



cutting through complexity

A new era in international tax

Tax morality, transparency,
base erosion and profit shifting

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FOREWORD

Tax directors around the world are shouldering the impact of fundamental changes in attitudes and approaches to tax. For many, the days are gone when tax was solely an expense to be managed. Whether it is corporate social responsibility, tax governance, enhanced transparency with tax authorities and investors or society holding individuals and businesses accountable for paying a fair amount of tax, these issues are subject to increasingly heated debates.

Corporate reputation management has always been an issue for large global companies. Now tax and the issue of paying your fair share is one of the most prominent areas being scrutinized by governments, the general public and, to a great extent, the media. Just like corporate responsibility and environmental issues, brand damage can occur if there is perception that a company's tax affairs are overly aggressive or 'unfair'.

As the public looks to businesses to 'do the right thing', expectations for more transparency are increasing. We expect the trends will continue toward more

transparency between taxpayers and the tax authorities, and more disclosure by public companies as to the amount of their tax payments and where those taxes are being paid.

On the other hand, tax systems have not kept up with changes in business models and practices, so there is room for improvement. And, countries often use their tax systems to compete for investment dollars and jobs, and to benefit the foreign activity of their own multinationals. Much of the current debate stems from this reality.

This paper asks four questions:

1. What are the underlying factors driving the international debate?
2. What is the story so far?
3. What are the areas of focus and likely future developments?
4. How does a company director, senior executive or advisor best respond?

With reputations at stake, ultimately for senior business leaders it will be a question of watching the developments and planning for a potential dialogue with all stakeholders on their tax matters.



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KPMG's Global Head of Tax

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FACTORS DRIVING THE DEBATE

The confluence of five streams

1 **Post global financial crisis (GFC) revenue and expenditure**

The new economic realities faced by governments around the world mean that significant tax reforms are taking place. As governments look to recoup lost revenues from the economic downturn, the entire world is in the midst of a period of considerable change with their taxation regimes. A large number of countries are considering, or are in the process of implementing, substantial reforms to their tax systems.

This has given rise to additional focus on tax payable by companies and high net worth individuals by politicians and public officials seeking to strengthen a weak fiscal position.

That focus is enhanced by a general public impression, particularly in Europe and the US, that large companies and banks caused the crisis and that they should be the first port of call for revenue, rather than the person on the Clapham omnibus, the Parisian RER, the Metro de Madrid or the Cleveland RTA.

2 **Rise of corporate social responsibility**

The second stream is the rise and broad acceptance of corporate social responsibility (CSR) in the last decade. This movement seeks to integrate a broad social agenda into the purview of business operations.

While diversity and sustainability have been the vanguard of CSR, anti-corruption and tax arguably constitute the next wave.

3 **Rise of media focus**

The third stream is the rise of media focus, including social media power and the entrance of many not-for-profit organizations into the taxation realm. Coverage of the inadequacies of Greek revenue collection, the effective tax rate of US Presidential Candidate Mitt Romney, the activities of UK Uncut and, more recently, the former French Budget Minister's reported evasion activities have kept taxation in the news spotlight.

This has had two effects.

- First, it has changed the nature and impact of reputational risk associated with tax matters. There is now more at stake. Tax has become an 'operational business' issue for some, no longer limited to its domain in the finance area of a major corporation.
- Second, it has placed tax into a level of discussion which is not attuned to its nuances and complexities. This makes discussion far more difficult.

