

# OECD/G20 Inclusive Framework on BEPS

Progress report July 2018 – May 2019





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“We will continue our work for a globally fair, sustainable, and modern international tax system based, in particular on tax treaties and transfer pricing rules, and welcome international co-operation to advance pro-growth tax policies. Worldwide implementation of the OECD/G20 Base Erosion and Profit Shifting package remains essential. We will continue to work together to seek a consensus-based solution to address the impacts of the digitalisation of the economy on the international tax system.”

G20 Leaders, Buenos Aires Communique, December 2018

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# Overview

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The OECD/G20 Base Erosion and Profit Shifting (BEPS) Project is about bringing coherence, transparency and substance to the international tax rules, which have been under pressure in recent years from the pace of globalisation and the heightened sophistication of international business transactions and global value chains, as well as the strains that digitalisation has brought to rules developed a century ago in a vastly different time. OECD and G20 governments came together in 2013 to address the issue of tax avoidance, and agreed a series of actions to tackle it.

The evolution of the OECD/G20 BEPS Project, from securing political commitment to take action in 2013 to the finalisation of detailed actions to counter BEPS in 2015 and to the establishment of an OECD/G20 Inclusive Framework on BEPS in 2016, is a case study in how multilateralism can be effective in the face of today's global challenges.

The OECD/G20 Inclusive Framework continues to grow from 82 members at the inaugural meeting of the OECD/G20 Inclusive Framework in July 2016 in Kyoto, it is now composed of 129 members and 14 observers, including over 70% of non-OECD and non-G20 countries and jurisdictions from all geographic regions. They are working together on an equal footing, and not only to implement the BEPS measures agreed in 2015. Beyond that, they are now designing the new international tax rules including as part of the fundamental discussions on how to address the tax challenges arising from digitalisation.

On 28-29 May 2019, the OECD/G20 Inclusive Framework met in Paris, with 289 delegates from 99 member jurisdictions and 10 observer organisations taking part. The key outcome of that meeting was the agreement of a *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*,<sup>1</sup> which will achieve a consensus-based, long-term solution by the end of 2020.

The agreement of this Programme of Work comes at a pivotal time in the history of the OECD/G20 BEPS Project, with the peer reviews of the BEPS minimum standards showing even greater levels of implementation, new and more detailed information on the activities of multinational enterprises being available – allowing a fuller understanding of the impact of base erosion and profit shifting – and the participation and importance of this work to developing countries taking on heightened importance.

The stakes are high. Understanding how much tax avoidance costs to governments around the world is fundamental to developing sound policies and prioritising specific measures. When the BEPS package was published in 2015, the OECD estimated that tax avoidance cost between USD 100-240 billion per year, or 4-10 percent of global corporate tax revenues.

That estimate was based on the best information available at the time. With the work done in the past years at ensuring the implementation of the BEPS Actions and the information gathered in the course of the various reviews, the OECD/G20 Inclusive Framework is now developing a more finely-tuned estimate of the impact of BEPS and the effectiveness of the measures taken to address it. In particular, the collection and analysis of corporate revenue statistics, the first look at the aggregate data on Country-by-Country (CbC) reports under Action 13, and other data sources will support an updated economic analysis of tax avoidance, and also of the impact of the implementation of the BEPS measures.

What is already evident is that the combined effect of the BEPS Actions has brought increased coherence, transparency and substance to the international tax rules, and their implementation has produced tangible results:

- **Action 5** (Harmful Tax Practices) – 255 preferential tax regimes have been reviewed to ensure that there is substance associated with the activities

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1. [www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf](http://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf)



they are intended to attract, and more than half have already been amended or abolished, with the others either already in accordance with the standard or still in the process of being reviewed or reformed. Exchanges of information on more than 21 000 tax rulings took place, thereby ensuring greater transparency of the arrangements between tax administrations and taxpayers. In addition, revising the criteria for the Forum on Harmful Tax Practices' peer reviews, a new global standard on the resumption of application of the substantial activities factor to no or only nominal tax jurisdictions was adopted in 2018.



- **Action 6** (Tax Treaty Abuse) – The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) now covers 88 jurisdictions, which will impact more than 1 500 bilateral tax treaties once governments finalise the ratification process. To date, over 20 signatories have ratified the MLI and over 50 tax treaties have already been modified and reinforced against abuse. Although such figures may seem low, more jurisdictions are currently in the process of ratifying the MLI which in turn will soon modify many more tax treaties.
- **Action 13** (Country-by-Country Reporting) – The first exchanges of CbC reports took place in June 2018, and currently there are more than 2 000 relationships in place for the exchange of CbC reports, under the Convention for Mutual Administrative Assistance in Tax Matters,

under bilateral double tax conventions and tax information exchange agreements, and between EU Member States.

- **Action 14** (Mutual Agreement Procedures) – This is a key measure to improve certainty for taxpayers, and the first peer review results are encouraging. Around 85% of Mutual Agreement Procedures (MAPs) concluded in 2017 resolved the issue. Almost 60% of MAP cases closed were resolved with an agreement fully resolving the taxation not in accordance with the tax treaty. This important increase in the number of cases closed is likely the result of an increase in resources or in a more efficient use of resources for many countries' competent authorities.

Overall, and through data analysis, we can already see some interesting patterns of where Multinational enterprise (MNE) activity is located and the relationship between that activity, the reporting of profits, and the tax paid. Moving forward, the continued collection of statistics in future years will provide a clearer picture of how companies are organising their global operations, and will further allow countries to assess the associated tax risks. ■





# Part I – Highlights: What's new?



## 1.1. TAX CHALLENGES ARISING FROM DIGITALISATION

### 1.1.1. Programme of Work

The top priority for the OECD/G20 Inclusive Framework is the work on tax and digitalisation, which has been a key aspect of the OECD/G20 BEPS Project since its inception. The 2015 BEPS Action 1 Report on *Addressing the Tax Challenges of the Digital Economy*<sup>2</sup> showed that, as a result of the pervasive nature of digitalisation, it would be difficult, if not impossible, to ring-fence the “digital economy” from the rest of the economy for tax purposes. Rather, it showed that the entire economy was digitalising.

The work of the OECD/G20 Inclusive Framework continued, and responding to the G20's call in March 2017, it delivered in 2018 an Interim Report<sup>3</sup> which embodied a commitment from all members to work on nexus and profit allocation rules that would consider the impacts of digitalisation, relating to the principle of aligning profits with underlying economic activities and value creation.

In January 2019, the OECD/G20 Inclusive Framework agreed on a Policy Note<sup>4</sup> – that included concrete proposals made by members framed within two complementary pillars – one revising the allocation of profit and nexus rules, and one proposing a global anti-base erosion mechanism. In February 2019 the OECD/G20 Inclusive Framework published a public consultation document that describes the two pillars in more detail, attracting 2 000 pages of written comments, and a public consultation took place in March with over 400 participants attending, from business, academia and civil society.

These discussions have informed the work of the OECD/G20 Inclusive Framework, which agreed at its plenary meeting of 28-29 May 2019 a Programme of Work that will pave the way toward a global solution to the tax challenges raised by digitalisation. This is a major step, which shows the strong willingness of OECD/G20 Inclusive Framework members to reach

an agreement by the 2020 deadline set by the G20. This Programme of Work provides instructions for the OECD/G20 Inclusive Framework as well as assigning technical work to subsidiary bodies to explore and agree on the core elements of the consensus-based solution to be delivered by next year.

The stakes are very high, but the spirit of compromise and unity that have been the foundation for the OECD/G20 Inclusive Framework's accomplishments to date provide great reason for optimism that a long-term, consensus-based solution can be achieved.

### 1.1.2. Value Added Tax

The 2015 BEPS Action 1 Report found that there was a high risk that services and intangibles delivered over the internet (such as streaming films or music) were escaping VAT in any jurisdiction, and that there was also a broader challenge for tax authorities to collect the VAT on cross-border supplies from online sales, particularly where these are acquired by private consumers from suppliers abroad (business-to-consumer or B2C sales).

To address the broader challenges of collecting the VAT on online sales of services and intangibles by foreign vendors, new guidelines and VAT collection mechanisms were agreed in the 2015 BEPS Action 1 Report that require foreign vendors to register for VAT in the consumer's jurisdiction and recommended a simplified regime be used to remit the VAT to facilitate compliance and administration. The recommended rules and mechanisms included in the 2015 BEPS Action 1 Report were complemented with the 2017 report on “*Mechanisms for the Effective Collection of VAT/ GST Where the Supplier is Not Located in the Jurisdiction of Taxation*” that provided further detailed practical guidance to support their consistent and effective implementation. The 2015 BEPS Action 1 Report also outlined options to facilitate the collection of VAT for imports of low-value goods from online sales, through the intervention of online vendors or other parties involved in the supply chain for online sales, such as

2. [www.oecd.org/tax/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm](http://www.oecd.org/tax/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm)

3. [www.oecd.org/ctp/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm](http://www.oecd.org/ctp/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm)

4. [www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf](http://www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf)

e-commerce platforms or express couriers.

To date, over 50 jurisdictions have adopted rules for the application of VAT to B2C supplies of services and intangibles from online sales by foreign vendors in accordance with rules and mechanisms recommended in the 2015 BEPS Action 1 Report. Among these jurisdictions, 40 jurisdictions have implemented simplified registration and collection regimes for the collection of VAT on the cross-border B2C supplies of services and intangibles. The evidence on the impact of these measures suggests that their implementation has greatly enhanced compliance levels and yielded substantial tax revenues for market jurisdictions, and has levelled the playing field between domestic suppliers and foreign vendors (see Figure 1).

