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G20-OECD BEPS Action Plan

Taking the pulse in the EMA region

Survey of participation and action by EMA countries

January 2015

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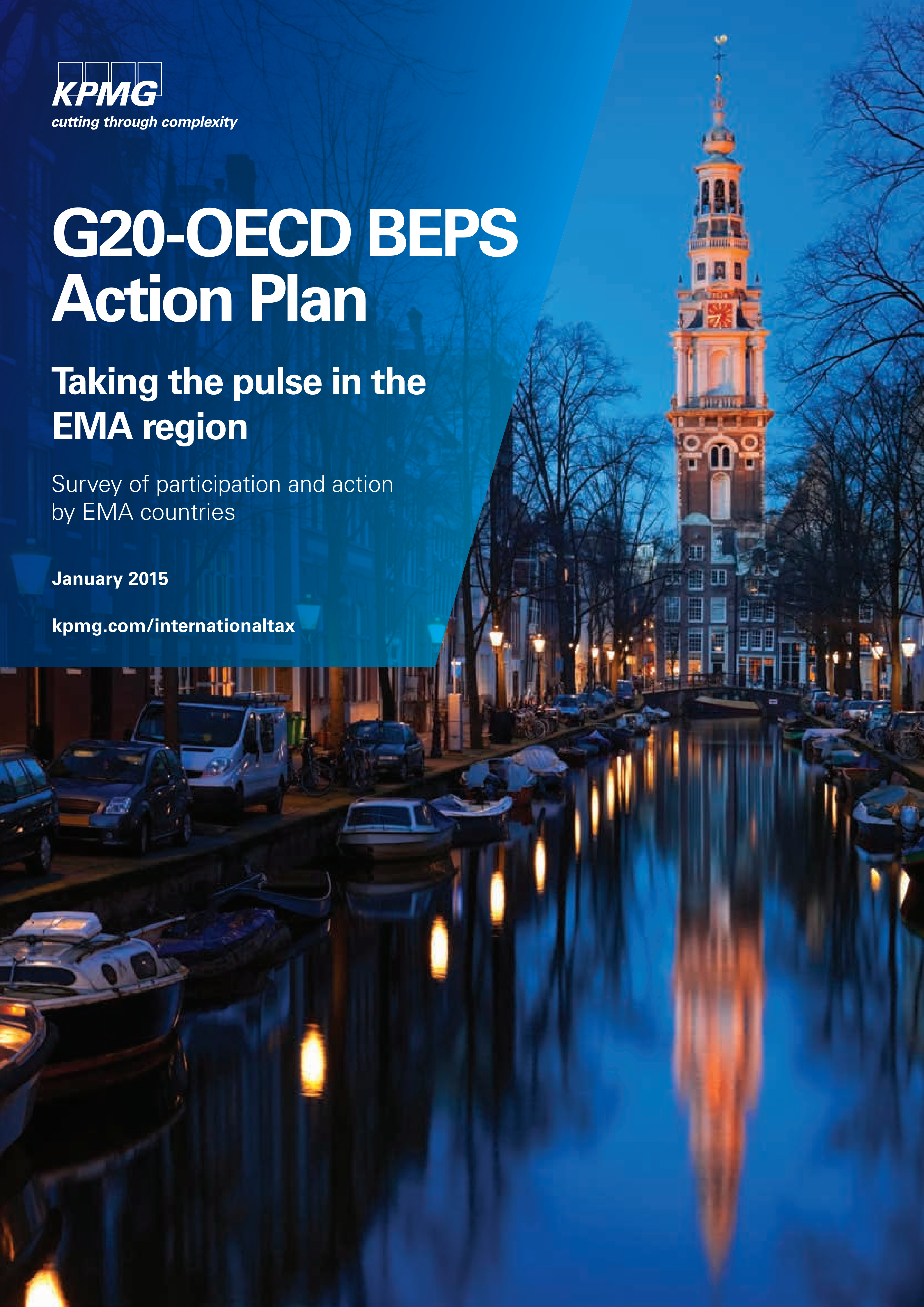

Introduction

In July 2013, the Organisation for Economic Co-operation and Development (OECD) released its Action Plan on Base Erosion and Profit Shifting (BEPS). The report followed negative media coverage surrounding international tax structures adopted by some high-profile multinational corporations. It also came at a time when European governments, their treasuries depleted by years of stimulus spending, were eager to maximize tax revenues.

Under these circumstances, it is not surprising that the G20-OECD BEPS Action Plan has received a good deal of attention. With deliverables concluding in December 2015, work on the Action Plan continues with the active participation of tax experts and authorities from all member states.

European governments have all expressed their commitment to end BEPS and are eager to help shape and refine the plan. In fact, some governments have already made changes to their tax codes in anticipation of coming recommendations. Others are waiting for more information to emerge from deliberations at the OECD.

Either way, change – some say historic change – is coming. From greater requirements for transparency and more stringent transfer pricing policies to justifying substance, the impacts will be felt by every country and every multinational company.

While it is true that every country wishes to curb BEPS, countries are also keen to use tax policy as a source of competitive advantage over other jurisdictions, meaning that no two reformed regimes will look alike. A survey of our leading tax authorities in Europe is thus at the crux of this paper, which examines, among other things:

- the impact of the BEPS debate on tax policy
- public and press reaction to BEPS
- recent or pending changes to tax codes ahead of the OECD recommendations
- the changing attitudes of tax authorities as reform becomes imminent
- the reactions of multinationals to expected reform.

The survey responses are enlightening. Some countries are forging ahead at full speed while others are taking a more cautious approach. Given this uncertainty, what should a multinational corporation do now? How can it maintain tax efficiency without running afoul of tax authorities in this new reality? These and other difficult questions are addressed throughout this paper. Although it is too early to decide all the answers, we certainly know enough to help tax directors prepare for a future that is sure to be very different from the present.

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G20-OECD BEPS Action Plan: Taking the pulse in the EMA region

The G20-OECD BEPS Action Plan consists of 15 points designed to help governments and tax authorities prevent corporations from taking advantage of different international tax rules in order to pay little or no tax. The international tax system has failed to keep up with two simultaneous economic developments. The first is globalization, as more and more companies fall into the multinational category, with integrated supply chains, centralized service functions and geographically dispersed operations. The second is digitization, which facilitates cross-border business and thereby makes it easier for a company to decide where its profits are made.

The spectrum of engagement

In some European countries, notably the United Kingdom and the Netherlands, BEPS has become a significant theme, with major media outlets jumping on board. A one-hour television documentary in Germany even put tax issues in prime time. Governments – some facing elections, others holding tenuously to coalitions – are also calling for greater fairness.

At the same time, countries with regimes that involve lower taxes are eager to remain competitive. In Luxembourg, for example, a significant portion of the economy depends on the financial services sector, including tax advisory services, and the government is taking a more cautious approach to reform. And in a strongly worded statement on the subject, Ireland's Department of Finance was emphatic that its low corporate tax rate would remain in place.

All the member countries are cooperating closely with the OECD and its various working groups to help shape the anti-BEPS recommendations. Naturally, each will have its own priorities, but it is also understood that if the Action Plan is to work, anti-BEPS measures will have to be implemented multilaterally. The term 'level playing field' has appeared in several reports and releases, an indication of the delicate balance governments are trying to strike as they study and refine the details of each element of the plan.

An ambitious plan

Will that balance be found before the end of 2015? To be sure, the timetable is tight for such a sweeping set of proposals, but the OECD has managed to meet its own deadlines to date. And while the process has revealed some oversights, such as a failure to consult pension funds on the issue of interest deductibility, the OECD has remained open to suggestions and has worked hard to ensure that its recommendations carry as few unintended consequences as possible.

But this remains an ambitious plan: Once the recommendations are finalized, each government will have to determine how they will affect its existing rules, conferring with the private sector to predict the impact on the economy as a whole. This must occur before any new legislation is proposed, debated, and enacted. In some countries, years may pass before reforms become law.

Integrating EU regulations

Equally concerned with BEPS, the European Commission presented its own Action Plan, which was endorsed by the European Council in May 2013. The plan, which would apply to business done between EU countries, has several elements that overlap the OECD project:

- expanding the automatic exchange of information to cover all forms of financial income and account balances
- tightening the rules against what is perceived to be aggressive tax planning
- requiring greater transparency from Switzerland, Andorra, Monaco, San Marino, and Liechtenstein
- establishing a platform on tax good governance to deal with issues such as aggressive tax planning and tax havens
- forming a high-level group to study taxation of the digital economy
- applying state aid granted through tax measures to prevent harmful tax competition
- requiring greater corporate transparency by introducing country-by-country reporting for extractive and logging companies and revising the most recent Capital Requirements Directive (CRD IV) for banks and investment funds.

