengthen CFC rules	<b>Action 6</b> Prevent treaty abuse	<b>Action 11</b> Data analysis	<b>Action 15</b> Multilateral instrument
<b>Action 4</b> Limit interest deductibility	<b>Action 7</b> Prevent the artificial avoidance of PE status	<b>Action 12</b> Mandatory disclosure rules	
	<b>Actions 8-10</b> Aligning transfer pricing outcomes with value creation: Intangibles; Risk and capital; and Other high-risk transactions	<b>Action 13</b> Re-examine transfer pricing documentation	
		<b>Action 14</b> Dispute resolution	

The BEPS measures range from new minimum standards to a revision of pre-existing international standards, and to common approaches which will facilitate the convergence of national rules and guidance drawing on best practices. Four mandatory minimum standards have been agreed to tackle issues in cases where no action by some countries would have created negative spillovers (including adverse impacts on competitiveness) on other countries, for example on dispute resolution and for combatting harmful tax practices. Pre-existing standards

have been updated, in particular on tax treaties and on transfer pricing. Common approaches have been agreed regarding hybrid mismatch arrangements and interest deductibility. In these areas, there is an expectation that countries will converge over time. Guidance based on best practices was also proposed to support countries intending to act in the areas of mandatory disclosure initiatives and controlled foreign company (CFC) rules. In other areas such as Action 11, the focus is put on analysing and measuring results.

Table 2. BEPS Actions per outcomes

Minimum standards	Reinforced international standards	Common approaches and best practices	Horizontal work
<b>Action 5 – 1st component</b> Preferential tax regimes	<b>Action 7</b> Prevent the artificial avoidance of PE status	<b>Action 2</b> Neutralise the effects of hybrid mismatch arrangements	<b>Action 1</b> Digital economy
<b>Action 5 – 2nd component</b> Exchange of information on tax rulings	<b>Actions 8-10</b> Aligning transfer pricing outcomes with value creation: Intangibles; Risk and capital; and Other high-risk transactions	<b>Action 3</b> Strengthen CFC rules	<b>Action 11</b> Data analysis
<b>Action 6</b> Prevent treaty abuse		<b>Action 4</b> Limit interest deductibility	<b>Action 15</b> Multilateral instrument
<b>Action 13</b> Re-examine transfer pricing documentation		<b>Action 12</b> Mandatory disclosure rules	
<b>Action 14</b> Dispute resolution			

## AN INCLUSIVE INSTITUTION

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In recognition of the truly global nature of BEPS, and to continue the development of standards as well as monitoring the effective implementation of the BEPS actions, the OECD and G20 established the OECD/G20 Inclusive Framework on BEPS. With an initial membership of 82 countries and jurisdictions in 2016, the OECD/G20 Inclusive Framework has continued to expand, and now brings together 116 countries and jurisdictions, and includes several international and regional organisations as observers.<sup>1</sup> The OECD/G20 Inclusive Framework allows all participating jurisdictions to work on an equal footing to develop standards on BEPS related issues, and to review and monitor the implementation of the whole BEPS package. Embodied in the Committee on Fiscal Affairs (CFA), the OECD/G20 Inclusive Framework makes use of a consensus-based mechanism whereby all members have the same rights.

The OECD/G20 Inclusive Framework's mandate is to:

- Finalise the remaining technical work to address BEPS challenges, including with respect to the tax challenges of the digitalised economy;
- Ensure the implementation of the 4 BEPS minimum standards through a robust peer review process;
- Gather data to monitor the other aspects of implementation, including under BEPS Actions 1 (on the tax challenges of the digitalised economy) and 11 (on measuring and monitoring BEPS); and
- Support jurisdictions in their implementation of the BEPS package, including by providing further guidance on the standards, through direct bilateral support and regional capacity building.
- The OECD/G20 BEPS Project has set the bar high in terms of the goals it seeks to achieve, and stakeholders are understandably eager to see results. This second progress report shows the advances made on many fronts, including through the peer reviews of the

minimum standards, development of further guidance and in supporting BEPS implementation by governments and taxpayers.

The OECD/G20 BEPS Project set ambitious targets in terms of both the legislative frameworks and the administrative co-operation needed. Despite the speed with which the BEPS actions were agreed, putting these policies into practice takes time. Introducing legislation can be a lengthy process, and once legislation enters into force there is generally a lead time for the law to enter into effect. Tax administrations need to adjust their procedures and develop guidance as appropriate. Taxpayers and other stakeholders need to understand what the new requirements are and how they affect existing and future transactions.

The remainder of this section provides a high-level description of the major developments over the past year. Greater detail on the individual items is available in the body of the report.

## THE TAX CHALLENGES OF DIGITALISATION

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The world has changed significantly over recent decades. In addition to globalisation, new technologies have facilitated new business models that have been putting the existing international tax rules under pressure. The OECD/G20 BEPS Project identified that some of the specific BEPS behaviours that were of concern had been exacerbated by the rapid and continuing evolution of digital technologies – the process of digitalisation. As part of the work of Action 1 under the OECD/G20 BEPS Project, it was recognised that, as a result of the pervasive nature of digitalisation, it would be difficult, if not impossible, to ring-fence the “digital economy”.

Beyond the BEPS issues, the 2015 Action 1 report also concluded that digitalisation was giving rise to some broader tax challenges, including in the areas of data, nexus and characterisation. Of course, it is always a challenge for policy makers to stay ahead of the latest developments. This is especially the case in the context of digitalisation.

The Action 1 Report set out a number of potential options for addressing the broader tax challenges of digitalisation; however, none of these options was

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<sup>1</sup>The full list of OECD/G20 Inclusive Framework's members and observers is available in Annex A

recommended to be implemented. However, it was concluded that the countries could introduce any of the options in their domestic laws as additional safeguards against BEPS, provided they respect the existing treaty obligations or in their bilateral treaties. In the absence of agreement, members of the OECD/G20 Inclusive Framework on BEPS agreed to continue working on tax and digitalisation with the objective of producing a final report in 2020. In March 2017, the G20 called on the OECD to produce an interim report in 2018.

In March 2018, the OECD/G20 Inclusive Framework on BEPS delivered the report, *Tax Challenges Arising from Digitalisation – Interim Report 2018*. The Interim Report shows the complexity of the issue and preliminary evidence suggests that the implementation of the BEPS actions is already having an impact. The Interim Report also embodies a commitment from all members of the OECD/G20 Inclusive Framework to undertake a coherent and concurrent review of the nexus and profit allocation rules that would consider the impacts of digitalisation on the economy, relating to the principle of aligning profits with underlying economic activities and value creation. These concepts, which have largely been based on notions of physical presence, have been challenged by digitalisation.

Whilst there is agreement among OECD/G20 Inclusive Framework members to review the nexus and profit allocation rules, the Interim Report also highlights that there are clear points of divergence between countries over the future direction of the international tax rules. While some countries are not convinced of the need for change, others believe that change should be targeted at the notion of “user participation”, which is often observed as a key characteristic of many highly digitalised businesses. For other countries, any future change should not be limited to “digital firms”, but should also apply to the economy more broadly.

The most pressing challenge for the OECD/G20 Inclusive Framework – and the international tax community more generally – is how to bridge the divide among the various points of view so that coherence of the international tax system is maintained.

## TRANSPARENCY

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When taxpayers have complex operations that span the globe, the ability of tax administrations to effectively enforce their tax laws will depend on the nature and extent of information that they have at their disposal. The OECD/G20 BEPS Project envisioned, and is delivering, a new and unprecedented level of tax transparency to tax administrations around the world.

- **BEPS Action 5** requires tax administrations in all OECD/G20 Inclusive Framework jurisdictions that issue rulings to exchange information on certain rulings with all other member jurisdictions where the jurisdictions have an exchange agreement in force and such rulings may be relevant. To date, over 17 000 rulings have been identified and information on these has been exchanged with the relevant exchange partners. Previously, such information may have only come to light through unofficial and often unauthorized disclosures. Now, countries are able to rely on their exchange partners to obtain such information, which can be vital to understanding the nature of a taxpayer’s affairs, and the transparency introduced globally through Action 5 also ensures that rulings regimes can no longer operate in a secretive and non-transparent manner which itself creates a positive deterrent effect.
- **BEPS Action 12** on mandatory disclosure regimes contains rules that allow jurisdictions to obtain early information on the tax compliance and policy risks raised by aggressive tax planning. Action 12 seeks to balance the need for early information on aggressive tax planning schemes with the need that disclosure requirements be appropriately targeted, enforceable and avoid over-disclosure or placing undue compliance burden on taxpayers. Several countries are considering the introduction of rules based on Action 12 and in May 2018, the European Council adopted a directive that will require Member States to introduce mandatory disclosure rules for cross-border aggressive tax planning, offshore structures and CRS avoidance schemes. The directive incorporates the model rules set out in the OECD Report on Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures issued in February this year.

- **BEPS Action 13:** The implementation of Action 13 on CbC reporting, supported by the introduction of improved transfer pricing documentation requirements and the OECD's wider work on tax co-operation, provides tax administrations with a new level of information on the global operations of MNE groups with activities in their jurisdiction. Information contained in an MNE group's CbC report includes the amount of unrelated party and related party revenue reported, profit before income tax, and income tax paid and accrued, as well as stated capital, accumulated earnings, number of employees and tangible assets, broken down by jurisdiction. More than 1 400 bilateral relationships for the exchange of CbC reports are already in place, with more to come throughout the year. With a view to support countries, guidance on implementation have been released on the implementation of CbC Reporting and on the appropriate use of the information contained in CbC reports.
- **BEPS Action 14** on improving dispute resolution mechanisms also helps increasing transparency as it aims at ensuring that taxpayers have access to MAP, that MAP are conducted in an efficient and timely manner and that agreements are implemented. A total of 21 jurisdictions have been reviewed so far (with 370 recommendations made), 16 more reviews are currently underway and 35 more have been scheduled through December 2019. Jurisdictions are already working to address the recommendations made in the peer reviews, and others are improving their procedures in anticipation of their reviews. Publishing countries' profiles and data on MAP also promotes the transparency towards taxpayers.

As a result of the OECD/G20 BEPS Project, tax administrators today have more information on the global picture than they ever had. Moreover, this is already changing behaviour among MNEs. With the exchange of CbC reports beginning in 2018 for the 2016 tax year, further evidence of the impact of the BEPS measures is anticipated in the coming years.

## CERTAINTY

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The work on dispute prevention and resolution holds great promise for improving tax certainty and a much enhanced level of co-operation and co-ordination

between taxpayers and tax administrations. The focus of this work is on dispute prevention and to ensure that where disputes do arise the systems are in place to provide taxpayers with an efficient, predictable and transparent avenue to resolution. The advent of CbC reporting is providing tax administrations with a much clearer view of the activities and organisational structures of MNEs and therefore a more refined ability to measure risks and target audit activity accordingly. This in turn feeds co-operative compliance programmes such as the International Compliance Assurance Program (ICAP), launched this year by tax administrations in eight countries, and which aims to deliver earlier tax certainty for taxpayers wishing to be transparent and compliant as well as providing greater assurance for the tax administrations involved.

Tax certainty continues to be enhanced by the ongoing peer review process for the BEPS Action 14 minimum standard on improving MAP (as discussed above). MAP was ranked as the second most important tool for dispute resolution in the 2017 OECD/IMF report on tax certainty. An update to that 2017 report is being published in 2018.

At request of the Chair of the CFA, the CFA's subsidiary bodies reviewed and discussed the 2017 report on tax certainty presented by the OECD and the IMF to the G20 Finance Ministers and its recommendations. The subsidiary bodies came to the conclusions that several recommendations and ideas of the report could provide a useful and valuable basis to integrate the concept of tax certainty into their work and output and therefore significantly contribute to the G20's request to enhance tax certainty.

## SUBSTANCE

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The philosophy behind the OECD/G20 BEPS Project was to eliminate the artificial shifting of profits and to realign taxation with the location of economic activity and value creation and this is what the implementation of the BEPS package is doing on a number of fronts. For example, the MLI is an important tool to prevent treaty shopping, and is expected to modify a third of existing tax treaties once ratified by all signatories. As signatories deposit additional ratification instruments in the coming months, the MLI will modify a growing

number of covered tax agreements with effects as from 2019 and 2020. OECD/G20 Inclusive Framework members are also introducing or revising their national guidance on transfer pricing to make it consistent with BEPS Actions 8-10, and amending their preferential tax regimes where necessary to make them consistent with Action 5 on harmful preferential tax regimes. A significant number of MNEs have taken pro-active measures to realign their tax arrangements with their real economic activity, including by reconsidering their transfer pricing positions or by relocating and on-shoring valuable assets, such as intangibles (see the Tax Challenges Arising from Digitalisation - Interim Report 2018, Chapter 3 Implementation and Impact of the BEPS Package for more information).