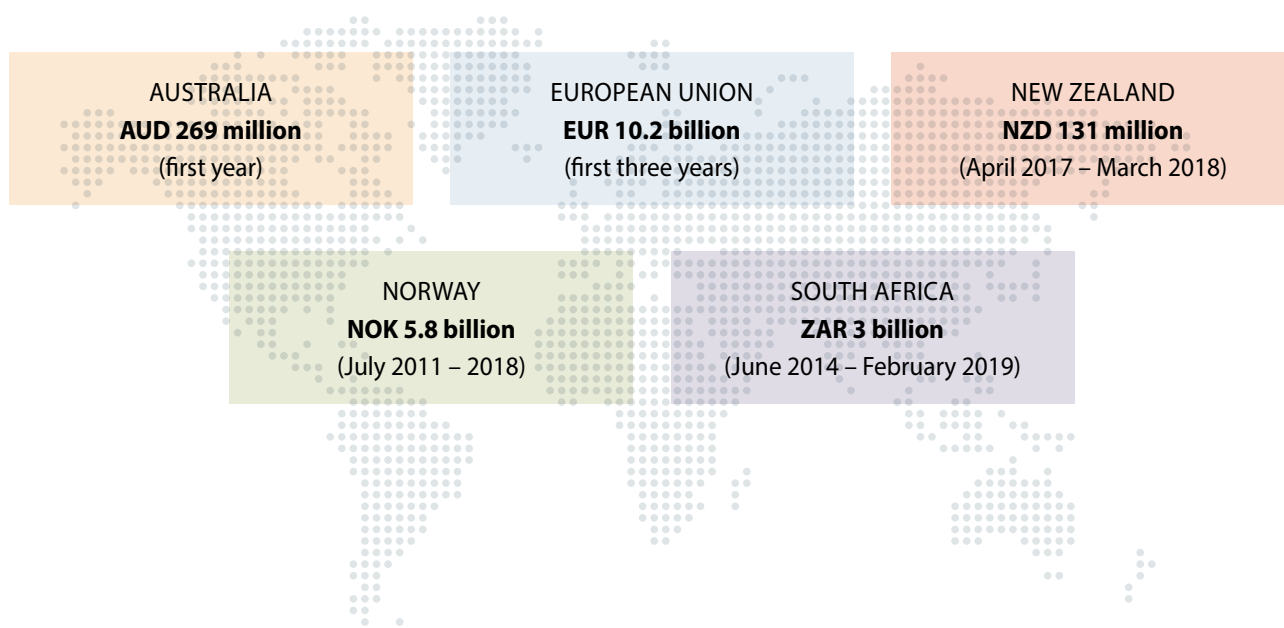
It is notable that following the adoption of rules for the application of VAT to B2C supplies of services and intangibles from online sales by foreign suppliers, countries are now turning their attention to the VAT treatment of imports of low-value goods. Since July 2018, Australia has applied GST at the point of sale for imports of low-value goods including the enlistment of platforms in the collection of the GST. In the first quarter of operation, Australia raised AUD 81 million from this measure. Further, the EU has legislated to apply such a regime from 2021 with

estimates that this will raise EUR 7 billion annually, New Zealand is currently in the process of legislating for such a regime, and other countries, including Norway, have signalled similar reforms. As of January 2019, Switzerland has introduced mail-order trade regulation according to which imports of low-value goods are subject to VAT.

The OECD has continued to support tax authorities worldwide with the implementation of measures for the effective and efficient collection of VAT on the continuously growing online trade. Another recent key deliverable from this work is the report on “The Role of Digital Platforms in the Collection of VAT/GST on Online Sales”, which provides guidance on a range of measures for enlisting e-commerce marketplaces and other digital platforms in the collection of VAT on the sales that they facilitate. These measures include making these platforms liable for collecting and remitting the VAT on the sales by online vendors that use their platform, as well as the sharing of information with tax authorities to increase compliance levels and reduce VAT fraud. This report was welcomed by the representatives from more than 100 countries, jurisdictions, international organisations and regional groups at the fifth meeting of the OECD Global Forum on VAT in Melbourne, Australia (20-22 March 2019).

**Figure 1. Revenues raised by jurisdictions implementing the recommended measures**

Cross-border B2C supply of digital services and intangibles





## 1.2. Country-by-Country reporting: exchanges and data

The beginning of the exchange of CbC reports marks an important milestone towards transparency, in the implementation of the OECD/G20 BEPS Project. The first exchanges took place in June 2018, and to date 80 jurisdictions have introduced CbC reporting filing obligation. Overall, 2 000 relationships between countries were activated for the exchange of CbC reports. Tax administrations now have access to unprecedented and consistent information on the largest foreign MNEs, which pose the greatest potential BEPS risk to their jurisdictions, given their size and potential revenues at stake.

In addition, the first aggregated and anonymised statistics prepared from data collected on CbC reports have now been prepared by OECD/G20 Inclusive Framework members and provided to the OECD for processing.

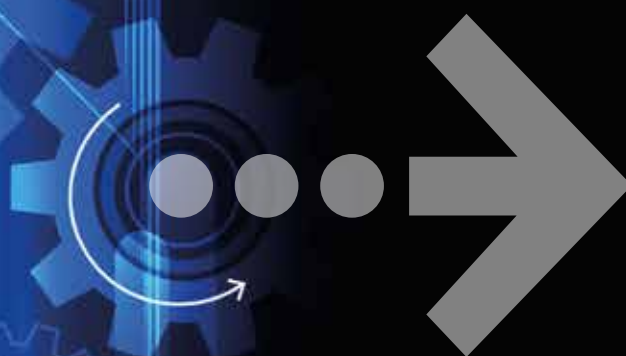
The statistics are being provided for CbC reports relating to fiscal years beginning between 1 January 2016 and 1 July 2016, preserving the anonymity of

MNE groups and the confidentiality of individual CbC reports. In total, there were 59 OECD/G20 Inclusive Framework members that had implemented CbC Reporting or had voluntary parent filing for the 2016 fiscal year, and it is estimated that only around 35 of those member jurisdictions received sufficient numbers of CbC reports to provide aggregated and anonymised statistics. Of those 35 jurisdictions, 26 jurisdictions have currently provided aggregated and anonymised statistics to the OECD covering around 4 100 CbC reports overall. Some OECD/G20 Inclusive Framework members are still in the course of preparing the statistics, so the total number of jurisdictions and CbC reports should increase by the time the CbC statistics are published in the second edition of *Corporate Tax Statistics* in 2020.<sup>5</sup>

5. Disclaimer: The initial analysis of the statistics is preliminary, both because data validation checks are still being performed, and because the OECD has only received reports from about 75% of the jurisdictions that received significant numbers of CbC reports for the 2016 fiscal year. The statistics from additional Inclusive Framework members will be incorporated into the analysis when they are provided. As the statistics were prepared from CbC reports filed for the 2016 fiscal year, it is worth noting that this period still pre-dates much of the implementation of the BEPS Actions. Nevertheless, we can already see some interesting patterns of where MNE activity is located and the relationship between that activity, the reporting of profits, and the tax paid.



## Part II – Minimum standards: the results



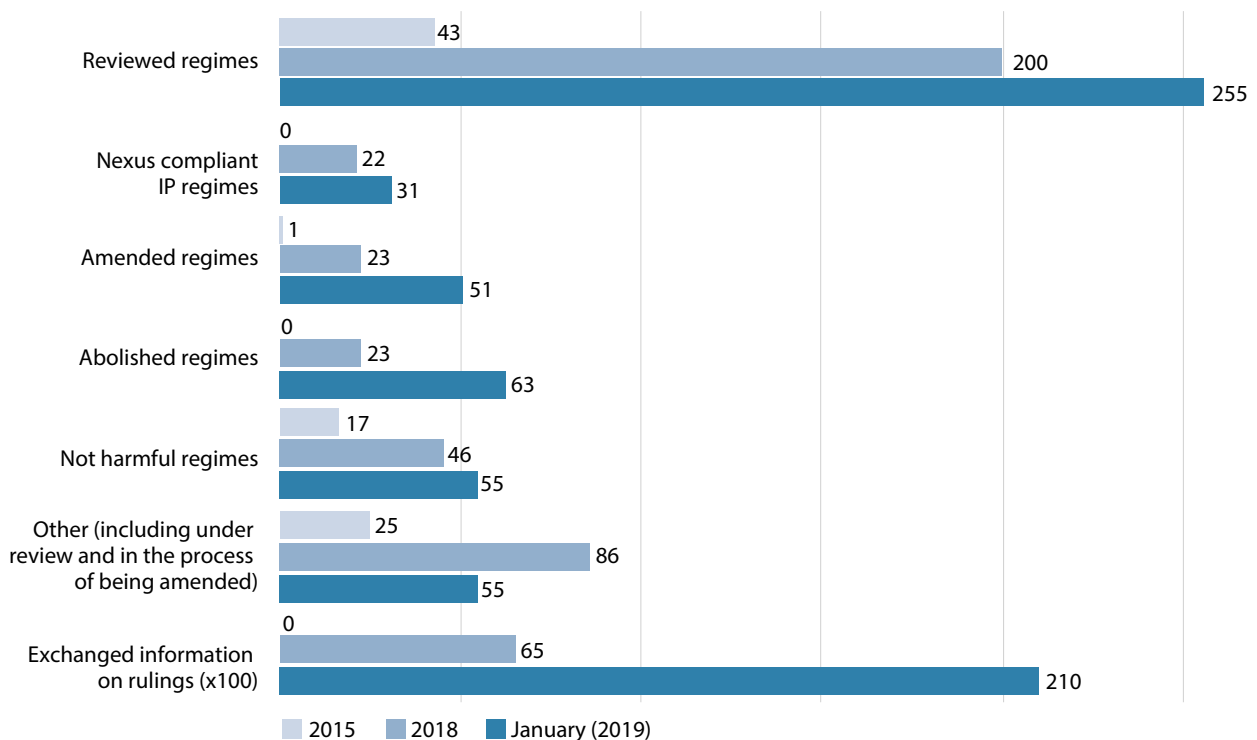


Peer reviews of the BEPS minimum standards are an essential tool to ensure the effective implementation of the BEPS package. First results were available for **Action 5** in 2017, for **Action 13** and **Action 14** in 2018, and the first results for **Action 6** were published this year. The results of the peer reviews show strong implementation throughout the world.

