/G20 BASE EROSION AND T SHIFTING (BEPS) PROJECT ckground and progr date

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BETTER POLICIES FOR BETTER LIVES

AN OVERVIEW OF THE BEPS PROJECT

OECD Work on Taxation

- Focus has historically been on the development of common standards to eliminate double taxation for cross border investments
  - Model Tax Convention, which serves as the basis for over 3,000 bilateral tax treaties
  - Transfer Pricing Guidelines, which provide common standards for allocating income among members of a multinational group
- Prevention of double taxation remains core work but there is now recognition that the issue of double non-taxation due to base erosion and profit shifting (BEPS) should also be tackled

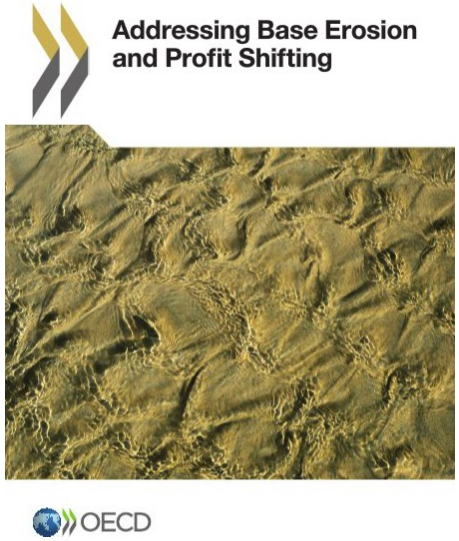
What is BEPS?

- Stated simply, BEPS arises because under the existing rules MNEs are often able to artificially separate the allocation of their taxable profits from the jurisdictions in which these profits arise
- This can result in income going untaxed anywhere, and significantly reduces the corporate income tax paid by MNEs in the jurisdictions where they operate

Why is BEPS a problem?

- It distorts **competition**
  - *Businesses that operate cross-border may profit from BEPS opportunities which gives them competitive advantages compared to enterprises that operate mostly at the domestic level*
- It distorts **investment decisions**
  - *…towards activities that have lower pre-tax rates of return but higher after tax rates of return – this may lead to an inefficient allocation of resources*
- It is an issue of **fairness**
  - *If other taxpayers think that MNE's can legally avoid paying income tax, it will undermine voluntary compliance by all taxpayers*

Report: Addressing BEPS



Addressing Base Erosion and Profit Shifting **published on 12 February 2013**

- identifies main pressure areas leading to opportunities for BEPS
- calls on governments to address these areas: in a nutshell, if governments are not happy with the results under the laws, they must change the laws

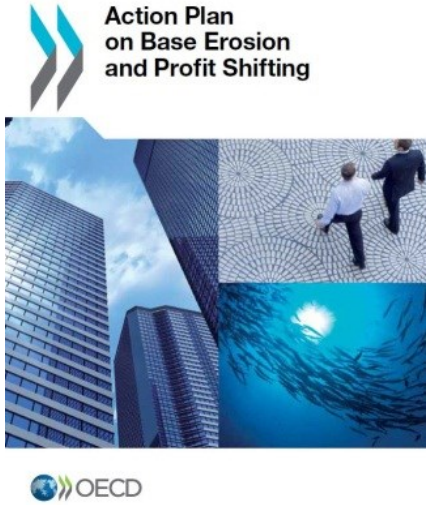
Key Tax Principles and Opportunities for BEPS

- In practice any structure aimed at BEPS incorporate a number of co-ordinated strategies, which often can be broken down into four elements
  - minimisation of taxation in a foreign operating or source country either by shifting gross profits via trading structures or reducing net profit by maximising deductions at the level of the payer
  - low or no withholding tax at source
  - low or no taxation at the level of the recipient (via low-tax jurisdictions, preferential regimes, hybrid mismatch arrangements) with entitlement to substantial non-routine profits via intra-group arrangements
  - no current taxation of the low taxed profits at level of ultimate parent. Further, effective cash repatriation strategies and "permanent" foreign reinvestment of low taxed cash
- The Report identifies a number of pressure areas e.g. hybrids, preferential regimes, anti-avoidance rules, etc.

Developing the Action Plan on BEPS

- Following the February report, all OECD Members and several non member countries in the Committee on Fiscal Affairs participated in the work to develop the Action Plan, including Argentina, China, India, Russia, and South Africa.
- The development of the action plan was also informed by engagement with business and civil society (consultations with BIAC, TUAC and NGOs)
- The action plan was approved at the meeting of the Committee on Fiscal Affairs on 25 June 2013. All G20 countries participated. It was published on 19 July 2013.

The BEPS Action Plan



BEPS Action Plan published in July 2013

15 Actions organised around *three* main pillars:

- The ***coherence*** of corporate tax at the international level
- A realignment of taxation and ***substance***
- ***Transparency***, coupled with certainty and predictability

OECD/G20 BEPS Project

- The work is carried out by the Committee on Fiscal Affairs (CFA) via its subsidiary bodies
- All eight non-OECD G20 countries (Argentina, Brazil, China, India, Indonesia, Russia, Saudi Arabia and South Africa) and OECD Accession countries (Colombia and Latvia) are **Associates** in the BEPS Project
- **Associates** in a Project participate on an equal footing with OECD countries, including participation in its bureau in the Committee overseeing the project in the discussions and in the decision-making process

An ambitious timeline - Deliverables

September 2014

- Digital Economy Report
- Hybrids
- Review of HTP Regimes
- Preventing Treaty Abuse
- Addressing TP aspects of Intangibles (Phase 1)
- Addressing TP documentation
- Multilateral Instrument Report

September 2015

- CFC Rules
- Interest Deductibility
- Strategy on expansion of FHTP
- Addressing avoidance of PE status
- Addressing TP aspects of Intangibles (Phase 2)
- Addressing TP aspects of risks and capital
- Addressing TP aspects of other high risk transactions
- Report on Data and Economic Analyses
- Mandatory Disclosure Rules
- Dispute Resolution

December 2015

- Addressing TP Interest Deductions
- Revision of HTP Criteria
- Multilateral Instrument

THE 2014 DELIVERABLES

Where are we in the process?

