



# OECD BEPS Action Plan

Taking the pulse in the EMA region

November 2015

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# Introduction

For tax executives in Europe, the future of international taxation is increasingly uncertain. The global project to address tax base erosion and profit shifting (BEPS) continues to build momentum. With the release of all final BEPS proposals and their endorsement by the G20 and European Union (EU), the Organisation for Economic Co-operation and Development's (OECD) is expected to start monitoring implementation of all 15 items in its Action Plan on BEPS.<sup>1</sup>

European governments have all expressed their commitment to end BEPS and are eager to help shape and refine the plan. In fact, the European Commission and the governments of some EU members have already made changes to their tax rules in advance of the OECD's coming recommendations. At the same time, 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.

The only certainty is that a wave of tax change is coming as more countries join in translating the OECD's recommendations into their domestic laws. From greater requirements for transparency and more stringent transfer pricing policies to justifying substance, every country and every multinational company will feel the impact.

As we turn the corner from consultation to implementation, the time is right to take stock. This report is the second in our series of 'pulse checks' on how actions on BEPS policy are progressing in Europe. In these pages, international tax leaders from KPMG's member firms in Europe offer insights on:

- the impact of the BEPS debate on tax policy in Europe and selected European countries
- recent and 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.

Most importantly, we sought to answer whether BEPS activities will ultimately improve the taxation of cross-border transactions in Europe – or if companies will continue to weather inconsistency and uncertainty for years to come.

Our findings are set out in the following pages, starting with an overview of BEPS-related trends in the region as a whole, followed by an in-depth look at how events are unfolding in selected European countries. We conclude with strategic advice that tax directors of all international companies should consider now to guard against adverse change and thrive in Europe's new tax reality.



**Vinod Kalloe**

Head of International Tax Policy  
KPMG Meijburg & Co, The Netherlands

<sup>1</sup> Organisation for Economic Co-operation and Development (2013), *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing. <http://dx.doi.org/10.1787/9789264202719-en> (referred to herein as "OECD Action Plan").

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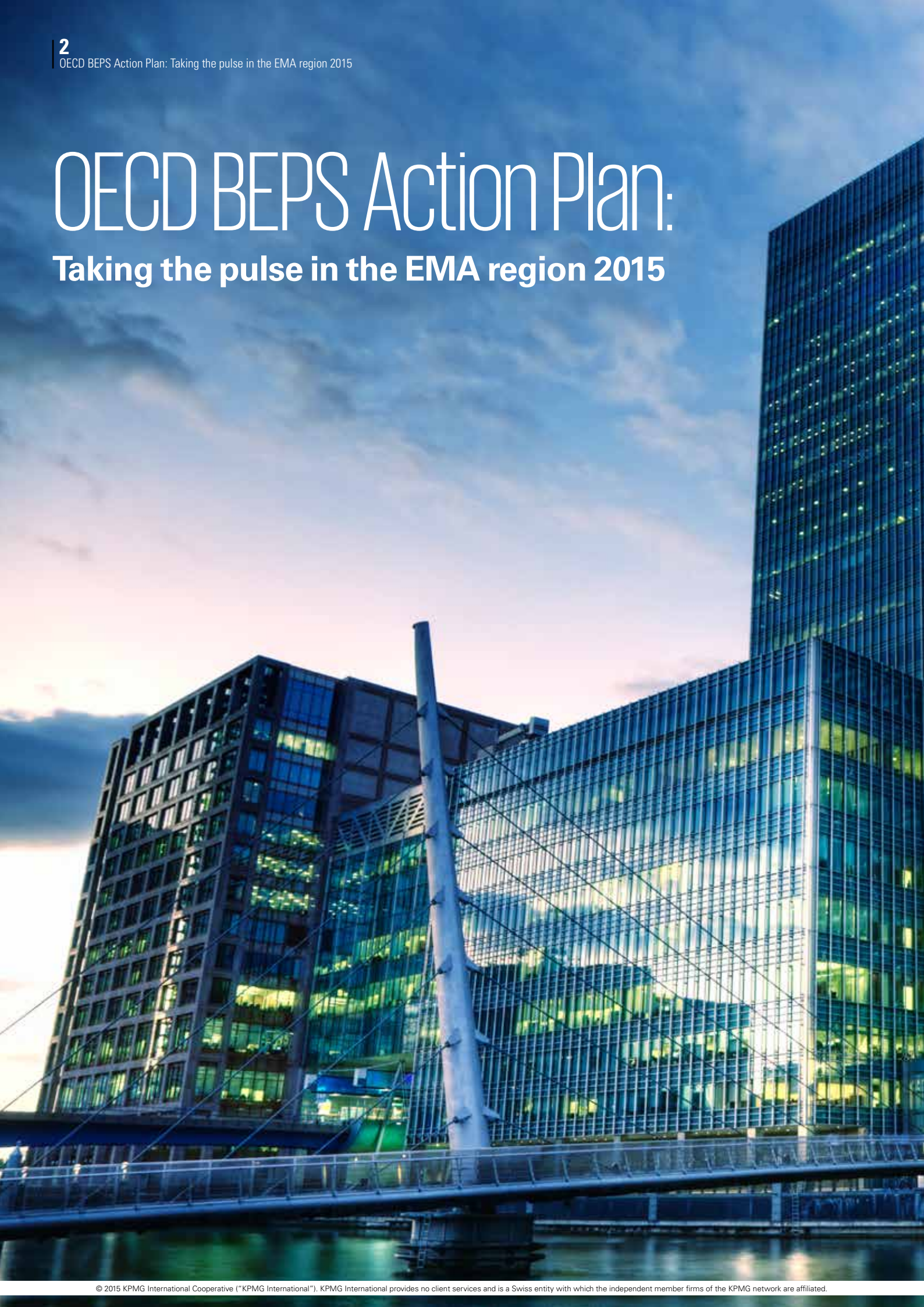
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# OECD BEPS Action Plan:

## Taking the pulse in the EMA region 2015









# OECD BEPS Action Plan:

## Taking the pulse in the EMA region 2015

### Overview

The OECD Action Plan on BEPS, introduced in 2013, set 15 specific action points to ensure international tax rules are fit for an increasingly globalized, digitized business world and to prevent international companies from paying little or no tax. After 2 years of outstanding effort, on 5 October 2015 the OECD published guidance on domestic legislative and administrative changes to address all 15 of the Plan's action points and achieve the G20's approval by the end of 2015.

Most OECD and G20 countries have been engaged in the OECD's work, and many other countries are either fully engaged or watching developments closely. Each government will have to determine how the guidance will affect existing rules, and then undertake the lengthy process of proposing, debating, and enacting domestic tax changes. In some countries, years may pass before reforms become law.

### EU moves forward on BEPS

While the OECD is adhering closely to its original timetable, the European Union (EU) is acting much more swiftly, with more direct and immediate impact on companies in Europe. The OECD's project involves a broad, diverse group of participants, while EU member states are closer in their attitudes towards BEPS solutions. The relative ease of gaining consensus among its members has allowed the EU to move forward on many of its responses to BEPS ahead of the OECD.

Over the past few years, the European Commission (EC) has undertaken consultations and introduced new legislation and guidance in a number of areas that overlap with the OECD's Action Plan items. As detailed in the

table on page 7, steps taken by the EU already include:

- expanding the automatic exchange of information on cross-border tax rulings (amending Directive 2011/16/EU)
- 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 measures on state aid granted through tax to prevent harmful tax competition
- requiring greater corporate transparency by introducing country-by-country (CbC) reporting for extractive and logging companies and revising the most recent Capital Requirements Directive (CRD IV) for banks and investment funds.

The EC's investigations into the ruling practices of EU member states are outside the bounds of the OECD's work, but clearly the OECD's emphasis on BEPS has brought these practices into focus. The EC has serious concerns as to whether the rulings under review – which typically involve transfer pricing issues – are in breach of EU state aid rules. Starting with investigations of specific tax rulings in Belgium, Luxembourg, the Netherlands and Ireland, the project was expanded

in early 2015 to cover tax rulings throughout the EU. If the EC decides that the tax benefits endorsed by certain rulings are state aid, affected taxpayers could be forced to repay up to 10 years of back taxes.