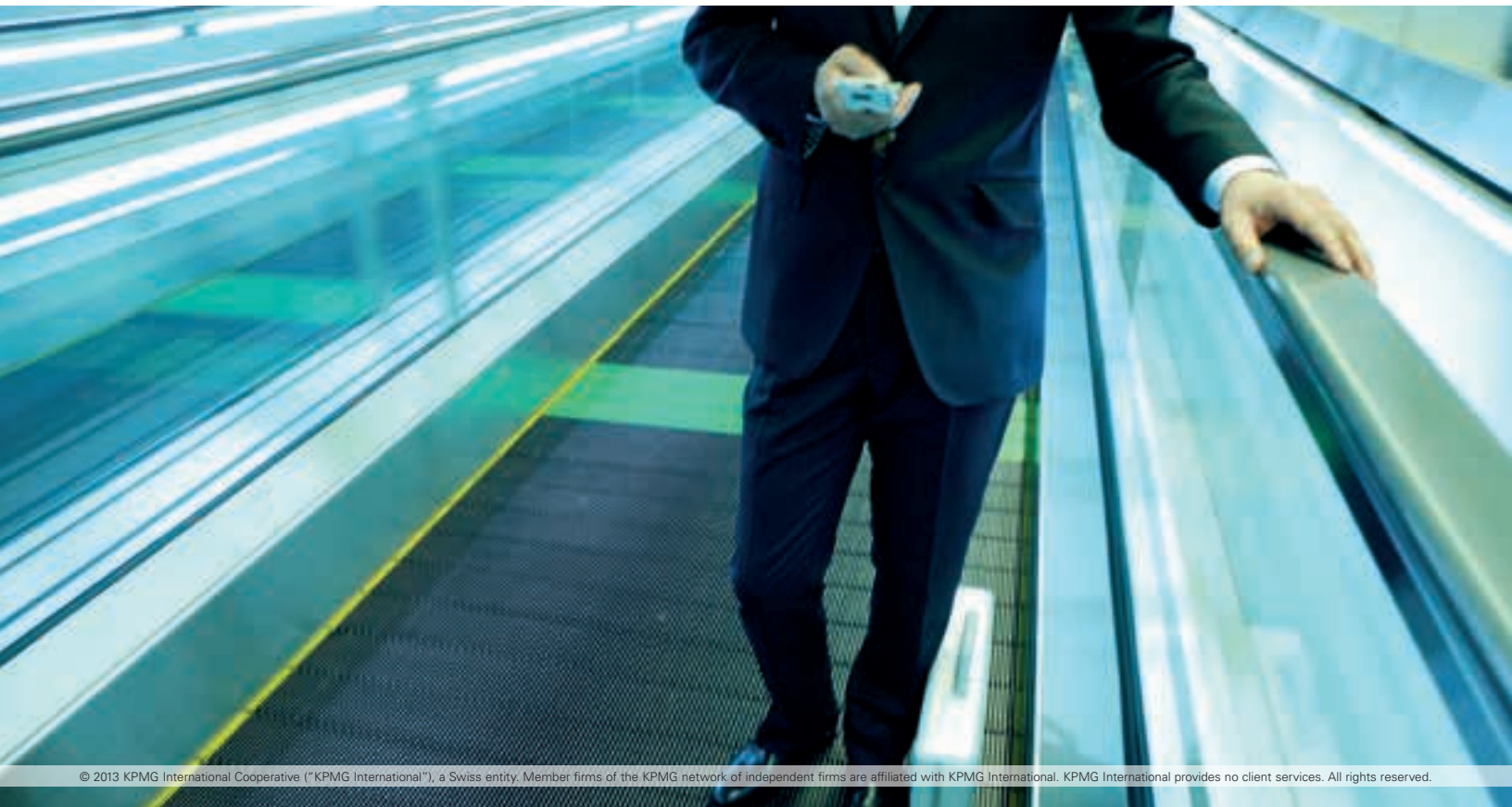
4 Internationalization of business

The fourth stream is the increasing internationalization of business. This is not simply a question of capital mobility, but of longer, more specialized and more international supply chains.

Those supply chains increasingly separate intellectual property, marketing capacity and support services into jurisdictions which are neither in the country of residence of the ultimate group holding company, nor in the country where the customers or the primary tangible factors of production are located.

5 Increasing use of the internet

Strongly related to increasing internationalization of business, is the fifth stream, which is the increasing use of the internet for sales and services. Sellers often do not have a physical presence where the transaction is initiated. This has given rise to a discussion of whether the standard tax treaty model, of more than 60 years standing, continues to be appropriate in a digital environment.



THE STORY SO FAR... TAX MORALITY



...businesses who think they can carry on dodging [their] fair share... well they need to wake up and smell the coffee, because the public who buy from them have had enough.



UK Prime Minister, David Cameron
World Economic Forum,
Davos, Switzerland, January 2013

OCTOBER 2010

Greek sovereign debt crisis fallout

While the heightened discussion of tax morality and transparency in recent times has many sources, a significant one concerns the media attention given to the causes of the Greek sovereign debt crisis.

A University of Chicago report estimated that tax evasion by self-employed professionals alone was 28 billion euros (EUR) or 31 percent of the budget deficit for that year. (See Artavanis, Morse, Tsoutsoura, *Tax Evasion across industries: Soft credit evidence from Greece*, 2012).

The fact that the European Central Bank and the IMF provided approximately EUR150 billion in bailout loans to Greece (out of a current cumulative total of about EUR240 billion) focused attention on comparative tax ethics of various systems throughout Europe and elsewhere.

