IMPLEMENTATION CHALLENGES IN BEPS

ICRIER 7TH ANNUAL G20 CONFERENCE

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What is BEPS?

Stated simply, BEPS arises because under the existing rules it is possible to artificially separate the allocation of taxable profits from the jurisdictions in which these profits arise.
Why the BEPS Project?

- Need to update the rules for the taxation of multinationals to
  - Reflect changes in the underlying, digitalised, economy
  - Ensure that system ‘is’ and ‘is perceived to be’ fair
  - Maintain long-standing consensus-based framework

- It is a matter of trust / integrity / economic efficiency / equality
Where we are in the BEPS project

Launched two years ago with the *BEPS Action Plan* (July 2013) following the report *Addressing BEPS* (February 2013)

First set of interim reports released in September 2014

**Final BEPS Package** to be delivered in **October** to G20 FM and **in November 2015** to Leaders

Post-2015 BEPS work
Features of the BEPS Project

**Fast-pace**

- 2-year time-bound

**Inclusive**

- OECD and G20 countries working together on an equal footing
- 14 Developing Countries, ATAF, CREDAC and CIAT participating directly
- Other 60 Developing Countries participating via Regional Networks in Asia, Africa, Latin America and Eurasia

**Transparent**

- 23 Discussion Draft published
- 11,000 pages of comments received
- 14 public consultations with stakeholders and regular webcasts
What’s going to be in the BEPS package?

a) Data and economic analyses (Action 11)

b) Reinforced international standards on tax treaties and transfer pricing: Actions 6 (treaty abuse) 7 (permanent establishment) 8-10 (transfer pricing) 13 (tp documentation)

c) Criteria and their application to ensure fair tax competition: Action 5 (harmful tax practices)

d) Recommendations, best practices, common approaches to bridge gaps among domestic laws: Actions 2 (hybrid mismatches) 3 (CFC rules) 4 (interest deductibility) 12 (mandatory disclosure)

e) Measure to provide more predictability (Action 14)

f) Analytical reports on complex issues: Actions 1 (digital economy) 15 (multilateral instrument)
BEPS in a *nutshell*

**Market / Production Country**

- Avoid Taxable Presence
- Minimise Assets/Risks
- Maximise Deductions

**Intermediate Country 1**

- Intermediate Sub 1
  - Low or no Withholding tax
  - Preferential Regime
  - OR
  - Hybrid Mismatches
  - OR
  - Base Eroding Payments

**Intermediate Country 1**

- Intermediate Sub 2
  - Maximise Assets/Risks
  - OR
  - Minimise Assets/Risks

**Ultimate Residence Country**

- Parent Co
  - Ineffective/No CFC Rules
  - Minimise Assets/Risks
  - Maximise Deductions
In addition to some technical follow-up work

Focus is / will be on

– Supporting and Monitoring Implementation
– In an Inclusive manner
## Implementation

### Changes to TP Guidelines

1. **Chapter I**: recognising actual transactions; allocations of risk; group synergies, location savings and other local market features; assembled workforce

2. **Chapter II**: Commodities

3. **Chapter V**: TP documentation and CbC report

4. **Chapter VI**: Intangibles

5. **Chapter VII**: Low value-adding services

6. **Chapter VIII**: Cost contribution arrangements

### Changes to MTC

1. Hybrid entities
2. LOB and/or PPT
3. Preamble
4. Other treaty anti-abuse measures (e.g. dividend washing, etc.)
5. Permanent Establishment definition
6. Minimum standard on Dispute Resolution (Arbitration)

### Other recommendations

1. Country-by-Country Reporting and TP Documentation
2. Harmful tax practices
3. Hybrid mismatches
4. Interest deductibility
5. CFC rules
6. Mandatory disclosure rules

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Maybe immediately applicable depending on the legal and tax system

Amend bilateral treaties
Multilateral instrument to be open for signature in 2016

Changes to domestic laws or practices depending on the system
The effectiveness of the project will be determined by its widespread and consistent implementation, thus importance of monitoring

Monitoring implementation key also to ensure level playing field

G20 FM Ankara: We will continue to work on an equal footing as we monitor the implementation of the BEPS project outcomes at the global level, in particular, … call on the OECD to prepare a framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions, particularly developing economies, on an equal footing […]

Modular: monitoring may take different forms depending on the item concerned

Capacity building should also be a key element of the monitoring framework.

Interest of non-OECD non-G20 countries is clear: 14 already happily participate in the work. In total about 90 countries are negotiating the multilateral instrument.

Proposal for an inclusive framework and then set up in 2016. Positive experiences on which to draw: Global Forum on Transparency and Exchange of Information
Concluding remarks

• A system meant to eliminate double taxation cannot itself generate double non-taxation

• The implementation of the BEPS measures are expected to put an end to the double non-taxation, stateless income and the like

• BEPS measures aimed at restoring and strengthening sovereign taxing rights by ensuring that countries can protect their tax bases

• The BEPS Project is a won bet: G20 and OECD demonstrated how governments can work together and achieve tangible results in short timeframes (top-down approach)

• Now time to go beyond OECD and G20 and ensure total inclusiveness so that standards are applied globally and adapted where needed
Questions and further information

Stay tuned: 5 October is approaching

Further information: www.oecd.org/tax/beps.htm