### The EC's latest Action Plan

Most recently, in June 2015, the EC presented a new action plan that would reform corporate taxation in the EU. The plan sets out a series of initiatives to address tax avoidance, increase transparency, and improve EU coordination.

One of the plan's key areas for action is to re-launch the Common Consolidated Corporate Tax Base (CCCTB). First announced in 2011, this proposal would introduce a single set of mandatory rules that cross-border companies could use to calculate their taxable profits in the EU (with the option to transfer losses), instead of having to deal with different national systems.

The EC also published a first pan-EU list of third-country non-cooperative tax jurisdictions based on standards of tax good governance (transparency, exchange of information, and fair tax competition). Publishing the list is a preliminary step toward developing a common EU approach to non-cooperative jurisdictions.

Finally, as part of the June package, the EU launched a public consultation on the controversial topic of public CbC reporting. The main purpose of consultation is to assess whether this public disclosure should be extended to multinational companies in industries other than the extractive and financial industries. At the OECD level, however, current proposals do not contemplate CbC reports being

available for review by anyone other than the tax authorities.

## Plan for coordinated implementation?

As we turn the corner from consultation to implementation, however, the next steps are not so clear. Businesses have raised concerns over the uncertainty and complexity that is bound to result from staggered implementation of new rules among different countries. The Action Plan sets out a plan for the coordinated implementation of its outcomes, but there currently seems to be no guidance or monitoring of unilateral implementation of the Action Plan's recommendations at the OECD level.

It's possible that some countries with a lukewarm commitment to the process could back away from the discussions if their own implementation plans (or lack thereof) come into focus. Once the Action Plan deliverables have been approved by the G20 by the end of this year, it is hoped that the OECD will continue to lead participating countries in developing guidelines and timetables to implement new international tax rules in concert.

## More tax complexity ahead

Just as domestic rules will be enacted at different paces in different places, it's also becoming apparent that the interpretation and implementation of the OECD recommendations will vary considerably. The EC says its June 2015 initiatives are "very much aligned" with the OECD's BEPS reforms but are "shaped to meet the EU's own particular challenges and needs."<sup>1</sup> And while most European countries have committed to follow the OECD's recommendations in principle, unilateral action taken to date suggests

more 'shaping' of the proposals will occur among individual countries. For example:

- The United Kingdom introduced a 'Diverted Profits Tax' to counter perceived contrived arrangements to divert profits from the UK.
- Hungary and Spain have introduced anti-hybrid legislation that took effect in 2015.
- Italy's legislation to introduce a tax on online transactions and a 'virtual permanent establishment' (PE) concept is currently before the country's parliament, and France may adopt a similar approach.

Globally, these departures from the letter of the OECD recommendations are expected to multiply. For example, the United States seems hesitant to embrace the OECD's recommendations due to concerns that the tax practices of US-based multinational companies are being unfairly targeted. In the area of transfer pricing, China, India and other Asian countries appear to be going their own way in interpreting how market characteristics, activities and intangible assets contribute value for purposes of allocating profit.

So even though the OECD Action Plan sought to instill more uniformity and certainty in the international tax system, it appears increasingly likely its implementation will be fragmented among regions and individual countries.

## Raising the bar for international tax policy

While the ideal of a coordinated, consistent and fair international tax system appears to remain out of reach, the OECD's work to date has spurred some important progress:

- **Advanced understanding of tax:** The OECD's working groups have generated an enormous amount of well-considered, in-depth research and analysis on international tax principles, a technically excellent body of work that will influence international tax policy decisions for many years to come.
- **Fewer loopholes:** The OECD's work has led policy makers to close some of the more egregious tax loopholes that have allowed some international companies to escape tax inappropriately.
- **Bringing emerging markets to the table:** Developing countries outside the OECD and G20 have been brought into the debate. While they may not share the same views, countries like Indonesia, the Philippines and Thailand have learned a great deal about the impact of international tax principles on their own tax revenues and tax competitiveness. They are upgrading their tax rules and administrative resources accordingly.
- **Engaging business:** Over the past 2 years, the attitude of many international businesses toward the debate has moved from disinterest to keen engagement. Internally, company directors and management are taking more interest in their tax affairs, the implications of their tax strategies, and their tax governance. Externally, companies' participation in the OECD debates will help ensure the OECD's recommendations are developed with an eye to practical business concerns.