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## COHERENCE

One of the pillars of the OECD/G20 BEPS Project was to ensure international coherence of certain aspects of corporate income taxation, by complementing existing standards and by addressing cases of no or low taxation associated with practices that artificially segregate taxable income from the activities that generate it. Three main areas were identified for that purpose, including neutralising the effects of hybrid mismatch arrangements (Action 2), strengthening CFC rules (Action 3), and limiting base erosion via interest deductions and other financial payments (Action 4). Since the BEPS package was released in 2015, countries and jurisdictions have started to implement these measures. For instance, within the EU, all three actions have become enshrined in EU law, and the United States has also included changes in these areas in its recent tax reform.

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## INCLUSIVENESS AND TECHNICAL ASSISTANCE

In the past year, the OECD/G20 Inclusive Framework on BEPS welcomed 15 new members – Anguilla, Bahamas, Bahrain, Barbados, Maldives, Mongolia, Oman, Qatar, Saint Kitts and Nevis, Saint Lucia, Serbia, Trinidad and Tobago, Tunisia, United Arab Emirates and Zambia. The OECD/G20 Inclusive Framework, now with 116 members many of them developing countries, is building capacity in developing countries through a comprehensive menu of activities including induction programmes for new members, regional training events, twinning programmes and bespoke training.

The Platform for Collaboration on Tax (PCT), established in 2016 by the IMF, the OECD, the UN and the WBG to improve the co-ordination of their capacity building activities on tax, works to support developing countries including through the development of BEPS-related toolkits to address key priorities identified by these countries. The next toolkit on indirect transfer of assets will be delivered by the end of 2018.

On 14-16 February 2018, the PCT held its first Global Conference on Taxation and the Sustainable Development Goals (SDGs) at the UN headquarters in New York, reaffirming the common objectives of the four partner international organisations in relation to the tax agenda, including: how to mobilise domestic resources for development; tax policies to support sustainable economic growth, investment and trade; the social dimensions of taxation.

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## CONCLUSION

The BEPS Actions are designed to stop countries and companies from competing on the basis of a lack of transparency, a lack of substance or the exploitation of loopholes or differences in countries' tax systems. They are focused on avoiding double non-taxation without creating double taxation. The remainder of this report provides further details on the achievements over the past year, focusing on the major developments in dealing with the tax challenges of the digitalised economy and the entry into force of the MLI (Part I), peer reviews of the BEPS minimum standards (Part II), and broader BEPS implementation (Part III). The annexes provide information on the membership of the OECD/G20 Inclusive Framework on BEPS (Annex A), a list of the BEPS actions and a guide to where this work is done within the OECD (Annex B), and a detailed description of how CbC data will be used to measure BEPS (Annex C). ■



# Part I – Major Developments



The two major developments in advancing the BEPS agenda in the past year are the publication of the OECD/G20 Inclusive Framework's *Tax Challenges Arising from Digitalisation – Interim Report 2018* and the coming into force of the MLI. After the release of the OECD/G20 BEPS package, the OECD/G20 Inclusive Framework agreed to renew the mandate of the Task Force on the Digital Economy (TFDE) and continue to monitor developments in respect of digitalisation with a further report to be delivered by 2020. In March 2017, the G20 called on the OECD to deliver an interim report by the 2018 IMF/World Bank Spring Meetings. The request that was reiterated by the G20 Leaders at their July 2017 Hamburg Summit. The report was delivered to the G20 Finance Ministers in March 2018.

The MLI entered into force on 1 July 2018, marking a significant step in international efforts to update the existing network of bilateral tax treaties and reduce opportunities for tax avoidance by multinational enterprises.

## 1.1. TAX CHALLENGES ARISING FROM DIGITALISATION

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The 2015 BEPS Action 1 Report on the digital economy noted that the digital economy is characterised by an unparalleled reliance on intangibles, the massive use of data (notably personal data), and the widespread adoption of multi-sided business models. Further, it found that it would be difficult, if not impossible, to ring-fence the digital economy. The report went on to highlight the ways in which digitalisation had exacerbated BEPS issues, but also noted that the measures proposed under the other BEPS Actions were likely to have a significant impact in this regard.

The Action 1 Report also noted that beyond BEPS, digitalisation raised a series of broader tax challenges, which it identified as data, nexus and characterisation. These challenges chiefly relate to the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among countries. While identifying a number of options to address these concerns, none were ultimately recommended. The Action 1 Report however noted that countries could introduce any of these options in their domestic laws as an additional safeguard against BEPS, provided they respect their existing international obligations including obligations under bilateral tax treaties.

### 1.1.1. Digitalisation, Business Models and Value Creation

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A robust understanding of how digitalisation is changing the way businesses operate and how they create value is fundamental to ensuring that the tax system responds to these challenges. In particular, looking at new and changing business models in the context of digitalisation, the Interim Report describes the main features of digital markets and how these shape value creation. It also identifies three characteristics that are frequently observed in certain highly digitalised business models: scale without mass, heavy reliance on intangible assets, and the role of data and user participation, including network effects. It was noted, however, that countries have different views on whether, and to what extent, these features represent a contribution to value creation by the enterprise.

### 1.1.2. BEPS implementation and relevant tax policy developments

The Interim Report also takes stock of progress made in the implementation of the BEPS package, which is curtailing opportunities for double non-taxation. Country-level implementation of the wide-ranging BEPS package is already having an impact, with evidence emerging that some MNEs have already changed their tax arrangements to better align with their business operations in some countries and regions. In the area of indirect taxes, the success and impact of the BEPS implementation process is also evident, with the OECD International VAT/GST Guidelines having been endorsed by over 100 countries, jurisdictions and international organisations. A large majority of OECD and G20 countries have adopted rules for the VAT treatment of business-to-consumer (B2C) supplies of services and intangibles by foreign suppliers in accordance with the OECD International VAT/GST Guidelines.

The implementation of these agreed measures also levels the playing field between domestic and foreign suppliers because foreign suppliers are required to charge VAT on sales to local customers as domestic suppliers do. The measures are already delivering increased revenues for governments, for example, as reported last year, over 3 billion euros in the EU alone as a result of the implementation of the new International VAT/GST Guidelines. Moreover, this regime has also allowed businesses to achieve a notable reduction in their compliance burden, which according to estimates

is 95 percent lower than what it would have been without such simplification measures.<sup>2</sup>

On the corporate income tax front, significant recent reforms have been passed to implement aspects of the BEPS package relevant to digitalisation. For instance several EU directives have been enacted.

Also, a significant number of MNEs, including some highly digitalised ones, have taken pro-active measures to realign their tax arrangements with their real economic activity, either by reconsidering their transfer pricing positions or by relocating and on-shoring valuable assets, such as intangibles. With the exchange of CbC reports beginning in 2018 for the 2016 fiscal year, further evidence of the impact of the BEPS measures is anticipated in the coming years.<sup>3</sup>

Recent years have also seen the introduction by some countries of a range of unilateral measures, which appear to reflect a discontent among some countries with the outcomes produced by certain aspects of the current international tax system. These measures, designed and implemented in various countries, can be grouped into four categories: alternative applications of the PE threshold, withholding taxes, turnover taxes, and specific regimes targeting large MNEs. Such measures have aimed at protecting and/or expanding the tax base

2. Deloitte (2016), *VAT Aspects of cross-border e-commerce - Options for modernisation*

3. Some examples of interesting articles reporting on these moves: Harpaz, J. (2015), *BEPS Rears Its Head In Amazon European Tax Policy Shift*, Forbes; Johnston, S. (2018), *Google to Book Ad Sales in New Zealand Due to Global Tax Debate*.



in countries where the customers or users are located. Many of them have included elements linked to a market in the design of the tax base (e.g. sales revenue, place of use or consumption).

### 1.1.3 Towards a global, consensus-based solution

There is general acknowledgement that the digital transformation continues to be an ongoing process and that there is a need to monitor how these changes may be impacting value creation. The broader tax challenges of digitalisation raise very complex technical questions. Members of the OECD/G20 Inclusive Framework have different views on the question of whether, and to what extent, the features identified as being frequently observed in certain highly digitalised business models should result in changes to the international tax rules. In particular, with respect to data and user participation, there are different views on whether, and to what extent, they should be considered as contributing to a firm's value creation, and therefore, what impact they should have on the international tax rules.

The different perspectives on these issues among the members of the OECD/G20 Inclusive Framework can generally be described as falling into three groups. The first group considers that the reliance on data and user participation may lead to misalignments between the location in which profits are taxed and the location in which value is created. However, the view of this group of countries is that these challenges are confined to certain business models and they do not believe that

these factors undermine the principles underpinning the existing international tax framework. Consequently, they do not see the case for wide-ranging change.

A second group of countries takes the view that the ongoing digital transformation of the economy, and more generally trends associated with globalisation, present challenges to the continued effectiveness of the existing international tax framework for business profits. Importantly, for this group of countries, these challenges are not exclusive or specific to highly digitalised business models.

Finally, there is a third group of countries that considers that the BEPS package has largely addressed the concerns of double non-taxation, although these countries also highlight that it is still too early to fully assess the impact of all the BEPS measures. These countries are generally satisfied with the existing tax system and do not currently see the need for any significant reform of the international tax rules.

Acknowledging these divergences, members agreed to undertake a coherent and concurrent review of the “nexus” and “profit allocation” rules that would consider the impacts of digitalisation on the economy, relating to the principle of aligning profits with underlying economic activities and value creation – two fundamental concepts relating to how taxing rights are allocated between jurisdictions and how profits are allocated to the different activities carried out by multinational enterprises, and seek a consensus-based



solution. While it is a challenging objective, the OECD/G20 Inclusive Framework has agreed to work towards a consensus-based solution by 2020.

#### **1.1.4. Interim measures to address the tax challenges arising from digitalisation**

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Developing, agreeing and implementing a global, consensus-based solution will take time, and, in some countries, there are pressing calls for governments to take more immediate action to address the tax challenges arising from digitalisation. There is no consensus on the need for, or the merit of, interim measures, with some countries opposing them. The risks and adverse consequences that these countries believe would arise as a result of such measures include negative impacts on investment, innovation and growth, the possibility of over-taxation, distortive impacts on production and increasing the economic incidence of tax on consumers and businesses, and increased compliance and administration costs.

The countries considering interim measures recognise these challenges, but consider there is a strong imperative to act, pending a global solution which may take time to develop, agree and implement. They take the view that there is a sound conceptual basis for an interim measure, that value is being generated within their jurisdiction that would otherwise go untaxed challenging the fairness, sustainability and public acceptability of the system. They think the challenges need to be weighed against the policy challenges of not acting in the interim and consider that at least some of the possible adverse consequences can be mitigated through the design of the measure.

The report therefore reflects the framework of design considerations, identified by countries in favour of introducing interim measures, which should be taken into account when considering introducing such measures. This framework takes into account some constraints, including that any such measures should be in compliance with existing international obligations, temporary, targeted and balanced, minimise over-taxation, as well as designed to limit the compliance costs and not to inhibit innovation. The Interim Report considers an interim measure in the form of an excise tax on the supply of certain e-services within their

jurisdiction that would apply to the gross consideration paid for the supply of such e-services.

#### **1.1.5. Beyond the international tax rules: the impact of digitalisation on tax policy and tax administration**

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Digitalisation is offering new opportunities as well as some challenges to tax policy and administration beyond the international tax system. These include the growth of the gig and sharing economy and how this is affecting tax compliance and revenues as a result of the rise of non-standard work. At the same time, technologies like blockchain give rise to both new, secure methods of record-keeping while also facilitating crypto-currencies which can pose risks to the gains made on tax transparency in the last decade. Some work is already underway to better understand and address these developments, but further work is required to ensure that governments can harness the opportunities these changes bring while ensuring the ongoing effectiveness of the tax system. It will also be important to give specific consideration to how advances can be implemented in developing countries to take into account their particular circumstances.

The impact of widespread implementation of the BEPS package, including recent EU directives as well as certain aspects of the US tax reform, should result in neutralising the very low effective tax rates of some companies. Nonetheless, BEPS measures do not necessarily resolve the question of how rights to tax are shared between jurisdictions. The OECD/G20 Inclusive Framework will continue working towards a consensus-based long-term solution.

## **1.2. THE MLI ENTERS INTO FORCE**

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The MLI, negotiated by more than 100 countries and jurisdictions under a mandate from G20 Finance Ministers, will modify existing bilateral tax treaties to swiftly implement the tax treaty measures developed in the course of the OECD/G20 BEPS Project. Treaty measures that are included in the MLI include those on hybrid mismatch arrangements, treaty abuse and permanent establishment. The MLI also strengthens provisions to resolve treaty disputes, including through mandatory binding arbitration, which has been taken up by 28 signatories.

The entry into force of the MLI follows the deposit of the fifth instrument of ratification by Slovenia on 22 March 2018. Earlier, Austria, the Isle of Man, Jersey, and Poland deposited their instruments with the OECD. Since then New Zealand, Serbia, Sweden and the United Kingdom have deposited their instruments of ratification.