The new normal for audits

Many tax authorities in Europe have become emboldened by the ongoing discussions about tax morality and BEPS. They are intensifying audits, especially when issues such as mismatching, transfer pricing or substance are part of the picture. The motives are probably varied: Some governments hope to maximize tax revenues, while others are acting in response to public outrage at the possibility of corporations paying less than their 'fair share' of tax.

In the end, motive won't matter much, since post-BEPS Europe will undoubtedly include tighter audits for all. However, the new tax landscape will also offer an opportunity for greater cooperation between taxpayer and collector. In Austria, for example, horizontal monitoring is gaining popularity. Under this system, the taxpayer signs a declaration obliging the company to disclose records to the authorities. In subsequent and ongoing meetings, company and authorities work out the details of what is permissible or not. After some years, audits are no longer required.

Whether this practice comes into common use remains to be seen. In the short term, however, companies can expect audits to become more rigorous in general as all parties adjust to the new reforms.

The new normal for tax planning

Caution is the watchword for companies awaiting the legislative results of the BEPS debate. Many, though not all, companies are moving away from historic tax structures in anticipation of new government requirements. Some areas of particular interest are country-by-country (CbyC) reporting, substance requirements, hybrid mismatches and transfer pricing.

- **Country-by-country reporting:** Even companies that already take a cautious approach are performing impact evaluations to determine the skills and resources they will need to comply with CbyC reporting. CbyC will require that results from several different jurisdictions be translated into a single standard, and the administrative burden may be high, especially for smaller companies.
- **Substance requirements:** Current tax treaties, put in place to prevent double taxation, are now proving ineffective in preventing double non-taxation. It is expected that most countries will eliminate structures that permit companies to claim their profits in jurisdictions where they have no substance in terms of office space, tangible assets or employees.
- **Hybrid mismatches:** There is widespread acceptance in Europe that tax planning based on hybrid mismatches will be curtailed. Switzerland and the United Kingdom have already moved to prevent companies from using hybrid structures for the sole purpose of gaining tax advantages.
- **Transfer pricing:** Many countries in Europe have already indicated their intention to tighten transfer pricing rules in accordance with changes to the OECD guidelines.

Caution is the watchword for companies awaiting the legislative results of the BEPS debate.

Moving ahead with the BEPS project

Our survey revealed that many countries are actively engaged in shaping the BEPS recommendations at the OECD. At the same time, the OECD is actively seeking consultation on each point of the Action Plan with stakeholders in its member countries. As well, after a request from the G20, the OECD prepared a report on the impact of BEPS on low-income countries, releasing it as recently as August 2014.

All of this is to say that the BEPS agenda is still very much a work in progress. Numerous details will be refined before the project sends its recommendations to member countries in December 2015.

Countries in focus: Action or reaction?

AUSTRIA

Austria has been greatly affected by the tax morality debate, and public and political pressure to address the issue has been intense. Tax authorities are scrutinizing companies with multinational operations more closely, and in response, many companies are taking a cautious approach to tax planning, wary of unwanted and unwarranted media attention.

This wait-and-see attitude is also being driven by uncertainty about what specific changes will be made to tax laws as a result of the OECD BEPS project. The BEPS initiative has been fully supported by the Austrian government, and the indications are that it will implement the recommended reforms.

While the details are pending, companies are reviewing their current structures with an eye to curbing practices that may be viewed as aggressive. Structures that are purely tax driven, for example, could be subject to alteration.

Interest deductibility

As part of the recently implemented Corporate Income Tax (CIT) Act, interest payments to low-taxed group companies are no longer deductible for tax purposes as of 1 March 2014. The new restriction applies: (1) if the recipient is a group-affiliated corporation or a corporation under the controlling influence of the same shareholder as the group; and (2) if the interest payments are either tax exempt or subject either to a nominal tax rate of less than 10 percent or to an effective tax rate of less than 10 percent due to a beneficial regime in the receiving state.

The explanatory notes to the law indicate that harmful low effective taxation will be assumed if the receiving entity is subject to a (partial) tax exemption or benefits from fictitious interest deductions. Harmful low taxation will not be assumed if the receiving company pays little or no tax because of its own losses or losses from a group taxation arrangement.

What's more, if the direct recipient of the interest payments is not considered to be the beneficial owner of the interest income, taxation at the level of the beneficial owner of the interest payments will apply.

Transfer pricing

New rules governing transfer pricing are also likely to arise from the BEPS initiative. Currently, only transactions involving Austrian companies must be reported. The new requirement to report on a country-by-country basis will create additional layers of effort and transparency for companies in Austria, especially smaller companies, which will be forced to spend more on administration.

Horizontal monitoring

While not strictly related to BEPS, horizontal monitoring is an innovative and increasingly popular means of tax reporting in Austria. The taxpayer signs a declaration obliging his or her company to disclose records to the authorities. The two sides meet on an ongoing basis to discuss which tax practices are allowable and which are not, and after some years, audits are no longer conducted.

Although the start-up phase will require a certain amount of effort, in the long term the system provides a win–win: Both sides get security and certainty, and animosity and its associated costs are avoided.

Other measures

While we expect changes to other tax measures, such as taxation on intellectual property and permanent establishment regulations, the exact nature of these changes has yet to be determined. Given the current appetite for reform in Europe, we are unlikely to wait very long to find out.

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BELGIUM

Calls for measures to combat BEPS have coincided with the Belgian government's need to maximize tax revenue. A new 'fairness tax' was introduced to target the profits of multinational companies, whether or not they have been found to be avoiding paying their 'fair share'. More changes to the rules may be coming, but with a federal government still to be formed in the near future, no significant reform is expected until after the OECD completes its BEPS project.

As a founding member of the OECD, Belgium has fully supported the BEPS initiative. State Secretary for the Fight against Tax Fraud John Crombez has more than once said that the government will focus on the automatic exchange of information, hybrid structures, double non-taxation and transfer pricing.

To this point, the Belgian government has not implemented any anti-BEPS measures in response to the OECD project. In the wake of the cases involving perceived tax avoidance by high-profile multinationals, however, the government has made three significant moves that could be said to follow at least the spirit of the OECD's effort.

1. **Changes to the thin capitalization rule –** Designed to address interest deductibility, the revised rule imposes a 5:1 debt-to-equity ratio limit. Finance charges are deductible provided they are at arm's length and that the loan does not exceed five times the sum of the taxed reserves and the paid-up capital. The rule applies to finance charges paid to tax havens and between group companies.

2. **Introduction of a 'fairness tax' –** Targeting large Belgian companies and Belgian establishments of large foreign companies, the new tax will be due if a company distributes dividends but pays little or no tax on this dividend because of 'bad' deductions (losses carried forward, notional interest deductions). 'Good' deductions (participation exemptions, patent income deductions, investment deductions) will not trigger the fairness tax. The fairness tax rate is 5.15 percent (5 percent, plus a 3 percent crisis contribution on the 5 percent). Notably, there will be no fairness tax on the distribution of 'good' reserves. (In general, good reserves are those related to assessment year 2014 or earlier.) The fairness tax comes on top of the standard corporate income tax.

3. **Introduction of a new capital gains tax –** The new tax is applicable as from assessment year 2014 and applies only to large companies, not to small and medium enterprises (SMEs). At 0.412 percent, the tax is small and may be interpreted as a means to balance a playing field that multinationals are considered to have been using to greater advantage.

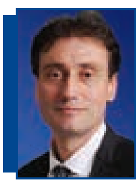
Armed with these new rules and supported by the public, media and government, tax authorities have been stepping up their investigations into corporate tax cases. Again, their approach is not directly related to the OECD BEPS project but has more to do with the need to raise money. That said, the anti-BEPS spirit is certainly a factor in the ramped-up efforts.

Transfer pricing

Audits have been paying special attention to transfer pricing, with a focus on intangibles, risk and capital.

Tax havens

In an effort to stem tax losses due to the use of tax havens, the Belgian government requires companies to report payments exceeding EUR100,000. A tax haven is defined as any country with a level of taxation below 10 percent or any jurisdiction on the OECD blacklist.



