

OECD SECRETARY-GENERAL REPORT TO G20 FINANCE MINISTERS

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G20 

OECD SECRETARY-GENERAL REPORT TO THE G20 FINANCE MINISTERS AND CENTRAL BANK GOVERNORS

ISTANBUL, TURKEY

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This report consists of two parts. Part I is a report by the OECD Secretary-General regarding (A) the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project; (B) Tax transparency through information exchange; and (C) Tax and Development. Part II is a Progress Report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

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Introduction

In Brisbane, G20 Leaders welcomed the package of 2014 BEPS deliverables – the first measures announced as part of the ambitious 2-year OECD/G20 BEPS Action Plan to reform the international tax system. **Important headway has already been made on some of the remaining components of the full package to be delivered by September as well as significant progress in the implementation of the 2014 deliverables.** In Brisbane, political leadership has unlocked progress to **address the issue of patent boxes.** All the countries have now joined the consensus on the modified nexus approach. Business can also move into a more certain tax environment, **with agreement reached on the application of key country by country reporting requirements through a government to government exchange mechanism.** Looking ahead, the holistic package of measures to address BEPS will require an effective implementation approach and **the framework for negotiating a multilateral instrument that will be capable of efficiently updating the international network of more than 3 000 tax treaties, has been agreed and is now presented for your endorsement.** It indicates how consistent implementation of the measures will be key to the success of addressing base erosion and profit shifting in the future.

The first year of the Project saw the direct participation of countries representing 90% of the world's economy, and drew on inputs from developing countries as well as the business community and civil society. **Responding to your call in September to deepen engagement with developing countries on BEPS issues, direct participation in the Project has now expanded, bringing a total of 61 countries together,** including a regional balance of interested lower income economies, which will join the decision-making and technical working group meetings. These countries are complemented by the addition of key regional tax organisations, the African Tax Administration Forum (ATAF) and the Inter-American Centre of Tax Administrations (CIAT), who join the IMF, the UN and the World Bank Group as Observers. Five regional networks of tax policy and administration officials have been institutionalised and will meet regularly from February 2015, to bring together input for the development of BEPS measures from an even broader community of tax administration and tax policy officials, and also to develop practical guidance on implementation.

The global fight against tax evasion continues, and since your endorsement of the new single common global Standard on Automatic Exchange of Tax Information in September, 93 jurisdictions have committed to an implementation timetable that will see the first automatic exchanges take place in 2017 and 2018. To meet that goal, jurisdictions are working together with the OECD and the financial services sector to maintain global consistency through the implementation phase. The effectiveness of AEOI implementation will be reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes. **At the same time, the Global Forum peer review process, which has reviewed over 70 jurisdictions in the last 5 years, has revealed that some jurisdictions are failing to implement their commitments to effective exchange of information on request.** Responding to the G20 call to consider potential tougher incentives for such jurisdictions, a number of options have been identified, drawing on an analysis of the measures which some countries and institutions have already put in place and which lay the groundwork for a more cohesive approach

With developing countries now deeply engaged in the work on BEPS and on tax transparency, there are a number of additional areas where **OECD is working with its partners in other international and regional organisations, to support developing countries to secure a stronger tax framework that can sustainably finance domestic development needs. Besides being an integral part of the BEPS and the tax transparency agenda, mobilising domestic resources for development is high on the international agenda given the imminent agreement in the United Nations on the Post-2015 Sustainable**

Development Goals in September, and the international effort on financing those goals. The work on taxes at the OECD aims to support and complement the international efforts on this area. Improving the availability and quality of comparable revenue statistics, tackling illicit financial flows through better inter-agency and international cooperation, and supporting the development of tax audit capacity for complex international cases, provides tangible immediate support to address the specific, priority challenges in tax policy and administration, while building networks of relationships that will continue to return dividends in the years ahead.

Strong political leadership on the international tax agenda will be necessary through 2015. The demonstrated commitment at the highest levels of governments has made a critical difference in realising the success achieved so far in addressing tax evasion and reforming the international tax rules. **I look forward to receiving your continued support in 2015 as we partner to ensure the necessary components of the international tax system are in place, to build a more resilient future.**

Given the extremely tight time schedule, I will report progress to you on a regular basis throughout the year and will be in a position to present the full package of the BEPS outputs for your endorsement at your October meeting in Peru.

PART I

**OECD SECRETARY-GENERAL REPORT
TO THE G20 FINANCE MINISTERS AND CENTRAL BANK GOVERNORS**

Base Erosion and Profit Shifting (BEPS)

**Tax transparency through information
exchange**

Tax and Development

A – BASE EROSION AND PROFIT SHIFTING (BEPS)

Overview

In September 2013, the G20 Leaders endorsed the ambitious BEPS Action Plan proposed by the OECD. In accordance with this 2-year Plan, the first batch of seven deliverables was presented to and endorsed by the G20 Finance Ministers in September 2014 in Cairns and by the G20 leaders at their Summit in Brisbane.

This first batch consisted of: **three reports** assessing the tax challenges of the digital economy (Action 1), harmful tax practices (Action 5) and the feasibility of a multilateral instrument to implement the BEPS measures (Action 15), **and four instruments**, tackling hybrid mismatches (Action 2), tax treaty measures (Action 6), transfer pricing (Actions 8-10), and transfer pricing documentation including country-by-reporting (Action 13). **The Explanatory Statement published with the 2014 deliverables described the interaction between those deliverables and the remaining work on the BEPS Actions to be delivered in 2015.**

Latest updates

Since then, strong progress has been made on the remaining eight actions with a view to completing the full BEPS package, as agreed, which will be presented at the end of 2015. I am glad to report that the 2015 Actions are on schedule, and that agreement has been reached on the implementation of key 2014 deliverables:

Developing a Multilateral Instrument to give effect to BEPS measures

A mandate for the development of a multilateral instrument to give effect to the treaty-related BEPS measures has now been approved, and is attached at Annex 1 for your endorsement. The multilateral instrument will be a tool that can modify existing bilateral tax treaties to reflect the outcomes of the BEPS Project, many of which concern issues relating to tax treaties. With more than 3 000 tax treaties currently in force, a single instrument, that can effectively update this network is critical to ensure that implementation of BEPS measures is rapid and consistent. This was emphasised in the Action 15 report published in September, which confirmed the feasibility of a multilateral instrument. An ad-hoc group hosted at the OECD, open to participation from all States, will undertake this work, and will hold their first meeting by July 2015, aiming to conclude the drafting of the instrument by 31 December 2016.