This original discussion of individual tax evasion spread in multiple directions, including the use of Swiss bank accounts and offshore holding companies by Greek and other European citizens.

UK Uncut and high street action – Part 1

While Greece involved tax avoidance and the illegal publication of tax data, this focus received a transformation elsewhere in Europe and particularly in the UK. In October 2010, a group of activists formed an organization called UK Uncut, which was an anti-austerity direct action group.

While their focus was much broader than taxation, they initially organized protests against a major telecommunications company (which had recently settled a tax dispute in the UK) and a group holding a series of high street stores (which, it was asserted, paid virtually no tax).

UK political dimension

This took on a political dimension of its own with a series of high-profile entertainers faulted for their involvement in tax avoidance schemes, and Prime Minister David Cameron and Chancellor George Osborne denouncing such behavior as “morally wrong”.

OCTOBER 2012

Double Irish Dutch Sandwich

In late October 2012, the international financial media began to discuss and explain the 'Double Irish Dutch Sandwich'.

This concept had been used in tax literature since at least 2007, but took on significant prominence in late 2012 as an example of how large multinationals can structure their affairs to direct profits into low or no tax jurisdictions.

DECEMBER 2012

UK Uncut and high street action – Part 2

In December 2012, UK Uncut launched a campaign against a major coffee retailer on the basis of the small amount of tax it had paid in the UK relative to its very large sales.

The retailer responded by indicating that it had listened to its customers and that it would pay approximately EUR10 million of tax in each of the income years of 2013 and 2014, whether it was profitable or not.

This was coupled with other profiles in the press on internet retailers and a search engine company.



SHIFTING GOAL POSTS

Are we experiencing parameter changes or shifting goal posts on international taxation? Yes.

- For many, tax is becoming a governance and reputational issue.
- The traditional concept of legality being the appropriate delineation of what is acceptable and what is not is changing. The reputational question, as vague as it may be, is coming to the fore.
- There is momentum to change the rules of international taxation that have been embedded for more than 60 years.

JANUARY 2013

David Cameron in Davos

In January 2013, the UK Prime Minister, David Cameron, presented to the World Economic Forum in Davos and used that opportunity to indicate that tax minimization would be placed on the G8 agenda.

He said, “businesses who think they can carry on dodging [their] fair share, or that they can keep on selling to the UK and setting up ever more complex tax arrangements abroad to squeeze their tax bills right down, well they need to wake up and smell the coffee, because the public who buy from them have had enough.”

France – The Collin & Colin report

Also in January, the French Government released a report they had commissioned by Pierre Collin and Nicholas Colin on international taxation in the digital environment.

They concluded that the concept of ‘permanent establishment’ (PE) needed to be changed under international tax treaties to acknowledge that users of the internet were real creators of value. Such a system, it was acknowledged, could only be introduced with wide international consensus and the report pushed governments to seek that consensus in the OECD, G8 and G20 forums.

In the meantime, it was suggested it may be appropriate for the French

Government to introduce a tax on the transfer of data to certain non-resident providers of services. This is essentially the concept of a “bit or byte tax”.

In addition, the Dutch Parliament has been debating the role of the Netherlands in international tax structuring, with some Parliamentarians suggesting that Dutch tax rules, which promote international holding companies, may be inappropriate.

FEBRUARY 2013

Addressing Base Erosion and Profit Shifting (BEPS) – Part 1

On 1 February 2013, the OECD released a report titled *Base Erosion and Profit Shifting* (BEPS). BEPS refers to the reduction or transfer of economic activities and consequential reduction in profits out of a country. This was released in advance of a G20 Finance Ministers meeting where Australia, France, Germany and the UK called for global action to tackle base erosion.

The US has seen multiple debates on the need for tax reform in recent years at various levels of sophistication. The 2012 election campaign saw considerable focus on Presidential Candidate Mitt Romney’s personal tax affairs, his effective tax rate and the reasons for that rate.



MARCH 2013

Business and Industry Advisory Committee (BIAC) – participation and dialogue

On 26 March 2013, to further collaboration and dialogue with stakeholders, the OECD met and consulted with BIAC, bringing together business representatives, government and others to address the international tax issues outlined in the OECD BEPS report.

Attendees included representatives from the OECD, the European Commission, specialists from KPMG and other professional services firms, as well as government representatives from Canada, Denmark, France, Germany, India, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, the UK and the US.