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FRANCE

The French government has responded to anti-avoidance sentiment by proactively redefining its strategies for preventing what it considers to be aggressive tax planning. Among other recommendations is that authorities be granted access to cost accounting, and calculations related to costs, in order to determine transfer pricing. The need to show substance will be a major driver of reforms.

Auditors are becoming increasingly intolerant of practices deemed to aid tax avoidance, such as restructurings that transfer a manufacturing activity outside France, breach distributor agreements, change distributor, agent or other functions, or close down sites. Any of these and similar actions raise the issue of the indemnification of the French company or of a possible transfer of goodwill. A whopping 40 percent penalty may be imposed on companies for business restructuring re-assessments undertaken on the grounds that the French company was unable to ignore that the restructuring was not made in its interest.

Finally, authorities have introduced requirements to provide cost accounting and consolidated accounts in the scope of a tax audit.

While the public and the media support reform, tax professionals are less enthusiastic, expressing concern that the changes are politically driven, poorly defined and responsible for introducing uncertainty into the regime. Indeed, some measures that have gained parliamentary approval have subsequently been struck down by the constitutional court.

As part of this same trend, French companies are dealing with more stringent compliance regulations. More and more, the taxpayer is being saddled with the burden of proof of compliance, obligated to spend time and energy demonstrating compliance in complex areas such as transfer pricing and international pricing.

Pre-BEPS measures

Rather than waiting for the OECD BEPS project to wrap up, France is moving ahead with controlled foreign corporation (CFC) rules and new anti-avoidance regulations:

- **Transparency.** In July 2013, the government introduced country-by-country (CbyC) reporting for banking and mining activities. A 2013 report from the Foreign Affairs Committee called for a transparency requirement for all enterprises of a certain size, including non-listed companies.
- **Transfer pricing.** The same Foreign Affairs Committee report also called for improved transfer pricing audit capabilities using CbyC to provide a record of activities and results to the French tax administration. It also recommended that the administration be authorized to access all cost accounting records, along with the calculations used to determine prices and intra-group invoicing price.
- **Interest deductibility.** The authorities have introduced new rules requiring the taxpayer to demonstrate that the lender is subject during the same fiscal year to income tax on the interest received, at a rate of at least 25 percent of the standard French rate (i.e. 33.33 percent *25 = 8.33 percent). If the lender is a foreign tax resident, the theoretical income tax will be compared with the tax that would have been due in France from a French tax resident. If the lender is a transparent entity, the French borrower must be related to the shareholders of the transparent entity and the minimum taxation will be appraised at the shareholder level, subject to conditions.

Learning from neighbors

To supplement ongoing BEPS discussions at the OECD, French tax officials are also looking to other jurisdictions for ideas on how best to deal with the issue. Investigators from the General Inspectorate of Finances compared tax regimes in Canada, Germany, the United States, the Netherlands and the United Kingdom to those of France and found that France was the only country in the group not to have included the arm's-length principle in its substantive law. Moreover, its enforcement tools were considered less adequate in comparison with those of its counterparts.

The authors of the report proposed adjustments to the wording of the tax code that would establish a rule whereby entities of the same group must engage in business relations equivalent to those that independent enterprises would have engaged in. This would allow the tax administration to take better advantage of its enhanced right of access to information, to establish internal rules and guidelines for the application of transfer pricing methods, and to constantly evaluate its own practices and own guidelines.

The trend toward constraint

Constraint will characterize the overall impact of these measures in the short term. Companies will be forced to spend more time and resources to meet reporting obligations, and ensuring consistency among all the globally located parts of a single company will be a monumental task.

While tax managers are aware that change is coming, they can do only so much to prepare. They recognize that substance will be a key point in any reform. Room to use hybrid or stratified structures is shrinking as authorities demand that transactions demonstrate a link to the underlying business. Companies are taking a more cautious approach as they seek to realize greater tax efficiencies.

Companies are also concerned about confidentiality as CbyC reporting is rolled out, requiring broader sharing of information. The downside of this requirement is that it raises the risk of competitors gaining access to vital information and thus compromising a company's ability to operate.

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GERMANY

Spurred by greater-than-expected public attention, Germany's coalition government has shown strong interest in the OECD BEPS project. A verbal commitment to the 15-point G20-OECD BEPS Action Plan has been made, and there have been indications that the government may legislate ahead of the final recommendations. The Ministry of Finance has specified as central objectives the adequate taxation of multinational companies, the prevention of non-taxation or low taxation, and the involvement of emerging and developing countries in the OECD process. Because Germany already has extensive anti-avoidance laws, reform is not expected to be disruptive.

Media coverage has made the tax affairs of multinational corporations a public issue. Never before has the topic been discussed so widely both in the press and by the German public, even garnering a one-hour television documentary.

Tax authorities have followed suit. Key issues are combating perceived aggressive tax planning, strengthening transparency between different tax authorities and improving the coordination of national tax regimes, as authorities cooperate not only across different German regional offices but also across international borders.

Auditors are paying more attention to issues that are also being discussed at the OECD, such as permanent establishment or hybrid mismatches. Stricter audits may also be encouraged by a government that wants to maximize revenues, but whatever the motivation, certain structures that were not questioned five years ago are now subject to challenge from the tax authorities.

Hybrid structures

In response, corporations are more aware of the risks associated with strategies such as the use of hybrid structures. If these structures are already in effect and being employed in accordance with current regulations, for the most part they are being left in place as corporations are awaiting the details of a possible reform to domestic law. Companies that wish to implement new strategies and structures are waiting before committing themselves to anything that might have to be unwound.

Anti-avoidance rules

Germany already has anti-treaty shopping rules, controlled foreign company (CFC) legislation and an anti-hybrid rule with a correspondence principle for dividends.

To date, unilateral measures have not been introduced in reaction to BEPS, but if BEPS and G20 initiatives are not realized by 2015, the government intends to introduce such measures. These may include restricting the deduction of expenses for payments to 'letterbox companies', and requiring the disclosure of certain tax planning arrangements.

In addition, companies with operations in more than one jurisdiction may be required to practice country-by-country (CbyC) reporting.

Substance requirements

International tax practitioners know that substance requirements are very likely to be part of any reform package. In anticipation, they are examining structures to ensure that transactions are completed for sound business reasons.

Public perception

As companies rethink their international tax strategies, public perception and reputational concerns will enter into consideration. Recent history shows that a great deal of damage can be done to a brand when the public reaction to certain practices is not accounted for.

Exit strategy

Because of the political nature of these reforms and the accelerated timetable the OECD has been following, it is expected that rules will continue to be refined, challenged and changed. Companies must consider that a strategy that works for them today might not work in the future. A carefully planned exit strategy is essential.

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IRELAND

For Ireland, the ideal outcome of the OECD BEPS project is one in which the country's tax regime meets the standards for substance and transparency but retains its reputation as a low-tax jurisdiction that encourages foreign direct investment (FDI). This should not present a great challenge as Irish tax policy is already largely in alignment with the anti-BEPS proposals.

As a demonstration of the attention the government is giving to the OECD's proposals, the Minister of Finance released a report in May 2014 to launch a public and business community consultation process that will address the BEPS issue specifically.

Interestingly, the second paragraph contains a strongly worded declaration that "Ireland remains 100 percent committed to the 12.5 percent corporate tax rate. This will not change." This statement is an indication of Ireland's desire to remain competitive internationally in the race for FDI by maintaining its low-tax status. At the same time, the Department of Finance remains very concerned to avoid Ireland being viewed as a tax haven. To that end, substance and transparency remain vital parts of its corporate tax policy.

While keenly interested in the media coverage of some high-profile cases, the Irish public is also aware of the importance of FDI to a small economy such as Ireland's. As a result, politicians have been able to take a measured approach to reform, knowing that this stance will not cost them at the polls.

Because of the successful retention of business-friendly tax policies, Ireland's tax regime has attracted its share of scrutiny from the European Union (EU). Mindful of potential reputational damage, the Irish tax authorities have become more cautious in their engagement with individual taxpayers and continue to be conscious of the need to show evidence of transparency and fairness in their dealings with companies.

Residency requirements

Reputational concerns were also at the heart of a legislative amendment to prevent Irish incorporated companies from being managed into 'statelessness' and therefore not taxable anywhere. Notably, the amendment was enacted well in advance of the conclusion of the BEPS project.