Country by Country Reporting – transfer pricing documentation (Action 13)

Following the publication in September of revised standards for transfer pricing documentation and a template for country-by-country reporting, **key elements of the implementation package for Action 13 have now been agreed.** The country by country template requires multinationals to provide information on revenues, profits, taxes accrued and paid and some activity indicators. **To support implementation, the following elements have now been defined: preparation and filing for the country-by-country reporting by multinationals with a turnover above EUR 750 million is expected to start in 2016 so that the first pieces of information are obtained by tax administrations by 2017. Information will be filed in the country of residence of the multinational and will further be automatically exchanged with countries fulfilling a number of conditions, in particular confidentiality and proper use of the information. Local filing will be deemed appropriate only in a limited number of enumerated cases.** A work plan for an implementation package to support the exchange of country-by-country reporting information has also been approved, and will be developed by April 2015. The details of these agreed elements are described in Annex 2. In this regard, as noted in Section B of this Report, 84 jurisdictions are

now covered by the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, one of the major legal instruments which provide for exchange of tax information between governments, and which could include exchanges of transfer pricing documentation.

Harmful Tax Practices – agreement on patent box regimes

Among the seven 2014 deliverables presented to G20 Finance Ministers, the Action 5 report on harmful tax practices was an interim progress report, recognising that no consensus had yet been reached on the important issue of patent boxes. In particular, discussions were ongoing regarding the most appropriate approach to the substance requirement for classifying intellectual property (IP or “patent box”) regimes in the context of harmful tax practices.

In Brisbane, the G20 Leaders endorsed a compromise solution to address this issue, proposed by Germany and the UK. **All OECD and G20 countries have now endorsed this compromise solution (see Annex 3) which provides for a required nexus between the location of the activities generating the income eligible to the preferential tax treatment and the jurisdiction offering this preferential regime. A grandfathering clause of 5 years has been accepted with no new entries after June 2016.**

Work has started on implementation of this measure, in particular to delineate the eligible income, trace the related expenses and limit the risk of abusive entries before grandfathering takes effect. Implementation work has also started as regards transparency to ensure the comprehensive reporting of tax rulings through automatic exchange of information.

Deepening the engagement of developing countries

A significant development at the heart of the BEPS Project is the integration of additional countries into the Project, bringing to 61 the number of countries participating directly.¹ Responding to the G20’s call for a more structured dialogue process with developing countries on the BEPS Project, in November the OECD launched its new Strategy for deepening developing country engagement. **From January, 14 countries (Albania, Azerbaijan, Bangladesh, Croatia, Georgia, Jamaica, Kenya, Morocco, Nigeria, Peru, Philippines, Senegal, Tunisia, and Vietnam) who have indicated their interest in participating and which reflect a regional balance, directly participate in the development of the BEPS measures,** through meetings of the Committee on Fiscal Affairs (CFA) and the BEPS technical working groups. In December, the OECD hosted a preparatory meeting for these countries to discuss their key BEPS concerns and how to most effectively participate in the BEPS Project, to ensure that their concerns and input are reflected in the measures being developed. The African Tax Administration Forum (ATAF) and the Centre for Inter-American Tax Administration (CIAT) have also joined the CFA and its working groups as Observers, the same status as that of the IMF, the UN and the World Bank in the CFA.

The direct participation of these 14 countries will also be bolstered by institutionalising the regional networks of tax policy and administration officials, led by regional tax organisations such as ATAF and CIAT and supported by the OECD and other international organisations. Building on earlier consultation

¹ Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, People’s Republic of China, Peru, Philippines, Poland, Portugal, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, the United States.

processes, the regional network meetings will provide a forum to discuss current BEPS issues, and will also be critical in the post-BEPS environment as jurisdictions move to implement and administer the BEPS measures which will require enhanced cross-border cooperation. The OECD, the IMF, the UN and the World Bank Group, have also outlined a structured dialogue proposal which was published in November in response to the call of the G20 Finance Ministers. These organisations will work together and with developing countries, including through the regional networks, to draw on the strengths of each organisations in order to provide the support necessary to developing countries to address the different tax issues most relevant to them.

2015 deliverables

The 2015 deliverables relate to strengthening the rules on controlled foreign corporations (**Action 3**); limiting base erosion from interest deductions and other financial payments (**Action 4**); the second phase of work on countering harmful tax practices (**Action 5**), preventing artificial avoidance of ‘Permanent Establishment’ status (**Action 7**), assuring transfer pricing outcomes in line with value creation (**Actions 8-10**), establishing methodologies to analyse BEPS data and the actions to address BEPS (**Action 11**), requiring taxpayers to disclose aggressive tax planning arrangements (**Action 12**); and making dispute resolution more effective (**Action 14**).

The consideration and drafting of measures to address these issues is already underway. The technical BEPS working groups have prepared eight discussion drafts which have now been issued for public comment. The first public consultations for 2015 on actions 6, 7 and 14 were held in January and attracted over 2 000 pages of comments from constituencies across G20 countries and beyond. **As in 2014, ensuring regular and in-depth liaison with a broad range of stakeholders – business, trade unions, civil society – is an important principle of the BEPS process, ensuring that solutions take into account all relevant considerations.** This approach also facilitates the process of reaching agreement on the measures, as well as their implementation by governments and business. As part of this ongoing liaison, the current status of the BEPS work is regularly outlined in public webcasts hosted by top OECD tax officials and watched so far by more than 26 000 people. The next live webcast update will be take place on 12 February.

Looking Ahead

The publication of the 2014 deliverables and the progress made in recent months, have demonstrated the central importance of engaged political support for the BEPS Project in order to reaffirm the continued commitment at the highest levels of governments to its objectives and the need to achieve consensus-based outcomes that result in real change. Through the Project, the OECD and G20 are also demonstrating how the 21st century calls for enhanced cross-border cooperation and the commitment to develop a multilateral instrument capable of modifying the global network of tax treaties marks an innovative approach to the challenges posed by the rapidly changing global business environment. It demonstrates the ability of governments to move rapidly, flexibly and in a coordinated manner to ensure the international tax rules are effective and fit for purpose.

Completing the 2015 deliverables by the end of 2015 will require significant amount of technical work to be undertaken in the coming months. At the same time, high-level political leadership demonstrating a clear commitment to agreeing a holistic package of measures will be necessary. The full BEPS package will be circulated in time for the G20 Finance Ministers meeting in October, and delivered to the G20 Leaders at their Summit in November. We will then start the actual implementation of the BEPS package which will be critical for our collective success.

B – TAX TRANSPARENCY THROUGH INFORMATION EXCHANGE

Update

In Brisbane, the G20 Leaders endorsed the global Common Reporting Standard for the automatic exchange of tax information (the AEOI Standard) on a reciprocal basis. To date 93 jurisdictions have committed to implementation of the AEOI Standard on a timeline that will see the first automatic exchanges take place in 2017 and 2018. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which is one of the possible legal frameworks that provides for AEOI, now covers 84 jurisdictions. To build on the legal framework and provide the administrative tool to undertake AEOI in practice, the Multilateral Competent Authority Agreement was launched in 2014 and has now been signed by 52 jurisdictions.

The Global Forum on Transparency and Exchange of Information in Tax Matters (the Global Forum) will review the effective implementation by jurisdictions of the AEOI Standard. Its 125 member jurisdictions participating on an equal footing, have led the successful peer review process for exchange of information (EOI) on request since 2010. The Global Forum is currently preparing the terms of reference for reviews of the AEOI Standard, and further information on their work is found in Part II of this report. An update on Global Forum members' plans for implementation of the AEOI Standard will be discussed at the Global Forum plenary meeting at the end of 2015.