The entry into force of the MLI, just one year after the first signing ceremony, underlines the strong political commitment to a multilateral approach to fighting BEPS by multinational enterprises and translating commitments into concrete measures to combat aggressive tax planning arrangements creating BEPS that will be included in more than 1 360 tax treaties worldwide. The entry into force of the MLI on 1 July 2018 will bring it into legal existence in these five jurisdictions. In accordance with the rules of the MLI, its provisions will start having effect for tax treaties as from 2019.

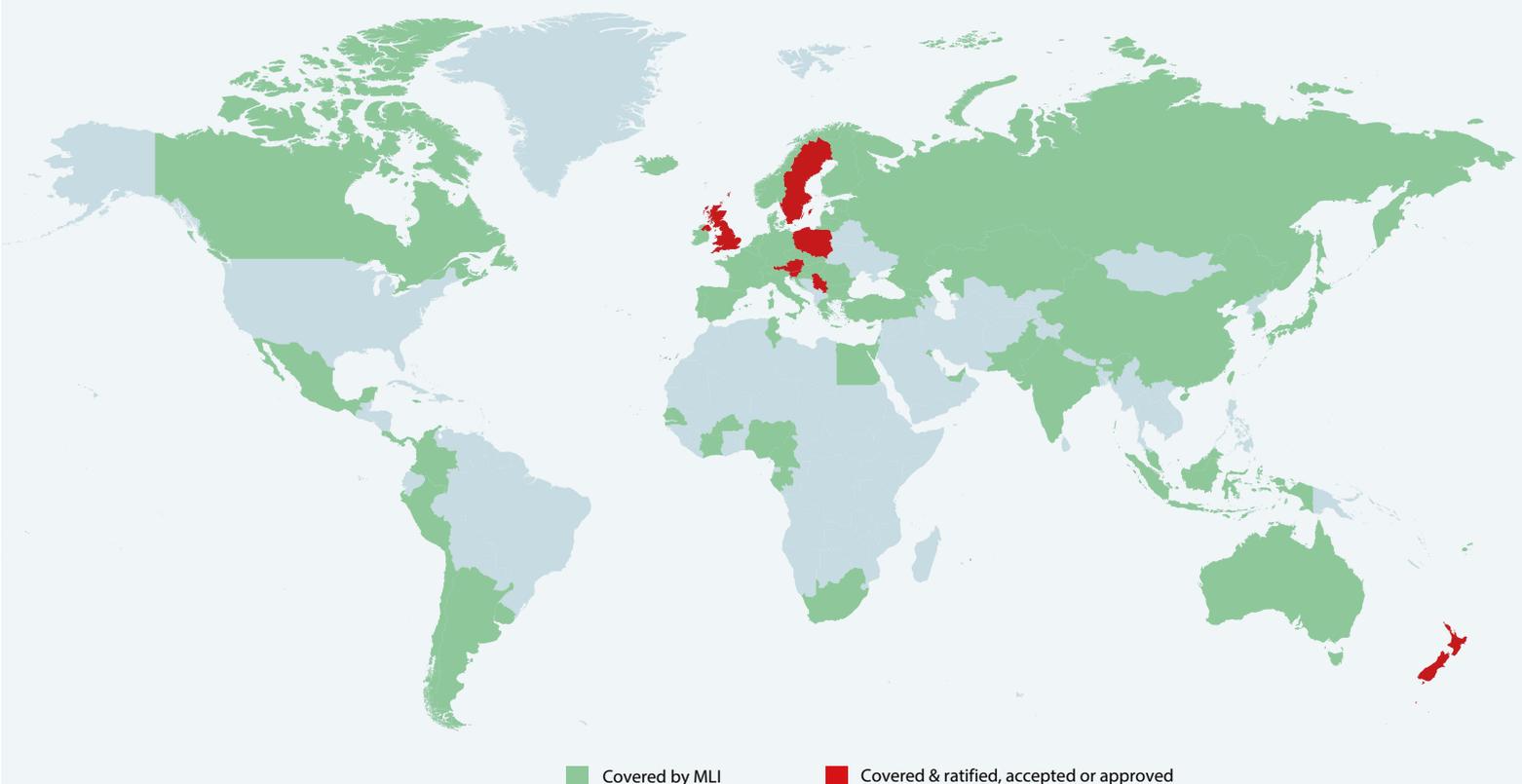
The effects of the provisions of the MLI on a specific bilateral tax agreement can easily be analysed by

using the MLI Matching Database. The MLI Matching Database is a tool developed by the OECD, as Depository of the MLI. It provides tabulated data extracted from the list of reservations and notifications (the “MLI Position”) provided by each Party to the MLI. The MLI Matching Database can automatically generate information on the likely matching of MLI Positions and on the likely modifications made by the MLI to a specific tax agreement that is covered by the MLI (a “Covered Tax Agreement”). The main interface of the MLI Matching Database allows users to select jurisdiction pairs to analyse the possible matching outcome. It is a valuable tool for both taxpayers and governments.

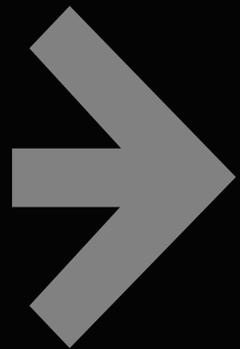
The MLI already covers 82 jurisdictions, and additional jurisdictions are expected to join in the coming year. In the meantime, existing Signatories are making progress in their ratification processes; it is expected that over 30 signatories will deposit their instruments of ratification before year-end. ■

**Figure 1. Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting**

Status as of 29 June 2018



## Part II – Peer Reviews of the Minimum Standards



Peer reviews of the BEPS minimum standards are an essential tool to ensure the effective implementation of the BEPS package. These are well underway. Results are already available for BEPS Action 5, Action 13 and Action 14, while the peer review of Action 6 has recently started. The present section summarises the key outcomes of the peer review processes. Results by country are available on the interactive map presenting key indicators and outcomes of the OECD work on international tax matters, in relation to both BEPS and exchange of information.

## 2.1. ACTION 5 ON HARMFUL TAX PRACTICES

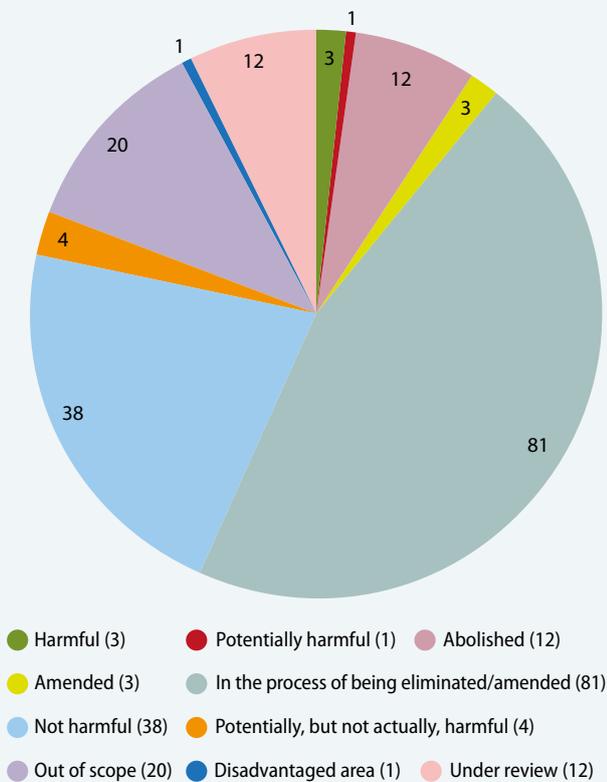
In-depth evaluations have been completed to assess the implementation of BEPS Action 5, covering both the exchange of tax ruling information and the identification of harmful preferential regimes. These reviews ensure that tax competition can occur in a way that is fair and requires substantial business activity; in a way that is transparent; and in a way that provides a globally consistent standard for taxpayers. The first peer review reports on Action 5 were published in October 2017 (*Harmful Tax Practices – 2017 Progress Report on Preferential Regimes*) and in December 2017 (*Harmful Tax Practices – Peer Review Reports on the Exchange of Information on Tax Rulings*).

The work on preferential tax regimes continues at a fast pace: 175 regimes have been considered by the FHTP against the standard for harmful preferential tax regimes, of which 31 have already been changed; 81 require legislative changes which are in progress; 47 are out of scope of the regimes being reviewed or otherwise have specific features which do not pose any BEPS risks in practice; 4 have harmful or potentially harmful features and 12 regimes are still under review (see Figure 2). Importantly, in order for regimes that impose no or low effective tax rates on geographically mobile income to be found not harmful they must comply with the “substantial activities” requirement, meaning that tax benefits are granted only where the core activities required to earn the income are undertaken by the taxpayer with the necessary employees and operating expenditure, or undertaken in the jurisdiction. This requirement upholds the principles of the OECD/G20 BEPS Project, ensuring that value creation and taxation are aligned, and the effectiveness of this requirement is being closely monitored.

To date, 112 regimes are in the process of or have already been modified or abolished. Consequently, there are only three remaining regimes where this is not the case and which have been found to cause actual harm, all of which are IP regimes: France, Italy and Turkey. In the case of Italy and Turkey, amendments have already been made so that the determination of actual harmfulness only relates to certain grandfathering aspects of the regime as it existed previously. In the case of France, the finding of harmfulness extends to the regime as a whole.

**Figure 2. Preferential Tax Regimes**

All regimes (175) – results as of 9 May 2018



However, France has now announced its intention to amend its regime to comply with the Action 5 nexus approach. The process will continue, and further regimes will be reviewed as and when identified by members.

Ambitious timelines apply for preferential regimes which have harmful features, and OECD/G20 Inclusive Framework members are taking swift legislative steps to meet them. For regimes reviewed in 2017,

jurisdictions generally agreed to amend or abolish the harmful features of the regimes within 12 months – by October 2018. Furthermore, the scope of benefits that can continue under the existing regimes with harmful features is strictly limited, with those regimes to be closed off to new entrants by October 2017 (or 30 June 2018 for IP regimes) and limited grandfathering generally permitted until 30 June 2021 at the latest. Figure 3 illustrates these timelines.

At the same time, the Action 5 standard on compulsory spontaneous exchange on tax rulings is providing significant information to tax administrations around the world. Over 17 000 rulings have already been identified and information is now being exchanged between OECD/G20 Inclusive Framework members, on the key issues contained in tax rulings which can be used for risk assessment. In many cases, information on one ruling will be exchanged with more than one jurisdiction, meaning the number of exchanges occurring is far greater than 17 000.

The first peer review took place in 2017, covering the 44 original BEPS Associates. Almost 50 recommendations were issued to enhance the effective implementation of the standard on exchange of information on rulings. Common issues identified included the timeliness of the exchanges and the additional requirements to exchange specific information on IP regimes. In many cases, these issues were resolved in anticipation of the peer review process. The response to these recommendations, and the first review of other OECD/G20 Inclusive Framework members, is taking place in this year’s peer review, with results to be released in late 2018.

**Figure 3. Timelines for Preferential Regimes**



## 2.2. ACTION 6 ON TREATY ABUSE

The compliance with the Action 6 minimum standard requires members of the OECD/G20 Inclusive Framework to include in their tax treaties (1) a new preamble statement that the common intention of the parties to the treaty is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements, and (2) an anti-abuse treaty provisions (one of the alternatives: the Principal Purposes Test (PPT); the PPT + a simplified Limitation on Benefits (LOB) provision; or a detailed LOB + anti-conduit rules) if requested to do so by another jurisdiction member of the OECD/G20 Inclusive Framework.

Many jurisdictions have already joined the MLI which covers over 80% of the bilateral treaties in force between those jurisdictions. From the country positions (on covered tax agreements and on reservations) - also known as “MLI Positions” - that have been deposited so far, all Covered Tax Agreements will at least include the new preamble language and the PPT provisions, bringing those 1 360+ agreements up to the Action 6 minimum standard. At the same time, jurisdictions are actively renegotiating treaties on a bilateral basis to bring the remaining agreements up to standard. Consequently, more than half of the 2 500 bilateral tax treaties in force and listed by the MLI signatories in their country positions will have been updated to implement the Action 6 minimum standard when the bilateral agreements and the MLI enter into force and effect in respect of all signatories.

**Table 3. MLI and the Implementation of the Action 6 Minimum Standard**

Jurisdictions covered	82
Covered Tax Agreements (CTA)	1 360
Ratification Instruments Deposited	9
Projected % CTAs including new preamble language	100%
Projected % CTAs including PPT	100%
Projected % CTAs including additional S-LOB	3%

The core output of the Action 6 peer monitoring process will be an annual report on the implementation of the minimum standard on treaty shopping, based on a self-assessment process with the assistance of the Secretariat and approved by consensus by members of

the OECD/G20 Inclusive Framework on BEPS. The report will state whether and how the minimum standard has been incorporated in all the existing bilateral treaties of each jurisdiction of the OECD/G20 Inclusive Framework and what actions the jurisdiction is taking in respect of those that do not. The report will also describe any implementation issues on which guidance is requested and a description of any case where it considers that a jurisdiction is unwilling to respect its commitment to implement the minimum standard on treaty-shopping. The first report will be finalised in January 2019.