## 2.1. ACTION 5 HARMFUL TAX PRACTICES

Action 5 contains two related but distinct requirements: one with respect to preferential tax regimes, and one on transparency that requires the exchange of information on tax rulings. Both requirements are peer reviewed by the Forum on Harmful Tax Practices (FHTP). The implementation of the Action 5 minimum standard has significantly changed preferential tax regimes all over the world, many of which have now been abolished, and the others are in the process of being made consistent with Action 5 or remain under review. In addition, information on tax rulings that was not accessible to other tax administrations is now routinely exchanged, leading to more transparency and equipping tax administrations with more data on the international tax arrangements of their multinational groups to enable earlier detection of aggressive tax planning / non-compliance. The exchange of information on these rulings also acts as a deterrent to governments and taxpayers from agreeing “sweetheart” deals. The progress achieved under Action 5 from the start of the OECD/G20 BEPS Project until today is significant.

Figure 2. BEPS Action 5 in figures: 2015-2019



## FHTP 2018 HIGHLIGHTS

- All of the 16 Intellectual Property (IP) regimes listed in the 2015 BEPS Action 5 report, which were inconsistent with the agreed standard, are now in line with it, or have been abolished.<sup>6</sup>
- During the year, legislation has been enacted for more than 80 regimes to abolish them or to make amendments in order to comply with the Action 5 minimum standard.
- A new global standard on the application of substantial activities requirements, to no or only nominal tax jurisdictions has been adopted.
- New regimes have been brought into the review process shortly after their introduction.
- Almost 21 000 exchanges of information on tax rulings have taken place in the two years of the operation of this Action 5 standard.

### 2.1.1 Preferential tax regimes

The FHTP started its work on harmful tax practices in 1998 and reviewed preferential tax regimes of OECD members based on the criterion set out in the 1998 report. As the scope of the FHTP's work has now been expanded to all Inclusive Framework members (and jurisdictions of relevance), the FHTP has, since the start of the OECD/G20 BEPS Project, reviewed over 250 regimes of 70 jurisdictions.

In 2015, the Action 5 minimum standard introduced more stringent requirements for substantial activities, by introducing the nexus approach for IP regimes. At that time, none of the existing IP regimes of OECD members and G20 countries were compliant with the nexus approach, which is a key feature of the Action 5 standard since it ensures that the benefit of a preferential regime is linked to a substantial research and development (R&D) activity.<sup>7</sup> As it stands, all of those regimes are now in line with the nexus approach or have been abolished, and beyond this,

almost all IP regimes of the other Inclusive Framework members are likewise abolished or amended to be nexus compliant. Jurisdictions introducing new IP regimes are in general immediately designing them to be compliant with the nexus approach, creating a more global level playing field.

OECD/G20 Inclusive Framework members that were first reviewed in 2017 have also made a tremendous effort to comply with the ambitious FHTP timelines, which provides for the amendment or abolishment of other regimes that fail to meet the criteria in principle no later than by the end of 2018.

An ongoing mandate from the Action 5 report was the consideration of revisions or additions to the existing FHTP criteria. The most important aspect of the revision released in 2018 is the adoption of a new standard imposing substantial activities requirements on no or only nominal tax jurisdictions. As all preferential tax regimes providing benefits to income from geographically mobile activities must meet the substantial activities requirements, it was agreed that it was essential to ensure that business activity does not simply relocate to a zero tax jurisdiction to avoid these requirements. This new standard will ensure a more level playing field and the FHTP is reviewing jurisdictions against the standard starting this year.

Put together, the progress achieved on Action 5 has delivered significant progress in limiting harmful tax practices. Around the world, regimes can no longer be used by countries to attract the tax base from other countries by targeting non-residents and foreign income only. They must also comply with transparency and where relevant be subject to exchange of information. Finally, they must enforce substantial activities requirements to ensure that such regimes cannot be used for empty, tax-driven arrangements. A more level playing field is also being established vis-à-vis no and only nominal tax jurisdictions, where the same substantial activities requirements now apply across whole sectors of business activity.

6. Two regimes that remain actually harmful in one aspect are Italy and Turkey's intellectual property (IP) regimes. These regimes have already been amended, and the determination of actual harmfulness only relates to certain grandfathering aspects of the regime. As such, this harmful element is transitional only and will cease to operate by 30 June 2021.

7. The "nexus approach" was developed in the context of IP regimes and allows a taxpayer to benefit from an IP regime only to the extent that the taxpayer itself incurred qualifying R&D expenditures that gave rise to the IP income.



### 2.1.2 Exchange of information on tax rulings

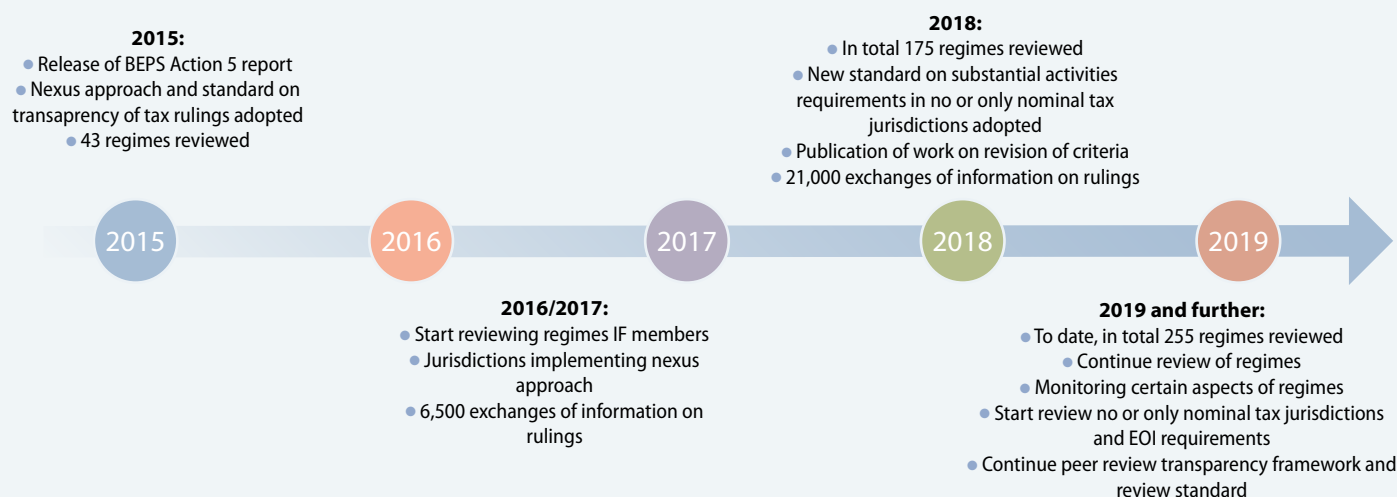
Almost 21 000 exchanges of information on tax rulings have taken place between Inclusive Framework jurisdictions, increasing transparency between tax administrations significantly. The second annual peer review of the transparency framework was finalised in 2018, covering 92 jurisdictions. The report includes 60 recommendations for improvement, and jurisdictions already have undertaken or are now undertaking actions to resolve the issues, demonstrating the effectiveness of the peer review process. For example, almost two thirds of the recommendations for improvement made to the 44 jurisdictions in the first annual peer review have already been addressed.

### 2.1.3 Future work

Figure 3 shows the most important work done by the FHTP in the last years and its future work.

- The FHTP will continue to review existing and future preferential tax regimes.
- In addition, the review of the substantial activities factor for no or only nominal tax jurisdictions has started in 2019, together with the development of the exchange of information requirements that support the new standard.
- The FHTP will increasingly focus its attention on the effective implementation of the substantial activities requirements in practice, conducting annual monitoring to revisit any issues of compliance with the substantial activities standard where needed in respect of both regimes and no or only nominal tax jurisdictions.
- The FHTP will continue its annual peer review of the transparency framework on the exchange of information on rulings, and prepare to conduct the review of the effectiveness of the standard.

Figure 3. Timeline for Forum on Harmful Tax Practices



## 2.2 ACTION 6 TAX TREATY ABUSE

Action 6 identified treaty abuse, and in particular treaty shopping, as one of the most important sources of BEPS concerns. Taxpayers that engage in treaty shopping and other types of treaty abuse undermine tax sovereignty by claiming treaty benefits in inappropriate circumstances, thereby depriving countries of tax revenues.

Tackling treaty shopping is one of the four BEPS minimum standards, and jurisdictions have committed to include provisions in their tax agreements to ensure a minimum level of protection against treaty shopping. Before the OECD/G20 BEPS Project, most of the world's 3 500+ tax treaties did not include a robust anti-treaty shopping provision that could prevent the granting of treaty benefits in inappropriate circumstances.