In short, the OECD's project has raised the bar for international tax policy across the globe. While the work may

<sup>1</sup> EC Fact Sheet, "Questions and Answers on the Action Plan for Fair and Efficient Corporate Taxation in the EU", 17 June 2015.

fall short of delivering an ideal tax world, it will still us bring many steps closer, especially where tax fairness and transparency are concerned.

### More uncertainty to come

For international companies in Europe, it looks like the current situation will lead to more uncertainty and tax controversy in the coming years than ever before. The past few years have seen tax authorities in Europe grow bolder in their audit practices as a result of changing attitudes to tax morality and BEPS. Some governments are seeking 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. Whatever their motives, tax authorities in Europe and around the world are intensifying audits, especially when issues such as mismatching, transfer pricing or substance are in play.

Companies can expect audits to become more rigorous in general as all parties adjust to the new reforms. As countries put in place new international tax concepts, many existing corporate structures may need to be revised – or unwound and replaced entirely. Companies expanding into new business ventures or jurisdictions need to look ahead to ensure new international arrangements would be BEPS-compliant. Both current and new arrangements may necessitate, for example, new intragroup finance arrangements, the development

of new transfer pricing policies and documentation processes, or migration of holding company structures for intellectual property (IP) holdings.

Some areas of special interest to companies in Europe are as follows:

- **Country-by-country (CbC) 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 CbC reporting. CbC reporting 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 proving ineffective in preventing double non-taxation. Most countries are expected to 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, the United Kingdom, Germany and other countries 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.

In the short term, the swelling wave of international tax changes to come during the BEPS implementation phase means companies need to analyze how specific new provisions and prohibitions would affect their current arrangements and restructure them as needed. Over the longer term, companies need to institute governance procedures to monitor evolving operating models and determine the most efficient, BEPS-compliant way of operating in the future.

As countries put in place new international tax concepts, many existing corporate structures may need to be revised – or unwound and replaced entirely.



OECD Action Plan on BEPS – Action Items	Corresponding EU Initiatives
Action 1 – <b>Address tax challenges of the digital economy</b>	Digital economy expert group
Action 2 – <b>Neutralize effects of hybrid mismatch arrangements</b>	Parent-Subsidiary Directive including hybrid finance instruments EU Code of Conduct group – Hybrid entities EU Code of Conduct group – Hybrid permanent establishments
Action 3 – <b>Strengthen controlled foreign company (CFC) rules</b>	EU Code of Conduct – Inbound profit transfers
Action 4 – <b>Limit base erosion via interest deductions and other financial payments</b>	
Action 5 – <b>Counter harmful tax practices more effectively, taking into account transparency and substance</b>	EU Code of Conduct – Review of third-country regimes EU State Aid – Ruling practices EP Tax Committee ruling review EU Directive on Mutual Assistance and Cooperation amendment including rulings and APAs
Action 6 – <b>Prevent treaty abuse</b>	EU Parent Subsidiary Directive – GAAR EU Interest and Royalty Directive – GAAR
Action 7 – <b>Prevent artificial avoidance of permanent establishment status</b>	
Actions 8, 9, 10 – <b>Assure transfer pricing outcomes are in line with value creation</b> <i>Action 8 – intangibles</i> <i>Action 9 – risks and capital</i> <i>Action 10 – other high-risk transactions</i>	EU Joint Transfer Pricing Forum and EU Code of Conduct – Transparency on transfer pricing ruling practices; exchange of APAs between EU member states
Action 11 – <b>Establish methodologies to collect and analyze data on BEPS and the actions to address it</b>	
Action 12 – <b>Require taxpayers to disclose their aggressive tax planning arrangements</b>	EU Action Plan – Public consultation tax transparency 2015
Action 13 – <b>Re-examine transfer pricing documentation</b>	EU Accounting Directive – Public disclosure of CbyC reports by extractive industry EU Capital Requirement Directive – Public disclosure of CbyC reports by banks EC consultation (2015) on public disclosure of CbyC reports by all multinational companies; impact assessment due in first quarter of 2016
Action 14 – <b>Make dispute resolution mechanisms more effective</b>	EC to launch initiative to broaden Arbitration Convention beyond transfer pricing
Action 15 – <b>Develop a multilateral instrument</b>	EU initiative to harmonize or coordinate EU block implementation of BEPS recommendations

Source: KPMG International, 2015.