## 2.3. ACTION 13 ON COUNTRY-BY-COUNTRY REPORTING

On BEPS Action 13, Country-by-Country (CbC) Reporting, jurisdictions have taken significant steps to introduce a framework for the filing and exchange of reports with respect to MNE groups with consolidated group revenues of at least EUR 750 million (or near equivalent amount in domestic currency, as of January 2015), with measures being implemented rapidly, consistently and globally. The information collected is valuable for tax administrations, and includes the amount of revenue reported, profit before income tax, and income tax paid and accrued, as well as the stated capital, accumulated earnings, number of employees and tangible assets. This will be particularly useful for developing countries that will be able to better assess the transfer pricing risks posed by some MNEs in their tax jurisdiction and make informed decisions on deploying audits – leading to a more efficient allocation of resources. Fifty-seven jurisdictions either required the ultimate parent entities of MNE groups to file a CbC report for 2016, or allowed them to do so on a voluntary basis. This included the headquarter jurisdictions of substantially all MNE groups above the revenue threshold. Over 60 jurisdictions now have a comprehensive domestic legal framework for CbC reporting in place, including those with rules commencing after 2016. Jurisdictions are also implementing mechanisms for the exchange of CbC reports. By the deadline for the first exchange of CbC reports, starting in June 2018, over 1400 exchange relationships were activated, comprising those between the 70 signatories to the CbC reporting multilateral competent authority agreement (CbCR MCAA), between the 28 EU Member States, and under bilateral competent authority agreements for exchanges under double tax conventions, Convention on Mutual Administrative Assistance in Tax Matters, or tax information exchange agreements.

The first annual peer review report on the implementation of the Action 13 minimum standard was released in May 2018. This focused primarily on the domestic legal and administrative framework for the filing of CbC reports, but also reviewed the status of a jurisdiction's exchange framework and the measures it has in place to ensure the appropriate use of CbC reports. The report contains an assessment of the implementation of CbC reporting in 95 OECD/G20 Inclusive Framework members. Based on information provided up to 12 January 2018 (the deadline for the first annual peer review), the report found that, in addition to the information set out above:

- Where legislation is in place, the implementation of CbC reporting has been found largely consistent with the Action 13 minimum standard. Where inconsistencies with the minimum standard were identified, the report includes recommendations to address these. A total of 28 jurisdictions received one or more recommendations for improvement on specific areas of their domestic legal and administrative framework. A further 33 jurisdictions received a general recommendation to put in place or finalise their domestic legal and administrative framework

(noting that the vast majority of these jurisdictions do not apply CbC Reporting requirements for 2016).

- 58 jurisdictions have multilateral or bilateral competent authority agreements in place, effective for fiscal periods starting on or after 1 January 2016, or on or after 1 January 2017.
- 39 jurisdictions provided detailed information relating to appropriate use, providing sufficient assurance that measures are in place to ensure the appropriate use of CbC reports.

A number of OECD/G20 Inclusive Framework members were not included in the first annual peer review report. This is due to a variety of reasons, including capacity constraints, the impact of natural disasters, the fact that jurisdictions joined the OECD/G20 Inclusive Framework after the start of the peer review process or had opted-out of the peer review, as they do not currently have any MNE groups headquartered in their jurisdiction. The OECD is engaging with these jurisdictions in order for them to participate in the CbC Reporting framework including the peer review process as soon as possible. The second annual peer review, which will place a



greater focus on the exchange and use of CbC reports, commenced in April 2018.

Following the first exchanges of CbC reports, work will begin on analysing how CbC reports are used by tax administrations for high-level transfer pricing risk assessment, the assessment of other BEPS-related risks and for economic and statistical analysis, where appropriate. Building on the CbC Reporting: Handbook on Effective Tax Risk Assessment, prepared by the OECD Forum on Tax Administration and released in September 2017, this work will support countries in the effective use of CbC reports, enabling them to better identify areas where tax risk is low and to instead focus resources on those issues where risk is greater. Analyses of data from CbC reports will also feed the work on Action 11, aiming at measuring the impact of the BEPS measures.

#### 2.4. ACTION 14 ON DISPUTE RESOLUTION

On BEPS Action 14 dealing with the improvement of mutual agreement procedures (MAP), a total of 72 jurisdictions have been scheduled for review, 21 reviews have already been published and 16 are currently under way (see Table 4).

Some of the OECD/G20 Inclusive Framework members requested more time to implement the Action 14 requirements and received a deferral of their review to 2020.<sup>4</sup>

The main issues identified so far are: a considerable portion of tax treaties need to be amended (which may be addressed by the Multilateral Instrument), improvements in MAP guidance are necessary (particularly for those jurisdictions that do not currently have any such guidance), resolution of cases within 24 months on average, especially for transfer pricing cases and finally implementation of MAP agreements after a given period of time, for example because of domestic time limits. On the positive side, the reviews also show access to MAP is granted in eligible cases, MAP guidance is generally clear and available, some competent authorities have adequate resources, and some competent authorities take a pragmatic and principled approach, MAP agreements are implemented on time and roll-back of bilateral APAs is mostly available.

4. Namely: Angola, Belize, Benin, Burkina Faso, Cameroon, Congo, Costa Rica, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Gabon, Georgia, Haiti, Jamaica, Kenya, Liberia, Malaysia, Mauritius, Nigeria, Pakistan, Panama, Paraguay, Peru, Senegal, Seychelles, Sri Lanka, Ukraine and Uruguay.

**Table 4. Mutual Agreement Procedures (MAP) Jurisdictions**

Published			Ongoing		Not yet started				
1 <sup>st</sup> batch 5 December 2016	2 <sup>nd</sup> batch 7 March 2017	3 <sup>rd</sup> batch 7 July 2017	4 <sup>th</sup> batch December 2017	5 <sup>th</sup> batch April 2018	6 <sup>th</sup> batch By August 2018	7 <sup>th</sup> batch By December 2018	8 <sup>th</sup> batch By April 2019	9 <sup>th</sup> batch By August 2019	10 <sup>th</sup> batch By December 2019
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	Brunei	Andorra	Barbados
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Curacao	Bermuda	Kazakhstan
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Guernsey	British Virgin Islands	Oman
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Isle of Man	Cayman Islands	Qatar
United Kingdom	Liechtenstein	Norway	Malta	Romania	India	Indonesia	Jersey	Macau (China)	Saint Kitts and Nevis
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Monaco	Turks and Caicos Islands	Thailand
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	San Marino		
		Spain	Portugal	Turkey	South Africa	Saudi Arabia			

The jurisdictions that have received recommendations are addressing the deficiencies, including by adding additional resources to the MAP function, publishing MAP guidance or amending their tax treaties. These actions will be monitored and followed up in stage 2 of the peer review process (starting second half of 2018 for the jurisdictions in the first batch).

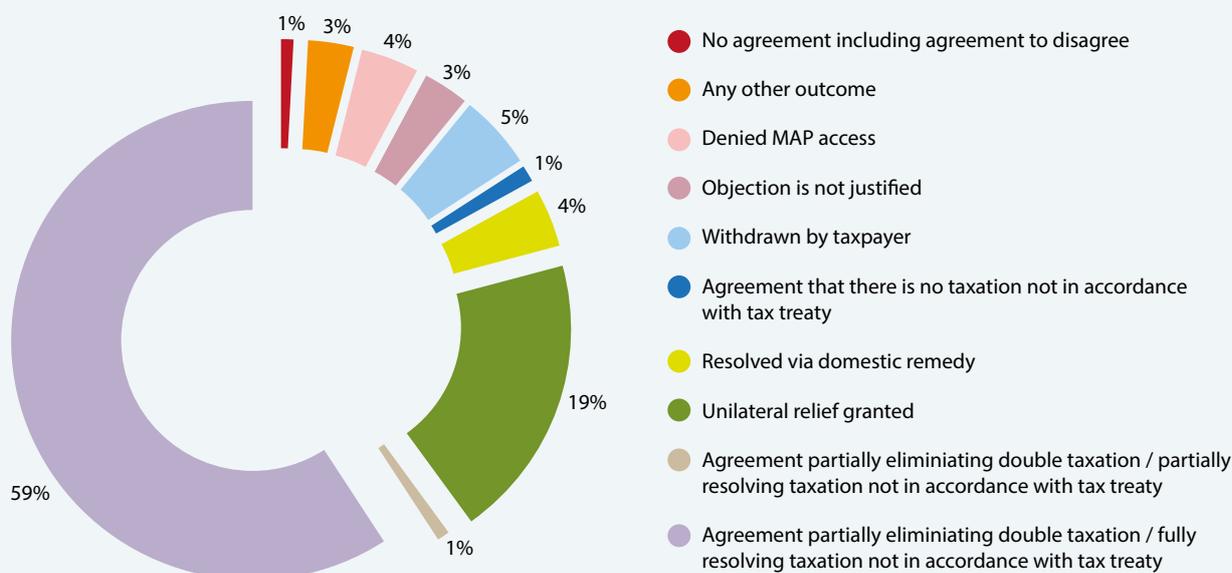
The Action 14 minimum standard also requires countries to publish their specific “MAP profiles”, meaning public information on their competent authority details, links to their domestic MAP guidelines and to other useful information regarding the MAP process, pursuant to an agreed template. Publishing MAP profiles promotes the transparency and dissemination of jurisdictions’ MAP programmes. In this respect, around 75 MAP profiles have been published on the OECD website. Furthermore, jurisdictions reported their MAP statistics under the new MAP Statistics Reporting Framework and the statistics for the year 2016 have been published. The 2017 MAP statistics are due by the end of May 2018 and will be published in the second semester of 2018, for the first time with a country-by-country break down.

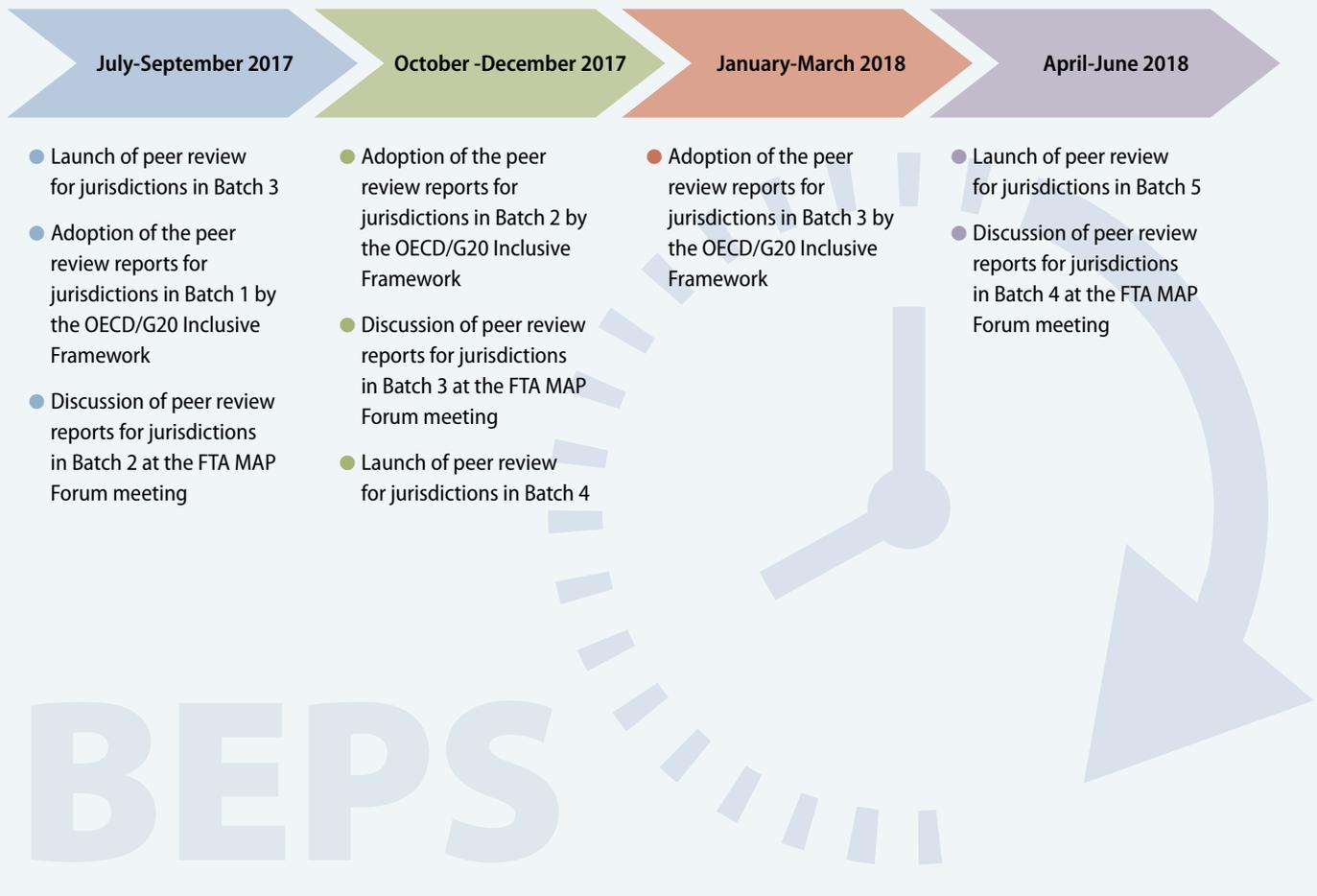
The 2016 statistics show that in comparison with the 2015 MAP statistics, both the number of MAP cases in

start-of-the-year inventory and the number of started MAP cases have increased, which results from both an increase in the number of reporting jurisdictions and modified counting rules. Approximately 8 000 cases were in the inventory of the reporting jurisdictions as of 1 January 2016 and almost 25% of them were closed during 2016. Almost 1 500 cases started on or after 1 January 2016, and approximately 25% of them were already closed in 2016. The following illustrates some highlights from these statistics:

- Transfer pricing cases account for slightly more than half of the MAP cases in inventory.
- Transfer pricing cases take more time on average than other cases: approximately 30 months are needed for transfer pricing cases and 17 months for other cases.
- Over 85% of MAPs concluded in 2016 resolved the issue. Almost 60% of MAP cases closed were resolved with an agreement fully resolving the taxation not in accordance with the tax treaty and almost 20% of them were granted a unilateral relief while almost 5% were resolved via domestic remedy. Finally, 5% of the MAP cases closed were withdrawn by taxpayers while approximately 10% were not resolved for various reasons. ■

**Figure 4. MAP Outcomes**



**Figure 5. Timeline July 2017 – June 2018 for BEPS Action 14**

### Box 1. Induction Programmes

Induction Programmes were introduced in 2017 to provide assistance to developing countries through tailor made programmes for the implementation of the BEPS package.

After an initial request, Induction Programmes begin with a meeting with the Minister of Finance (or minister otherwise responsible for taxation), fostering political buy-in for legislative changes, particularly the four BEPS minimum standards. This ensures key decision makers are informed of the advantages of policy change, international developments and can monitor progress.

Induction Programmes are provided based on demand from countries/jurisdictions and their specific priorities. They can be tailored to include wider stakeholder engagement such as with parliamentarians or the judiciary.

Based on these initial meetings, as well as a technical-level workshop with tax policy and revenue administration staff,

a roadmap for BEPS implementation is developed. This document also identifies the responsibilities of different stakeholders supporting the country (including, for example, WBG, IMF, regional organisations), thereby acting as an important tool to strengthen co-ordination and avoid duplication. Wherever possible, country visits are carried out jointly by the Secretariats of the OECD/G20 Inclusive Framework and the Global Forum on Transparency and Exchange of Information for Tax Purposes, given the strong linkages between the two agendas (this is particularly the case on confidentiality assessments).

A total of 11 Induction Programmes were initiated in 2017 (Botswana, Cameroon, Georgia, Kazakhstan, Nigeria, Paraguay, Peru, Thailand, Ukraine, Uruguay and Viet Nam) and 12 have been launched in 2018 (Barbados, Burkina Faso, Cameroon, Egypt, Jamaica, Liberia, Mauritius, Mongolia, Papua New Guinea, Trinidad and Tobago, Tunisia, Zambia).

## Part III – Broader BEPS Implementation



Beyond the minimum standards, the BEPS package also included common approaches to facilitate the convergence of country practices on domestic legislation and treaty provisions to neutralise hybrid mismatches (Action 2), on building blocks of effective CFC rules (Action 3), on limitation of the deductibility of interest expenses via intra-group and third party loans (Action 4), and on domestic legislation relating to mandatory disclosure by taxpayers of aggressive arrangements or structures (Action 12). Some countries have started to implement these measures, including at regional level such as in the EU.

In addition, as part of the revision of existing standards, transfer pricing rules have been clarified and progress has been made in the course of 2018 where further work was needed post-2015.

Finally, the horizontal work dedicated to the economic analysis of the impact of BEPS and BEPS counter-measures, fed by the first results of countries' implementation, is underway. The latest developments on Action 11 are also described in Part III.

### 3.1. ACTION 2, ACTION 3 AND ACTION 4

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The BEPS package included recommendations for domestic law measures to address the BEPS risks posed by aggressive tax planning. These included a common approach to limiting excessive interest deductions (Action 4) and neutralising hybrid mismatches (Action 2) as well as best practices in the design of effective controlled foreign company (CFC) rules (Action 3). The interest limitation and hybrid mismatch rules, set out in the BEPS Action 4 and 2 Reports, prevent multinationals from using excessive interest expenses to erode a country's tax base and restrict their ability to engineer double non-taxation outcomes through the use of artificial cross-border arrangements. The best practices for the design of CFC rules in the Action 3 Report reduce the incentive for multinationals to shift their profits into low-tax jurisdictions by imposing a minimum level of tax on certain categories of income. The response to aggressive tax planning under the BEPS Action Plan was not intended to prevent MNEs from taking proper advantage of differences in tax rates between countries or to limit the deduction of reasonable business expenses incurred under ordinary arrangements between related parties but rather to improve the coherence of the international tax system and encourage multinationals to adopt more transparent structures that would bring tax outcomes into line with value creation.

#### 3.1.1. Action 2 on Neutralising the Effects of Hybrid Mismatch Arrangements

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The 2015 Action 2 recommendations targeted mismatches resulting from differences in the tax treatment of instruments or entities but they do not directly deal with mismatches that arise through the use of branch structures. These 'branch mismatches' occur where the head office and branch jurisdiction take a different view as to the allocation of income and expenditure between the branch and head office and they include situations where the branch jurisdiction does not treat the taxpayer as having a taxable presence in that jurisdiction.

The OECD/G20 Inclusive Framework considered that branch mismatch arrangements offer multinationals opportunities to reduce their overall tax burden by

exploiting differences in the rules governing the allocation of payments between two jurisdictions, thereby raising the same issues as hybrid mismatches in terms of competition, transparency, efficiency and fairness. Given the similarity between hybrid and branch mismatches, both in terms of structure and outcomes, the OECD/G20 Inclusive Framework issued a further report on Neutralising the Effect of Branch Mismatch Arrangements in July 2017, setting out recommendations for branch mismatch rules that would bring the tax treatment of these arrangements into line with the approach set out in the Action 2 Report. The adoption of branch and hybrid mismatch rules as a single package supports the integrity of the common approach set out in Action 2 by preventing taxpayers shifting from hybrid mismatch to branch mismatch arrangements in order to secure the same tax advantages.

Although not a minimum standard, Action 2 has been rapidly adopted by a number of members of the OECD/G20 Inclusive Framework. EU Member States adopted hybrid and branch mismatch rules in Council Directive (EU) 2017 (“ATAD 2”) and hybrid mismatch rules were also included as part of the US tax reform legislation, which passed into law at the end of last year. In addition, both the Australian and New Zealand governments have introduced legislative proposals for neutralising the hybrid and branch mismatches that are in line with the Action 2 recommendations.

### 3.1.2. Action 3 on Designing Effective Controlled Foreign Company Rules

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A substantial number of OECD/G20 Inclusive Framework countries have either adopted or made improvements to their CFC regimes following the release of the Action 3 Report.<sup>5</sup> While the nature of these changes vary from one country to the next, some of these recent CFC reforms (including those in Japan and the United States) include a tax on the excess profits of CFCs, which ensures an effective minimum level of tax on MNEs headquartered in that jurisdiction.

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5. These countries include Argentina, Australia, Colombia, Denmark, Iceland, Japan, Romania, Russia, Slovak Republic, South Africa and the United States. Under Council Directive (EU) 2016/1164 (“ATAD 1”), all 28 EU Member States are required to have CFC rules in place by the beginning of next year.

### 3.1.3. Action 4 on Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

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A number of OECD/G20 Inclusive Framework members have also adopted interest limitations rules or are in the process of aligning their domestic legislation with the recommendations of Action 4.<sup>6</sup> For example, under the US tax reform legislation, US taxpayers are not permitted to deduct net interest expense on loans from third parties and related parties in excess of 30% of their adjusted taxable income, an amount which approximates EBITDA. As part of Council Directive (EU) 2016/1164 (“ATAD 1”) EU Member States have agreed to adopt an interest cap that will restrict a taxpayer’s deductible borrowing costs (including on third party debt) to 30 percent of the taxpayer’s earnings before interest, tax, depreciation and amortisation (EBITDA).

## 3.2. TRANSFER PRICING: ACTIONS 8-10

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The objective of the 2015 BEPS Report on Actions 8, 9 and 10 was to ensure that the profits of MNEs better align with economic activity and value creation. In addition, expanded guidance on an approach for tax administrations to ensure appropriate pricing of hard-to-value intangibles in situations of information asymmetry was included in the Guidelines. Through this work, the OECD Transfer Pricing Guidelines have been modernised, and a new edition was published in July 2017. In June 2018, additional guidance addressed to tax administrations was approved on the application of the approach to hard-to-value intangibles, which has been incorporated into the OECD Transfer Pricing Guidelines as an annex to Chapter VI.

When the BEPS package was released in 2015, it was agreed that OECD/G20 Inclusive Framework members would continue work on some key issues, including finalising transfer pricing guidance on the application of transactional profit split method and on financial transactions. Beyond this work, the objective was to improve clarity and certainty in the application of the transfer pricing rules.

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6. These countries include Argentina, India, Japan, Malaysia, South Korea, South Africa, Turkey and Viet Nam.



### 3.2.1. Revised Guidance on Profit Split

BEPS Action 10 mandated clarifications on the application of the profit split method in the context of global value chains. After extensive consultation with stakeholders, and detailed discussions, the revised guidance was approved by the OECD/G20 Inclusive Framework in June 2018. The revised guidance, which will be incorporated into the OECD Transfer Pricing Guidelines, has particularly benefitted from the significant input of developing country members of the OECD/G20 Inclusive Framework. The guidance provides the following indicators on when the profit split method is likely to be the most appropriate transfer pricing method:

- i. Each party makes unique and valuable contributions;
- ii. The business operations are highly integrated such that the contributions of the parties cannot be reliably evaluated in isolation from each other;
- iii. The parties share the assumption of economically significant risks, or separately assume closely related risks.

The revised text also expands the guidance on how the profit split method should be applied, including determining the relevant profits to be split, and appropriate profit splitting factors.

Sixteen examples, including some contributed by developing country members of the OECD/G20 Inclusive Framework, are included to illustrate the principles discussed in the text, and demonstrate how the method should be applied in practice.

### 3.2.2. Financial Transactions

Financial transactions have traditionally represented a complex issue from a transfer pricing perspective. As a result of the OECD/G20 BEPS Project, financial transactions were identified as an area of concern for which specific guidance in the OECD Transfer Pricing Guidelines was missing.

Accordingly, under the specific mandate of the Report on Actions 8-10 of the BEPS Action Plan *Aligning Transfer Pricing Outcomes with Value Creation*, the OECD/G20 Inclusive Framework is currently undertaking further work to provide guidance on transfer pricing for financial transactions, to provide both tax administrations and practitioners with the required tools to address transfer pricing issues involved in intragroup financial transactions. The project, started in 2016, is close to producing a discussion draft that will be released for public consultation before the end of 2018. That discussion draft will address the interaction between existing transfer pricing rules and the particularities of financial transactions, and will provide guidance on a specific set of activities of particular complexity such as intragroup funding, guarantees and the use of so-called “captive” insurance companies.

**Box 2. Ensuring Developing Country Participation and Action to Combat BEPS**

There are three main objectives in helping countries combat BEPS and thereby increase domestic resource mobilisation by developing countries. These are: the effective participation of developing countries in BEPS standard-setting and policy solutions; the effective implementation of the BEPS minimum standards and other priority actions (e.g. on transfer pricing) by developing countries; and enhanced legislative, organisational, and human resource capabilities in developing countries.