The government is sensitive to the potential for unintended exploitation of its tax system, and the structure of its corporate tax regime is generally aligned with the anti-BEPS efforts of the OECD. This has been the case for several years now; Ireland's 12.5 percent corporate tax rate applies only to active trading income, whereas passive non-trading income is taxed at 25 percent.

On other matters related to the tax regime, the authorities are awaiting the final outcome of the BEPS-related reform process to determine their next steps. The desire to remain competitive as a tax jurisdiction is likely to inform any proposed changes.

As other jurisdictions seek to tighten their requirements for counterparty jurisdictions to have substance and to subject companies to tax on profits, the country may benefit. Companies with no substantial overseas presence may seek a low-tax jurisdiction such as Ireland in which to establish a home base.

Anti-haven rules

Ireland does not have specific anti-haven provisions, but various relief measures in Irish tax law (such as source country withholding taxes) are available only to persons who are resident for tax purposes in the EU or in countries with which Ireland has tax treaty arrangements.

The digital economy

Like other EU member states, Ireland will be adopting new place-of-supply rules for VAT purposes with respect to digital supplies. The rules will go into effect from 1 January 2015 and will collect VAT on the supplies at the rate in force in the country of the consumer.

Hybrid structures

Irish domestic law already limits opportunities for specific hybrid structures. Legislative provisions broadly require that the income from such arrangements is subject to tax in the hands of the lender in order to ensure that certain interest payments remain tax deductible as interest, rather than being characterized as non-deductible dividends or distributions for Irish tax purposes.

Alignment of economic substance and taxable profits

The Irish Department of Finance views the stance of the BEPS project on alignment issues as an opportunity. If the BEPS project is successful, Ireland may become a "hub for the centralization of international business".[1] The department also recognizes that mismatches that arise within the current international tax framework can be resolved only on a multilateral level.

Country-by-country reporting

Many view country-by-country (CbyC) reporting as an effective deterrent to profit shifting. Ireland has generally supported incentives on cross-border sharing of tax information. For example, Ireland was one of the first jurisdictions to sign an intergovernmental agreement with the United States under the US Foreign Account Tax Compliance Act (FATCA).

Taking a cautious approach

Changes to tax law are most assuredly coming, and while the nature of those changes remains uncertain, it is clear that the level of complexity is about to rise. This is the case not only in Ireland but also in other jurisdictions. Tax managers should be wary of launching into new structures that may be costly to wind down.

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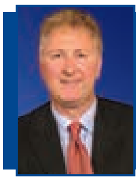

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[1] Ireland, Department of Finance, *OECD Base Erosion and Profit Shifting Project in an Irish Context,* Public Consultation paper (May 2014), page 4.

ITALY

The Italian government has been quite active at the OECD in helping to shape the anti-BEPS recommendations but has not released any specifics about the positions or proposals of its tax authorities. While public reaction to recent high-profile tax cases has been strong, there has been little debate on what measures should be adopted to prevent them.

In anticipation of the OECD report, the Italian parliament ordered a review of the corporate tax system in March 2014. Among the issues to be addressed are: General abuses of tax law, some specifically concerning international taxation, including the losses of foreign entities; transfer pricing rules; rules governing controlled foreign corporations (CFCs); blacklist rules; withholding taxes; and permanent establishment. A series of draft laws are expected to be released from the end of September 2014 onward.

Even if the government follows the trend prevailing in the European Union and adopts the OECD BEPS recommendations, some areas of Italian law will see little change. There are already stringent rules on interest deductibility, royalties, lease and other payments, anti-hybrid provisions, and anti-abuse rules concerning EU directives each resembling OECD and/or EU recommendations. Nevertheless, the rules will be reviewed under article 12 of the new legislation.

Given the opportunity to compare systems across the OECD, the Italian government should note that its own law is often more aggressive than that of other jurisdictions; this aggressiveness is hurting business. Although the specifics cannot be determined at this point, we can expect a number of reforms in the new legislation that will have an impact on Italian companies.

Country-by-country reporting

As country-by-country (CbyC) reporting is not currently mandatory, regulations that require it would have significant consequences for Italian companies, depending on the complexity of their non-Italian operations. In addition to added time and costs, confidentiality is a concern.

Digital economy taxation

Part of the impetus for the BEPS project lay in the fact that several internet companies were paying very low or no tax in jurisdictions where they seemed to make strong profits. Italian authorities have indicated that they will address this issue in a new law.

In fact, a proposal was issued at the end of 2013 for a law to deal with internet-based sales of marketing and advertising services for which sales in Italy are recorded in another jurisdiction. Poorly written, the draft legislation proved ineffectual and contrary to EU law and was dropped. Lawmakers are now waiting for better coordination within the European Union.

Permanent establishment

The concept of permanent establishment within Italian tax law largely coincides with the one provided by the OECD Model Tax Convention. For more than a decade, Italian tax authorities have aggressively challenged multinational enterprises, supported by case law such as that involving Philip Morris International and sometimes deviating from the same OECD convention.

The International Standard Ruling procedure now includes questions related to whether or not a multinational has a permanent establishment in Italy, and a proposed law should introduce a program of voluntary disclosure to align Italy with more acceptable international standards.

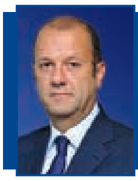
Abuse of law

Tax authorities take a dim view of companies that use transactions to pay less than what is considered their fair share. Armed with this admittedly vague principle, the authorities have been able to challenge such activities, often very forcefully and without distinguishing tax avoidance from legitimate tax savings. It is hoped that in the wake of the OECD BEPS project, the principle will become better codified in law.

Wait and see

While Italian tax authorities remain unwilling to report on their progress at the OECD, Italian companies have little choice but to wait and see what recommendations are taken to parliament and enacted in legislation. In light of existing laws, anti-BEPS measures are unlikely to cause great upheaval, but companies also understand that certain tax-savings opportunities derived from non-Italian interests may disappear.

In general the BEPS discussion, and the firm rules that come out of it, will spur multinationals to strengthen their tax infrastructure and research areas of legitimate tax savings. Clear rules will also offer an opportunity to improve the relationship between the corporate community and the Italian tax authorities. Mutual antagonism may be assuaged by consistent standards that are understood by all parties.



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LUXEMBOURG

The Luxembourg government fully supports the BEPS project and is actively participating in tax policy discussions at the European and international level. It has also stressed the need to create an effective 'level playing field' to ensure a fair application of international tax standards and to ensure a coherent implementation of the new tax rules worldwide.

Comments to that effect from the new coalition government in December 2013 were a reminder that Luxembourg, as any other jurisdiction, is fighting against unfair tax competition from all countries, including non-European countries. But that debate existed long before the BEPS project was launched, through the impetus of the EU initiatives on tax cooperation and exchange of information that led to the progressive end of the banking secrecy in Luxembourg. Luxembourg has indeed not waited for the current BEPS debate to move towards enhanced transparency in tax matters and implement a number of concrete measures into its domestic law.

Transparency

Recent developments have shown that Luxembourg is a constructive and active player in the move towards greater transparency in tax matters. As an example, Luxembourg has specifically promoted the introduction of the automatic exchange of information for tax purposes as a global standard and will, as from 1 January 2015, implement the automatic exchange of information on the basis of the European Savings Taxation Directive.

As far as businesses are concerned, the tax morality debate has not gone

unnoticed nor has been underestimated. They have indeed understood the need to anticipate the changes that are likely to occur in the international tax scene, including the fact that they may have to explain to the tax authorities – and even to the media and the public – their tax strategy and the amount of taxes there are paying worldwide. This is due not only to the fact that new regulations are creating more mandatory disclosure requirements, but also to the increasing public pressure pushing for voluntary reporting.

Tax policy

In December 2013, Luxembourg's government announced its intention to introduce two new regulations in line with the spirit of the BEPS work. The first involves stricter requirements for substance, especially for intellectual property (IP) structures when companies wish to benefit from the IP box regime. The second is an extension of the scope of the transfer pricing regulations and is also fully in line with OECD guidelines and which have, in the meantime, recently been enacted by the Parliament as part of the 2015 budget. Furthermore, a specific provision on the documentation requirements for taxpayers performing transactions between related parties has also been introduced into the Luxembourg tax law thus evidencing that particular attention is given to transfer pricing documentation.