Compliance with the Action 6 minimum standard requires members of the Inclusive Framework to include in their tax treaties (1) a statement that the common intention of the parties to the treaty is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements, and (2) an anti-abuse treaty provision such as a principal purposes test (PPT) or a limitation on benefits provision. To increase tax certainty in the application of the PPT, the Inclusive Framework has formed an informal group of interested delegates that would explore various areas where more tax certainty could be provided in the PPT, including best practices in the area of the general anti-avoidance rules, and would report back with recommendations.

The peer review of Action 6 was launched in 2018 and the results were published in January 2019, showing that Inclusive Framework members have together taken steps to strengthen their treaty networks.

The first results show that a large majority of OECD/G20 Inclusive Framework members are now in the process of modifying their treaty network. On 30 June 2018, 82 of the then 116 members had some agreements that were already compliant with the

minimum standard or were subject to a complying instrument and would therefore comply shortly.<sup>8</sup> Countries are doing so primarily by modifying their treaties through the MLI – the legal instrument developed following the conclusions of Action 15 of the BEPS Action Plan to implement tax treaty-related BEPS standards and measures. Almost all the bilateral tax agreements will be subject to the MLI, and the few that are not, will be amended via separate renegotiations.

The next peer review exercise will be launched in the first half of 2019 and there will be a review of methodology in 2020.

### 2.2.1 Action 15: Multilateral Instrument

The MLI was first signed on 7 June 2017. Today, the MLI covers 88 jurisdictions from all continents and all levels of development. 25 of these jurisdictions have already deposited their instrument of ratification as of May 2019.<sup>9</sup> Despite the fact that the

8. A further seven jurisdictions have no comprehensive tax agreements and are therefore at present outside the scope of this exercise.

9. Namely Australia, Austria, Curaçao, Finland, France, Georgia, Guernsey, Ireland, Isle of Man, Israel, Japan, Jersey, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Poland, Serbia, Singapore, Slovakia, Slovenia, Sweden and the United Kingdom.



ratification process may seem slow, it is still faster for governments than renegotiating bilaterally the 3 500 tax treaties currently in force.

The MLI will modify existing bilateral tax treaties to swiftly implement the tax treaty measures developed in the course of the OECD/G20 BEPS Project. Treaty measures that are included in the MLI include those on hybrid mismatch arrangements, treaty abuse and permanent establishment. The MLI also strengthens provisions to resolve treaty disputes.

The year 2019 marks an important step in the implementation process of the MLI as its provisions started to enter into effect on 1 January. As of May 2019, the MLI had already modified about 60 agreements across the worldwide network of tax agreements, and this number is going up rapidly as more signatories deposit their instruments of ratification.

The entry into effect of the provisions of the MLI, less than two years after the first signing ceremony, underlines the strong political commitment to a multilateral approach to fighting BEPS and translating commitments into concrete measures that will be included in more than 1 500 tax treaties worldwide.

As many more jurisdictions expect to deposit their ratification instruments this year, signatories remain committed to ensure the effective, clear and consistent implementation of the MLI. As part of this work, the OECD continues to improve and develop new tools to help users understand the MLI and its effects. The MLI matching database allows users to easily assess the impact of the MLI on a particular tax treaty. It automatically generates information on the likely matching of MLI Positions and on the likely modifications made by the MLI to that treaty. The OECD is currently working on expanded features to add to the database, including information on entry into effect.

At the same time, jurisdictions are preparing synthesised texts of their modified agreements, based on Guidance published by the OECD at the end of 2018. This guidance is used by governments that intend to provide insight into the impact of the Convention on existing treaties. Synthesised texts also provide comprehensive information to taxpayers, auditors, advisors and other users on when the modifications will have effect in each jurisdiction. The Guidance is among the recent additions to a wide range of existing tools and background documents, which are expected to be used widely as jurisdictions' implementation of the MLI gathers pace.



## KEY FACTS ON ACTION 15 IMPLEMENTATION

- 88 covered jurisdictions
- 25 jurisdictions depositing their ratification instrument
- Over 1 500 agreements to be modified by the MLI
- Inclusion of the principal purpose test (PPT) in those 1 500 modified agreements
- About 60 agreements already modified by the MLI
- 29 covered jurisdictions that opted for mandatory binding arbitration



## 2.3 ACTION 13 COUNTRY-BY-COUNTRY REPORTING

### 2.3.1 Implementation of a CbC reporting filing obligation

Improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations and limit the compliance burden on businesses. Action 13 on Transfer Pricing Documentation establishes a three-tiered approach to transfer pricing documentation, comprising a master file with an overview of an MNE's business and transfer pricing policies, local files with more detailed information on specific transactions with a particular jurisdiction, and a CbC report containing information on the global spread of an MNE's activities, results, and where it pays tax.

Action 13 supports both transparency and coherence in international tax, by improving the level and quality of information available to tax administrations on MNEs in their jurisdiction, and ensuring tax administrations are increasingly able to access and make use of the same information on these MNEs.

Significant advances toward CbC reporting implementation have been witnessed this last year, with 59 OECD/G20 Inclusive Framework members requiring or permitting CbC reports to be filed by the ultimate parent entity of MNEs with consolidated

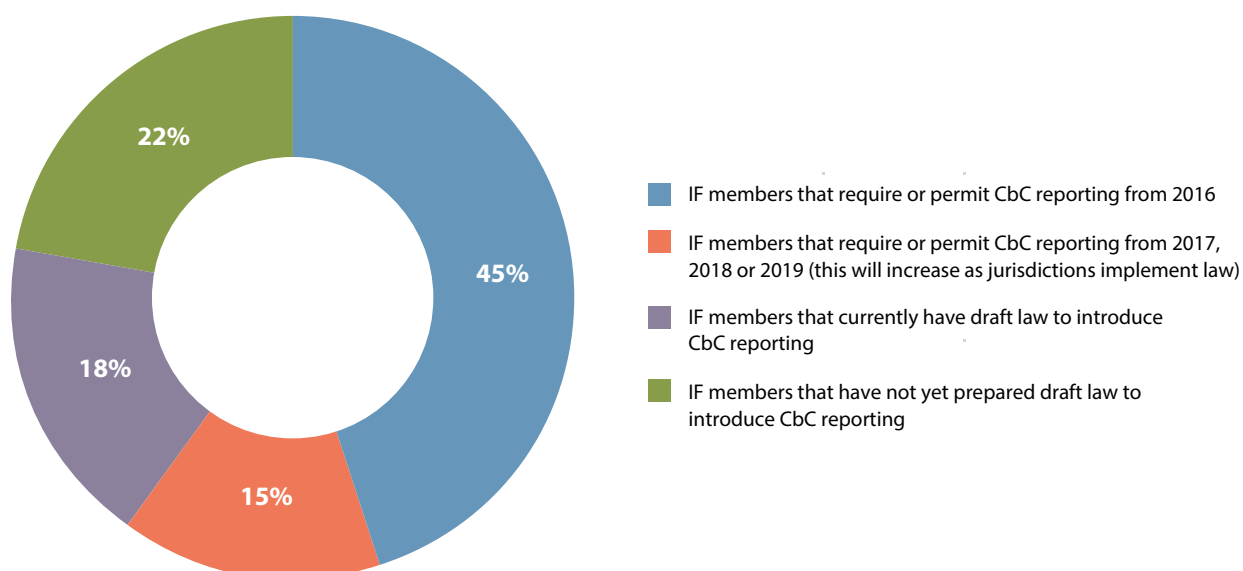
group revenue of at least EUR 750 million (or near equivalent in domestic currency as of January 2015) in the previous year. Moreover, almost 80 OECD/G20 Inclusive Framework members have introduced a CbC reporting filing obligation into law and around 25 further OECD/G20 Inclusive Framework members currently have draft law to introduce an obligation in the near future.

In total, over three quarters of OECD/G20 Inclusive Framework members have introduced or are in the process of introducing a CbC reporting obligation, including all G20 countries. As a result of this progress, substantially every MNE above the consolidated group revenue threshold is already within the scope of CbC reporting, and the remaining gaps are rapidly being closed.

### 2.3.2 Implementation of a CbC reporting exchange framework

Currently, there are more than of 2 000 bilateral relationships for the exchange of CbC reports. Those relationships are being put in place under the Convention for Mutual Administrative Assistance in Tax Matters, bilateral double tax conventions and tax information exchange agreements, and between EU Member States. Further work is needed to support jurisdictions in putting exchange relationships in place and in meeting the conditions for obtaining CbC reports.