To meet their AEOI commitments, officials are currently attending training sessions developed by the OECD, and supported by the Global Forum, on effective AEOI implementation. The OECD is also drawing on its expertise to prepare guidance on best practice for implementation of the AEOI standard, to ensure that implementation is consistent and reduces the compliance impact where possible for both governments and the financial sector. This includes the development of a public web portal on the AEOI Standard to assist governments, financial institutions and other stakeholders in its implementation.

Interim report on possible tougher incentives for failure to respect Exchange of Information on request standards

At their meeting in September, the G20 Finance Ministers asked the OECD to work with all G20 members:

to propose possible tougher incentives and implementation processes, to deal with those countries which fail to respect Global Forum standards on exchange of tax information on request. The OECD should report back to us on progress at the first meeting of Finance Ministers and Central Bank Governors in 2015.

This interim report outlines the preliminary findings on this issue. A full report will be delivered to G20 Finance Ministers at their meeting in September.

Background

The existence of a **level playing field is critical to the effectiveness of international standards**. Jurisdictions should not be able to benefit from their failure to implement international standards at the detriment of those that do. **Global commitment to tax transparency, including by all financial centres, has therefore been central to previous G20 calls for all jurisdictions to adopt and implement the international standard of exchange of information on request**. As early as 2009, the G20 has referred to coordinated countermeasures against those that do not adopt the EOI on request standard.

The role of the Global Forum Peer Review Process

The Global Forum, hosted at the OECD, establishes a benchmark that accurately reflects an up to date assessment on each jurisdiction's ability to effectively exchange information on request (EOI). The comprehensive and robust peer review process to assess EOI on request has been critical in monitoring progress. Phase 1 of a Global Forum review focuses on ensuring an appropriate legal framework exists, while Phase 2 considers the effectiveness of a jurisdiction's EOI procedures in practice. Through the Forum, members also have access to support to prepare for their reviews as well as assistance in addressing the recommendations made.

A total of 150 reviews have been conducted since the peer review process commenced in 2010 (consisting of Phase 1, Phase 2 or Combined Phase 1 and Phase 2 reviews). **71 jurisdictions have received an overall rating** (assigned once both Phase 1 and Phase 2 is complete), and **82% are rated either compliant or largely compliant.** Most countries are making progress – the review framework provides for supplementary reviews once jurisdictions' have addressed recommendations made in the initial report, and so far, **92 jurisdictions have acted to implement around 500 of the recommendations made.**

There remain a number of jurisdictions that have failed to address the recommendations made by the Global Forum and therefore failed to effectively implement the international standard of exchange of information on request. The Global Forum process has now been in place for 5 years, and in 10% of cases, more than 24 months have passed since the findings were made without any progress to address them.

Proposals on tougher incentives

The initial analysis suggests that there are three main tools which can be used to establish stronger incentives for jurisdictions to **reform their laws and processes which provide opportunities for tax evasion and other illicit financial flows through a lack of transparency and effective information exchange mechanisms.**

1) Increasing awareness of the Global Forum review outcomes

The results of the Global Forum review process are made publicly available, and for jurisdictions which do not demonstrate strong results, there can be a negative reputational impact. With the support of the G20, expanding awareness of the list of jurisdictions who have not met the EOI on request standard would increase their impact, **providing greater incentive for jurisdictions to move quickly to address the shortfalls identified in their legal framework and administrative processes.**

2) Improve co-ordination of domestic measures and link more closely to Global Forum review outcomes

An initial analysis covering 40 countries indicates that the **vast majority already have measures in place intended to address the lack of effective exchange of information on request.** These include both legislative and administrative measures, ranging from special withholding taxes rules to an increased audit risk for taxpayers who engage in transactions involving high risk jurisdictions.

The table below shows the top 10 measures already being applied, ranked by the number of jurisdictions applying them.

The top 10 measures currently being applied to address an absence of effective tax information exchange on request

1. Current taxation of domestic shareholders on (certain) income of a controlled foreign company
2. Disallowing deductions or credits with respect to certain transactions
3. Special withholding tax rules
4. Increased audit risk for taxpayers who engage in transactions with certain “high risk” jurisdictions
5. Increased information reporting requirements
6. Additional question(s) on tax returns as to the ownership of foreign assets
7. Applying transfer pricing rules to transactions between unrelated parties/ increased transfer pricing documentation requirements
8. Increased substantiation requirements in respect of transactions involving certain jurisdictions
9. Refusal to issue rulings in respect of transactions involving certain jurisdictions
10. Increased penalties for use of certain jurisdictions

To date, the application of few of these unilateral measures are explicitly linked to the outcome of the Global Forum peer review process.

3) Encourage investment policies that take into account the Global Forum peer review outcomes

Some international financial institutions have incorporated the outcomes of the Global Forum review process as factors in their investment policies, for example the Council of Europe Development Bank, the European Bank of Reconstruction and Development, the European Investment Bank and the International Finance Corporation, a member of the World Bank Group.

The policies adopted by these institutions are similar, and can be broadly described as **restricting the routing of investments through jurisdictions where a jurisdiction is “not in compliance”** with the standard on EOI on request, being a jurisdiction regarding which:

- i) a Global Forum Phase 1 review has been completed but where the Global Forum has determined that a Phase 2 review will not take place until additional steps have been taken by the jurisdiction to address the recommendations made; or
- ii) a Global Forum Phase 2 review has been completed and which has received an overall rating of “non-compliant” or “partially compliant”.

Next steps

By increasing awareness of the Global Forum peer review outcomes, taking a more coordinated approach by aligning unilateral measures to those outcomes and encouraging investment policies which take those outcomes into account, countries will intensify the impact on jurisdictions which fail to meet the international standard on EOI on request.

The preliminary findings reflected in this interim report will be further developed and a final report on possible tougher incentives and implementation measures will be delivered to the G20 Finance Ministers at their meeting in September.

C – TAX AND DEVELOPMENT

Developing countries have been important participants in the work to improve global tax transparency, and today make up more than 50% of the 125 members of the Global Forum on Transparency and Exchange of Information. On BEPS, and as noted in Section A of this Part, the OECD announced in November the new strategy for deepening developing country engagement on BEPS issues. This strategy builds on the significant input already provided by more than 80 developing countries in the first year of the BEPS Project. This new strategy includes the integration of 14 additional countries to participate in the decision making and technical working group meetings to develop BEPS solutions, as well as the institution of regional networks of tax administration and tax policy officials.

The OECD, the IMF, the UN and the World Bank Group have also agreed a structured dialogue process with and among developing countries on the tax issues they face, in response to the call from the G20 Finance Ministers in September 2014. This structured dialogue builds on the strengths of each of these organisations, and also aims to reduce duplication, in order to better support developing countries in efforts to build transparent and effective tax systems which take due account of the specific challenges they face.

