



LES 15 ACTIONS DU BEPS
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Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report

The spread of the digital economy poses challenges for international taxation. This report sets out an analysis of these tax challenges. It notes that because the digital economy is increasingly becoming the economy itself, it would not be feasible to ring-fence the digital economy from the rest of the economy for tax purposes. The report notes, however, that certain business models and key features of the digital economy may exacerbate BEPS risks, and shows the expected impact of measures developed across the BEPS Project on these risks. The report also describes rules and implementation mechanisms to enable efficient collection of value-added tax (VAT) in the country of the consumer in cross-border business-to-consumer transactions, which will help level the playing field between foreign

and domestic suppliers. The report also discusses and analyses options to deal with the broader tax challenges raised by the digital economy, noting the need for monitoring developments in the digital economy over time

[Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 - 2015 Final Report](#)

This report sets out recommendations for domestic rules to neutralise the effect of hybrid mismatch arrangements and includes changes to the OECD Model Tax Convention to address such arrangements. Once translated into domestic law, the recommendations in Part 1 of the report will neutralise the effect of cross-border hybrid mismatch arrangements that produce multiple deductions for a single expense or a deduction in one jurisdiction with no corresponding taxation in the other jurisdiction. Part 1 of the report sets out recommendations for rules to address hybrid mismatches in respect of payments made under a hybrid financial instrument or payments made to or by a hybrid entity. It also recommends rules to address indirect mismatches that arise when the effects of a hybrid mismatch arrangement are imported into a third jurisdiction. The recommendations are supported by a commentary and examples to illustrate how they should apply. Part 2 of the report sets out proposed changes to the Model Convention that will ensure the benefits of tax treaties are only granted to hybrid entities (including dual resident entities) in appropriate cases. Part 2 also considers the interaction between the OECD Model Convention and the domestic law recommendations in Part 1.

[Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report](#)

This report sets out recommendations in the form of building blocks for effective CFC rules. The recommendations are designed to ensure that jurisdictions that choose to implement them, have rules that effectively prevent taxpayers from shifting income into foreign subsidiaries. The report sets out the following six building blocks for the design of effective CFC rules: (1) definition of a CFC, (2) CFC exemptions and threshold requirements, (3) definition of income, (4) computation of income, (5) attribution of income, and (6) prevention and elimination of double taxation. Because each country prioritises policy objectives differently, the recommendations provide flexibility to implement CFC rules that combat BEPS in a manner consistent with the policy objectives of the overall tax system and the international legal obligations of the country concerned.

[Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report](#)

The mobility and fungibility of money makes it possible for multinational groups to achieve favourable tax results by adjusting the amount of debt in a group entity. The recommended approach ensures that an entity's net interest deductions are directly linked to its level of economic activity, based on taxable earnings before deducting net interest expense, depreciation and amortisation (EBITDA). This approach includes three parts: a fixed ratio rule based on a benchmark net interest/EBITDA ratio; a group ratio rule which allows an entity to deduct more interest expense in certain circumstances based on the position of its worldwide group; and targeted rules to address specific risks. A country may choose not to introduce the group ratio rule, but in this case it should apply the fixed ratio rule to multinational and domestic groups without improper discrimination.

[Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report](#)

Preferential regimes continue to be a key pressure area. Current concerns are primarily about preferential regimes which can be used for artificial profit shifting and about a lack of transparency in connection with certain rulings. The report sets out an agreed methodology to assess whether there is substantial activity. In the context of IP regimes such as patent

boxes, agreement was reached on the “nexus approach” which uses expenditures as a proxy for substantial activity and ensures that taxpayers can only benefit from IP regimes where they engaged in research and development and incurred actual expenditures on such activities. The same principle can also be applied to other preferential regimes so that such regimes are found to require substantial activity where the taxpayer undertook the core income generating activities. In the area of transparency, a framework has been agreed for the compulsory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange. The results of the application of the existing factors applied by the FHTP, and the elaborated substantial activity and transparency factors, to a number of preferential regimes are included in this report. *English*

Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report

This report includes changes to the OECD Model Tax Convention to prevent treaty abuse. It first addresses treaty shopping through alternative provisions that form part of a minimum standard that all countries participating in the BEPS Project have agreed to implement. It also includes specific treaty rules to address other forms of treaty abuse and ensures that tax treaties do not inadvertently prevent the application of domestic anti-abuse rules. The report finally includes changes to the OECD Model Tax Convention that clarify that tax treaties are not intended to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping) and that identify the tax policy considerations that countries should consider before deciding to enter into a tax treaty with another country.

Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report

This report includes changes to the definition of permanent establishment in the OECD Model Tax Convention that will address strategies used to avoid having a taxable presence in a country under tax treaties. These changes will ensure that where the activities that an intermediary exercises in a country are intended to result in the regular conclusion of contracts to be performed by a foreign enterprise, that enterprise will be considered to have a taxable presence in that country unless the intermediary is performing these activities in the course of an independent business. The changes will also restrict the application of a number of exceptions to the definition of permanent establishment to activities that are preparatory or auxiliary nature and will ensure that it is not possible to take advantage of these exceptions by the fragmentation of a cohesive operating business into several small operations; they will also address situations where the exception applicable to construction sites is circumvented through the splitting-up contracts between closely related enterprises.

Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports

The report contains revisions to the OECD Transfer Pricing Guidelines to align transfer pricing outcomes with value creation. The revised guidance focuses on the following key areas: transfer pricing issues relating to transactions involving intangibles; contractual arrangements, including the contractual allocation of risks and corresponding profits, which are not supported by the activities actually carried out; the level of return to funding provided by a capital-rich MNE group member, where that return does not correspond to the level of activity undertaken by the funding company; and other high-risk areas. The report also sets out follow-up work to be carried out on the transactional profit split method which will lead to detailed guidance on the ways in which this method can appropriately be applied to further align transfer pricing outcomes with value creation.

Measuring and Monitoring BEPS, Action 11 - 2015 Final Report

There are hundreds of empirical studies finding evidence of tax-motivated profit shifting, using different data sources and estimation strategies. While measuring the scope of BEPS is challenging given its complexity and existing data limitations, a number of recent studies

suggest that BEPS is responsible for significant global corporate income tax (CIT) revenue losses. This report assesses currently available data 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, using different data sources and assessing different BEPS channels. These indicators provide evidence that BEPS exists and has been increasing over time. New empirical analysis estimates that the scale of global CIT revenue losses could be between USD 100 and 240 billion annually at 2014 levels. The report also presents a toolkit to assist countries evaluate the fiscal effects of BEPS countermeasures. The research also finds significant non-fiscal economic distortions arising from BEPS. The report concludes by making recommendations regarding data and monitoring tools to improve the analysis of BEPS in the future.

□ **Mandatory Disclosure Rules, Action 12 - 2015 Final Report**

The lack of timely, comprehensive and relevant information on aggressive tax planning strategies is one of the main challenges faced by tax authorities worldwide. Mandatory disclosure regimes can enable countries to quickly respond to tax risks by providing early access to such information. This report includes an overview of mandatory disclosure regimes, based on the experiences of countries that have such regimes, and sets out recommendations for a modular framework for use by countries wishing to implement or amend mandatory disclosure rules in order 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, more timely information with the compliance burdens for taxpayers. This report also sets out specific recommendations for rules targeting international tax schemes, as well as for the development and implementation of more effective information exchange and co-operation between tax administrations.

Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report

This report contains revised standards for transfer pricing documentation incorporating a master file, local file, and a template for country-by-country reporting of revenues, profits, taxes paid and certain measures of economic activity. The revised standardised approach will require taxpayers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess transfer pricing and other BEPS risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries. Country-by-country reports will be disseminated through an automatic government-to-government exchange mechanism. The implementation package included in this report sets out guidance to ensure that the reports are provided in a timely manner, that confidentiality is preserved and that the information is used appropriately, by incorporating model legislation and model Competent Authority Agreements forming the basis for government-to-government exchanges of the reports.

Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report

Developing a Multilateral Instrument to Modify Bilateral Tax Treaties, Action 15 -2015 Final Report