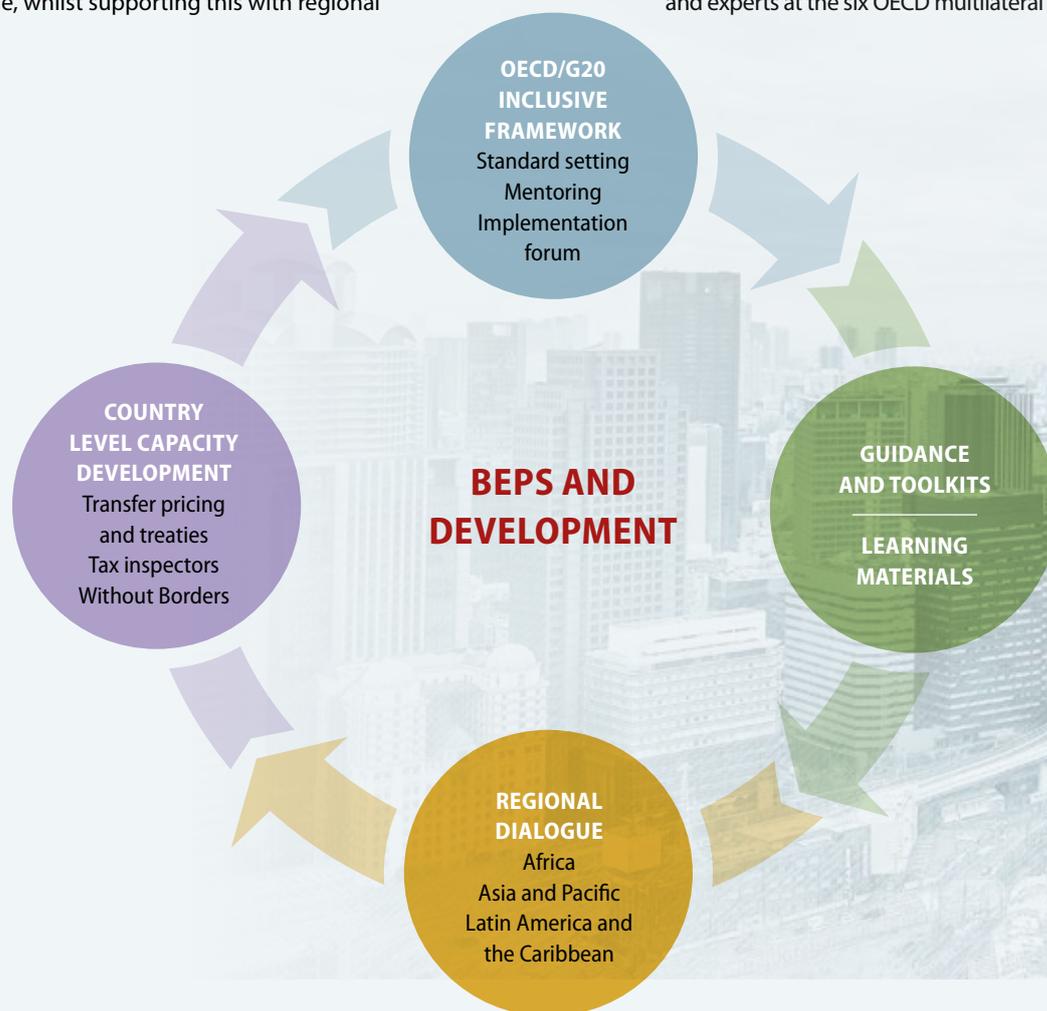
To achieve these objectives requires a theory of change. Evidence suggests there can be a high degree of confidence in meeting these objectives if activities are combined into a coherent package of assistance to developing countries.

In particular, bringing developing countries into BEPS standard setting and implementation ensures they can influence norms and standards in their favour. Developing country involvement has meant making the convening body – the OECD/G20 Inclusive Framework on BEPS – as accessible as possible, whilst supporting this with regional

events to maintain momentum and reach those countries yet to join (or unable to participate in) the main OECD/G20 Inclusive Framework meetings and technical working parties.

This enhanced access is supported by technical assistance to country officials through a combination of regional and country level capacity development. But outreach and assistance needs to extend beyond just tax officials, to ensure ministers, parliamentarians and other senior decision makers are aware of the BEPS risks their countries face. In doing so, these key stakeholders can also take ownership of implementing the BEPS responses.

In 2018, the OECD launched a new project on blended learning. Courses are currently offered on various BEPS actions and implementation using a combination of on-line training (delivering reading materials, Presentations, videos, self-assessment tests and email tutoring) to supplement traditional face-to-face workshops under the guidance of an event leader and experts at the six OECD multilateral tax centres.



### BEPS AND TRANSFER PRICING

At the request of developing countries, and in partnership with ATAF, the EU Commission and the WBG, the Secretariat helped build capacity in 23 developing countries in 2017/2018, supporting the application of the OECD's BEPS and transfer pricing norms and standards through tailored country-level assistance.

The programmes have raised awareness of the BEPS Actions (and related transparency initiatives) and the benefits of the OECD/G20 Inclusive Framework on BEPS, and have supported countries with their BEPS implementation plans. A total of 90% of the recipient countries or jurisdictions are in the process of, or have followed recommendations on legislative changes. These recommendations have led to the approval of primary or secondary legislation, as well as the issuance of guidance for taxpayers and tax administrations in some cases.

The work delivered by the Secretariat - including meetings with senior Ministry of Finance and tax administration officials on the BEPS outcomes and the OECD/G20 Inclusive Framework - provided countries such as Tunisia and Zambia the knowledge and confidence they needed to join the OECD/G20 Inclusive Framework in the second half of 2017.

### AUDIT SUPPORT THROUGH TAX INSPECTORS WITHOUT BORDERS (TIWB)

TIWB is a programme that supports audit capacity on a wide range of international tax issues and helps in the correct application of the BEPS standards levelling the playing field for all governments in a way that ensures fair taxation of profits in the countries where the economic value is created. Developing countries report benefits in terms of improved capacities and confidence to conduct quality audits, and better compliance by taxpayers.

Since its launch in 2015, TIWB has already established a global footprint with 38 ongoing or completed projects and 22 more upcoming projects in Africa, Asia Pacific, Latin America and Caribbean as well as parts of Eastern Europe. The target is to get to 100 deployments by 2020. To date, USD 328 million additional revenues have been raised.

TIWB is now branching out from general audit support to more specific sector audits mainly in mining, financial sector, commodities and telecommunications; as well as from tax avoidance issues to tax evasion issues supporting investigations for tax and crime.



### Box 3. International and Regional Organisations Involved in the OECD/G20 BEPS Project

International and regional organisations are playing a key role in supporting their membership in the implementation of BEPS, as well as feeding in the experiences of their membership into the work of the OECD/G20 Inclusive Framework.

#### INTERNATIONAL ORGANISATIONS

The IMF, the UN and the WBG are permanent observers to the OECD/G20 Inclusive Framework. They are collaborating with the OECD through the Platform for Collaboration on Tax (the Platform), to strengthen their co-operation on tax issues and in particular on capacity-building support to developing countries, such as the delivery of toolkits to translate the complexity of some of the BEPS Actions for low capacity countries and to deliver reports on other international tax priorities.

In February 2018, the Platform held its first Global Conference on Tax and the Sustainable Development Goals at the UN headquarters in New York. The final statement reaffirmed the common objectives of the four partner international organisations in relation to the tax agenda, including: how to mobilise domestic resources for development; tax policies to support sustainable economic growth, investment and trade; the social dimensions of taxation (income and gender inequality, human development); as well as capacity development and international tax co-operation.

#### TOOLKITS

The Platform is also working to develop toolkits aimed at supporting low capacity, low-income countries in countering key base erosion and profit shifting issues. The first of these toolkits, on Effective and Efficient Tax Incentives for Development, was released in 2015. The second, on Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses, which included a supplementary report on Information Gaps on Prices of Minerals, was released in June 2017. The toolkit was used as the basis of a pilot workshop targeting developing country tax administrations held in September 2017, and in events hosted by the UN. Feedback from these events has been extremely positive. Three additional workshops will be held during 2018 to disseminate and discuss this toolkit.

A draft toolkit on Indirect Offshore Transfers of Interests was released for public consultation in 2017, with further consultation in mid-2018 and expected finalisation by the end of the year. Further toolkits, including on Implementing Effective Transfer Pricing Documentation Regimes, Treaty Negotiation, BEPS Risk Assessment, Base Eroding Payments and Supply Chain Restructures, are also under development or in the earlier stages of planning.



## REGIONAL ORGANISATIONS

Regional tax organisations also actively participate in the OECD/G20 Inclusive Framework with the status of observers, as well as they support their members to implement the BEPS measures.

- ***African Tax Administration Forum (ATAF)***

ATAF has provided extensive input into the revision of the transfer pricing guidance on profit splits, including an example that primarily reflects developing country circumstances. ATAF also provided capacity building support to its members in collaboration with the OECD Secretariat and other partners.

- ***Centro Interamericano de Administraciones Tributarias (CIAT)***

CIAT provided technical assistance for its members on the implementation of BEPS and transfer pricing, and dedicated its last Technical Conference in San José, Costa Rica to BEPS, in September 2017.

- ***Cercle de réflexion et d'échange des dirigeants des administrations fiscales (CREDAF)***

CREDAF organised - in collaboration with the OECD Secretariat, Le Pôle Stratégies de développement et finances publiques (UNDP/France joint initiative) and Benin Revenue Authority (Direction générale des Impôts) – a regional meeting of the IF on BEPS for French-speaking countries in Cotonou including a MLI workshop, in July 2017. CREDAF also organised for its member countries – in collaboration with the OECD Secretariat – a Transfer Pricing Workshop in Ouagadougou, Burkina Faso, in February 2018.

- ***Study Group on Asian Tax Administration and Research (SGATAR)***

Established in 1970, SGATAR is a forum for tax administrators to enhance co-operation, improve administration and discuss issues related to tax administration. During its 46<sup>th</sup> Annual Meeting in 2016, SGATAR adopted a transfer pricing competency roadmap and training curriculum. An agreement was likewise reached that two transfer pricing training programmes (one intermediate and one advanced) would be held each year for the next five years, to ensure sustained momentum in the development of transfer pricing expertise. One of the three Working Group topics of the 47<sup>th</sup> Annual SGATAR Meeting was dedicated to transfer pricing, specifically with regard to issues on high-risk transactions common in the Southeast Asian Region and other developing countries.

## 3.3. ECONOMIC ANALYSIS OF BEPS: ACTION 11

As recognised in the BEPS Action 11 Report on Measuring and Monitoring BEPS, a major challenge of assessing the scale and impact of BEPS was the scarcity of relevant data and the significant limitations of existing data sources. As a step towards addressing this challenge and with a view towards providing more accurate monitoring of the impact of BEPS and the effect of the BEPS package over time, a series of new data collection processes and analytical tools have been developed and are now being put in place.

Work is currently underway to compile a new Corporate Tax Statistics dataset, which is scheduled to be released for the first time in November 2018. The Corporate Tax Statistics dataset will bring together, in an internationally consistent format, a range of data relevant to the analysis of BEPS and the taxation of corporations more generally. Improving the quality of available corporate tax statistics will be a critical step towards improving the quality and accuracy of the OECD/G20 Inclusive Framework's ongoing efforts to measure and monitor BEPS and the impact of the BEPS package. Therefore, the dataset will gather numerous types of data and analyses that can provide new insights into corporate taxation and the incentives corporate tax systems create for firms. Three main categories of data will be included in the first release: data on tax revenues; data on tax rates; and data on tax incentives. In addition, future editions, from 2019 onwards, will also include some statistics from CbC Reports based upon countries' aggregated and anonymised data.

### 3.3.1. Data on Tax Revenues

A number of indicators of corporate income tax revenue will be presented in the Corporate Tax Statistics dataset. This information will be compiled from the OECD's Global Revenue Statistics Database. The indicators of corporate tax revenues included will be: the level of corporate tax revenue in local currency; corporate tax revenue as percentage of GDP; and corporate tax revenue as a percentage of total tax revenue. This information will generally be available from 1965 for OECD countries and from 1990 for those non-OECD countries that are included in the Global Revenue Statistics Database. By the end of 2018, it is expected

that the Global Revenue Statistics Dataset will include 90 countries. These data are important for researchers and policy makers interested in corporate taxation.

### 3.3.2. Data on Tax Rates

Information on statutory CIT rates is an integral part of the new dataset. Statutory CIT rates are currently presented in the OECD Tax Database for OECD countries, and the new Corporate Tax Statistics dataset will expand coverage of this information to members of the OECD/G20 Inclusive Framework. Statutory CIT rates at the central and sub-central government levels will be reported for the years 2000 to 2018. The data is currently being collected from OECD/G20 Inclusive Framework members through a survey of members and the data collection and verification process is ongoing.

Among the new data to be included in the Corporate Tax Statistics are forward-looking corporate effective tax rates. The chief difference between effective tax rates and statutory corporate tax rates is that effective tax rates account for the tax base as defined by country-specific corporate tax provisions, such as

fiscal depreciation rules, interest deduction limitation rules, investment tax credits, R&D tax incentives and other provisions such as, e.g., group-level consolidation regimes. In this way, effective tax rates are a more accurate measure of the effects of the tax system on investment incentives allowing for cross-country comparisons as well as analyses of specific industries or business types. The development of this new data series will allow empirical research to better control for changes in corporate tax bases over time and across countries, thereby improving macroeconomic studies related to BEPS.