Figure 4. Implementation of a CbC reporting filing obligation



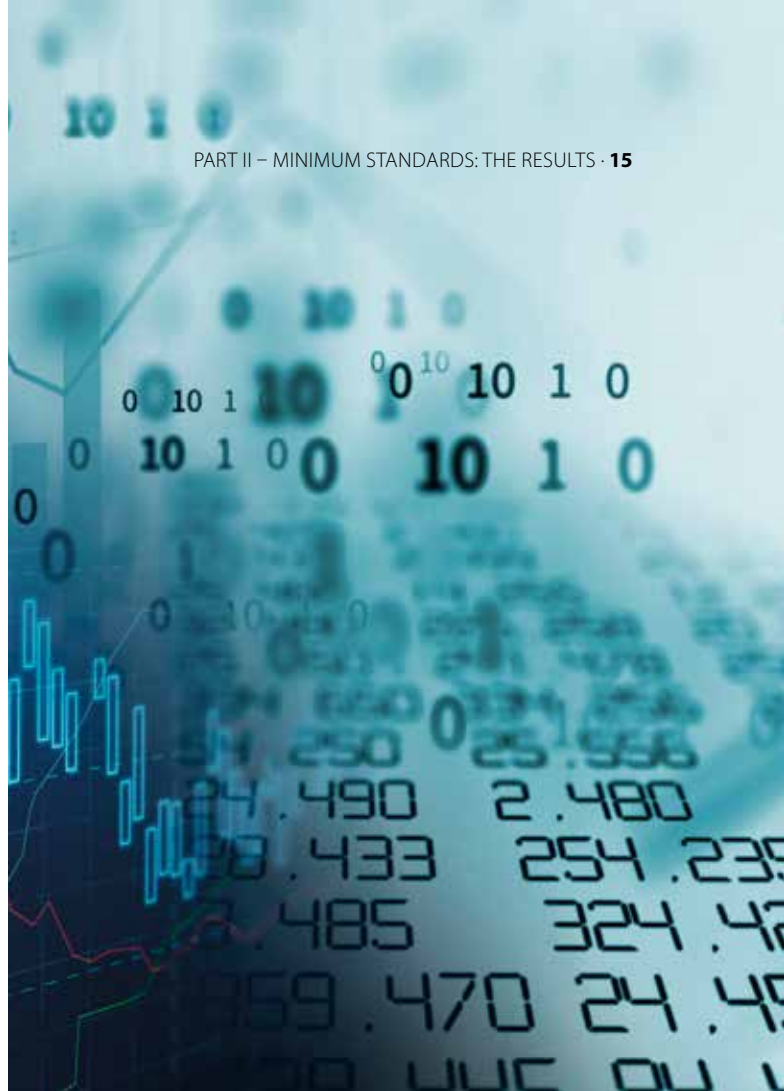
### 2.3.3 The peer review of implementation of BEPS Action 13

The second annual peer review of the implementation of Action 13 will be completed in the summer of 2019. This will consider implementation of the minimum standard by almost 120 Inclusive Framework members, compared with 95 jurisdictions in the first peer review. Where legislation is in place, implementation remains largely consistent with the minimum standard. Since the first peer review, a large number of jurisdictions have introduced changes to address recommendations received.

### 2.3.4 Work to support the effective use of CbC reports by tax administrations

It is vital that tax administrations use the information in CbC reports effectively in the assessment of transfer pricing and other BEPS-related risks. The OECD Forum on Tax Administration (FTA) has undertaken a number of initiatives to support tax administrations in using CbC reports and prevent its misuse.

- **CbCR risk assessment workshops:** Since January 2017, a series of workshops have been held to consider how CbC reports can be best used in risk assessments. These include a September 2018 workshop in the People's Republic of China, co-hosted with the State Taxation Administration, attended by representatives of 21 tax administrations and 10 MNEs and business groups.
- **Handbook on the Effective Use of CbC Reports in Tax Risk Assessment:** This handbook considers how CbC reports may be used within different approaches to tax risk assessment, the key risk indicators that may be detected and what a tax administration should do if a CbC report suggests a tax risk may be present.
- **International Compliance Assurance Programme (ICAP)** is a multilateral risk assessment and assurance process, which uses CbC reports and other risk assessment information to provide MNEs and tax administrations with increased tax certainty. A second pilot for ICAP (ICAP 2.0), including so far 17 participating tax administrations, was announced



#### KEY FACTS ON ACTION 13 IMPLEMENTATION

- 59 jurisdictions require or permit CbC reports to be filed.
- 80 jurisdictions having introduced CbC reporting filing obligation and 25 further jurisdictions currently having draft law to introduce an obligation in the near future.
- 2,000 bilateral relationships exist for the exchange of CbC reports.
- 120 jurisdictions will be covered in the second annual peer review.

at the FTA's 12th Plenary meeting, held in Santiago, Chile on 26-28 March 2019.

- **Comparative Risk Assessment initiative (CoRA):** Building on the increasingly common information available to tax administrations for tax risk assessment, CoRA is an initiative to drive greater convergence in the perception of risk by tax administrations, and in the understanding of how key risk indicators can be detected, including through an MNE's CbC report.

● **Tax Risk Evaluation and Assurance Tool (TREAT):**

TREAT is a tool to support tax administrations, in particular those in developing countries, in interpreting an MNE's CbC report to identify where further enquiries may, or may not, be needed. TREAT incorporates training materials drawing on experience in ICAP and CoRA, to assist tax administrations in the risk assessment of MNEs.

#### KEY FUTURE DEVELOPMENTS ON ACTION 13

- The second peer review of almost 120 members of the Inclusive Framework will be completed in mid-2019.
- The FTA will continue to develop practical tools to support the use of CbC reports, including ICAP 2.0, CoRA and the release of TREAT.
- A review of the Action 13 minimum standard, taking into account the experience of tax administrations and MNEs to date, commenced in November 2018 and will be completed by the end of 2020.

#### 2.4. ACTION 14 MUTUAL AGREEMENT PROCEDURE

The genesis for Action 14 developed from a recognition that the actions to counter BEPS must be complemented with actions that ensure certainty and predictability for businesses and individuals. It

was therefore necessary to develop robust dispute settlement resolution processes across jurisdictions to ensure that disputes are resolved in a timely, effective and efficient manner. The Action 14 minimum standard seeks to achieve this through a rigorous stage 1 peer review process that is then followed up one year later in a stage 2 monitoring report.

The peer review process is now well underway. With already 45 jurisdictions reviewed under stage 1 of the process, 16 more are currently in the process of being finalised and another 18 jurisdictions are scheduled for review (see Table 1). Almost all OECD/G20 Inclusive Framework members that qualify for a deferral have opted to do so and for 31 jurisdictions such deferral has been approved by the FTA MAP Forum.

Furthermore, OECD/G20 Inclusive Framework members are now reporting their MAP statistics under the previously developed MAP Statistics Reporting Framework that reflects a collaborative approach. These statistics are published annually on the OECD website and provide transparency on a jurisdiction-by-jurisdiction basis regarding (i) the number of cases started (ii) the outcome of the cases (iii) inventories and (iv) the length of time it takes to resolve such cases on average. This common





reporting also provides a reliable and comparable metric by which jurisdictions can be assessed under the minimum standard for certain elements.

For the 45 jurisdictions reviewed thus far, around 990 recommendations have been issued, including recommendations for jurisdictions to maintain compliance with certain elements of the minimum standard, including the need for more resources to process MAP cases, improving timeliness of the resolution of MAP cases and updating domestic rules. At the same time, the Action 14 minimum standard is already having a broader impact on MAP worldwide:

- There has been a marked increase in the number of cases dealt with by competent authorities which have been closed, in almost all jurisdictions under review. This is likely the result of an increase in resources or in a more efficient use of resources for many competent authorities as a result of the peer review process or, in some cases, for jurisdictions that anticipate their own upcoming peer review.
- The peer review process has spurred changes in a few jurisdictions regarding the structure and organisation of competent authorities to streamline their processes for resolving MAP cases in a timely manner.

Italy has implemented **changes in January 2017 to the structure and organisation of its competent authorities to streamline their processes for resolving MAP** cases in a timely manner.

- The number of MAP profiles published on the OECD website continues to increase. MAP profiles of over 90 jurisdictions are published on the OECD website<sup>10</sup> thereby providing taxpayers with a central repository of easily accessible information, which will facilitate their use of MAP.
- In addition, more than a quarter of the jurisdictions updated or introduced comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP.

Luxembourg and Belgium have each **introduced MAP guidance** for the first time.

The United Kingdom **revised its MAP guidance** to reflect fully the requirements of the Action 14 Minimum Standard, thus providing further clarity to taxpayers seeking to access MAP

10. Available at: [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm)





- Access to MAP is now granted for more cases than in the past. For instance, transfer pricing cases are given access to MAP in all but one jurisdictions. Furthermore, a few jurisdictions changed their policy to allow for access to MAP after a judicial decision has been rendered, even if their competent authorities are still bound by such a decision.

Switzerland revised its MAP guidance and **simplified its procedures for taxpayers to submit a MAP request** for both transfer pricing cases and cases concerning individuals.

Greece and Mexico both **changed their policy to allow access to MAP after a judicial decision** has been rendered.

In addition to these broader changes, the monitoring process under Stage 2 has already begun. The reports for the six jurisdictions that were peer reviewed in batch 1 have recently been discussed and approved by the FTA MAP Forum. These stage 2 reports are the first glimpse into how well jurisdictions are

implementing the specific recommendations issued to them during stage 1 of the Action 14 peer review process.

The results of this stage 2 monitoring process available thus far indicate that jurisdictions are making tangible progress. In general, the six batch 1 jurisdictions are considered to be compliant under most of the criteria of the Action 14 minimum standard with respect to the prevention of disputes, availability and access to MAP, the resolution of MAP cases and the implementation of MAP agreements. In this regard, a few noteworthy highlights are as follows:

- All six jurisdictions provide for the possibility of roll-back of bilateral APAs and provide access to MAP in eligible cases.
- All six jurisdictions have a documented bilateral notification and/or consultation process in place to notify the other jurisdictions in cases where they consider a MAP request to be not justified.



- Many of the jurisdictions have updated their publicly available MAP guidance to provide more clarity and details to taxpayers. One revised its MAP guidance to provide further clarity to taxpayers seeking to access MAP in a MAP-intensive jurisdiction. Another also revised its MAP guidance and simplified its procedures for taxpayers to submit a MAP request for both transfer pricing cases and cases concerning individuals. One other jurisdiction introduced comprehensive MAP guidance for the first time.
- Each of the six jurisdictions decreased the amount of time needed to close MAP cases and five of the six jurisdictions met the sought-after 24-month average timeframe to close MAP cases.
- Almost all jurisdictions are able to implement MAP agreements notwithstanding their domestic time limits and no issues have surfaced in this respect throughout the peer review process.