# Countries in focus:

**Moving from talk to action**







## Austria



Austria has been notably 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

Due to a recent Corporate Income Tax (CIT) Act amendment, interest payments to low-taxed group companies are no longer deductible for tax purposes as of 1 March 2014. The 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.

Further, 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 CbyC 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 their 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 requires 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 of IP and PE 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.



**Barbara Polster**  
Partner, International Tax  
KPMG in Austria



**Hans Zöchling**  
Head of International Tax  
KPMG in Austria





Until recently, Belgian tax policy has been geared to meeting budgetary challenges, especially in the wake of the economic crisis. As public anger in Belgium rose over the tax practices of some multinationals, Belgium's previous government realized that the fight against aggressive tax planning could help smooth the passage of certain measures through Parliament.

The tax focus of Belgium's current government, elected in May 2014, continues to be on job creation and economic growth. With salary costs in Belgium becoming prohibitively high relative to its neighbors, Belgium is seeking to reduce its reliance on tax revenue from labor, and to increase revenue from other sources (e.g. energy and natural resource companies, consumption taxes). At the same time, the fight against tax fraud – a key responsibility of Belgium's Minister of Finance – remains high on the political agenda.

As a founding member of the OECD, Belgium has fully supported the BEPS initiative but has not been an early adopter. So far Belgium has not implemented specific anti-BEPS measures in direct response to the OECD project. However, certain anti-abuse rules to safeguard the tax base of individuals and corporations against aggressive planning have existed for quite some time, and recently the government has taken further steps that are in line with the spirit of the OECD's BEPS project.

### Stepped up enforcement of anti-BEPS rules

Specific anti-abuse rules backed-up with a general anti-abuse rule (GAAR) have been in place for decades. Interest, royalties and service fees paid to tax havens are not deductible unless the taxpayer can prove that the expenses are connected to transactions actually carried out and do not exceed normal limits. Under the GAAR, a transaction as a whole cannot be opposed to the tax authorities, if they demonstrate by presumptions or any other evidence,

that fiscal abuse is one of the transaction's main drivers.

Recent years have seen significantly stepped-up audits aimed at detecting international tax fraud. A specialized team of about 100 auditors has been allocated to this area, and this centralized team is steering the audits of large multinationals across Belgium.

### BEPS trends in Belgian tax rules and practice

- **Tackling offshore regimes.** The previous government introduced a rule requiring individuals to report in their tax returns whether they are the founder or the beneficiary of legal constructions such as trusts, foundations and foreign low-taxed entities. The rule applies as from assessment year 2014. The current government has now gone a step further with its so-called 'Cayman tax'. Under this transparency tax, income received by the legal construction will be taxable to the resident individual/legal entity that is the founder of the legal construction,



as if the founder had received the income directly. The tax does not apply if the founder or beneficiary can demonstrate that the low-taxed entity's income is effectively taxed at a rate of at least 15 percent or, under certain conditions related to the possible exchange of information, that the legal construction has genuine activity and economic substance.

- **Tax haven transparency.** In an effort to tackle the improper use of tax havens, Belgian tax law requires companies to report payments exceeding 100,000 euros (EUR) to recipients based in a tax haven. A 'tax haven' is defined as any country with a level of taxation below 10 percent or any jurisdiction on the OECD blacklist. This information already points in the direction of potential aggressive or abusive transactions and thus facilitates tax audits.
- **Transfer pricing.** Belgium's tax administration established a small team of auditors specialized in transfer pricing to examine transfer pricing issues, with a focus on intangibles, risk and capital. This team has been expanded, and training is being conducted in local tax offices with the goal of increasing local transfer pricing expertise and establishing 'satellite' transfer pricing audit centers.