The 2015 budget also contains a provision that gives an explicit legal basis to the ruling process, and thus formalizes and modernizes the existing rules. It is also foreseen that the annual report published by the direct tax authorities will include a synthetic and anonymized presentation of all the rulings, following thereby the current global trend towards increased transparency.

As BEPS discussions continue, Luxembourg is an active participant to the OECD's work. Luxembourg has made the commitment to fully apply the new regulations that will result from these discussions. However, Luxembourg generally takes the approach of not moving unilaterally when it comes to anti-BEPS regulations. The government and tax authorities are indeed waiting for the BEPS project to wrap up at the OECD and have been stressing the need to ensure a coordinated implementation of the BEPS actions at international level. Meanwhile, the government is working on a comprehensive tax reform for 2016/2017 that will thus be taking into account some of the BEPS recommendations.

Preparing for a post-BEPS environment

That said, many companies are already sketching out tax plans to anticipate the new rules. Most of them are not yet moving ahead but have at least started rethinking their tax strategies and are preparing to defend their choices to their boards of directors and the tax authorities.

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THE NETHERLANDS

The latest chapter in the Netherlands' long-running debate over corporate taxation, the OECD BEPS project has received a good deal of public, media, and parliamentary attention. Current discussion centers mostly on the taxation of multinationals. In response, companies are increasingly weighing risks versus opportunities, including assessing potential reputational damage relating to international tax planning.

For the most part, the Netherlands is waiting for the final OECD recommendations to reform its own regulations. Representatives of the Dutch government actively and constructively participate in the various OECD and EU initiatives. The debate in Parliament and in the press is largely focused on tax treaty policy relating to developing countries and on supporting capacity building within tax administrations in developing countries. From this debate, the Netherlands has decided to approach 23 tax treaty (developing) countries to explore amendments to existing treaties to include enhanced anti-abuse provisions.

Additionally, the government has supported the inclusion of developing countries in the process of shaping the BEPS recommendations. The Netherlands favors multilateral solutions to the BEPS problems and is awaiting the final OECD recommendations before acting unilaterally. Dutch tax authorities are monitoring BEPS discussions in both the European Union and the OECD and are keen to retain the country's reputation for business friendliness while ensuring a level playing field.

Transparency

The government has indicated its support for more disclosure on corporate reporting, although it favors multilateral rules that apply equally to all countries. It is expected that the sharing of information between tax administrations will become more robust, and that measures will be introduced to make this automatic.

Country-by-country reporting (CbyC)

The Netherlands favors multilateral rules that apply equally to all countries and is likely to support the OECD initiative on CbyC to tax authorities. It is not clear whether the Dutch government would support mandatory disclosure of country-by-country information to the public (other than the currently adopted EU directives on public CbyC for banks and extractive industries). Some multinational companies, notably in the oil and gas and mining industries, already disclose country-by-country tax information, even without a legal obligation.

Hybrid structures

The Dutch government will most likely support OECD proposals to combat the effects of hybrid structures (based on disparities and thus giving rise to double non-taxation). The OECD is expected to propose measures in September 2014.

Transfer pricing

In its latest version of the Transfer Pricing Decree, released in November 2013, the Dutch government reaffirmed its commitment to the long-standing practice of applying OECD transfer pricing guidelines and the arm's length principle.

Treaty abuse

Several years ago, the Netherlands took measures prohibiting the issuance of tax residence certificates for companies in situations where, in the Dutch view, the application of the tax treaty to income payable from source countries to the Netherlands could be unjustified. This policy also includes exchange of information with source countries where, in the Dutch view, the application of the tax treaty could be unjustified.

Recently, the law was changed to expand reporting obligations on 'substance' to the Dutch tax authorities that can, under certain circumstances, be spontaneously exchanged with tax treaty countries. Furthermore, as a long-standing part of the Dutch Tax Treaty Policy, the Netherlands will continue to propose specific anti-abuse provisions aimed at addressing tax treaty abuse.

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SWITZERLAND

Switzerland is embracing tax reform. Independently of the OECD BEPS project, the Swiss government has undertaken substantial tax reforms. A draft bill is expected to reach parliament by October 2014, although it is anticipated that enforcement of any new rules will not begin earlier than 2018.

Parliament has been driven to act in part by the same public outcry that is being heard in other jurisdictions. EU opposition to certain Swiss tax structures is also playing a role in the proposed reforms. In January 2014, the EU and government of Switzerland initialed a mutual understanding on business taxation, ending a nearly decade-long dispute.

The new measures will fall in line with the BEPS project proposals, and the Swiss tax authority has been actively monitoring discussions with the OECD to ensure that new legislation conforms to the new standard. The most important elements of the legislation are those that will abolish the special holding company regime, the mixed and domiciliary regime, the finance branch regime and the Swiss principal regime. Regimes established to replace the previous ones will comply not only with EU law but also with the requirements set out by the OECD. We expect several changes, including the introduction of an intellectual property (IP) box regime and a deemed interest reduction regime.

We also expect reforms such as the elimination of stamp duty on the issuance of bonds and shares, the withholding tax regime and possibly the introduction of a tonnage tax. The overall corporate tax rate may also be lowered, while traditional measures such as taking a step-up in basis for tax purposes are likely.

Stricter audits

Perhaps in anticipation of the coming reforms, Swiss tax authorities have been stricter with audits. When their rulings are challenged or there is room for interpretation, the authorities have been leaning toward the recommendations of the BEPS project. Switzerland enjoys a solid financial position compared to other European countries, so its support of the BEPS project should not be seen as a directive from a cash-strapped government. Rather, its actions reflect the Swiss government's desire to be seen as a leader in implementing the internationally recognized OECD principles.

Hybrid structures

Tax directors are re-examining their hybrid instruments, wary of any indication of profit shifting. They are performing gap analyses to determine the degree of change necessary to become compliant with the expected new regulations. Current tax rules, introduced approximately two decades ago, do not allow Swiss parent companies to use hybrid structures with their immediate subsidiaries. Further, for over 50 years, Switzerland has had legislation in place to unilaterally inhibit the misuse of treaty benefits.

Country-by-country reporting

As the government seems determined to develop BEPS-compliant tax rules, tax directors of companies with operations in more than one jurisdiction are also preparing for a future in which CbyC is the norm.

Limited risk deductions

Tax authorities have recently announced that they will examine the margins of limited risk distributors and commissionaires. The Swiss Federal Tax Administration is currently of the view that the gross margins of such distributing units cannot exceed 3 percent, based on the usual function and risk profile of such set-ups. Together with a national interest group led by the Big Four in Switzerland, many individual companies are in discussion with the Tax Administration regarding its peculiar approach to limited risk deductions.

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UNITED KINGDOM

Debate about the tax structures adopted by multinational companies has been especially vigorous in the United Kingdom. The coalition government, facing a general election in 2015, has been very publicly studying possible remedies. Representatives from HM Treasury, HM Revenue & Customs and other government departments have been active in discussions on the G20-OECD BEPS Action Plan. With the knowledge that change is coming, many UK companies are in the midst of assessing the impact on their businesses going forward.

Exchequer Secretary to the Treasury David Gauke has expressed the UK's support for the G20-OECD BEPS Action Plan: "We'll continue to work through the G20 and OECD – on the digital economy, on coherence, on substance and on transparency – to make sure that this area is properly reformed."

With a number of high-profile government officials involved in the G20-OECD BEPS Action Plan, the UK government is sending a clear message that it is taking the OECD's efforts seriously. Representatives from business, as well as the advisory community, have been actively encouraged by the OECD to get involved in helping to shape the Action Plan in a way that does not disturb ordinary commerce.

Tackling tax avoidance is not a new concept in the UK. In fact, the country has historically been proactive on anti-avoidance. Most recently, the government introduced a new set of controlled foreign corporation (CFC) provisions, and the regime has already been amended to ensure that groups are not able to utilize the rules to generate a UK tax advantage.

It is understood that the UK tax legislative framework has been studied at the OECD in order to assess what might constitute best practice in designing rules to defeat perceived BEPS activity. An example is anti-arbitrage rules, which have prevented companies from exploiting asymmetries between different tax regimes by using contrived arrangements. The new CFC provisions are also being reviewed as a potential model for tackling the artificial export of profits from one country to another.