The OECD has organized the BEPS project around three work clusters that are chaired by officials from key member countries: Countering Base Erosion, chaired by Germany; Jurisdiction to Tax, co-chaired by France and the US; and Transfer Pricing, chaired by the UK.

MAY 2013

Forum on Tax Administration

This Forum was set up by the OECD 10 years ago and covers 45 economies. Following its eighth meeting in Moscow, it issued a *Final Communiqué* which was broadly supportive of the OECD BEPS initiative. Interestingly, it noted that three members – Australia, the UK and the US – have obtained a very significant amount of data on complex offshore structures that they intend to share with other members.

JUNE 2013

G8 action plans on taxation

The G8 meeting in Lough Erne, Northern Ireland, resulted in a 10 point declaration on taxation matters. Each member of the G8 agreed to produce an action plan in relation to the declaration. Canada, France, Italy, Japan, the UK and the US have released individual plans which focus on transparency, beneficial ownership of shares and information sharing. Germany and Russia are expected to release similar plans before the end of 2013.

JULY 2013

OECD Action Plan released

On 19 July 2013, the OECD released its *Action Plan for Base Erosion and Profit Shifting*. This Action Plan is viewed as one the most significant developments in international taxation since the development of tax treaties nearly 100 years ago.

G20 Finance Ministers endorse OECD Action Plan

On 20 July 2013, the G20 Finance Ministers meeting in Moscow fully endorsed the OECD Action Plan.

LOUGH ERNE DECLARATION OF THE G8

Business drives growth, reduces poverty and creates jobs and prosperity for people around the world. Governments have a special responsibility to make proper rules and promote good governance. Fair taxes, increased transparency and open trade are vital drivers. A real difference can be made by doing the following:

- Tax authorities across the globe should automatically share information to fight the scourge of tax evasion.
- Countries should change rules that let companies shift their profits across borders to avoid taxes, and multinationals should report to tax authorities what tax they pay and where.
- Companies should know who really owns them, and tax collectors and law enforcers should be able to obtain this information easily.
- Developing countries should have the information and capacity to collect the taxes owed them – and other countries have a duty to help them.
- Extractive industry companies should report payments to all governments – and governments should publish income from such companies.
- Minerals should be sourced legitimately, not plundered from conflict zones.
- Land transactions should be transparent, respecting the property rights of local communities.
- Governments should roll back protectionism and agree to new trade deals that boost jobs and growth worldwide.
- Governments should cut wasteful bureaucracy at borders and make it easier and quicker to move goods between developing countries.
- Governments should publish information on laws, budgets, spending, national statistics, elections and contracts in a way that is easy to read and re-use, so that citizens can hold them to account.



THE STORY SO FAR... TRANSPARENCY

MAY 2008

Personal tax transparency

Finland, Norway and Sweden have for many years published data on individual taxpayers, levels of income and tax payments. This has led to the creation of “Top 10” lists by the media. As the data released now carries search functions, many complain of the breach of privacy.

On 1 May 2008, in the last days of the Romano Prodi Government, the Italian National Tax Office published on its website the earnings and taxes paid by 38 million taxpayers from 2005, in alphabetical order, and by region.

The website lasted only a few hours before it crashed from overuse. It was subsequently closed by the Italian Privacy Office, but not before the details of a number of high-profile personalities were published by the press. The Italian Finance Minister responsible for releasing the data did so to highlight the level of avoidance within the country. The action was strongly criticized on the basis that such personal details could lead to greater criminal extortion.

OCTOBER 2010

Name and shame

In October 2010, Christine Lagarde, the former French Finance Minister (and now Managing Director of the IMF), released to the Greek Government a list of approximately 2,000 names of individuals who had deposits with the Geneva branch of a major bank (out of a total of 130,000 names that the French police had obtained).

Protesting against the Greek Government’s failure to launch an investigation, a Greek weekly published the list. This led to the editor of the publication being charged with a criminal offence, for which he was acquitted.

JUNE 2012

‘Open Tax Lists’ in Denmark

On 13 June 2012, the Danish Parliament passed laws requiring the publication of the amount of tax paid by all companies in Denmark. These have been referred to as ‘Open Tax Lists’ and are published on the Danish Revenue’s website.

The information disclosed is the level of taxable income, utilized tax losses, the estimated tax payable for the year and the type of tax – whether it is ordinary income tax, cooperative tax or tonnage tax. The level of revenue is not disclosed. Also, the information disclosed is replaced every year – historical details are not contained on the website.

