

Meeting of the OECD Council at Ministerial Level

Paris, 6-7 May 2014



**BRINGING THE INTERNATIONAL
TAX RULES INTO THE 21ST CENTURY:
UPDATE ON BEPS, EXCHANGE OF
INFORMATION, AND THE TAX AND
DEVELOPMENT PROGRAMME**

**Bringing the International Tax Rules into
the 21st Century:
Update on Base Erosion and Profit Shifting
(BEPS), Exchange of Information, and the
Tax and Development Programme**



1. As the world economy has globalised, international tax planning by both individuals and companies has increased significantly. In the context of the financial crisis, which has turned into a fiscal crisis, tax affairs have drawn a lot of media and political attention. Although tax planning *per se* is legal and legitimate given that taxpayers are entitled to reduce their tax burden in compliance with the law, some weaknesses in the current international tax system, as well as lack of tax cooperation among governments, have raised serious concerns. The OECD has been at the forefront of improving tax cooperation and is now engaged in a high profile project to fix the weaknesses of the current international tax rules. This work is strongly supported by OECD Members and has gained broad international support, including from the G20 as reflected in last year Leader's Declaration:

“Cross-border tax evasion and avoidance undermine our public finances and our people's trust in the fairness of the tax system. Today, we endorsed plans to address these problems and committed to take steps to change our rules to tackle tax avoidance, harmful practices, and aggressive tax planning.”¹

2. The OECD is at the forefront of the global tax agenda through its work to address Base Erosion and Profit Shifting (BEPS) and the promotion of transparency and exchange of information, in particular through automatic exchange of information. All this work, strongly supported by the G20, takes place in a context of inclusiveness and emphasis on the need to promote domestic resource mobilisation.

3. As requested in the Declaration on BEPS adopted at the 2013 Ministerial Council Meeting [C/MIN(2013)22/FINAL], this note reports on progress made on the Comprehensive Action Plan (CAP) to address BEPS. It also provides an update on the key work streams of the OECD tax agenda of particular relevance to the 2014 Ministerial Council Meeting.

Addressing Base Erosion and Profit Shifting

4. For decades, the OECD has been promoting the elimination of double taxation on cross border trade and investments. Eliminating double taxation remains a key objective of the Organisation as it is conducive to cross border trade and investments, which spur growth and create jobs. However, the current rules (e.g. tax treaty provisions, transfer pricing guidelines) have not kept pace with the way business operates in the 21st century. As a result, the rules aimed at the elimination of double taxation have also resulted in facilitating double non taxation. In other words, the current international tax system has allowed legal tax planning by multinationals resulting in very low effective tax rates. This unintended tax policy consequence raises serious issues as it is a source of distortion among taxpayers and a loss of revenue for States.

5. The BEPS Project marks a turning point in the history of international co-operation on taxation. Following the 2013 Update to Council on BEPS [C/MIN(2013)7] and the Declaration on BEPS adopted at the 2013 Ministerial Council Meeting [C/MIN(2013)22/FINAL]², the OECD finalised and published the BEPS Action Plan in July 2013. The BEPS Action Plan is designed to fix the current deficiencies of the international tax system. It addresses the challenges resulting from the interaction of different tax sovereignties. Developing instruments to facilitate better coordination among tax jurisdictions to put an end to double non-taxation through hybrid mismatch arrangements, or to limit base erosion via interest deductions are examples in this area. The current rules have also been challenged by the globalisation of the economy and the Action Plan is addressing the abuse of tax treaties or the weaknesses of transfer pricing rules which may have facilitated the separation between the location of where profits are reported

¹ G20 Leaders' Declaration, Saint Petersburg Summit, 5-6 September 2013.

² The Declaration was adopted by Ministers and Representatives from all OECD countries, the European Union, Argentina, Brazil, Indonesia, Russia and South Africa.

and the location where the economic activities and value creation that generated those profits took place. Finally, the Action Plan will increase transparency between taxpayers and tax administrations, in particular through the promotion of country by country reporting by multinationals to tax administrations. Last but not least, it highlights the importance of certainty for taxpayers and the need to establish more effective dispute resolution mechanisms.