In addition to these efforts, the OECD is undertaking a number of areas of work to support developing countries in addressing their key tax issues, including to support the practical implementation of BEPS measures once agreed.

Work mandated by the G20 Development Working Group

As mandated by the G20 Development Working Group (DWG), the OECD is working with other international organisations and regional tax organisations to provide practical support for lower capacity developing countries, in two key areas relating to BEPS in 2015:

- a) A report on good practice in **transparency and governance of tax incentives** in lower income countries;
- b) A practical toolkit to assist developing countries **address lack of transfer pricing comparability data**, with supplementary work on **determining appropriate prices for mineral commodities**.

In addition, the issues arising from the **indirect transfer of assets**, to identify policy options to tackle abusive cases with particular reference to developing countries will be explored.

More broadly, **the OECD will deliver, in coordination with the IMF, UN, World Bank Group and regional tax administration forums where appropriate, to create toolkits to support developing countries on the implementation of the BEPS measures once agreed.** The regional networks of tax policy and administration officials will also play a key role here. The toolkits will target areas identified by developing countries to be of particular importance, including the implementation of:

- Effective transfer pricing documentation requirements;
- Rules relating to base eroding payments;
- Rules to counter artificial profit shifting through supply chain restructuring;
- Effective assessment of BEPS risks; and
- Capacity building measures for tax treaty negotiation.

This work will commence in 2015, and be carried out through 2017 in line with the timetable agreed by the G20 DWG.

Tax Inspectors Without Borders

In a global economy where there is growing cross-border impact of national tax systems, ensuring consistent, high quality and coherent approaches to tax audit is becoming more and more critical. This is particularly relevant in the case of complex tax audits, and where revenues from corporate taxpayers, many of them multinational enterprises, contribute a significantly higher proportion of revenue to governments in developing countries, than in OECD countries. In recognition of this need, the Tax Inspectors Without Borders (TIWB) initiative was established in 2013 with the objective of facilitating the deployment of experienced tax auditors on a demand-led basis to developing countries.

This peer-based learning model enables the transfer of tax audit knowledge and skills to tax administrations in developing countries through a real time, practical approach. Foreign experts (currently serving or recently retired tax officials) are deployed to work directly with local tax officials on current audits and audit-related issues concerning international tax matters, and to share general audit practices for the benefit of developing countries. This leads to improvements in the quality and consistency of audits and the transfer of knowledge to recipient administrations (tax administrations seeking assistance), as well as the potential for more revenues, greater certainty for taxpayers and encouraging a culture of compliance through more effective enforcement.

A TIWB Toolkit is now available to guide all parties through the TIWB expert deployment process. The experience gained to date in the pilot projects is being reviewed, with the initiative to be fully launched later in 2015. With initiatives such as the OECD/G20 BEPS Project and efforts to improve global exchange of tax information emphasising the need for strengthened cross-border cooperation, TIWB is an important project which has received the strong support of the G7 and G20 Leaders to date.

Illicit Financial Flows

Under the OECD's Oslo Dialogue to promote a whole of government approach to fighting tax crime and other financial crimes, OECD and non-OECD countries have come together to address illicit financial flows which have a significant economic and social cost on the global community. Through its Foundation and Intermediate level programmes, the OECD, which launched the International Academy for Tax Crime Investigation in 2014, has carried out intensive training courses with over 100 participants from 36 countries, including more than 20 developing countries. Reflecting the inter-agency implications of tackling illicit financial flows effectively, participants have drawn from revenue authorities, financial intelligence units, ministries of finance, and the judiciary. Developing country demand for support in this area continues to grow and the opportunity to establish further training centres are currently being explored. There is a concurrent need to galvanize high-level engagement to address this estimated multi-trillion dollar issue, and expand the discussion on coherent approaches for improved frameworks for inter-agency and cross-border cooperation.

Revenue Statistics

One of the flagship policy tools available to OECD members for more than 40 years, the OECD Revenue Statistics programme began to expand four years ago to also cover interested non-OECD countries. Countries work with the OECD to standardise their relevant revenue data so that it can be presented on an internationally comparable basis. Drawing on this data, officials have access to an accurate data snapshot which is comparable over time, as well as across countries. This high-quality tool is invaluable for policy makers as part of informed decision-making.

Standardising tax information is not easy. But we have made progress. The Latin America and Caribbean edition of the Revenue Statistics publication is now in its fourth year, and will cover 20 countries. The second Asian edition in 2015 will cover 5 countries. The first African edition is currently under development with 5 countries currently committed to participating. Ongoing support to this Project is essential to ensure that countries have the policy tools necessary to ensure sustainable financing for their development objectives on both national and regional levels.

All this work is highly relevant to support domestic resource mobilisation, in particular in the context of the negotiation of the Sustainable Development Goals and financing for development.

PART II

Global Forum on Transparency and Exchange of Information for Tax Purposes

Progress Report to the G20 Finance Ministers and Central Bank Governors: Update on Effectiveness and On-Going Monitoring

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Overview

2014 was a momentous year for tax transparency, in large part owing to the ambitious agenda set by the G20, and the G20 members leading by example. The *2014 Global Forum Report to the G20 Leaders* described the major progress made in 2014 toward tax transparency. It reported on progress made by jurisdictions in relation to the exchange of information on request; how the Global Forum met the mandate of the G20 to incorporate the Financial Action Task Force's work on beneficial ownership into the Global Forum standards; on the adoption by the Global Forum and the commitments by almost 90 Global Forum members to implement the new standard for the Automatic Exchange of Information, and how the Global Forum was supporting developing countries to benefit from the international tax and transparency agenda.

At their Brisbane meeting in November 2014, the G20 Leaders endorsed the global Common Reporting Standard for the automatic exchange of tax information (the AEOI Standard) on a reciprocal basis, and agreed to begin exchanging information automatically with each other and with other countries by 2017 or end-2018, subject to completing necessary legislative procedures. The leaders welcomed financial centres' commitments to do the same and called on all other jurisdictions to join G20 countries in implementing the necessary measures.

This report provides a short update of the developments occurring in the Global Forum since the last report to the G20 Leaders in November 2014. Work on incorporating beneficial ownership into the Global Forum's standards has advanced and preparations are underway for monitoring the implementation of the new standard on automatic exchange of information.

Exchange of Information on Request

The Global Forum's peer review process evaluates jurisdictions' compliance with the international standard of transparency and exchange of information on request. Reviews take place in two phases: Phase 1 reviews examine the legal and regulatory framework; Phase 2 reviews look into the implementation of this framework in practice. Following a Phase 2 review, ratings are assigned which indicate a jurisdiction's overall compliance with the standards.

As of January 2015, the Global Forum has finalised Phase 1 reviews of 105 jurisdictions and assigned ratings for a total of 71 jurisdictions after completion of their Phase 2 reviews. The overall ratings show that 20 jurisdictions are rated "Compliant", 38 jurisdictions "Largely Compliant", 9 jurisdictions "Partially Compliant" and 4 jurisdictions "Non-Compliant". Table 1 below shows the allocation of overall ratings for jurisdictions for which Phase 2 reviews have been completed. Supplementary reviews, which evaluate changes made by a jurisdiction to address the recommendations made in their reports, and based on a potential improvement in ratings, are ongoing for Austria, British Virgin Islands, Cyprus, and Luxembourg.