With respect to each jurisdiction bringing their tax treaties in line with the Action 14 minimum standard, there is still some divergence. Half of the assessed jurisdictions made very good progress on updating their treaty network and achieved this by carrying out an action plan that prioritised relevant tax treaty negotiations when the treaties are not expected to be modified by the MLI. Some jurisdictions are bringing their tax treaties in line with the Action 14 minimum standard through ratification of the MLI.

In the future, more insights into progress will come not only from the publication of the 2018 MAP statistics but also from the release of each stage 2 monitoring report following up on any stage 1 recommendations.

**Table 1. Mutual Agreement Procedures (MAP) Jurisdictions**

Stage 1 completed						Stage 1 ongoing		Not yet started	
1 <sup>st</sup> batch 5 December 2016	2 <sup>nd</sup> batch 7 March 2017	3 <sup>rd</sup> batch 7 July 2017	4 <sup>th</sup> batch 29 December 2017	5 <sup>th</sup> batch 10 April 2018	6 <sup>th</sup> batch 31 August 2018	7 <sup>th</sup> batch 31 December 2018	8 <sup>th</sup> batch By April 2019	9 <sup>th</sup> batch By August 2019	10 <sup>th</sup> batch By December 2019
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	Brunei	Andorra	Barbados
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Curacao	Anguila	Barbados
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Guernsey	Bahamas	Kazakhstan
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Isle of Man	Bermuda	Oman
United Kingdom	Liechtenstein	Norway	Malta	Romania	India	Indonesia	Jersey	British Virgin Islands	Qatar
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Monaco	Cayman Islands	Saint Kitts and Nevis
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	San Marino	Macau (China)	Thailand
		Spain	Portugal	Turkey	South Africa	Saudi Arabia	Serbia	Tunisia	Trinidad and Tobago
								Turks and Caicos Islands	United Arab Emirates

## Part III – Other key developments





### 3.1. BEPS IMPLEMENTATION BEYOND THE MINIMUM STANDARDS

#### 3.1.1. Actions 2, 3 and 4

The BEPS package included recommendations for domestic law measures to address the BEPS risks posed by aggressive tax planning. These included a common approach to neutralising hybrid mismatches (Action 2) and limiting excessive interest deductions (Action 4) as well as best practices in the design of effective controlled foreign company (CFC) rules (Action 3).

The Action 2 recommendations targeted mismatches resulting from differences in the tax treatment or characterisation of an instrument or entity. The work on hybrid mismatches was subsequently expanded to deal with similar opportunities that arise through the use of branch structures.

Since announcement of the Action 2 recommendations, a number of Inclusive Framework members have rapidly adopted rules to address such hybrid and branch mismatches (e.g., Australia and New Zealand). As part of the common approach to addressing hybrid mismatches, work continues amongst OECD/G20 Inclusive Framework members to share practical examples of these structures to ensure consistent, comprehensive and coherent outcomes from the application of the new rules.

The Action 3 recommendations outline approaches to ensure the taxation of certain categories of income of a multinational enterprise in the jurisdiction of the parent company in order to counter popular offshore structures that result in no or indefinite deferral of taxation. Comprehensive and effective CFC rules have the effect of reducing the incentive to shift profits from a market country into a low-tax jurisdiction. Almost 50 OECD/G20 Inclusive Framework members now have CFC rules.

As for Action 4, several jurisdictions have either already taken steps to limit interest deductibility (e.g., Argentina, India, Japan, Korea, Malaysia, Norway and South Africa) or are in the process of aligning their domestic legislation with the recommendations of Action 4 (e.g., Peru and Viet Nam).

#### ACTIONS 2-3-4 IMPLEMENTATIONS

Although they are not minimum standards, Actions 2-3-4 have been rapidly adopted by a large number of countries:

- The EU Council has adopted two Anti-Tax Avoidance Directives requiring Member States to implement, by the beginning of this year, interest limitation and CFC rules that are consistent with Actions 3 and 4 and anti-hybrids rules consistent with Action 2 by the beginning of 2020.
- The Tax Cuts and Jobs Act ("TCJA"), which was signed into law by the United States at the end of 2017, includes provisions consistent with the recommendations under Actions 2-4, and the introduction of a minimum tax on global intangible low-taxed income (GILTI), which reflects recommendations made in the Action 3 report.

#### 3.1.2. Action 7 Permanent Establishment Status

Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a state only to the extent that the foreign enterprise has in that state a permanent establishment to which the profits are attributable. The definition of permanent establishment included in tax treaties is therefore crucial in determining whether a non-resident enterprise must pay income tax in another state.

The Action 7 Final Report did not include any minimum standards, but recommended changes to address techniques used to inappropriately avoid the tax nexus, including via replacement of distributors with commissionaire arrangements, via specific activity exemptions, and via the artificial fragmentation of business activities. The recommended treaty changes could be implemented through the MLI as optional provisions, or through bilateral tax treaty negotiations. The take-up of those provisions among the (currently) 88 jurisdictions that are party to the MLI is as explained on the next page.

- 40 jurisdictions have opted for the changes to Article 5(5) and 5(6) of the OECD Model Tax Convention, lowering the threshold for the creation of a dependent agent PE.
- 44 jurisdictions have opted for the amended Article 5(4) of the OECD Model Tax Convention, with the overarching preparatory or auxiliary requirement and 50 jurisdictions have opted for the anti-fragmentation rule in Article 5(4.1) of the OECD Model Tax Convention.
- 32 jurisdictions have opted for the anti-contract splitting provision included in the Commentary on Article 5 of the OECD Model Tax Convention.

#### IMPLEMENTATION OF ACTION 7 THROUGH THE MLI

Option for the lowering the threshold for a dependent agent PE: **40 jurisdictions**

Option for the overarching preparatory/auxiliary requirement: **44 jurisdictions**

Option for the anti-fragmentation rule: **50 jurisdictions**

Option for the anti-contract splitting: **32 jurisdictions**

#### 3.1.3. Action 8-10 Transfer Pricing

The objective of the 2015 Final Report on Actions 8-10 was to ensure that the profits of MNEs better align with economic activity and value creation. The updated edition of the OECD Transfer Pricing Guidelines was published in July 2017 to incorporate the deliverables resulting from this work.

##### **Finalisation of BEPS follow-up work**

Significant progress was made since the last progress report on the projects mandated by the 2015 Final Report on Actions 8-10.

Additional guidance on the attribution of profits to permanent establishments resulting from the



changes in the Action 7 Final Report to Article 5 of the OECD Model Tax Convention was published in March 2018. Revised guidance on transactional profit split method (Action 10) was also published in June 2018<sup>11</sup> and will be incorporated into the next edition of the Transfer Pricing Guidelines.

The additional guidance addressed to tax administrations on the application of the hard-to-value intangibles (HTVI) approach (Action 8) was finalized and published in June 2018 and it will be incorporated in the next edition of the Transfer Pricing Guidelines, foreseen in 2019. It was also agreed that a monitoring process be put in place to monitor the application of the HTVI approach by jurisdictions in the period of 2019-2020.

Developing transfer pricing guidance for financial transactions started in 2016 and a discussion draft was released for public consultation in March 2018. That discussion draft, which does not yet represent a consensus position of the Inclusive Framework or its subsidiary bodies, aims to clarify the application of the principles included in the 2017 edition of the Transfer Pricing Guidelines, in particular, the

11. OECD (2018), Revised Guidance on the Application of the Transactional Profit Split Method - BEPS Action 10, [www.oecd.org/tax/transfer-pricing/revised-guidance-on-the-application-of-the-transactional-profit-split-method-beps-action-10.pdf](http://www.oecd.org/tax/transfer-pricing/revised-guidance-on-the-application-of-the-transactional-profit-split-method-beps-action-10.pdf).



accurate delineation analysis under Chapter I, to financial transactions. The work also addresses specific issues related to the pricing of financial transactions such as treasury function, intra-group loans, cash pooling, hedging, guarantees and captive insurance. Significant progress was made on this project and it is nearing completion, which is expected to be accomplished in 2019.

### **Monitoring**

Monitoring activities have been enhanced to gather information on the key features of countries' transfer pricing system and more specifically on the status of the implementation by jurisdictions of the guidance developed under Actions 8-10.

That work has produced an update of the Transfer Pricing Country Profiles, which can be consulted on the OECD website. Further analysis of the information collected from tax administrations in more than 50 OECD/G20 Inclusive Framework members has been conducted with a view to assessing the effectiveness of the measures adopted as well as the impact on both compliance by taxpayers and proper administration by tax authorities. Monitoring will continue to gain importance as jurisdictions continue to implement and apply (all or part of) the guidance developed under Actions 8-10.

### **3.1.4. Action 11 – Economic analysis of BEPS**

The delivery of the Corporate Tax Statistics database, which was launched in January 2019, is a significant step toward Action 11 implementation. This new database is intended to assist in the study of corporate tax policy and has already begun to improve the quality and expand the range of data available for the analysis of BEPS. The first edition of the database contains information on over 100 jurisdictions, and several main categories of data: corporate tax revenues, corporate tax rates, and tax incentives related to innovation.

### **3.1.5. Action 12 Mandatory Disclosure Regimes**

Action 12 contains rules that allow jurisdictions to obtain early information on the tax compliance and policy risks raised by aggressive tax planning. Action 12 seeks to balance the need for early information on aggressive tax planning schemes with the need for disclosure requirements to be appropriately targeted, enforceable and avoid over-disclosure or placing undue compliance burdens on taxpayers. The adoption of Council Directive (EU) 2018/822 by EU Member States will result in the reporting of cross-border aggressive tax planning, offshore structures and CRS avoidance schemes to EU member tax authorities. The directive largely incorporates the model rules set out in the OECD Report on Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures issued in February 2018.