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Item	36	Payment ratio	14.300
	65	Debt to assets	5.850
	3.00	T debt/Equ ratio	5.850
	3.65	Tot inv/assets	62.430
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INTERNATIONAL RESPONSES

Dodd-Frank Act in the US

SEC-registered companies in the extractive industries are required to disclose payments of taxes, royalties, fees, bonuses, dividends and infrastructure payments that are not *de minimis* in nature and made after 30 September 2013.

EU expansion of transparency disclosures

The EU is currently considering proposals to expand disclosures of taxes, royalties and similar payments not only in the extractive industries, but to projects in the forestry, construction, telecommunications and other sectors.

On 16 April 2013, the EU Parliament approved changes to require country-by-country reporting of tax payments by certain EU financial institutions.

Extractive industries transparency initiative

Voluntary framework involving over 70 mining, oil and gas companies who report on taxes, royalties, production entitlements, fees and bonuses and similar payments in the material jurisdictions in which they operate.

APRIL 2013

Rise of Foreign Account Tax Compliance Act (FATCA)

FATCA requires non-US financial institutions to identify and disclose the account holders' names, addresses, balances, receipts and withdrawals for certain US citizens. To ensure compliance, if the foreign financial institution does not comply, then those making payments to the non-compliant foreign financial institutions are required to withhold 30 percent of the gross payments.

A number of countries including Denmark, Germany, Mexico, Spain, Switzerland and the UK have entered into agreements with the US involving management of this exchange of information. Many more countries are expected to enter into similar agreements in the future.

On 9 April 2013, France, Germany, Italy, Spain and the UK agreed to develop and pilot a multilateral tax information exchange. Under this agreement, a wide range of information will be automatically exchanged in a manner similar to the FATCA exchanges with the US. On 24 July 2013, Australia also agreed to join the pilot scheme for multilateral exchange of information.

JUNE 2013

Australia's approach

On 29 June 2013, Australia enacted legislation requiring disclosure of taxes paid by corporate entities with an annual income of greater than 100 million Australian dollars (AUD), or with a Minerals Resource Rent Tax (MRRT) or Petroleum Resource Rent Tax (PRRT) liability.

The rules apply to corporate entities with either a 'reported total income' of AUD100 million or more; or a MRRT or PRRT liability in a year (irrespective of income). Reported total income is the entity's total gross income for accounting purposes. It includes exempt and foreign-sourced income and extraordinary gains. It is broader than ordinary and statutory income and turnover.

For corporate entities with a reported total income over AUD100 million it is currently proposed that the Commissioner will publish (probably on the Australian Taxation Office (ATO) website): the name, Australian Business Number (ABN), reported total income, taxable income and income tax payable. A tax loss or nil tax will be reported as not having taxable income. For MRRT and PRRT taxpayers, only the name, ABN and liability will be published.

The rules will apply from the 2013-14 income year and years starting after 1 July 2013 for MRRT and PRRT. The information is based on an entity's tax returns and thus taxpayers will not be required to provide additional information to the Commissioner.

Beneficial ownership of shares

The UK Government announced plans to revise the UK Companies Act to ensure that information about beneficial ownership of shares would be available to relevant authorities. The Government will consult on whether they should be publicly available. Trustees of express trusts would also be required to obtain and hold information on beneficial ownership.

PERSONAL TAX INFORMATION OF PUBLIC OFFICIALS

Since the early 1970s, it has become tradition in the US for the President in office to release their personal tax returns or at least a statement of their tax position. The personal tax returns of US Presidents going back to Richard Nixon's 1969 return are available on the internet.

In more recent times the public demand for openness has moved to the level of Presidential candidates. Candidate Mitt Romney was moved to release income tax returns and provide a summary of his tax affairs going back to 1990.

In the 2012 London Mayoral election, all three candidates were moved to release their personal income tax returns, and there has been considerable political debate on whether the UK should embrace greater publication of general tax information.



OECD BEPS ACTION PLAN

On 19 July 2013, the OECD released the *Action Plan on Base Erosion and Profit Shifting* that identified 15 specific actions that will give governments the domestic and international instruments to prevent corporations from paying little or no taxes.

The underlying rationale of the Action Plan is that globalization of the world economy has resulted in multinational enterprises shifting from country-specific models to global models with integrated supply chains, centralization of service functions, location of activities that are distant from the physical location of customers and increasing delivery of service and digital products over the internet.