Country-by-country reporting (CbyC)

The G20-OECD BEPS Action Plan is very likely to include the recommendation that companies undertake some form of country-by-country reporting (CbyC). UK companies have expressed apprehension about the practical difficulties of collecting data from all the different jurisdictions in which they operate. Each jurisdiction has its own distinct principles, and translating information to ensure that reporting is consistent across countries (such that it can be accurately reviewed by tax authorities) will be a complicated process.

UK companies have also raised concerns about preserving the confidentiality of information as it is shared with tax authorities around the world. The risk of information leakage will potentially increase and tax authorities will have to design and implement processes and controls to satisfy these concerns.

Transfer pricing

A significant component of the G20-OECD BEPS Action Plan relates to transfer pricing, in particular with respect to the extent of documentation needed, hard to value intangibles, and risk and capital. Like the tax departments of other multinationals, those of UK companies have historically invested considerable efforts in ensuring that transfer pricing policies are robust. This is a complex area, and companies are keeping a close eye on developments to ensure that business models are disrupted as little as possible.

Hybrid mismatch arrangements

The preliminary draft of the OECD's recommendations on BEPS activity arising as a result of hybrid mismatch arrangements was widely considered too broad, prompting some companies in the banking and funds industries (particularly in the UK) to warn that the recommendations might do inadvertent damage to commercial transactions. It is hoped that the OECD has listened to these concerns and will make the necessary adjustments, but the example is cautionary: In their effort to eradicate BEPS, authorities and policy-makers must also ensure that they do not inflict collateral damage or stifle otherwise commercial activities.

On the horizon

In March 2014, the Chancellor of the Exchequer released a report by way of an update of the government's thinking on the G20-OECD BEPS Action Plan. Entitled *Tackling Aggressive Tax Planning in the Global Economy: UK Priorities for the G20-OECD Project for Countering Base Erosion and Profit Shifting,* the report outlines the government's priorities heading into 2015. The following are some recommendations of particular interest, together with the latest developments in the UK.

- **Examine taxation in the digital economy** to update the threshold at which a company becomes taxable in a foreign country, and review transfer pricing to take technological advances into account.
- **Neutralize the effects of hybrid mismatch arrangements** with due consideration for intra-group hybrid regulatory capital instruments that are a direct consequence of regulatory requirements. Most recently, the UK published a consultation document on 3 December 2014 on the UK's plans for implementing the G20-OECD agreed rules for neutralizing perceived hybrid mismatch arrangements. The consultation closes on 11 February 2015, with legislation currently expected to be effective for payments made on or after 1 January 2017.
- **Prevent treaty abuse** by denying benefits to persons whose main purpose is to gain access to tax benefits through those treaties.
- **Develop a CbyC template and transfer pricing documentation** to provide tax authorities with the information they need to efficiently identify and assess risks. On 22 September 2014, the UK government formally committed to implementing the new country-by-country reporting template, the first of 44 countries to do so.
- **Strengthen CFC rules** to make it more difficult for multinational enterprises based outside the UK to divert profits to low-tax countries (to level the playing field between those enterprises and UK domestic businesses).
- **Limit base erosion via interest deductions.** The UK already has a number of defenses against excessive interest deductions and awaits the output of the OECD on limiting the use of interest deductibility as a means of shifting profit.
- **Give attention to transparency and substance going forward.** The government is aware of the need to be mindful of compatibility with existing international law and to support fair competition, as well as to acknowledge legitimate commercial decisions with respect to R&D within the framework of globalized markets and operations.
- **Prevent the artificial avoidance of permanent establishment status** by re-examining and updating the rules governing the threshold at which a company becomes taxable in a foreign country, and work to prevent businesses from artificially fragmenting their operations to avoid breaching this threshold. The UK has recently published complex draft legislation entitled the 'Diverted Profits Tax' which seeks to tax companies in two potential areas: (i) foreign companies structuring their arrangements to avoid creating a permanent establishment (PE) in the UK; and (ii) entities/transactions which lack economic substance involving a UK company or the UK PE of a foreign company entering into arrangements that have the effect of reducing the UK company or UK PE's taxable profits. The law is expected to apply from 1 April 2015, applying a punitive rate of 25 percent to the diverted profits (rather than the anticipated standard corporation tax rate from that date of 20 percent).
- **Ensure that transfer pricing outcomes are in line with value creation.** Authorities will consider whether special measures are required to override the arm's length principle in certain circumstances.
- **Collect and analyze data on BEPS and counteractions** to determine the scale and impact of perceived aggressive tax planning by multinationals.
- **Require disclosure of certain tax-planning arrangements.** This builds on a mandatory disclosure scheme introduced in the UK in 2004 and will therefore be familiar to UK businesses.
- **Make dispute resolution mechanisms more effective.** This means going to arbitration where tax authorities cannot come to agreement or tax disputes have exceeded a certain length of time.
- **Develop a multilateral instrument** to enable participating jurisdictions to implement BEPS measures and enhance bilateral tax treaties.

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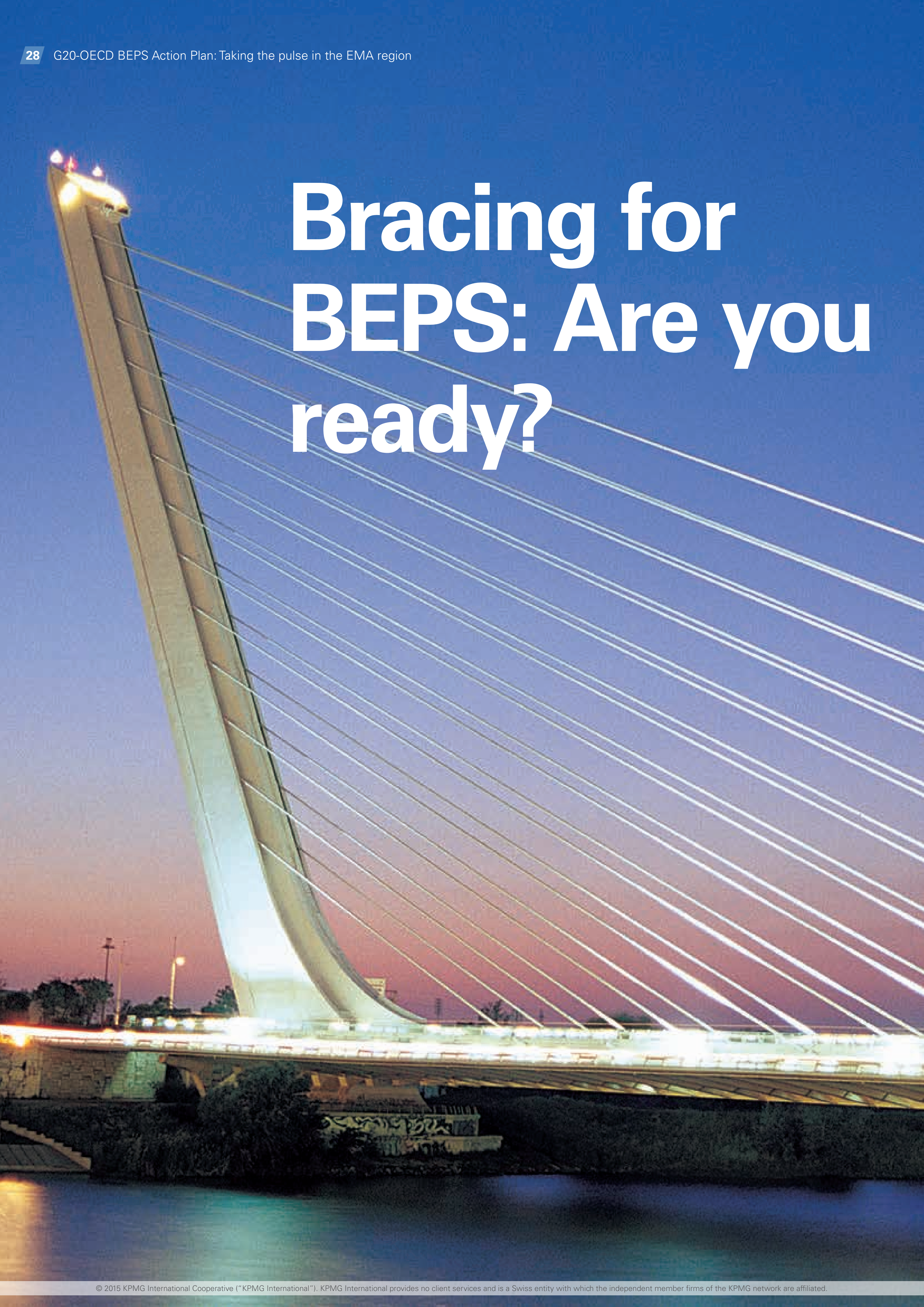
Bracing for BEPS: Are you ready?