6. The work to progress the deliverables on BEPS is now being undertaken at a rapid pace. All G20 countries, as well as Colombia and Latvia, are Associates in the BEPS Project, thus participating in the work done on BEPS on an equal footing with OECD Members. This includes participating alongside OECD Members in the Committee on Fiscal Affairs (CFA) and its subsidiary bodies on discussions relating to BEPS, with four BEPS Associates (Brazil, China, India and South Africa) also having been elected to join the Bureau of the CFA to steer the Project (“Bureau Plus”).

7. The OECD is actively sharing updates and seeking input from all stakeholders including developing countries, business and industry (through BIAC), civil society, labour (through TUAC) as well as relevant regional and international organisations. There is a transparent process of public consultation including through the release of discussion drafts for comment, information webcasts and meetings, all promoted through the BEPS website and in other media. In February and March 2014, a series of important regional BEPS consultations took place: in Korea (for Asia), Colombia (for Latin America and the Caribbean), South Africa (for Africa), and Paris (for francophone countries). The United Nations and the International Monetary Fund are also developing work on BEPS issues, and the OECD Secretariat is liaising with them to avoid duplication and ensure complementarity of each Organisation’s work streams.

8. The ambitious programme for delivery on the BEPS Action Plan is as follows:

BEPS Deliverables

September 2014:

- Report identifying tax challenges raised by the digital economy and the necessary actions to address them (Action 1);
- Recommendations regarding the design of domestic and tax treaty measures to neutralise the effects of hybrid mismatch arrangements (Action 2);
- Finalise the review of Member country regimes in order to counter harmful tax practices more effectively (Action 5);
- Recommendations regarding the design of domestic and tax treaty measures to prevent abuse of tax treaties (Action 6);
- Transfer pricing rules in relation to intangibles – phase 1 (Action 8);
- Transfer pricing documentation and country-by-country reporting template (Action 13);
- Report on the feasibility of a multilateral instrument to implement BEPS measures (Action 15)

September 2015:

- Recommendations regarding the design of CFC rules (Action 3);
- Recommendations regarding the design of domestic rules to limit base erosion via interest deductions and other financial payments (Action 4);
- Strategy to expand participation in the Forum on Harmful Tax Practices to non-OECD Members (Action 5);
- Tax treaty measures to prevent the artificial avoidance of permanent establishment status (Action 7);
- Transfer pricing rules in relation to intangibles – phase 2 (Action 8);
- Transfer pricing rules in relation to risks and capital, and other high-risk transactions (Actions 9 and 10);
- BEPS economic analyses and Recommendations regarding data collection on BEPS (Action 11);
- Recommendations regarding the design of domestic rules to require taxpayers to disclose their aggressive tax planning arrangements (Action 12); and
- Tax treaty measures to make dispute resolution mechanisms more effective (Action 14);

December 2015

- Changes to the transfer pricing rules to limit base erosion via interest deductions and other financial payments (Action 4);
- Revision of existing criteria to counter harmful tax practices more effectively (Action 5);
- Development of a Multilateral instrument (Action 15).

Exchange of Information

9. Since 2009, progress towards tax transparency has been unprecedented. Bank secrecy and lack of cooperation have facilitated offshore evasion for decades. In 2009, all jurisdictions agreed to put an end to bank secrecy in relation to tax authorities and to cooperate in accordance with the OECD standard on exchange of information on request. The OECD built on this major progress by establishing the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”), which has ensured a robust monitoring of the implementation of the standard and the progress towards a level playing field by its 121 member jurisdictions. Today, the OECD is taking a major step forward with the development of a new single common global standard on automatic exchange of financial account information.

10. In response to the G20 Leaders call in Saint Petersburg, the OECD has developed the single common global standard on AEOI which was presented to the G20 Finance Ministers and Central Bank Governors in Sydney in February 2014. This standard is ambitious as it covers all financial information and will ensure that financial institutions will implement the same rules across the world to provide the highest level of transparency to governments while respecting taxpayer confidentiality. The new standard requires key financial information to be reported including on interest, dividends, account balance, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the reportable accounts or payments made with respect to such accounts. Moreover, the standard provides for beneficial owners to be properly identified so that the interposition of legal structures such as trusts or companies will not prevent the information exchange. The new standard consists of a Common Reporting Standard and a Model Competent Authority Agreement, which were adopted by the Committee on Fiscal Affairs and strongly endorsed by the G20 Finance Ministers and Central Bank Governors in Sydney in February 2014. On 19 March, over 40 countries and jurisdictions committed to the early adoption of the OECD single common standard on AEOI, indicating specific dates for implementation and calling for a broad early adoption of the initiative to create rapidly a truly global system of automatic information exchange that leaves no hiding places for tax evasion.