The OECD states that these developments have opened up opportunities for multinational enterprises to greatly minimize their tax burden, leading to heightened sensitivity on what paying one's fair share really means.

The 15 actions can be classified into four categories:

1. Structural rule changes

There are five areas that could involve structural changes to international tax rules. They involve the digital economy, hybrid mismatches, controlled foreign corporation rules, the treatment of interest and financing and the rules surrounding PEs.

2. Aggressive planning and abuse of the tax system

There are three areas that can fall under the general heading of aggressive tax planning and abuse. They involve dealing with preferential tax regimes, preventing treaty abuse and establishing rules to disclose aggressive tax schemes.

3. Transfer pricing

There are four specific actions dealing with transfer pricing and an additional action that is a component of the Action Plan dealing with interest and financing. Three of these measures are based on the alignment of value creation with transfer pricing outcomes in the areas of intellectual property, risk and capital and other high-risk areas such as management fees and head office expenses. There is also a measure dealing with the documentation that multinational enterprises would need to provide.

4. Methodology

There are three measures which provide support for the broader program. They involve data collection and analysis on BEPS, making dispute resolution procedures between revenue authorities more effective and the introduction of a mechanism that would shortcut the need to renegotiate large numbers of tax treaties to implement the broader OECD program.

DETAILS OF THE OECD BEPS ACTION PLAN

The following is Annex A of the OECD's (2013) Action Plan on Base Erosion and Profit Shifting.

It is reproduced with permission from the OECD (OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. <http://dx.doi.org/10.1787/9789264202719-en>).

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Action	Description	Expected output	Deadline
1. Address the tax challenges of the digital economy	Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterization of income derived from new business models, the application of related source rules, and how to ensure the effective collection of VAT/GST with respect to the cross-border supply of digital goods and services. Such work will require a thorough analysis of the various business models in this sector.	Report identifying issues raised by the digital economy and possible actions to address them	September 2014
2. Neutralize the effects of hybrid mismatch arrangements	Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralize the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. This may include: (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual resident entities) are not used to obtain the benefits of treaties unduly; (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payor; (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules); (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and (v) where necessary, guidance on coordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be coordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping.	Changes to the Model Tax Convention	September 2014
		Recommendations regarding the design of domestic rules	September 2014

Action	Description	Expected output	Deadline
3. Strengthen CFC rules	Develop recommendations regarding the design of controlled foreign company rules. This work will be coordinated with other work as necessary.	Recommendations regarding the design of domestic rules	September 2015
4. Limit base erosion via interest deductions and other financial payments	Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be coordinated with the work on hybrids and CFC rules.	Recommendations regarding the design of domestic rules	September 2015
		Changes to the Transfer Pricing Guidelines	December 2015
5. Counter harmful tax practices more effectively, taking into account transparency and substance	Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.	Finalize review of member country regimes	September 2014
		Strategy to expand participation to non-OECD members	September 2015
		Revision of existing criteria	December 2015
6. Prevent treaty abuse	Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. Work will also be done to clarify that tax treaties are not intended to be used to generate double non-taxation and to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country. The work will be coordinated with the work on hybrids.	Changes to the Model Tax Convention	September 2014
		Recommendations regarding the design of domestic rules	September 2014
7. Prevent the artificial avoidance of PE status	Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemptions. Work on these issues will also address related profit attribution issues.	Changes to the Model Tax Convention	September 2015

Action	Description	Expected output	Deadline
8. Assure that transfer pricing outcomes are in line with value creation: intangibles	Develop rules to prevent BEPS by moving intangibles among group members. This will involve: (i) adopting a broad and clearly delineated definition of intangibles; (ii) ensuring that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with (rather than divorced from) value creation; (iii) developing transfer pricing rules or special measures for transfers of hard-to-value intangibles; and (iv) updating the guidance on cost contribution arrangements.	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention	September 2014
		Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention	September 2015
9. Assure that transfer pricing outcomes are in line with value creation: risks and capital	Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members. This will involve adopting transfer pricing rules or special measures to ensure that inappropriate returns will not accrue to an entity solely because it has contractually assumed risks or has provided capital. The rules to be developed will also require alignment of returns with value creation. This work will be coordinated with the work on interest expense deductions and other financial payments.	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention	September 2015
10. Assure that transfer pricing outcomes are in line with value creation: other high-risk transactions	Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties. This will involve adopting transfer pricing rules or special measures to: (i) clarify the circumstances in which transactions can be recharacterized; (ii) clarify the application of transfer pricing methods, in particular profit splits, in the context of global value chains; and (iii) provide protection against common types of base eroding payments, such as management fees and head office expenses.	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention	September 2015
11. Establish methodologies to collect and analyze data on BEPS and the actions to address it	Develop recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis. This will involve developing an economic analysis of the scale and impact of BEPS (including spillover effects across countries) and actions to address it. The work will also involve assessing a range of existing data sources, identifying new types of data that should be collected, and developing methodologies based on both aggregate (e.g. FDI and balance of payments data) and micro-level data (e.g. from financial statements and tax returns), taking into consideration the need to respect taxpayer confidentiality and the administrative costs for tax administrations and businesses.	Recommendations regarding data to be collected and methodologies to analyze them	September 2015