With the public debate on tax and morality at an all-time high, changes to international tax planning are inevitable. Greater scrutiny by tax authorities of international transactions will certainly be a part of those changes. Many structures will no longer be permissible. Transparency will be a major theme for both taxpayers and collectors, and we expect companies to be subject to more and stricter requirements to disclose where and how much tax they have paid.

Communication will be more important than ever, as will the management of tax risk.

Most companies will have to re-examine their tax strategies and structures. Communication will be more important than ever, as will the management of tax risk.

Assess the impacts: Companies should review their existing tax transactions and structures immediately to identify potential weaknesses according to the G20-OECD BEPS Action Plan, and take steps to make improvements. The following areas will need close scrutiny: Movement of functions, assets and personnel within the group; development of supporting legal, tax and transfer pricing documentation; and preparation of internal controls and working guidelines to mitigate tax risks.

With adequate preparation, multinational corporations will be able to adapt to the new tax landscape created by BEPS without suffering unwarranted disruptions in business operations or incurring excessive tax costs during the transition.

Stay informed: Companies should inform themselves about the practices and rules not only of local tax authorities but also of those in other countries, as the 'level playing field' principle will prompt countries to try to avoid competitive disadvantage. It is also important to pay attention to the OECD, which does an excellent job of reporting on the progress of the BEPS project.

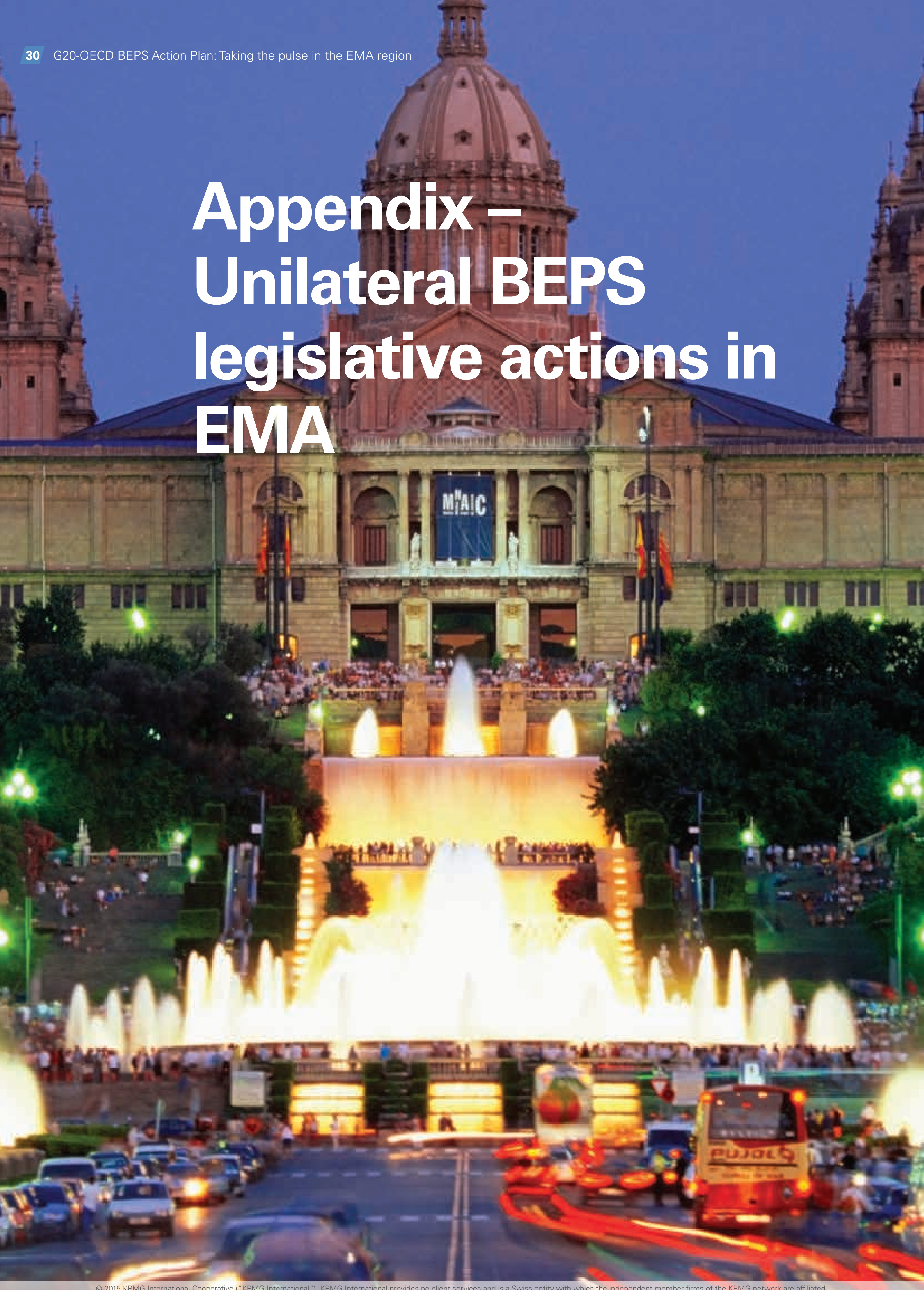
Get involved: The OECD has sought the input of the private sector throughout the BEPS project, and the opportunity to consult with policy-makers should not be missed. Effective, widely accepted solutions will be forged only through broad consultation with tax professionals in business, government and public practice.

Prepare for questions: As auditors grow stricter, companies can expect to be asked about business and tax activity at any time. It will be important to ensure that board members, C-suite executives and the core tax team are aware of potential questions and challenges from any number of stakeholders, not only regulators but also investors, media and the general public.

Think about reputational risk: Recent history provides ample warnings that companies should ensure their tax decisions take into account potential reputational risks, not simply whether the organization has complied with the tax laws in various jurisdictions.

Develop and maintain sound relationships with tax authorities: Several companies have benefited from open and respectful relationships with local tax authorities. These appropriate relationships should be the norm for all companies and all the countries where they claim business.

Appendix – Unilateral BEPS legislative actions in EMA



Even though we are only midway through the OECD's timeframe for developing proposals under the G20-OECD BEPS Action Plan and existing proposals are incomplete, many countries are already changing their tax legislation or administration in response. Below we summarize such actions taken so far by European countries regarding the Action Plan's 15 points.

G20-OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
Action 1 – Address tax challenges of the digital economy	**Czech Republic –** The Special Tax Authority, established in 2012 to administer large corporate taxpayers more efficiently, has several expert teams focussing on issues such as digital economy, transfer pricing and aggressive tax planning **Finland –** The Finnish Tax Administration is running a project to address tax questions related to electronic commerce **France –** Greater scrutiny of digital companies, new requirements for segmented accounts **Italy –** New rules to be introduced **Romania –** New place-of-supply rules for VAT purposes, including implementation of Mini One Stop Shop (MOSS)
Action 2 – Neutralize effects of hybrid mismatch arrangements	**Cyprus –** Expected to adjust relevant legislation to reflect the new provisions of the Parent-Subsidiary Directive **Finland –** Expected to adjust its legislation to reflect the new provisions of the Parent-Subsidiary Directive **France –** Existing rules limit opportunities for hybrid instruments **Germany –** Anti-hybrid rules in place (correspondence principle for dividends) **Hungary –** A new GAAR aims to deny tax exemption on income not taxable in any of the countries under a tax treaty due to different interpretation of the facts and/or the treaty itself, allowing the tax authority to bypass the normal mutual agreement procedure in such cases and proceed directly to the denial of exemption **Ireland –** Existing provisions limit opportunity for hybrid structures **Italy –** Existing rules to be reviewed **Malta –** Guidelines issued emphasizing that Maltese participation exemption does not apply to hybrid instruments in case of underlying debt **Poland –** New rules on corporate dividends aiming at disallowing participation exemption if the amount of dividend has been included in tax deductible costs of an entity paying the dividend introduced from 2015