11. With the Global Forum having been mandated by the G20 to monitor the proper implementation of the single common global standard for automatic exchange of financial account information, and the fact that all jurisdictions will be invited to commit to implementing it, the playing field will be levelled so that there will no longer be any place for tax evaders to hide and no jurisdiction would be at a competitive advantage for not implementing the new standard. The Global Forum has proved efficient in monitoring the implementation of the international transparency and exchange of information on request standard: more than 100 jurisdictions have been reviewed over the last four years, 124 peer review reports and 18 supplementary reports have been published and overall ratings have been attributed to assess the effective implementation of the standard by the Global Forum members (18 jurisdictions are rated “Compliant”, 26 jurisdictions “Largely Compliant”, 2 jurisdictions “Partially Compliant” and 4 jurisdictions “Non-Compliant”). A new voluntary working group on automatic exchange of information (AEOI) was established in November to assist the Global Forum in taking forward the G20’s mandate to monitor and review the implementation of the automatic exchange of information, and to help developing countries identify their needs for technical assistance and capacity building before engaging in AEOI. The group had its first meeting on 26-28 March 2014.

12. The Common Reporting Standard will be complemented in mid-2014 with guidelines and an IT architecture which will ensure an effective implementation of the standard in a cost efficient way for both the financial industry and governments. The OECD has also promoted a multilateral legal basis with the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) concluded under the

auspices of the OECD and Council of Europe. Almost all³ OECD and all G20 countries have now signed the Convention. Currently, 64 countries have signed the Convention and another 13 jurisdictions are covered by way of territorial extension. Finally, through the Tax and Development Programme, the OECD is supporting developing countries through capacity building to implement effective exchange of information, thereby allowing them to reap the benefits of the new environment of improved transparency.

13. In furtherance of the 2013 Ministerial Council Meeting Conclusions, which “call[ed] on all jurisdictions to move towards automatic exchange of information and to improve the availability, the quality and the accuracy of information on beneficial ownership, in order to effectively act against tax fraud and evasion” [C/MIN(2013)16/FINAL], the CFA has developed and proposes a draft Declaration on Automatic Exchange of Information on Tax Matters [C/MIN(2014)5], for adoption at the 2014 Ministerial Council Meeting, demonstrating the commitment to implement the new standard.

Tax and Development

14. The growing depth of the work with developing countries, including through the Tax and Development Programme, reflects the increased demand for OECD’s expertise in tackling international tax issues. The programme is responsive to the needs expressed by developing countries, and its projects have included work on transfer pricing, tax incentives, exchange of information, taxpayer education and *Tax Inspectors without Borders*, to facilitate practical audit assistance.

15. There is increasing demand from developing country tax administrations for help on transfer pricing, with the programme expanding to cover 20 countries. Developing countries have increased tax collection by over 100 million USD as a result of the programme. A series of tax incentives reviews which commenced in 2013 have already helped 6 developing countries identify and quantify their tax expenditure, which enables more informed tax policy design. This programme is now growing to cover additional countries while also exploring ways to support regional tax expenditure review programmes. At the same time, growth in the OECD regional revenue statistics publications – now encompassing 18 countries in the 3rd Latin America edition, as well as plans for inaugural publications covering revenue statistics for Africa and Asia – are providing essential comparative data, including comparative positions with OECD countries, to allow tax policy makers to mobilise resources more effectively through better tax policy design. The Tax and Development Programme has also strengthened assistance to its developing country members and prepared a publication promoting current and innovative taxpayer education programmes in OECD and non-OECD Member countries.

16. The last 12 months has also seen large steps forward with the Tax Inspectors Without Borders (TIWB) initiative. TIWB’s objective is to facilitate targeted, tax audit assistance programs, under which tax audit experts work directly with local officials in developing country tax administrations to carry out current audits.

17. In June 2013, the CFA and the Development Assistance Committee jointly agreed the recommendations of the feasibility study on TIWB, including that the initiative be established under an initial 18 month mandate to December 2014. June also saw support for TIWB from the G8 Leaders, and in September, from the G20 Leaders who welcomed TIWB, and committed to continuing to assist developing countries to build capacity in the area of tax administration, noting its importance for domestic resource mobilisation.