It can be noted that some jurisdictions (see Table 1) could not receive ratings because their Phase 2 reviews could not take place. The Phase 1 reviews of 12 jurisdictions determined that the legal and regulatory framework for EOI of these jurisdictions presented serious deficiencies that prevented them from moving to Phase 2 until they act on the recommendations made (including one jurisdiction for whom the launch of

the Phase 2 review is still subject to conditions). Some of these jurisdictions have reported that they have implemented, or are in the process of implementing, the recommendations to enable them to ask for Supplementary reports. The Supplementary Phase 1 report of Switzerland is underway. The Global Forum has now formulated a process designed to swiftly encourage the remaining jurisdictions to respond to the recommendations, failing which a rating of non-compliant may be assigned.

Table 1: Overall ratings for jurisdictions for which Phase 2 has been completed

TABLE OF JURISDICTION RATINGS	
Australia, Belgium, Canada, China, Denmark, Finland, France, Iceland, India, Ireland, Isle of Man, Japan, Korea, Mexico, New Zealand, Norway, Slovenia, South Africa, Spain, Sweden.	Compliant
Argentina, The Bahamas, Bahrain, Belize, Bermuda, Brazil, Cayman Islands, Chile, Estonia, Former Yugoslav Republic of Macedonia (FYROM), Germany, Ghana, Gibraltar, Greece, Grenada, Guernsey, Hong Kong (China), Italy, Jamaica, Jersey, Macao (China), Malaysia, Malta, Mauritius, Monaco, Montserrat, Netherlands, Philippines, Qatar, Russia, San Marino, Singapore, Slovak Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Turks and Caicos Islands, United Kingdom, United States.	Largely compliant
Andorra, Anguilla, Antigua and Barbuda, Austria,* Barbados, Indonesia, Israel, Saint Lucia, Turkey.	Partially compliant
British Virgin Islands,* Cyprus,* Luxembourg,* Seychelles.	Non-compliant
Jurisdictions that cannot be rated because they cannot move to Phase 2	
Brunei Darussalam, Marshall Islands, Dominica, Federated States of Micronesia, Guatemala, Lebanon, Liberia, Panama, Nauru, Switzerland**, Trinidad and Tobago, Vanuatu.	

* The jurisdiction is undergoing a Supplementary review to improve its ratings.

** The launch of the Phase 2 of Switzerland is subject to conditions. Switzerland is undergoing a Supplementary Phase 1 review.

Preparation of the next round of reviews

In recognition of the need to ensure continuous monitoring, the Global Forum agreed that a new round of reviews would be initiated in 2016, following the completion of the existing Schedule of Reviews. For this purpose it examined its Terms of Reference, which are the basis for the reviews, so as to take into account the experience gained from the peer reviews, as well as international developments in relevant areas. In October 2014, the Global Forum agreed the set of issues where changes to the Terms of Reference will be made, including enhanced requirements regarding the beneficial ownership of legal entities and arrangements, and work is now in progress to refine the detailed proposals, as well as to agree the processes to be followed for the new round.

Automatic Exchange of Information

Rapid progress has been made on getting widespread support for the implementation of the common global standard for automatic exchange of financial account information (AEOI). 89 Global Forum members have already committed themselves to the new AEOI standard in either 2017 or 2018 while 5 jurisdictions have not indicated a timeline or have not yet committed (see Table 2 below).² The remaining members are developing countries where the Global Forum is committed to providing technical assistance to help them implement the AEOI Standard.

Table 2: GF member jurisdictions committed to implementing the AEOI Standard

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2017
Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Cayman Islands, Chile, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom, Uruguay
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018
Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Belize, Brazil, Brunei Darussalam, Canada, China, Costa Rica, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Marshall Islands, Macao (China), Malaysia, Monaco, New Zealand, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates
JURISDICTIONS THAT HAVE NOT INDICATED A TIMELINE OR THAT HAVE NOT YET COMMITTED
Bahrain, Cook Islands, Nauru, Panama, Vanuatu

The Global Forum is working to develop a detailed process to monitor and review the implementation of the AEOI Standard, including a Terms of Reference and a Methodology for these reviews. One of the key aspects of this work is to design an objective and effective multilateral process to assess a jurisdiction's readiness to ensure that information which is exchanged remains confidential and that there are appropriate mechanisms in place to safeguard the data.

Competent Authority meeting

Global Forum members remain keen to continuously improve the administrative co-operation and practices to fight against tax evasion and protecting the integrity of tax systems. Therefore around 60 delegations came together at the annual Competent Authorities' Meeting held in Mexico in early December. This was the third meeting of this kind which aims to improve communication between Competent Authorities, and develop measures to overcome practical impediments to effective tax co-operation and the support that is

² The United States has indicated that it will be undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.

needed by developing countries if they are to effectively participate in a global information exchange network. Competent Authorities will meet again in 2015 to follow-up on the work already done, and anticipated.

Developing countries

The membership of the Global Forum continues to grow with increasing interest amongst developing countries. In the last 3 months Niger and Cote D'Ivoire have become new members of the Global Forum taking the membership to 125 jurisdictions. The Global Forum engages in a range of initiatives to support its developing country member jurisdictions in effectively implementing the international standards, and ensuring that exchanges between members' tax authorities are efficient and of high quality. These activities will intensify greatly in 2015 due to Global Forum members' commitment to the AEOI Standard and the need to ensure that developing countries can participate in and benefit from the Standard, as well as in connection with the recently launched Africa Initiative which aims at increasing engagement with African countries.

In its response to the 2014 Roadmap on AEOI for Developing Countries, the G20 leaders indicated their support for pilot projects to be undertaken between developing and G20/developed country partners, which would be facilitated by the Global Forum, working with the World Bank Group and other international and regional organisations. To date, six developing countries (Albania, Colombia Morocco, Pakistan, the Philippines, and Uganda) have indicated interest in participating in pilot projects. Work has already commenced on three of these projects. The first projects will be undertaken with Albania and Colombia, collaborating with Italy and Spain respectively as pilot partners. The Philippines (with Australia as pilot partner) is next in line. On-site visits for the purpose of undertaking feasibility studies and developing implementation plans are scheduled in these cases for March and April 2015. France will partner Morocco and work is likely to commence soon on this project. The proposed projects with Pakistan and Uganda are still being evaluated and developed country partners have yet to be identified. A "call to action" for G20 members to support these and other similar pilots or provide support and resources for improving information exchange in other forms would be very helpful.