G20-OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
Action 2 – Neutralize effects of hybrid mismatch arrangements (cont'd)	**Portugal –** Rules with respect to dividends from foreign entities revised under 2014 reform **Romania –** Expected to adjust relevant legislation to reflect the new provisions of the Parent-Subsidiary Directive **Spain –** Anti-hybrid legislation currently awaiting parliamentary approval **Sweden –** Introducing anti-hybrid rules in line with the latest amendments to the Parent–Subsidiary Directive **Switzerland –** Current tax rules (introduced about two decades ago), do not allow Swiss parent companies to use hybrid structures with their immediate subsidiaries **United Kingdom –** Published consultation on 3 December 2014 on the UK's plans for implementing the G20-OECD agreed rules for neutralizing perceived hybrid mismatch arrangements. Consultation closes on 11 February 2015, with legislation currently expected to be effective for payments made on or after 1 January 2017
Action 3 – Strengthen controlled foreign company ruless	**Finland –** The Finnish Tax Administration is running a project to develop means to prevent international tax avoidance overall; whether this will affect the Finnish CFC legislation is unknown **France –** CFC legislation in force **Germany –** CFC legislation in force, no plans to tighten the rules **Greece –** CFC rules apply for the first time in 2014 **Italy –** Existing rules to be reviewed **Poland –** CFC rules introduced from 2015 **Portugal –** CFC rules tightened under 2014 reform **Russia –** Enactment of CFC legislation **Spain –** CFC rules recently strengthened **Sweden –** CFC legislation in force
Action 4 – Limit base erosion via interest deductions and other financial payments	**Austria –** Restrictions on deductions introduced **Belgium –** Thin capitalization rules strengthened **Czech Republic –** Higher withholding rate imposed on Czech source dividends, interest and royalty paid to countries with which the Czech Republic does not have tax treaty, information exchange agreement or convention on mutual administrative assistance in tax matters **Finland –** Limits on deductibility of interest apply from 2014 **France –** Thin capitalization rules strengthened. Interest deductibility limited where beneficiary is subject to low taxation **Greece –** Stricter provisions for deductibility under 2013 law **Italy –** Existing restrictions on deductions set for review **Norway –** Rules limiting interest deductibility put into effect in 2014 **Poland –** Tightening thin capitalization regime **Portugal –** Earnings stripping rules introduced in 2013, limiting deductibility **Russia –** New law proposed for 2015, possibly limited to controlled transactions **Slovakia –** Proposed earning stripping rules expected to take effect on 1 January 2015 **Spain –** Stricter interest deductions rules are going to be approved in 2015 **Sweden –** Strict interest deduction rules introduced in 2013 are under review and expected to be replaced shortly **Turkey –** CFC rules in effect

G20-OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
Action 5 – Counter harmful tax practices more effectively, taking into account transparency and substance	**Finland –** Tighter scrutiny of transfer pricing practices and to taxation of carried interest structures **France –** Substance under scrutiny **Greece –** Tax authority requirements for transfer pricing tightened and tax avoidance rules introduced **Poland –** Plans to introduce GAAR **Portugal –** Increased scrutiny of transfer pricing practices **Romania –** Under general anti-abuse provisions, 'artificial transactions' can be disregarded or adjusted for tax purposes **Russia –** Russian Government approved model tax information exchange agreement, with the first agreements expected to be concluded in the coming year **Slovakia –** Substance-over-form principle broadened **Turkey –** Substance-over-form principle is already accepted by Turkey
Action 6 – Prevent treaty abuse	**Finland –** The Finnish Tax Administration is currently running a project that aims to promote Finland's international cooperation **France –** Anti-treaty shopping clause in new tax treaties **Germany –** New German model DTT contains switch-over and subject-to-tax rules as well as specific anti-avoidance rules **Hungary –** A new GAAR aims to deny tax exemption on income not taxable in any of the countries under a tax treaty due to different interpretation of the facts and/or the treaty itself, allowing the tax authority to bypass the normal mutual agreement procedure in such cases and proceed directly to the denial of exemption **Italy –** Existing rules to be reviewed **Poland –** Reviewing and amending tax treaties **Romania –** Increased withholding tax of 50% for payments to companies resident in non-treaty countries in relation to artificial transactions; renewing existing treaties to add information exchange and administrative cooperation clauses **Russia –** Establishing of beneficial ownership concept in the Russian Tax Code; taxation of indirect sales of Russian real estate **Slovakia –** White list of treaty states established; withholding and security taxes significantly increased on payments to non-treaty countries; payments to non-treaty countries deductible only after the required withholding, settlement and notification to tax authorities are complete **Sweden –** New Swedish government has indicated continual updates to Swedish tax treaties **Switzerland –** For over 50 years, Switzerland has had legislation in place to unilaterally inhibit the misuse of treaty benefits **Turkey –** renewing existing treaties by adding information exchange and administrative cooperation clauses

G20-OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
Action 7 – Prevent artificial avoidance of permanent establishment status	**Estonia –** New regulations expected ahead of OECD **Greece –** Existing permanent establishment laws remain strict **Poland –** Intention to put more emphasis on tax audits of entities doing business in Poland through unregistered permanent establishments **Portugal –** Increased scrutiny of transfer pricing practices **Spain –** Strong support for broadening the scope of current laws **United Kingdom –** Expected to introduce a new "Diverted Profits Tax" (at a rate of 25 percent, rather than 20 percent) from 1 April 2015 to counter perceived 'contrived arrangements' to divert profits from the UK
Actions 8, 9, 10 – Ensure transfer pricing outcomes are in line with value creation ***Action 8 – intangibles*** ***Action 9 – risks and capital*** ***Action 10 – other high-risk transactions***	**Austria –** New rules on transfer pricing likely **Belgium –** More scrutiny of transfer pricing **Finland –** Finland's government is studying risks and is expected to implement a domestic advance pricing agreement procedure **France –** Increased tax audits and greater scrutiny of transfer prices **Italy –** New rules on transfer pricing currently being written **Luxembourg –** More detailed transfer pricing rules are contemplated **Poland –** Plan to introduce a new ruling procedure that would guarantee that a particular tax plan is not abusive **Portugal –** New rules on transfer pricing currently being drafted **Romania –** Increased scrutiny of transfer pricing and proposed tightening of transfer pricing reporting requirements **Slovakia –** Rules amended to broaden scope of transfer pricing rules to also cover domestic transactions **Spain –** New measures will be approved in 2015 **The Netherlands –** New transfer pricing decree introduced
Action 11 – Establish methodologies to collect and analyze data on BEPS and the actions to address it	**No unilateral action in EMA to date**
Action 12 – Require taxpayers to disclose their aggressive tax planning arrangements	**Belgium –** Mandatory disclosure of tax haven payments **Czech Republic –** New regulation requiring disclosure of selected transactions with related parties and filed together with the corporate income tax return (effective from 2015) **Germany –** Disclosure rule for aggressive tax planning structures under discussion but not yet proposed **Poland –** Plan to introduce a new ruling procedure that would guarantee that a particular tax plan is not abusive **Portugal –** Disclosure provisions introduced in 2008 and subsequently refined **Russia –** Greater disclosure to become mandatory as part of 'de-offshore-ization' program **Turkey –** Companies registered with the Large Corporation Tax Office are required to prepare transfer pricing reports by April of fiscal year and submit them upon request; tax haven list prepared but not yet approved

G20-OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
Action 13 – Re-examine transfer pricing documentation	**France –** Creation of an abridge TP declaration/CbyC reporting obligation for banking and mining sector **Greece –** Stricter documentation requirements apply from 2014 **Norway –** Amendment to transfer pricing documentation proposed to strengthen requirements; CbyC reporting required for extractive and mining industries **Poland –** extending requirement to prepare transfer pricing documentation on partnerships and consortium agreements **Portugal –** New rules on TP currently being written which include the CbyC report and stricter requirements for documentation **Slovakia –** The Swedish Tax Agency has proposed that the Swedish government take legislative action to make the new documentation requirements enforceable under domestic law **Spain –** Spain's current documentation requirements may be updated according to the OECD CbyC reporting requirements **Sweden –** The Swedish Tax Agency has proposed that the Swedish government take legislative action to make the new documentation requirements enforceable under domestic law **United Kingdom –** On 22 September 2014, the UK government formally committed to implementing the new country-by-country reporting template
Action 14 – Make dispute resolution mechanisms more effective	**Sweden –** The advance tax ruling procedure is under review
Action 15 – Develop a multilateral instrument	**n/a**

Source, KPMG International, 2014.

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