## **3.2. INCLUSIVENESS**

The OECD/G20 Inclusive Framework was established in 2016, in response to calls for greater developing country inclusion. Critically, all members of the OECD/G20 Inclusive Framework participate on an equal footing, giving each of them a voice in the decision making.

### **3.2.1. Membership**

At its inaugural meeting in Kyoto, Japan in July 2016 there were 82 members of the OECD/G20 Inclusive Framework. Today, there are 129 members and 14



observer organisations<sup>12</sup>. The past year has seen further growth and a consolidation of the OECD/G20 Inclusive Framework. It welcomed 13 new members: Antigua and Barbuda, Armenia, Aruba, Cabo Verde, Cook Islands, Dominica, Dominican Republic, Faroe Islands, Greenland, Grenada, Morocco, North Macedonia, and Saint Vincent and the Grenadines.

The OECD/G20 Inclusive Framework now has a truly global membership, including over 70% of non-OECD and non-G20 countries from all geographic regions (see Figure 4). The leadership of the OECD/G20 Inclusive Framework reflects this diversity, with newly elected or re-elected deputy chairs from China and Nigeria, and Steering Group members from Brazil, Côte d'Ivoire, Georgia, India, Jamaica, Senegal and South Africa.

With greater inclusiveness and participation, developing countries' perspectives and inputs are increasingly influencing the development of international standards on corporate taxation, particularly on the taxation of the digitalising economy and in terms of standard setting for transfer pricing.

12. The full list of OECD/G20 Inclusive Framework on BEPS members and observers is available in Annex A.

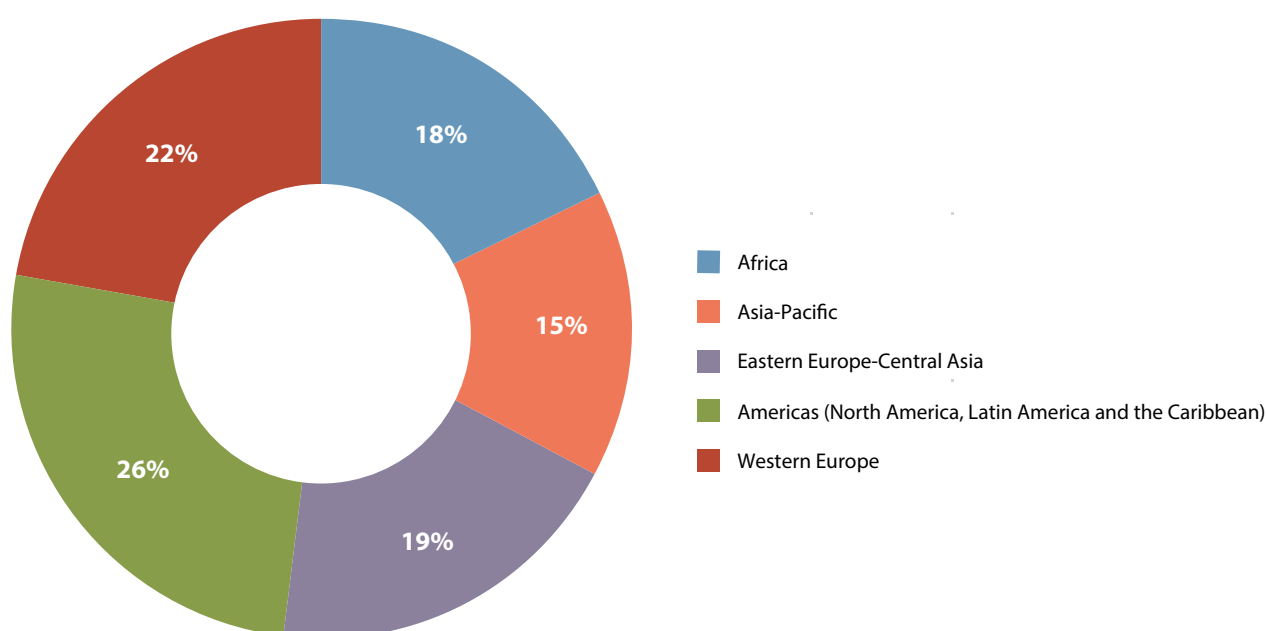
### 3.2.2. Support to Developing Countries

Capacity building support for developing countries has always been core to the OECD/G20 Inclusive Framework, prioritising active, equal participation in the BEPS process. In addition, the Secretariat, in partnership with the African Tax Administration Forum (ATAF), the European Commission and the WBG also supports countries that are not OECD/G20 Inclusive Framework members through demand-led bilateral programmes, some of which are making significant progress on BEPS implementation, like in Uganda for instance.

To date, 30 bespoke induction programmes have been launched with the aim of assisting developing countries to successfully implement their BEPS priorities. These programmes are tailored to the needs of the countries concerned and may include technical workshops and/or high-level engagement with ministers or other key political decision makers.

The Secretariat is also supporting developing countries with the use of on-line resources. After the successful introduction of “blended learning” events in 2018 – combining on-line training and traditional face-to-face workshops, the Secretariat has launched an e-learning programme in February 2019 and will be developing further modules on international tax topics.

Figure 5. **Regional Composition of the OECD/G20 Inclusive Framework on BEPS**



### 3.2.3. Tax Inspectors Without Borders (TIWB)

Tax Inspectors Without Borders (TIWB), a joint-OECD/United Nations Development Programme (UNDP) initiative, which was launched in Addis Ababa in July 2015, has further strengthened and expanded its reach across the globe in the past year. With 54 programmes currently underway or completed and over 26 upcoming programmes, TIWB audit assistance continues to provide tax administrations in developing countries with much needed assistance in building capacity to implement BEPS solutions and generate more revenues.

To date, cumulative increases in revenue collected since 2012 amount to approximately USD 470 million from thirteen cases. On average, for every USD 1 spent on TIWB activities between 2013 and 2018, there was a more than USD 100 increase in tax revenues collected by Host Administrations (see Figure 6).

Beyond the increase in tax revenues collected, TIWB programmes have been a major confidence builder for tax administrations, and a deterrent against tax avoidance strategies by MNEs, helping to create behavioural changes and a culture of voluntary compliance as well as an environment

where businesses know what to expect from tax administrations.

The TIWB initiative has continued to evolve to meet the needs of developing countries. One of those needs has been for greater input from industry experts, e.g. from the diamond, floriculture, oil and gas, forestry and mining sectors. The enhanced sectoral focus of TIWB into the mining sector will be bolstered by the OECD's strengthening partnership with the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). IGF will provide industry experts, raise demand for TIWB programmes among its 71 members and promote inter-agency co-operation in the host countries undertaking TIWB programmes in the mining sector. The TIWB initiative also places an increasing emphasis on enhancing South-South co-operation to help ensure developing country perspectives remain at the forefront in the audit assistance provided.

TIWB is currently looking into further areas where its model can apply. For instance, five pilot programmes on tax crime are due to begin in 2019. Other areas being explored include the use of TIWB for joint audits and support for Common Reporting Standard (CRS) data interpretation.

**Figure 6. Regional Reported Revenue Increases from TIWB Assistance**



### 3.2.4. Platform for Collaboration on Tax

The Platform for Collaboration on Tax (PCT) partners – the IMF, OECD, UN, and WBG – continue to strengthen their co-operation implementing the Action Plan agreed by the Platform partners at the conclusion of the PCT conference in February 2018. The PCT is currently expanding its secretariat to enable it to deliver on the Action Plan, and is preparing a full update on activities. Work is also underway to further clarify the roles of the Platform partners to enhance co-operation. The PCT will also deliver a progress report on its activities to the G20 Finance Ministers in June 2019. In addition, a programme to support Small Island Developing States and other limited capacity countries to address BEPS in the tourism sector will shortly be launched by the PCT. It is envisaged that this programme would draw on sectoral and tax technical expertise within the secretariats of the partner organisations, complemented by practical TIWB initiatives in relevant participating economies.

Progress has been made on the toolkits being developed by the PCT. These toolkits are intended to provide practical implementation guidance on BEPS issues of particular relevance to developing countries. A draft of the toolkit on *Taxation of Offshore Indirect Transfers* was subject to a second public consultation that closed on 24 September 2018. This second round of consultation was undertaken because the

toolkit addresses a number of difficult international tax policy issues on which there is limited existing practical guidance. This has attracted considerable debate from business. Progress is continuing with further toolkits - a toolkit on *Implementing Efficient and Effective Transfer Pricing Documentation Regimes* will be launched for consultation in 2019.

In the past year, a number of events were held with developing country participants to operationalise the completed PCT toolkits. Feedback from participants on these events has been extremely positive and countries are reporting that the tools provided are having a real impact on corporate tax enforcement efforts. As a result of this positive feedback, the approaches discussed in the 2017 toolkit on *Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses* will also be incorporated into the UN Practical Manual on Transfer Pricing for Developing Countries, as well as being the focus of a new e-learning module being developed by the OECD.

### 3.2.5. Co-operation with regional organisations, civil society

The work of the OECD/G20 Inclusive Framework has been consolidated in the past year, including embedding BEPS implementation so that it becomes an integral part of the regional tax architecture. Regional organisations are increasingly taking ownership of the OECD/G20 BEPS Project, and its





### Box 1. Induction Programmes

The past year's APEC experience of supporting BEPS implementation is illustrative of the how regional membership groupings and bodies are taking ownership of the BEPS agenda. Building on work begun by Viet Nam in 2017, as APEC President, Papua New Guinea hosted several BEPS technical training events in 2018 for APEC economies, supported by the Secretariat of the OECD/G20 Inclusive Framework, and Australia. The mix of developing and developed economies provided a useful basis for experience sharing and mutual support. In 2019, Chile as APEC President is pursuing this work. To encourage the exchange of knowledge, the Secretariat of the OECD/G20 Inclusive Framework developed an on-line community of practice facility specifically for APEC economies,

based on the Knowledge Sharing Platform financed and developed by Canada.