At its annual meeting in Berlin in October 2014, the Global Forum welcomed the launch of a new three-year initiative focussed on the needs of Africa. The Africa Initiative is a joint effort of ATAF, CREDAF, the Global Forum, the OECD, the World Bank Group, other international organisations and individual African members of the Global Forum. The aim is to deliver a program to unlock the potential for transparency and exchange of information in Africa, to engage with relevant leaders in African countries on the benefits that it can bring, and to leave behind a legacy of increased capacity in tax administrations across the continent. In 2015 the Global Forum secretariat will work closely with individual member countries and regional bodies from Africa to put exchange of information on the agenda of the African leaders in the same way as it has been on the agenda of G20 leaders for the past several years.

Next Steps

The Global Forum continues to make significant progress in its peer review process for exchange of information on request. The first round of reviews is expected to be completed in 2015 with an estimated further 37 peer reviews completed, ratings assigned to a further 20 jurisdictions and the remaining reviews launched to cover almost all Global Forum members. A number of supplementary reviews will be completed to assess the progress made by jurisdictions. The mechanism that has been put in place to incentivise improvements for jurisdictions that still cannot move to Phase 2 is expected to swiftly encourage these jurisdictions to make significant improvements.

A new Schedule for the second round of reviews will be drawn up and the detailed drafting of revised *Terms of Reference* will also be completed in preparation for this new round. In continuing with the review process with improved Terms of Reference, the Global Forum aims to ensure that momentum towards the greatly improved international cooperation in tax matters is maintained.

Major progress has already been made on AEOI over the last few months, with most jurisdictions other than developing countries that do not house financial centres having committed to implement the AEOI Standard. Work is underway on assisting the effective implementation of the standard through training events and pilot projects. Alongside the Global Forum will work to design an effective peer review mechanism for monitoring the implementation of the AEOI Standard including on evaluating confidentiality and data safeguards.

Enhanced engagement with developing countries will ensure that they can fully participate in and benefit from an enhanced transparent tax environment. For this purpose the Global Forum has put in place an ambitious technical assistance plan comprising one on one assistance, pilot projects, and 6 training seminars across the world. The Africa Initiative is expected to give a major boost to African jurisdictions in their efforts to enhance transparency and information exchange in the region.

Annex 1

Mandate for the Development of a Multilateral Instrument on Tax Treaty Measures to Tackle Base Erosion and Profit Shifting (BEPS Action 15)

Preamble

Recognising that Action 15 of the Action Plan on Base Erosion and Profit Shifting (BEPS) called for the development of a multilateral instrument to implement measures developed in the course of the work on BEPS and modify bilateral tax treaties;

Considering that the Report “Developing a Multilateral Instrument to Modify Bilateral Tax Treaties”, which was approved by the Committee on Fiscal Affairs and endorsed by the Leaders of the G20, concluded that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly;

Noting that the G20 Leaders Communiqué adopted in Brisbane on 16 November 2014 welcomes the significant progress of the Base Erosion and Profit Shifting (BEPS) Action Plan “to modernise international tax rules”;

The countries participating in the OECD-G20 BEPS Project have agreed to establish an ad hoc Group (hereinafter “the Group”) with the mandate set out below. They recognise that the Group is not a formal or informal OECD body and therefore participation of non-OECD members in the Group does not create, and cannot be interpreted to create, a precedent in the context of OECD procedures for the participation of non-members in OECD activities.

A. Objective

1. The Group shall develop a multilateral instrument to modify existing bilateral tax treaties solely in order to swiftly implement the tax treaty measures developed in the course of the OECD-G20 BEPS Project.

B. Participation

1. Membership of the Group is open to all interested States.
2. All members of the Group participate on an equal footing.
3. Non-State Jurisdictions can participate in the Group as Observers upon a specific invitation by the Group.
4. Relevant international and regional intergovernmental organisations can be invited by the Group to participate as Observers.

C. Duration

1. The Group will start its work no later than July 2015.
2. The Group will aim to conclude its work and open the multilateral instrument for signature by 31 December 2016.
3. The term of the mandate for the Group will end upon the opening of the multilateral instrument for signature.

D. Governance

1. The Plenary of the Group is the decision-making body of the Group.
2. The Plenary is assisted by:
 - a. A Bureau appointed by the Plenary of the Group, which will prepare and guide the work of the Group; and
 - b. Sub-groups or existing OECD bodies, as deemed appropriate by the Plenary.
3. The Plenary of the Group shall appoint a Chair and two Vice-Chairs at its first meeting, who are also Chair and Vice Chairs of the Bureau.
4. The Group is convened under the aegis of the OECD and G20 and is served by the OECD Secretariat.
5. The functioning of the Group and its sub-groups will be governed by the OECD Rules of Procedure and the provisions of international law related to the development and conclusion of treaties.
6. The Group will provide periodic updates to the Committee on Fiscal Affairs (hereafter “the Committee”) regarding progress made and will consult with the Committee and its subsidiary bodies as necessary and appropriate.

E. Funding

1. The functioning of the Group will be funded by its Members.
2. Members and Observers in the Group will be responsible for covering the costs of their participation in the work of the Group.

Annex 2

Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting (BEPS Action 13)

1. In September 2014 the countries participating in the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project published the report “Guidance on Transfer Pricing Documentation and Country-by-Country Reporting” (the September Report). The September Report was presented to the G20 Finance Ministers at their September 2014 meeting in Cairns and to G20 Leaders at their November 2014 meeting in Brisbane, Australia.
2. The September Report described a three-tiered standardised approach to transfer pricing documentation. This standard consists of (i) a master file containing standardised information relevant for all MNE group members; (ii) a local file referring specifically to material transactions of the local taxpayer; and (iii) a Country-by-Country Report containing certain information relating to the global allocation of the MNE group’s income and taxes paid together with certain indicators of the location of economic activity within the MNE group (the “CbC Report”).
3. The September Report noted that “it is essential that the recommendations in the September Report be implemented consistently and effectively” taking into account a number of important considerations that were outlined in that Report. The Explanatory Report to the 2014 deliverables added that “. . . this major achievement will require careful implementation, in particular as regards the way to transmit sensitive information, and guidance in this respect will be developed by February 2015.”
4. This note sets out guidance on the following matters relating to the implementation of the CbC Report: (i) the timing of preparation and filing of the CbC Report, (ii) which MNE groups should be required to file the CbC Report, (iii) the necessary conditions underpinning the obtaining and the use of the CbC Report by jurisdictions and (iv) the framework for government-to-government mechanisms to exchange CbC Reports together with the work plan for developing an implementation package.
5. This note relates primarily to the implementation of the CbC Report. In addition, it is recommended that the master file and local file elements of the new transfer pricing documentation standard be implemented through local country legislation or administrative procedures and that the master file and local file be filed directly with the tax administrations in each relevant jurisdiction as required by those administrations. Countries participating in the OECD/G20 Project agree that with regard to the local file and the master file confidentiality and consistent use of the standards contained in Annex I and Annex II of Chapter V of the Transfer Pricing Guidelines, and included in the September Report, should be taken into account when introducing these elements in local country legislation or administrative procedures.
6. Further, mechanisms will be developed to monitor jurisdictions’ compliance with their commitments and to monitor the effectiveness of the filing and dissemination mechanisms described below, in addition to but acknowledging the role of the 2020 review of implementation set out in the September Report. Finally, it is recognised that the need for more effective dispute resolution may increase as a result of the enhanced risk assessment capability following the adoption and implementation of a CbC reporting requirement and the work under Action 14 of the BEPS Project should take that into account.