³ Israel has indicated its intention to sign the Convention and is currently finalising the legislative procedure in parliament which will enable it to sign the Convention. The draft amendment of the Israeli current legislation has already been approved by the Ministerial Committee for Legislation and has passed the first reading in parliament.

18. TIWB is now functioning on a trial operational basis, and the Secretariat has:

- Developed a Toolkit to guide parties through the process of establishing TIWB programmes;
- Appointed a TIWB advisory board which was endorsed by the Task Force on Tax and Development in October 2013 and which held its first meeting in March; and
- Launched two pilot TIWB programmes, commencing in December 2013 and January 2014, with number of others in preparation.

Illicit Flows and Financial Crimes

19. The OECD is also moving forward its efforts to address illicit financial flows under the OECD's Oslo Dialogue on Tax Crimes and Other Crimes. This initiative is founded on a whole of government approach aimed at improving effective inter-agency cooperation, sharing of information between countries, and capacity building based on the latest risks and techniques to fight financial crime. Capacity building foundation courses bringing together officials from OECD and non-OECD Member countries began in 2012, and an intermediate level course will also be held for the first time in 2014.

Looking Forward

20. The next 12 months, and in particular to the end of 2014, will see some significant milestones in the OECD's tax agenda.

21. By the end of May 2014, all of the BEPS public consultations relating to the first deliverables in the BEPS Action Plan will have been conducted. This will lead in September 2014 to the delivery of the first elements of the 15 Actions contained in the Action Plan. This includes reporting on the tax challenges of the digital economy, and necessary actions to address them (Action 1); recommendations on the design of measures to neutralise the effects of hybrid mismatch arrangements (Action 2) and to prevent the abuse of tax treaties (Action 6), and the first phase of work on transfer pricing rules in relation to intangibles (Action 8). Work is also ongoing on the BEPS Actions due for delivery in September and December 2015.

22. On automatic exchange of information, in mid-2014 the OECD will finalise the technical modalities, including safeguards, to allow effective implementation of the new single common global standard. These will include a commentary to both the Common Reporting Standard and the Model Competent Authority Agreement to ensure consistent application and operation, and also the IT technical solutions on secure transmission of data and presentation of information. The package consisting of the standard (i.e. the Model CAA and the CRS) as well as the commentary and the technical solutions is scheduled for adoption by the OECD Council in mid-2014. We will also maintain our efforts to expand the global reach of the Convention on Mutual Administrative Assistance in Tax Matters, with additional countries, including Azerbaijan, Kenya, Mauritius, the Philippines and the Seychelles, already having indicated their interest in signing the Convention.

23. The Global Forum on Transparency and Exchange of Information for Tax Purposes will continue to undertake its schedule of Peer Reviews and overall ratings in 2014, as it also develops the third phase of the review process. The AEOI working group will present proposals to the Global Forum on monitoring implementation of the AEOI standard going forward, and criteria to determine when it would be appropriate for jurisdictions to implement AEOI. These criteria will have regard in particular to capacity constraints, and the need to ensure confidentiality and proper use of information exchanged. The progress on AEOI, with the Global Forum as well as on the BEPS Action Plan will be presented to the G20 Leaders at their summit in Australia on 15-16 November 2014.

24. The Tax and Development Programme will continue to grow its transfer pricing programme, expanding in accordance with demand to also cover broader BEPS issues. The reviews of tax incentive regimes will continue, including greater coordination of regional approaches on this important issue for developing countries. Tax Inspectors Without Borders will facilitate pilot programmes of targeted tax audit assistance using a “learning by doing” approach, and the OECD will use the feedback from those pilots to refine and improve the TIWB model. A review of TIWB’s mandate is anticipated before the end of 2014. OECD will bolster its capacity building programme on illicit financial flows with the launch of an OECD International Academy for Tax Crime Investigation by mid-2014.⁴

⁴ Tax officials are in a strong position to be the first government authority to identify possible indicators of tax crime but also serious non-tax financial crime, including corruption and money laundering. A pilot capacity building programme was launched in 2013 by the OECD at the *Guardia di Finanza Scuola di Polizia Tributaria in Ostia*, Italy. Following the success of the pilot, an OECD International Academy for Tax Crime Investigation will be established shortly, with its first centre in Ostia [C(2014)64]. The Academy will contribute to the Development Strategy and the Tax and Development Programme.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