Similar projects are well underway among regional tax organisations and regional banks. The Inter-European Organisation of Tax Administrations (IOTA) and the African Tax Administration Forum (ATAF), for example, have committee structures in place to support BEPS implementation. The Inter-American Center of Tax Administrations (CIAT), the Study Group on Asian Tax Administration and Research (SGATAR) and the Asian Development Bank have also embarked on BEPS support programmes and activities for their members.

implementation is increasingly being incorporated into existing meetings of regional tax organisations (RTOs) and other inter-governmental forums like the Asia-Pacific Economic Cooperation (APEC) forum (see Box 1).

Eleven regional outreach events were delivered by the Secretariat of the OECD/G20 Inclusive Framework in the past year, all of them conducted in partnership with various Regional Tax Organisations, reaching 96 developing economy jurisdictions and countries around the globe. In addition, the number of international and regional organisations involved in the work of the OECD/G20 Inclusive Framework has

continued to increase, which in turn has supported increased representation of developing country views in relevant forums (see list of participating international and regional organisations in Annex A).

Civil society has been continuously involved in the work of the OECD/G20 Inclusive Framework. In the past year, civil society representatives have had a particularly active role in the discussions on the tax challenges of digitalisation. For instance, civil society representatives took an active part in the Stakeholder Roundtable held during the sixth meeting of the OECD/G20 Inclusive Framework on 24 January 2019 in Paris.



# Annexes

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

Complete list of Members of the OECD/G20 Inclusive Framework on BEPS as at May 2019<sup>13</sup>

Andorra	Burkina Faso	Egypt
Angola	Cameroon	Estonia
Anguilla	Canada	Faroe Islands
Antigua and Barbuda	Cape Verde	Finland
Argentina	Cayman Islands	France
Armenia	Chile	Gabon
Aruba	China (People's Republic of)	Georgia
Australia	Colombia	Germany
Austria	Congo	Greece
Bahamas	Cook Islands	Greenland
Bahrain	Costa Rica	Grenada
Barbados	Côte d'Ivoire	Guernsey
Belgium	Croatia	Haiti
Belize	Curaçao	Hong Kong (China)
Benin	Czech Republic	Hungary
Bermuda	Democratic Republic of the Congo	Iceland
Botswana	Denmark	India
Brazil	Djibouti	Indonesia
British Virgin Islands	Dominica	Ireland
Brunei Darussalam	Dominican Republic	Isle of Man
Bulgaria		Israel
		Italy
		Jamaica



### List of Observers of the OECD/G20 Inclusive Framework on BEPS as at May 2019

Japan	Norway	Singapore
Jersey	Oman	Slovak Republic
Kazakhstan	Pakistan	Slovenia
Kenya	Panama	South Africa
Korea	Papua New Guinea	Spain
Latvia	Paraguay	Sri Lanka
Liberia	Peru	Sweden
Liechtenstein	Poland	Switzerland
Lithuania	Portugal Qatar	Thailand
Luxembourg	Romania	Trinidad and Tobago
Macao (China)	Russian Federation	Tunisia
Malaysia	Saint Kitts and Nevis	Turkey
Maldives	Saint Lucia	Turks and Caicos Islands
Malta	Saint Vincent and the Grenadines	Ukraine
Mauritius	San Marino	United Arab Emirates
Mexico	Saudi Arabia	United Kingdom
Monaco	Senegal	United States
Mongolia	Serbia	Uruguay
Montserrat	Seychelles	Viet Nam
Morocco	Sierra Leone	Zambia
Netherlands		
New Zealand		
Nigeria		
North Macedonia		

1. List of Observer Organisations to the OECD/G20 Inclusive Framework on BEPS as at May 2019
2. African Development Bank (AfDB)
3. African Tax Administration Forum (ATAF)
4. Asian Development Bank (ADB)
5. Commonwealth Association of Tax Administrators (CATA)
6. Centro Interamericano de Administraciones Tributarias (CIAT)
7. *Cercle de Reflexion et d'Echange des Dirigeants des Administrations Fiscales* (CREDAF)
8. European Bank for Reconstruction and Development (EBRD)
9. Inter-American Development Bank (IADB)
10. International Monetary Fund (IMF)
11. Intra-European Organisation of Tax Administrations (IOTA)
12. Pacific Islands Tax Administrators Association (PITAA)
13. United Nations (UN)
14. World Bank Group (WBG)
15. World Customs Organization (WCO)

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



## Annex B – BEPS Actions and the subsidiary bodies of the OECD/G20 Inclusive Framework on BEPS

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

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

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

BEPS Action	Relevant subsidiary bodies and ad hoc groups of the OECD/G20 Inclusive Framework
<p><b>Action 5 - Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance</b></p> <p>This action sets out a minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime. In the context of IP regimes such as patent boxes, consensus was reached on the “nexus” approach. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange.</p>	<p>Forum on Harmful Tax Practices</p>
<p><b>Action 6 - Preventing the Granting of Treaty Benefits in Inappropriate Circumstances</b></p> <p>This action includes a minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse. Other changes to the OECD Model Tax Convention have been agreed to ensure that treaties do not inadvertently prevent the application of domestic anti-abuse rules. It also contains the policy considerations to be taken into account when entering into tax treaties with certain low or no-tax jurisdictions.</p>	<p>Working Party No. 1 on Tax Conventions and Related Questions</p>
<p><b>Action 7 - Preventing the Artificial Avoidance of Permanent Establishment Status</b></p> <p>This action includes changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention. These changes address techniques used to inappropriately avoid the tax nexus, including via replacement of distributors with commissionaire arrangements or via the artificial fragmentation of business activities.</p>	<p>Working Party No. 1 on Tax Conventions and Related Questions</p>
<p><b>Actions 8-10 - Aligning Transfer Pricing Outcomes with Value Creation</b></p> <p>Action 8 looked at transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Under Action 9, contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks. Action 10 has focused on other high-risk areas. The combined report contains revised guidance which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them. It also contains guidance on transactions involving cross-border commodity transactions as well as on low value-adding intra-group services.</p>	<p>Working Party No. 6 on the Taxation of Multinational Enterprises</p>
<p><b>Action 11 - Measuring and Monitoring BEPS</b></p> <p>This action assesses currently available data and methodologies and concludes that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required. Noting these data limitations, a dashboard of six BEPS indicators has been constructed. These indicators provide strong signals that BEPS exists and suggest it has been increasing over time.</p>	<p>Working Party No. 2 on Tax Policy Analysis and Tax Statistics</p>

## Annex B – BEPS Actions and the subsidiary bodies of the OECD/G20 Inclusive Framework on BEPS

BEPS Action	Relevant subsidiary bodies and ad hoc groups of the OECD/G20 Inclusive Framework
<p><b>Action 12 - Mandatory Disclosure Rules</b></p> <p>This action provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules which seeks to design a regime that fits those countries' need to obtain early information on aggressive or abusive tax planning schemes and their users. The recommendations provide the necessary flexibility to balance a country's need for better and more timely information with the compliance burdens for taxpayers.</p>	<p>Working Party No. 11 on Aggressive Tax Planning</p>
<p><b>Action 13 - Guidance on Transfer Pricing Documentation and Country-by-Country Reporting</b></p> <p>This action contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on Country-by-Country Reporting. First, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "master file" that is to be available to all relevant tax administrations. Second, it requires that detailed transactional transfer pricing documentation be provided in a "local file" specific to each country, identifying material related-party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made. Third, large MNEs are required to file a Country-by-Country Report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued and other indicators of economic activities.</p>	<p>Ad Hoc Group on Country-by-Country Reporting, consisting of members of both Working Party No. 6 and Working Party No. 10</p>
<p><b>Action 14 - Making Dispute Resolution Mechanisms More Effective</b></p> <p>Recognising the importance of removing double taxation as an obstacle to cross-border trade and investment, countries have committed to a minimum standard with respect to the resolution of treaty-related disputes. In particular, this includes a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure.</p>	<p>Forum on Tax Administration - Mutual Agreement Procedures Forum/ Working Party 1 on Tax Treaties</p>
<p><b>Action 15 - Developing a Multilateral Instrument to Modify Bilateral Tax Treaties</b></p> <p>This action explored the technical feasibility of a multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties. This led to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which was adopted in November 2016.</p>	<p>Ad Hoc Group on the Multilateral Instrument for BEPS tax treaty measures</p>



## FURTHER READING

Overview of the OECD's work on BEPS:

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

OECD (2019), *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris.

<https://oe.cd/beps-programme-of-work-tax-challenges-digitalised-economy>

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

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

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

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

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

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

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This is the third annual progress report of the OECD/G20 Inclusive Framework on BEPS. The report describes the progress made to deliver on the mandate of the OECD/G20 Inclusive Framework, covering the period from July 2018 to May 2019. The report contains an overview and three sections of substantive content. Part 1 focuses on the highlights of the work on addressing the tax challenges of the digitalisation of the economy. Part 2 describes the progress in respect to the peer reviews of the BEPS minimum standards. Part 3 describes other key developments. These are followed by three annexes providing information on the membership of the OECD/G20 Inclusive Framework on BEPS (Annex A) and a list of the BEPS Actions with a guide to where this work is done within the OECD (Annex B).



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