(i) Timing: When Should the CbC Reporting Requirement Start?

7. It is recommended that the first CbC Reports be required to be filed for MNE fiscal years beginning on or after 1 January 2016. However, it is acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. In order to assist countries in preparing timely legislation, the key elements of statutory provisions requiring ultimate parent entities of MNE groups to file the CbC Report in their jurisdiction of residence will be developed. Jurisdictions will be able to adapt these elements to their own legal systems. Given the recommendation in the September Report that MNEs be allowed one year from the close of the fiscal year to which the CbC Report relates to prepare and file the CbC Report, this recommendation means that the first CbC Reports would be filed by 31 December 2017. For MNEs with a fiscal year ending on a date other than 31 December, the first CbC Report would be required to be filed later in 2018, 12 months after the close of the relevant MNE fiscal year, and would report on the MNE group's first fiscal year beginning after 1 January 2016. It follows from this recommendation that the countries participating in the OECD/G20 BEPS Project agree that they will not require filing of a CbC Report based on the new template for MNE fiscal years beginning prior to 1 January 2016. The MNE fiscal year relates to the consolidated reporting period for financial statement purposes and not to taxable years or to the financial reporting periods of individual subsidiaries.

(ii) Which MNE Groups Should Be Required to File the CbC Report?

8. It is recommended that all MNE groups be required to file the CbC Report each year except as follows.

9. There would be an exemption from the general filing requirement for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than € 750 million or a near equivalent amount in domestic currency. Thus, for example, if an MNE that keeps its financial accounts on a calendar year basis has € 625 million in consolidated group revenue for its 2015 calendar year, it would not be required to file the CbC Report in any country with respect to its fiscal year ending 31 December 2016.

10. It is believed that the exemption described in paragraph 9, which provides a threshold of €750 million, will exclude approximately 85 to 90 percent of MNE groups from the requirement to file the CbC Report, but that the CbC Report will nevertheless be filed by MNE groups controlling approximately 90 percent of corporate revenues. The prescribed exemption threshold therefore represents an appropriate balancing of reporting burden and benefit to tax administrations.

11. It is the intention of the countries participating in the OECD/G20 BEPS Project to reconsider the appropriateness of the applicable revenue threshold described in the preceding paragraph in connection with their 2020 review of implementation of the new standard, including whether additional or different data should be reported, as set out in the September Report.

12. It is considered that no exemptions from filing the CbC Report should be adopted apart from the exemptions outlined in this section. In particular, no special industry exemptions should be provided, no general exemption for investment funds¹ should be provided, and no exemption for non-corporate entities or non-public corporate entities should be provided. Notwithstanding this conclusion, countries participating in the OECD/G20 BEPS Project agree that MNE groups with income derived from international transportation or transportation in inland waterways that is covered by treaty provisions that are specific to such income and under which the taxing rights on such income are allocated exclusively to

¹ Clarification will be provided on the different forms of consolidation and the consequences of these forms of consolidation for investment funds.

one jurisdiction, should include the information required by the CbC template with respect to such income only against the name of the jurisdiction to which the relevant treaty provisions allocate these taxing rights.

(iii) Necessary conditions underpinning the obtaining and the use of the CbC Report

13. Countries participating in the OECD/G20 BEPS Project agree to the following conditions underpinning the obtaining and the use of the CbC Report.

- Confidentiality. Jurisdictions should have in place and enforce legal protections of the confidentiality of the reported information. Such protections would preserve the confidentiality of the CbC Report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a TIEA or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Such protections include limitation of the use of information, rules on the persons to whom the information may be disclosed, order public, etc.
- Consistency. Jurisdictions should use their best efforts to adopt a legal requirement that MNE groups' ultimate parent entities resident in their jurisdiction prepare and file the CbC Report, unless exempted as set out in paragraph 9. Jurisdictions should utilise the standard template contained in Annex III of Chapter V of the Transfer Pricing Guidelines, and included in the September Report. Stated otherwise, under this condition no jurisdiction will require that the CbC Report contain either additional information not contained in Annex III, nor will it fail to require reporting of information included in Annex III.
- Appropriate Use. Jurisdictions should use appropriately the information in the CbC Report template in accordance with paragraph 25 of the September Report. In particular, jurisdictions will commit to use the CbC Report for assessing high-level transfer pricing risk. Jurisdictions may also use the CbC Report for assessing other BEPS-related risks. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the CbC Report. They will further commit that if such adjustments based on CbC Report data are made by the local tax administration of the jurisdiction, the jurisdiction's competent authority will promptly concede the adjustment in any relevant competent authority proceeding. This does not imply, however, that jurisdictions would be prevented from using the CbC Report data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit.²

² Access to a mutual agreement procedure (MAP) will be available when the government-to-government exchange of the CbC Reports is based on bilateral treaties. In cases where the international agreements on which the government-to-government exchanges of the CbC Reports are based do not contain provisions providing access to MAP, countries commit to introducing in the competent authority agreement to be developed a mechanism for competent authority procedures to discuss with the aim of resolving cases of undesirable economic outcomes, including if such cases arise for individual businesses.

(iv) The framework for government-to-government mechanisms to exchange CbC Reports and implementation package

a) Framework

14. Jurisdictions should require in a timely manner CbC reporting from ultimate parent entities of MNE groups resident in their country and referred to in (ii) and exchange this information on an automatic basis with the jurisdictions in which the MNE group operates and which fulfil the conditions listed in (iii). In case a jurisdiction fails to provide information to a jurisdiction fulfilling the conditions listed in (iii), because (a) it has not required CbC reporting from the ultimate parent entity of such MNE groups, (b) no competent authority agreement has been agreed in a timely manner under the current international agreements of the jurisdiction for the exchange of the CbC Reports or (c) it has been established that there is a failure to exchange the information in practice with a jurisdiction after agreeing with that jurisdiction to do so, a secondary mechanism would be accepted as appropriate, through local filing or by moving the obligation for requiring the filing of the CbC Reports and automatically exchanging these reports to the next tier parent country.

b) Implementation package

15. Countries participating in the OECD/G20 BEPS Project therefore have agreed to develop an implementation package for government-to-government exchange of CbC Reports.

More specifically:

- The key elements of domestic legislation requiring the ultimate parent entity of an MNE group to file the CbC Report in its jurisdiction of residence will be developed. Jurisdictions will be able to adapt this language to their own legal systems, where changes to current legislation are required. Key elements of secondary mechanisms will also be developed.
- Implementing arrangements for the automatic exchange of the CbC Reports under international agreements will be developed, incorporating the conditions set out in (iii) above. The work related to such implementing arrangements will include the development of competent authority agreements (“CAAs”) based on existing international agreements (the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties and TIEAs). Both bilateral and multilateral CAAs will be explored, drawing on the existing models developed by the OECD working with G20 countries for the automatic exchange of financial account information.
- A comprehensive package containing the different elements indicated above will be developed by April 2015.