As part of this work, both effective marginal tax rates (EMTRs) and effective average tax rates (EATRs) are being calculated. EMTRs measure the extent to which taxation increases the pre-tax rate of return required by investors to break even, which may be used to assess how taxes affect the incentive to expand investment. EATRs measure the effect of taxation on investment projects earning economic rents, which may be used to assess choice along the extensive margin, such as a firm's location decision or technology choice. The dataset will include both EMTRs and EATRs as well as



two additional variables: the net present value (NPV) of capital allowances, expressed as a percentage of investment, and the cost of capital.

The scope of countries and jurisdictions covered will include all willing OECD/G20 Inclusive Framework members. A survey was circulated in April 2018 to collect information on relevant corporate tax provisions in force in July 2017. The development of these ETRs will also involve co-operation with the EU Commission (EC) to reduce response burdens and ensure methodological alignment with ETRs published by the EC.

### 3.3.3. Data on Tax Incentives

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The Corporate Tax Statistics dataset will also include two indicators on research and development (R&D) tax incentives, both compiled by the OECD's Science, Technology and Innovation (STI) directorate. This will cover all OECD/G20 Inclusive Framework members that wish to participate. Governments worldwide increasingly rely on tax incentives in addition to direct support measures (e.g., grants) to promote R&D in firms and encourage innovation and economic growth. In 2017, 30 out of the 35 OECD countries offered tax relief on R&D expenditures. While expenditure-based R&D tax incentives are not an item of investigation within BEPS, evidence on the incidence and generosity of these provisions is important and can help inform better policy decisions on the use of public funds.

The first set of R&D tax incentive indicators – implied tax subsidy rates on R&D expenditures – measure the notional level of tax support per additional unit of R&D to which firms with certain characteristics are in principle entitled. The types of tax support schemes taken into account include R&D tax credits and allowances, payroll withholding taxes, social security contributions and accelerated depreciation of capital assets used for R&D. The Corporate Tax Statistics dataset will include four variables related to this indicator spanning four firm types: large, profitable firm; SME, profitable firm; large, loss-making firm; and SME, loss-making firm.

The second set of R&D tax incentive indicators reflects tax expenditures for business R&D as reported by countries in the OECD data collection on tax incentive support for R&D expenditures. These estimates of the

cost of R&D tax incentives can be combined with data on direct R&D funding, as compiled by National Statistical Offices based on reports from firms, in order to provide a more complete picture of government efforts to promote business R&D. Reporting such tax support can facilitate transparency and more balanced international comparisons of public support for innovation.

The final set of information included in the first release of the Corporate Tax Statistics dataset will relate to Intellectual Property (IP) regimes. Many jurisdictions have implemented IP regimes which allow income from the exploitation of IP to be taxed at a lower rate than the headline corporate statutory tax rate. As agreed as part of the BEPS Action 5 minimum standard, peer reviews are being undertaken to identify features of such regimes that can facilitate BEPS, and therefore have the potential to unfairly impact the tax base of other jurisdictions. The FHTP collects the detailed information necessary for these reviews. The Corporate Tax Statistics dataset will draw on the data collected by the FHTP and will report information on IP regimes' rates and qualifying assets as well as the status of IP regimes per the FHTP's review.

### 3.3.4. Country-by-Country Reports

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While they will not be available for the first release of the Corporate Tax Statistics dataset, an additional set of analyses planned to be included in future versions of the Corporate Tax Statistics dataset are aggregated and anonymised statistics from CbC Reports. The aim of gathering and analysing statistics derived from CbCRs is to provide governments with a more complete view of the largest MNEs' global activities and to improve the economic and statistical analysis of BEPS. Up until now, one of the greatest difficulties in the measurement and analysis of BEPS has been the lack of available data on the income, taxes, and business activity of MNE groups on a jurisdiction by jurisdiction basis. CbCRs are expected to be a step forward in measuring BEPS since they will provide jurisdiction-specific information.

The first aggregated and anonymised CbCR statistics for 2016 are expected to be available for compilation in an internationally consistent format in 2019. These statistics are expected to be valuable in supporting future assessment of the effectiveness of the changes



recommended as part of the BEPS package in conjunction with other available data, including that collected in the Corporate Tax Statistics dataset. A detailed description of the CbCR statistics that are being collected and analysed is provided in Annex C.

While data constraints remain a challenge, progress is continuing on tracking the scale and economic impact of BEPS over time. As recommended in the Action 11 Report, continued work has been undertaken on updating the BEPS indicators and exploring new data sources that may be used to refine the indicators. While data from more recent years that may shed light on the impact of the BEPS measures is not yet available, the indicators can provide a baseline against which future assessments of BEPS may be compared. Work has already commenced on updating the estimate of the net global revenue lost due to BEPS published in the Action 11 Report. This will assist in providing a global view of the scale of BEPS and how it has evolved since the analysis performed in the Action 11 Report and is expected to be updated in 2020.

### 3.4. MODEL DISCLOSURE RULES FOR CRS AVOIDANCE ARRANGEMENTS

Several countries are considering the introduction of rules based on Action 12 and in May 2018, the European Council adopted a directive that will require Member States to introduce mandatory disclosure rules for cross-border aggressive tax planning, offshore structures and Common Reporting Standard (CRS) avoidance scheme.

Responding to a request of the G7, the OECD has issued model mandatory disclosure rules that would require promoters and service providers, such as lawyers, accountants, financial advisors, and banks, to inform tax authorities of any arrangements they design, market, or provide services in respect of, to avoid reporting under the OECD/G20 Common Reporting Standard or prevent the identification of the beneficial owners of passive offshore vehicles.

As the reporting and automatic exchange on offshore financial accounts pursuant to the CRS becomes a reality in over 100 jurisdictions this year, many taxpayers that held undeclared financial assets offshore have come clean to their tax authorities in recent years, which has already led to the identification of close to 85 billion euros of additional tax revenue.

In the meantime, individuals, often with the help of advisers and financial intermediaries, continue to try hiding their offshore assets and fly under the radar of CRS reporting. The design of these model rules draws extensively on the best practice recommendations in the BEPS Action 12 Report while being specifically targeted at these types of arrangements and structures. While not mandatory, the new model rules provide an effective tool to target these persons and their advisers, by introducing an obligation on a wide range of intermediaries in the jurisdictions that adopt the rules to disclose arrangements to circumvent CRS reporting to the tax authorities or conceal the beneficial owners of passive offshore vehicles. ■

# Annexes



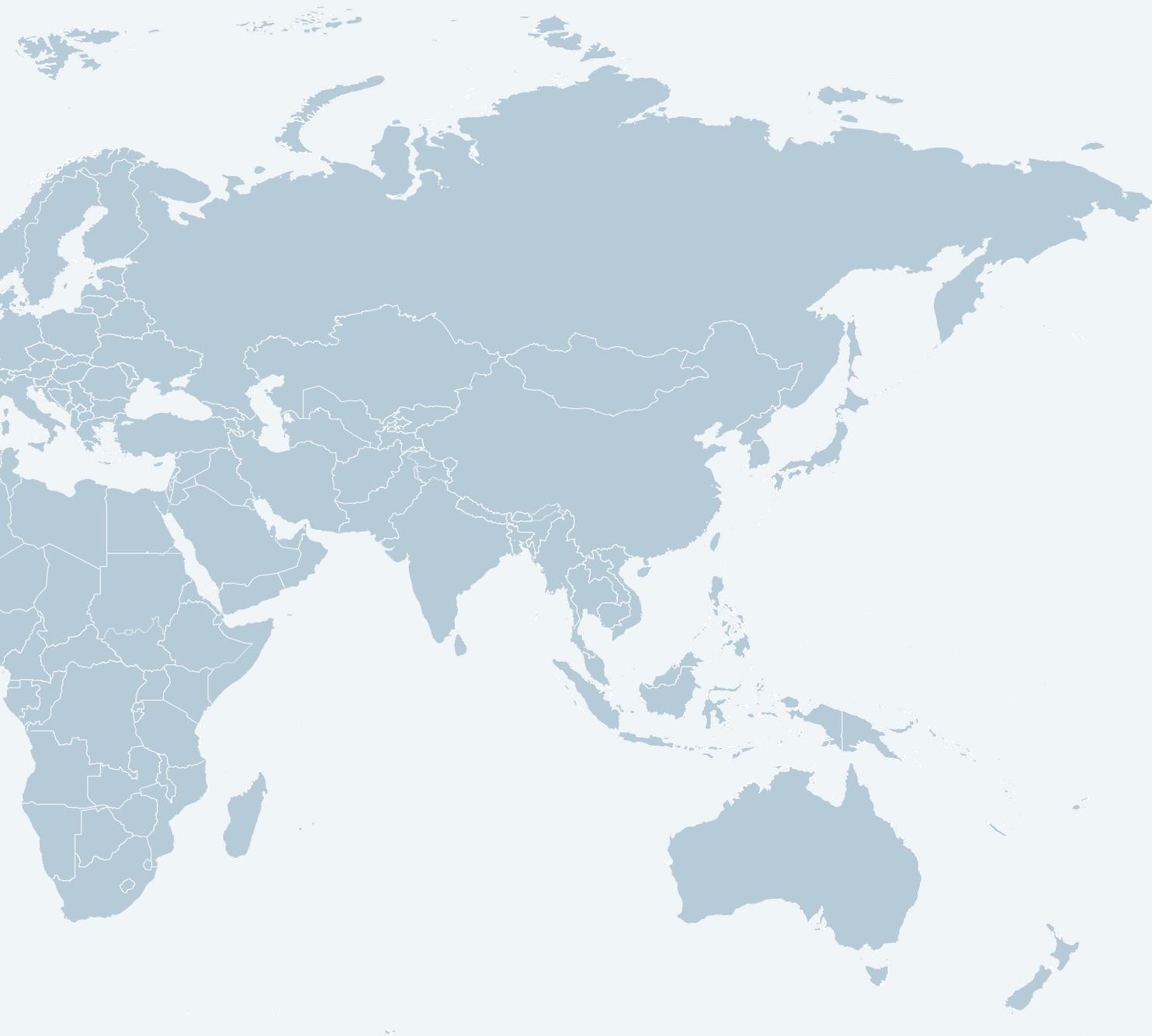


## Annex A – Membership of the OECD/G20 Inclusive Framework on BEPS

Complete list of Members of the OECD/G20 Inclusive Framework on BEPS as of 20 June 2018<sup>7</sup>

Andorra	Brazil	Costa Rica	Gabon	Italy	Maldives
Angola	British Virgin Islands	Côte d'Ivoire	Georgia	Jamaica	Malta
Anguilla		Croatia	Germany	Japan	Mauritius
Argentina	Brunei Darussalam	Curaçao	Greece	Jersey	Mexico
Australia	Bulgaria	Czech Republic	Guernsey	Kazakhstan	Monaco
Austria	Burkina Faso	Democratic Republic of the Congo	Haiti	Kenya	Mongolia
The Bahamas	Cameroon		Hong Kong (China)	Korea	Montserrat
Bahrain	Canada		Hungary	Latvia	Netherlands
Barbados	Cayman Islands	Denmark	Iceland	Liberia	New Zealand
Belgium	Chile	Djibouti	India	Liechtenstein	Nigeria
Belize	China (People's Republic of)	Egypt	Indonesia	Lithuania	Norway
Benin		Estonia	Ireland	Luxembourg	Oman
Bermuda	Colombia	Finland	Isle of Man	Macau (China)	Pakistan
Botswana	Congo	France	Israel	Malaysia	Panama

7. An up-to-date list of members can be found online at [www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf](http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf)



Papua New Guinea	Serbia	Tunisia
Paraguay	Seychelles	Turks and Caicos Islands
Peru	Sierra Leone	Turkey
Poland	Singapore	Ukraine
Portugal	Slovak Republic	United Arab Emirates
Qatar	Slovenia	United Kingdom
Romania	South Africa	United States
Russia	Spain	Uruguay
Saint Kitts and Nevis	Sri Lanka	Viet Nam
Saint Lucia	Sweden	Zambia
San Marino	Switzerland	
Saudi Arabia	Thailand	
Senegal	Trinidad and Tobago	

### List of Observers of the OECD/G20 Inclusive Framework on BEPS as of 20 June 2018

1. International Monetary Fund (IMF)
2. United Nations (UN)
3. World Bank Group (WBG)
4. African Tax Administration Forum (ATAF)
5. Centro Interamericano de Administraciones Tributarias (CIAT)
6. Cercle de réflexion et d'échange des dirigeants des administrations fiscales (CREDAF)

## Annex B – BEPS Actions and the Subsidiary Bodies of the OECD/G20 Inclusive Framework on BEPS

The OECD's Committee on Fiscal Affairs in its Inclusive Framework on BEPS format is the decision making body of the OECD/G20 Inclusive Framework. Subsidiary bodies of the OECD/G20 Inclusive Framework carry out the technical work on each of the BEPS Actions, as set out in the table below.