- After 12 months of work, committee meetings, online collaboration, engagement with developing countries, discussion drafts, stakeholders input, and public consultations …
- … The seven 2014 deliverables have been agreed by consensus by OECD and G20 countries, together with a statement that explains their content and nature
- With this first set of deliverables, the OECD/G20 Project has gone a long way in achieving consensus on key measures to address BEPS.

The 2014 Deliverables

- **Explanatory Statement**
- **3 Reports**:
  - two final reports on the Digital Economy (Action 1) and the Feasibility of a Multilateral Instrument (Action 15)
  - one interim report on progress in fighting Harmful Tax Practices (Action 5)
- **Draft Rules in 4 areas**
  - Hybrid mismatch arrangements
  - Treaty abuse
  - TP Intangibles
  - TP Documentation and CBC template

Action 1 – Digital Economy

- Not possible to ring-fence the digital economy for tax purposes but some of its key features may exacerbate BEPS risks.
- Those BEPS risks will be addressed by other work in BEPS Project - notably Action 7 (Artificial Avoidance of PE), Actions 8-10 (Transfer Pricing), Action 3 (CFC).
- Rules to ensure that VAT on B2C transactions paid in destination country ready by 2015.
- Issues related to nexus and data and options to address them presented and decision to wait to finalisation of BEPS work to take decisions on broader challenges.

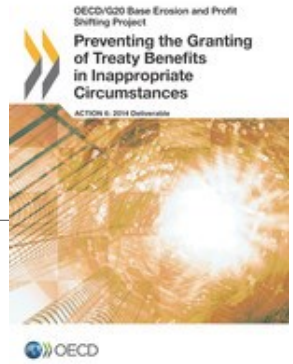
Action 2 – Hybrids

- General and specific recommendations for domestic hybrid mismatch rules and model treaty provisions which will put an end to hybrid mismatches.
- Matching rule that aligns the tax outcomes with that of the other jurisdiction without interfering with any other tax, commercial or regulatory outcomes
- Ordering rule which prevents more than one country applying their domestic hybrid mismatch rules to the same arrangement.

Action 5 – Harmful Tax Practices

- Agreement that preferential regimes need to require presence of substantial activity not to be considered harmful
- Three approaches considered to determine that, agreement to be reached
- Agreement that preferential regimes need to be transparent
- Agreement reached on framework for compulsory spontaneous exchange on rulings related to preferential regimes

Action 6 – Treaty Abuse

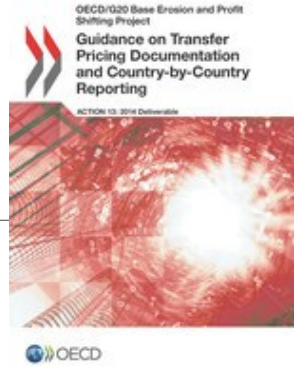


- Agreement that treaties not to be used to generate double non-taxation
- Agreement on a common minimum standard to tackle treaty abuse
- Further work to be done on some technical details related to the drafting of the provisions
- Further work to consider impact of anti-abuse provisions on collective investment vehicles.

Action 8 – TP Intangibles

- Consensus was reached on treatment of corporate synergies, location savings and definition of intangibles.
- Interim guidance on allocation of returns from intangibles
  - legal ownership alone is not enough
  - contributions to intangible value must be appropriately rewarded
- Work closely related to 2015 work on treatment of risks and financing so some sections are bracketed

Action 13 – TP Doc and CBC



- Agreement on standard TP documentation that includes Master file, local file and country-by-country reporting template
- Overview of where profits, sales, employees, and assets are located and where taxes are paid and accrued on a country-by-country basis
- Useful tool for risk assessment
- Work ongoing to ensure high confidentiality of information given to tax admnistration

Action 15 – Multilateral Instrument

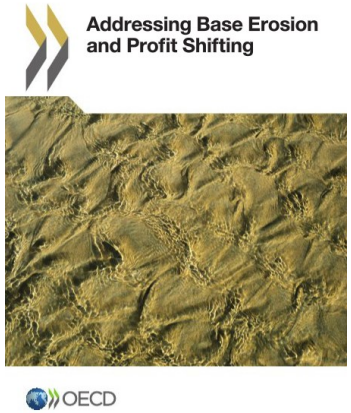
- Multilateral instrument to implement BEPS measures and amend bilateral tax treaties is feasible and desirable
- Will expedite and streamline the implementation of tax treaty related measures developed to address BEPS
- Draft terms of reference / mandate for consideration by the Committee on Fiscal Affairs in January 2015

NEXT STEPS

Next Steps – 2014 and 2015

- Report to G20 Leaders in November and continue the technical work, namely
- 2014 deliverables further refined to address technical issues and consider interaction with the 2015 deliverables
- Work on 2015 deliverables ongoing
- Consultation with stakeholders will continue
- Engagement with developing countries will be strengthened
- Finalise the work by 2015

Questions and further information



QUESTIONS?

Further information:

http://www.oecd.org/ctp/beps.htm

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