16. Participating jurisdictions endeavour to introduce as necessary domestic legislation in a timely manner. They are also encouraged to expand the coverage of their international agreements for exchange of information. The implementation of the package will be monitored on an ongoing basis. The outcomes of this monitoring will be taken into consideration in the 2020 review.

Annex 3

Agreement on Modified Nexus Approach for IP Regimes (BEPS Action 5)

This consensus achieved by the FHTP builds on the joint proposal by Germany and the UK and aims to resolve the concerns countries have expressed about some features of the Modified Nexus Approach and identify what further work is required in order to enable agreement to be reached on this issue during 2015. Concerns have been expressed about how to calculate qualifying R&D expenditure, transitional arrangements between regimes and time allowed for this through grandfathering provisions, and the tracking and tracing methodology for R&D expenditure that will determine whether it qualifies.

The agreement is based on the following elements, which seek to address the concerns that have been raised, whilst reinforcing the nexus approach, providing safeguards against profit shifting, and ensuring that there is equal treatment across all sectors and businesses of different sizes. These also aim to ensure that the approach to implementing new rules is consistent with existing OECD rules on the phasing out of harmful regimes.

A) The Modified Nexus Approach – conceptual issues

- i. Nexus Approach: General acceptance of the Modified Nexus Approach as presented in the OECD Report on Action 5, but requiring further modifications relating to the level of qualifying expenditure, grandfathering provisions and the tracking and tracing of expenditure:
2. Up-lift: Under the currently proposed Modified Nexus Approach, businesses using already existing Patent Box regimes might see a reduction in income receiving preferential treatment, as R&D expenditure to develop the patent must be undertaken in a more limited number of entities, including the company holding the relevant patent, to qualify. This could impose restructuring costs on groups which have dedicated R&D companies in order for them to retain the relief in future. Furthermore, to disregard any IP acquisition costs at all might have an impact on commercial decisions. To reflect these concerns raised by businesses, countries may allow for an up-lift of qualifying expenditure within the Modified Nexus Approach. However, one needs to take into account that the very conceptual basis of the Modified Nexus Approach is intended to ensure that, in order for a significant proportion of IP income to qualify for benefits, a significant proportion of the actual R&D activities must have been undertaken by the qualifying taxpayer itself. Accordingly, such up-lift needs to be restricted. It may only be granted to the extent that expenditure in the context of outsourcing and acquisitions has actually taken place, and it is in any case limited to a certain percentage of the qualifying expenses of the respective company: **30%**. This percentage-based limitation relates to the overall amount of both outsourcing and acquisition costs. For the avoidance of doubt, acquisition costs and expenditures for outsourcing to related parties are not included in qualifying expenditures, but are taken into account in determining the limitation described in the preceding sentence⁵.

⁵ This does not change the effect of note 8 on page 51 of the 2014 Deliverable on Countering Harmful Tax Practices More Effectively (OECD, 2014).

Example (1):

Parent company incurred qualified expenses of 100,
parent company incurred costs for **acquisition of IP** assets of 10,
subsidiary company incurred R&D expenses of 40.

- Maximum up-lift amount = $100 \times 30\% = 30$
- Overall qualifying expenses including a limited percentage of outsourcing and acquisition costs = 130

Example (2):

Parent company incurred qualified expenses of 100,
parent company incurred costs for **acquisition of IP** assets of 5,
subsidiary company incurred R&D expenses of 20.

- Maximum up-lift amount = $100 \times 30\% = 30$
- Overall qualifying expenses including a limited percentage of outsourcing and acquisition costs = 125

B) Timing, grandfathering and reporting issues

1. Close old regime to new entrants: Countries choosing to have IP regimes will need to bring the applicable rules in line with the Modified Nexus Approach. That means that there can be no new entrants to any existing regime after the date that a new regime consistent with the modified nexus approach takes effect, and no later than 30 June 2016. The FHTP further agrees that any legislative process necessary to make this change must commence in 2015. This transition period for the closure of existing regimes to new entrants recognises that countries will need time for any legislative process.

“New entrants” include both new taxpayers not previously benefiting from the regime and new IP assets owned by taxpayers already benefiting from the regime. Further, it is understood that new entrants are only those that fully meet all substantive requirements of the regime and have been officially approved by the tax administration, if required. New entrants therefore do not include taxpayers that have only applied for the regime.

2. Final abolition of old regime: In order to give protection for taxpayers benefiting from existing regimes, countries are allowed to introduce grandfathering rules. Under such rules, all taxpayers benefiting from an existing regime may keep such entitlement until a second specific date (“abolition date”). The period between the two dates should not exceed 5 years (so the abolition date would be **30 June 2021**). After that date, no more benefits stemming from the respective old regimes may be given to taxpayers.

3. Further work to be concluded by June 2015:

- Reporting requirements under Modified Nexus Approach: An approach to the tracking and tracing of R&D expenditure, that is practical for tax authorities and companies to implement, needs to be developed in order to implement the Modified Nexus Approach. Agreement will also be needed on transitional provisions to enable companies to transfer IP from existing regimes into new regimes. The FHTP acknowledges that it might be difficult for companies to provide detailed information about qualifying expenditure for past years under the Modified Nexus Approach if – until the time at which new rules are introduced – there is no requirement for them to track such expenditure. The FHTP will agree practical methodologies for identifying qualifying expenditure that companies and tax authorities should use recognising the particular issues regarding qualifying expenditure with respect to expenses incurred prior to the introduction of the Modified Nexus Approach. Failure to do so will mean that no tax benefit may be granted to those companies under the Modified Nexus Approach. Special rules will be developed for this time period to ease the tracking and tracing of such expenditure.
- Additional safeguards: The FHTP will continue to discuss measures to mitigate the risks that new entrants seek to avail themselves of existing regimes with a view to benefiting from grandfathering. Examples could include enhanced transparency (e.g. requiring spontaneous exchange of information on taxpayers benefiting from a grandfathered regime regardless of whether a ruling is provided), monitoring of new entrants, and possible restrictions, so as to mitigate the risk of new entrants availing themselves of existing regimes with a view to benefiting from grandfathering.
- Guidance on the definition of qualifying IP assets: Under the Modified Nexus Approach the only IP assets that could qualify for benefits under an IP regime are patents and functionally equivalent IP assets that are legally protected and subject to approval and registration processes, where such processes are relevant. The Modified Nexus Approach explicitly excludes from receiving benefits marketing-related IP assets such as trademarks. The FHTP recognises the need for clarity on the definition of qualifying IP assets. The FHTP will therefore produce further guidance on this definition, addressing in particular the exact scope of IP assets, for example, the treatment of copyrighted software or innovations from technically innovative development or technical scientific research that do not benefit from patent protection, always provided of course that such assets have been developed with sufficient nexus.