All members of the OECD/G20 Inclusive Framework participate on an equal footing in the decision-making body, as well as in the technical working groups.

<b>BEPS Action</b>	<b>Relevant subsidiary bodies and ad hoc groups of the OECD/G20 Inclusive Framework</b>
<p><b>Action 1 – Addressing the Tax Challenges of the Digital Economy</b></p> <p>This action analyses BEPS risks exacerbated in the digital economy and shows the expected impact of the measures developed across the OECD/G20 BEPS Project. It concludes that the digital economy cannot be ring-fenced as it is increasingly the economy itself and proposes technical options to deal with the tax challenges of the digital economy.</p>	Task Force on the Digital Economy
<p><b>Action 2 - Neutralising the Effects of Hybrid Mismatch Arrangements</b></p> <p>This action provides a common approach which facilitates the convergence of national practices through domestic and treaty rules to neutralise such arrangements. It helps to prevent double non-taxation by eliminating the tax benefits of mismatches and to put an end to costly multiple deductions for a single expense, deductions in one country without corresponding taxation in another, and the generation of multiple foreign tax credits for one amount of foreign tax paid.</p>	Working Party No. 11 on Aggressive Tax Planning
<p><b>Action 3 - Designing Effective Controlled Foreign Company Rules</b></p> <p>This action sets out recommendations in the form of building blocks of effective CFC rules, while recognising that the policy objectives of these rules vary among jurisdictions. It identifies the challenges to existing CFC rules posed by mobile income such as that from intellectual property, services and digital transactions, and allows jurisdictions to reflect on appropriate policies in this regard.</p>	Working Party No. 11 on Aggressive Tax Planning
<p><b>Action 4 - Limiting Base Erosion Involving Interest Deductions and Other Financial Payments</b></p> <p>This action provides a common approach to facilitate the convergence of national rules in the area of interest deductibility. It aims at ensuring that an entity's net interest deductions are directly linked to the taxable income generated by its economic activities and fostering increased co-ordination of national rules in this space.</p>	Working Party No. 11 on Aggressive Tax Planning

<b>BEPS Action</b>	<b>Relevant subsidiary bodies and ad hoc groups of the OECD/G20 Inclusive Framework</b>
<p><b>Action 5 - Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance</b></p> <p>This action sets out a minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime. In the context of IP regimes such as patent boxes, consensus was reached on the “nexus” approach. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange.</p>	Forum on Harmful Tax Practices
<p><b>Action 6 - Preventing the Granting of Treaty Benefits in Inappropriate Circumstances</b></p> <p>This action includes a minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse. Other changes to the OECD Model Tax Convention have been agreed to ensure that treaties do not inadvertently prevent the application of domestic anti-abuse rules. It also contains the policy considerations to be taken into account when entering into tax treaties with certain low or no-tax jurisdictions.</p>	Working Party No. 1 on Tax Conventions and Related Questions
<p><b>Action 7 - Preventing the Artificial Avoidance of Permanent Establishment Status</b></p> <p>This action includes changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention. These changes address techniques used to inappropriately avoid the tax nexus, including via replacement of distributors with commissionaire arrangements or via the artificial fragmentation of business activities.</p>	Working Party No. 1 on Tax Conventions and Related Questions
<p><b>Actions 8-10 - Aligning Transfer Pricing Outcomes with Value Creation</b></p> <p>Action 8 looked at transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Under Action 9, contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks. Action 10 has focused on other high-risk areas. The combined report contains revised guidance which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them. It also contains guidance on transactions involving cross-border commodity transactions as well as on low value-adding intra-group services.</p>	Working Party No. 6 on the Taxation of Multinational Enterprises

## Annex B – BEPS Actions and the Subsidiary Bodies of the OECD/G20 Inclusive Framework on BEPS

<b>BEPS Action</b>	<b>Relevant subsidiary bodies and ad hoc groups of the OECD/G20 Inclusive Framework</b>
<p><b>Action 11 - Measuring and Monitoring BEPS</b></p> <p>This action assesses currently available data and methodologies and concludes that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required. Noting these data limitations, a dashboard of six BEPS indicators has been constructed. These indicators provide strong signals that BEPS exists and suggest it has been increasing over time.</p>	<p>Working Party No. 2 on Tax Policy Analysis and Tax Statistics</p>
<p><b>Action 12 - Mandatory Disclosure Rules</b></p> <p>This action provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules which seeks to design a regime that fits those countries' need to obtain early information on aggressive or abusive tax planning schemes and their users. The recommendations provide the necessary flexibility to balance a country's need for better and more timely information with the compliance burdens for taxpayers.</p>	<p>Working Party No. 11 on Aggressive Tax Planning</p>
<p><b>Action 13 - Guidance on Transfer Pricing Documentation and Country-by-Country Reporting</b></p> <p>This action contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on Country-by-Country Reporting. First, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "master file" that is to be available to all relevant tax administrations. Second, it requires that detailed transactional transfer pricing documentation be provided in a "local file" specific to each country, identifying material related-party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made. Third, large MNEs are required to file a Country-by-Country Report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued and other indicators of economic activities.</p>	<p>Ad Hoc Group on Country-by-Country Reporting, consisting of members of both Working Party No. 6 and Working Party No. 10</p>

<b>BEPS Action</b>	<b>Relevant subsidiary bodies and ad hoc groups of the OECD/G20 Inclusive Framework</b>
<p><b>Action 14 - Making Dispute Resolution Mechanisms More Effective</b></p> <p>Recognising the importance of removing double taxation as an obstacle to cross-border trade and investment, countries have committed to a minimum standard with respect to the resolution of treaty-related disputes. In particular, this includes a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure.</p>	<p>Forum on Tax Administration - Mutual Agreement Procedures Forum/ Working Party 1 on Tax Treaties</p>
<p><b>Action 15 - Developing a Multilateral Instrument to Modify Bilateral Tax Treaties</b></p> <p>This action explored the technical feasibility of a multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties. This led to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which was adopted in November 2016.</p>	<p>Ad Hoc Group on the Multilateral Instrument for BEPS tax treaty measures</p>

## Annex C – Using Country-by-Country Reporting Data to Measure BEPS

The collection of aggregated and anonymised data from the Country-by-Country Reports (CbCRs) was a key recommendation of the BEPS Action 11 final report and will play an important role in supporting the OECD/G20 Inclusive Framework's ongoing work on the measurement and monitoring of BEPS. The aim of collecting this data is to provide governments with a more complete view of the global activities of the largest MNEs and to improve the analysis of BEPS and the effect of BEPS countermeasures in conjunction with other data available to governments. At present, one of the major challenges associated with measuring BEPS is that only limited information is available on the location of MNE groups' income, taxes, and business activities. CbCRs represent a step forward in supporting the measurement of BEPS since they will provide jurisdiction-specific information.

CbCRs provide information on income, taxes, and business activities of MNEs on a tax jurisdiction-by-tax jurisdiction basis. This is very important information for tax administrations in order to assess high-level transfer pricing and other BEPS-related risks of specific MNEs. It may also be a valuable source of information that can contribute to the measurement and monitoring of BEPS at a macro level. Consequently, OECD/G20 Inclusive Framework members have agreed to provide three main data tables summarising the information reported on CbCRs according to the jurisdictions where MNEs operate and the tax rates faced by MNEs.

### **Table 1: Where do the business activities of MNEs take place?**

The first table to be provided by OECD/G20 Inclusive Framework members will include an overview of MNE activities based on the jurisdictions of their operations. It will contain aggregated tabulations of the data provided on CbCRs grouped by the jurisdictions reported on the CbCRs. Stateless entities will be considered as a separate jurisdiction though there will be variation across jurisdictions as to which entities are considered stateless. For each jurisdiction, the total of each of the variables (i.e., income, taxes and business activities) pertaining to that jurisdiction on all CbCRs filed will

be reported. Two separate panels will be reported for this table: one panel that contains only data from jurisdictions where MNE groups have reported positive profits, and one panel that contains only data from jurisdictions where MNE groups have reported losses. This will be important for the calculation of tax rates and to provide an overview of the geographic distribution of profits and losses. If necessary to preserve the confidentiality of the data, OECD/G20 Inclusive Framework members can aggregate jurisdictions for which information cannot be released individually into broad geographic groupings.

### **Table 2: What are the tax rates paid by MNEs?**

The second table will provide an overview of MNE activities based on the tax rate faced by MNEs. MNEs will be categorised according to the overall tax rate they face, and MNEs with total profits that are negative or zero will be included in a separate category. For each category of MNEs, the total of each of the variables recorded on the CbCRs filed by the MNEs in that category will be reported. Within each category of MNE, information will also be broken down at the jurisdiction level. OECD/G20 Inclusive Framework members may aggregate jurisdictions into geographic groupings where this is necessary to preserve the confidentiality of the data.

### **Table 3: What is the relationship between tax rates and the business activities of MNEs?**

The third table will provide an overview of MNE activities based on the tax rate faced by MNEs in the jurisdictions where they operate. In order to create this table, a tax rate will first be calculated for operations in each jurisdiction listed on an MNE group's CbCR. That is, for each MNE, jurisdiction-specific tax rates will be calculated. The operations in each jurisdiction will then be categorised according to their tax rate. In Table 3, the total of each of the variables recorded on CbCRs will be reported broken down by this tax rate category. In this table, no jurisdictions will be specifically listed by name. After these data tables are prepared, OECD/G20 Inclusive Framework members have agreed that ratios can be computed from the variables reported on the tables to

examine the relationships among MNEs' income, taxes, and business activities. These ratios will be grouped into three categories. The first category will include measures of tax burden, such as the ratio of income tax to profits and the ratio of income tax to total revenues. The second category will include measures of profits relative to economic activity, such as the ratio of profits to total revenue and profits to the number of employees. The third category will contain other measures, such as the ratio of related party revenues to total revenues.

### **Preserving the Confidentiality of CbCRs**

CbCRs contain confidential information regarding MNEs, and preserving the confidentiality of this information and the anonymity of MNE groups reporting this information will be of paramount importance. In order to preserve the confidentiality of individual CbCRs, governments will perform the analyses and then provide the aggregated and anonymised data to the OECD. Governments will only provide these analyses for CbCRs filed directly in their jurisdictions in order to avoid disclosing any information from CbCRs obtained through exchange agreements. It will be critical that these analyses be performed and presented by OECD/G20 Inclusive Framework members in as consistent a way as possible in order to improve comparability of the data and to facilitate the study of BEPS behaviour. Some flexibility in the level of aggregation is provided to ensure that the reported statistics are anonymised and preserve the confidentiality of the filing taxpayers.

### **Monitoring BEPS through CbCR Data**

By gathering and publishing these aggregated analyses, governments and the public will have an overview of global MNE activity that was not be available otherwise. The aggregated analyses of CbCR data may provide indications of the extent of the misalignment of taxes, income, and business activity. However, it is important to note, that due to the aggregated nature of the CbCR analyses and the limited number of items on the CbCR itself, definitive conclusions about BEPS will not be able to be drawn from the analyses alone. The analyses will be made publicly available. ■

## FURTHER READING

Overview of the OECD's work on BEPS:

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

Iterative map on international tax co-operation:

[www.oecd.org/tax/international-tax-co-operation-map.htm](http://www.oecd.org/tax/international-tax-co-operation-map.htm)

OECD (2015), *Base Erosion and Profit Shifting, 2015 Final Reports*,  
OECD Publishing, Paris.

<http://dx.doi.org/10.1787/23132612>

OECD (2013), *Action Plan on Base Erosion and Profit Shifting*,  
OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264202719-en>

OECD (2013), *Addressing Base Erosion and Profit Shifting*,  
OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264192744-en>



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This is the second annual progress report of the OECD/G20 Inclusive Framework on BEPS. The report describes the progress made to deliver on the mandate of the OECD/G20 Inclusive Framework, covering the period from July 2017 to June 2018. The report contains an overview and three sections of substantive content. The introduction describes in broad strokes how the BEPS policy objectives are being achieved. Part 1 describes the major developments consisting of the work on addressing the tax challenges of the digitalisation of the economy and the coming into force of the BEPS multilateral instrument. Part 2 describes the progress in respect of the peer reviews of the BEPS minimum standards. Part 3 describes the wider BEPS implementation. These are followed by three annexes providing information on the membership of the OECD/G20 Inclusive Framework on BEPS (Annex A), a list of the BEPS actions and a guide to where this work is done within the OECD (Annex B), and a detailed description of the use of Country-by-Country reporting data to measure BEPS (Annex C).



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