Action	Description	Expected output	Deadline
12. Require taxpayers to disclose their aggressive tax planning arrangements	Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules. The work will use a modular design allowing for maximum consistency but allowing for country specific needs and risks. One focus will be international tax schemes, where the work will explore using a wide definition of “tax benefit” in order to capture such transactions. The work will be coordinated with the work on cooperative compliance. It will also involve designing and putting in place enhanced models of information sharing for international tax schemes between tax administrations.	Recommendations regarding the design of domestic rules	September 2015
13. Re-examine transfer pricing documentation	Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNE’s provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.	Changes to Transfer Pricing Guidelines and Recommendations regarding the design of domestic rules	September 2014
14. Make dispute resolution mechanisms more effective	Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.	Changes to the Model Tax Convention	September 2015
15. Develop a multilateral instrument	Analyze the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, interested Parties will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this evolution.	Report identifying relevant public international law and tax issues	September 2014
		Develop a multilateral instrument	December 2015

Summary of the BEPS Action Plan by timeline

BY SEPTEMBER 2014		
Action	Description	Expected output
Address the tax challenges of the digital economy	Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterization of income derived from new business models, the application of related source rules, and how to ensure the effective collection of VAT/ GST with respect to the cross-border supply of digital goods and services. Such work will require a thorough analysis of the various business models in this sector.	Report identifying issues raised by the digital economy and possible actions to address them
Neutralize the effects of hybrid mismatch arrangements	Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralize the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. This may include: (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual resident entities) are not used to obtain the benefits of treaties unduly; (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payor; (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules); (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and (v) where necessary, guidance on coordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be coordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping.	Changes to the Model Tax Convention
		Recommendations regarding the design of domestic rules

BY SEPTEMBER 2014		
Action	Description	Expected output
Counter harmful tax practices more effectively, taking into account transparency and substance – phase 1	Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.	Finalize review of member country regimes
Prevent treaty abuse	Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. Work will also be done to clarify that tax treaties are not intended to be used to generate double non-taxation and to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country. The work will be coordinated with the work on hybrids.	Changes to the Model Tax Convention Recommendations regarding the design of domestic rules
Assure that transfer pricing outcomes are in line with value creation: intangibles – phase 1	Develop rules to prevent BEPS by moving intangibles among group members. This will involve: (i) adopting a broad and clearly delineated definition of intangibles; (ii) ensuring that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with (rather than divorced from) value creation; ...	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention
Re-examine transfer pricing documentation	Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNE's provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.	Changes to Transfer Pricing Guidelines and Recommendations regarding the design of domestic rules
Develop a multilateral instrument – phase 1	Analyze the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, interested Parties will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this evolution.	Report identifying relevant public international law and tax issues

BY SEPTEMBER 2015		
Action	Description	Expected output
Strengthen CFC rules	Develop recommendations regarding the design of controlled foreign company rules. This work will be coordinated with other work as necessary.	Recommendations regarding the design of domestic rules
Limit base erosion via interest deductions and other financial payments	Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be coordinated with the work on hybrids and CFC rules.	Recommendations regarding the design of domestic rules
Counter harmful tax practices more effectively, taking into account transparency and substance – phase 2	Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.	Strategy to expand participation to non-OECD members
Prevent the artificial avoidance of PE status	Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemptions. Work on these issues will also address related profit attribution issues.	Changes to the Model Tax Convention
Assure that transfer pricing outcomes are in line with value creation: intangibles – phase 2	Develop rules to prevent BEPS by moving intangibles among group members. This will involve: ... (iii) developing transfer pricing rules or special measures for transfers of hard-to-value intangibles; and (iv) updating the guidance on cost contribution arrangements.	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention
Assure that transfer pricing outcomes are in line with value creation: risks and capital	Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members. This will involve adopting transfer pricing rules or special measures to ensure that inappropriate returns will not accrue to an entity solely because it has contractually assumed risks or has provided capital. The rules to be developed will also require alignment of returns with value creation. This work will be coordinated with the work on interest expense deductions and other financial payments.	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention

BY SEPTEMBER 2015		
Action	Description	Expected output
Assure that transfer pricing outcomes are in line with value creation/other high-risk transactions	Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties. This will involve adopting transfer pricing rules or special measures to: (i) clarify the circumstances in which transactions can be recharacterized; (ii) clarify the application of transfer pricing methods, in particular profit splits, in the context of global value chains; and (iii) provide protection against common types of base eroding payments, such as management fees and head office expenses.	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention
Establish methodologies to collect and analyze data on BEPS and the actions to address it	Develop recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis. This will involve developing an economic analysis of the scale and impact of BEPS (including spillover effects across countries) and actions to address it. The work will also involve assessing a range of existing data sources, identifying new types of data that should be collected, and developing methodologies based on both aggregate (e.g. FDI and balance of payments data) and micro-level data (e.g. from financial statements and tax returns), taking into consideration the need to respect taxpayer confidentiality and the administrative costs for tax administrations and businesses.	Recommendations regarding data to be collected and methodologies to analyze them
Require taxpayers to disclose their aggressive tax planning arrangements	Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules. The work will use a modular design allowing for maximum consistency but allowing for country specific needs and risks. One focus will be international tax schemes, where the work will explore using a wide definition of "tax benefit" in order to capture such transactions. The work will be coordinated with the work on cooperative compliance. It will also involve designing and putting in place enhanced models of information sharing for international tax schemes between tax administrations.	Recommendations regarding the design of domestic rules
Make dispute resolution mechanisms more effective	Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.	Changes to the Model Tax Convention

BY DECEMBER 2015		
Action	Description	Expected output
Limit base erosion via interest deductions – phase 2	Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be coordinated with the work on hybrids and CFC rules.	Changes to the Transfer Pricing Guidelines
Counter harmful tax practices more effectively, taking into account transparency and substance – phase 3	Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.	Revision of existing criteria to identify harmful tax practices
Develop a multilateral instrument – phase 2	Analyze the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, interested Parties will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this evolution.	Multilateral instrument

OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. <http://dx.doi.org/10.1787/9789264202719-en>



Future developments

The OECD Action Plan items are targeted to be complete in the next 18 to 24 months. However, many new developments and activities will certainly occur within and beyond this timeframe.

How these developments will evolve will depend on the positions of key OECD Member Countries, in particular France, Germany, the UK and the US.

Two G20 members who are OECD members – China and India – will also have a critical role, given that the Action Plan involves input from non-OECD G20 members.

Involvement of China and India is important to ensure that the future holds for one largely coherent set of international tax rules and not multiple paths.

Australia, as host of the G20 in 2014, sees itself as taking a prominent role in the development of the Action Plan.

Australia is one of three countries that will set the agenda for the G20 over the next few years. Mexico, as the 2012 host, falls out of the troika at the end of this year. Russia is the current host and Turkey will join the group next year as the 2015 host.



HOW BEST TO RESPOND

The following are key actions businesses must take seriously and address now, regardless of industry or geography.

- **Ensure you are fully informed:** Keep abreast of developments that will occur locally and internationally. Consider how these developments could affect your tax positions and planning.
- **Plan for public discussion and develop a tax narrative:** Be prepared to comment on your business and tax activity at any given moment. (A particularly important capability in the era of social media). Ensure board members, management/C-Suite members and the core tax team are aware of the potential questions and challenges that could come from any number of stakeholders such as regulators, investors, media and the general public.
- **Think reputational risk:** Ensure that decisions around tax are made taking into account potential reputational risks and not simply whether your organization has complied with the tax laws in various jurisdictions.
- **Assess your company's relationship with tax authorities:** Ensure that there is appropriate, open and respectful relationships with local tax authorities in all countries in which you operate.

All signs suggest that we will continue to see increased pressure for more transparency between taxpayers and the tax authorities, and more and broader disclosure by companies on how much and where they pay tax.

Ultimately, business leaders, tax authorities and policy makers will need to remember that this is a changing world and one can resist the change or embrace it. The problem with the former is that one tends to get left behind. Do not become complacent, this issue is not going away.

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