A strong supporter of the OECD's proposals on transfer pricing documentation and CbyC reporting, the Belgian government is also studying the feasibility of introducing formal transfer pricing documentation regulations.

- **Thin capitalization.** Designed to address interest deductibility, the recently revised thin cap 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 5 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.

- **Fair share of tax.** Targeting large Belgian companies and Belgian establishments of large foreign companies, the so-called 'fairness tax' that was introduced in 2013 is due if a company distributes dividends but pays little or no tax on this dividend because of over-use 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. The fairness tax comes on top of the standard corporate income tax.



**Eric Warson**  
Head of International Tax  
KPMG in Belgium



## 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.

French tax 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 reassessments 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, taxpayers are 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 transactions.

### 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. Additional BEPS actions include the following:





- **Transparency.** In July 2013, the government introduced 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 report called for improved transfer pricing audit capabilities using CbyC reporting to provide a record of activities and results to the French tax administration. The report recommended that the administration be authorized to access all cost accounting records, along with the calculations used to determine prices and intragroup 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 x 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.
- **Tax treaties.** All new tax treaties entered by France include substance and anti-treaty shopping provisions.

Additionally, France signed the multilateral treaty for exchange of information in Berlin on 29 October 2014.

### 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 than those of its counterparts.

The authors of the report proposed adjustments to 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 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. Ensuring consistency among all parts of one company in all its countries of operation 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 requirement raises the risk of competitors gaining access to vital information and compromising a company's ability to operate.



**Nathalie Cordier-Deltour**

Partner, International Tax  
Fidal, France\*

\*Fidal is an independent legal entity that is separate from KPMG International and KPMG member firms.



## 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 OECD BEPS Action Plan has been made. 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. While media coverage and public anger toward tax evasion has somewhat abated, multinational companies that pay minimal tax in Germany continue to receive negative publicity.

Tax authorities have become much more aware of, and active in, their audits of international transactions. 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 with neighboring tax authorities, for example, in France and Austria. The German Ministry of Finance hosted the October 2014 conference on tax transparency and fairness at which 50 states signed the multilateral agreement on the automatic exchange of tax information.

Auditors are paying more attention to issues that are also being discussed at the OECD, such as PE or hybrid mismatches. Stricter audits may also be encouraged by a government that wants to maximize revenues. Whatever the motivation, certain structures that were not questioned 5 years ago are now subject to challenge from the tax authorities.

Tax controversy and disputes have risen accordingly. While rising public attention to tax has not influenced the courts' objectivity in deciding BEPS-related issues, the courts' stance toward issues in this area could change in the future.

### Country-by-country reporting

CbyC reporting is one area where German enthusiasm for the BEPS project has waned in the past year. In light of the high volume of activity of German multinationals in the BRICs (Brazil, Russia, India and China) and other emerging countries, there are fears that the CbyC reports could cause the tax authorities in these markets to pursue a greater share of tax. Nevertheless, Germany continues to show constructive engagement in the development of these proposals.

### Hybrid structures

Corporations in Germany have become much 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 await the details of possible refinements to domestic law



in response to the OECD proposals. 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, 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.

A first legislative draft might be released at the beginning of 2016 implementing the anti-hybrid recommendations of the OECD and CbyC reporting.

## Substance requirements

International tax practitioners know that substance requirements are 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 OECD's accelerated timetable, 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.



**Franz Prinz zu Hohenlohe**  
Head of International Tax  
KPMG in Germany



**Dr Gabriele Rautenstrauch**  
Director, International Tax  
KPMG in Germany



## Ireland



For Ireland, the OECD BEPS project would ideally end with the country's tax regime perceived as meeting the standards for substance and transparency but keeping its reputation as a low-tax jurisdiction that encourages foreign direct investment (FDI). This should not present a challenge for Irish tax policymakers as the country's tax policy is already largely in step with the anti-BEPS proposals.

Following a public consultation on BEPS, the Minister of Finance addressed a number of BEPS related matters in a tax strategy document subtitled *A Roadmap for Ireland's Tax Competitiveness*, released in tandem with the country's October 2014 budget.

The policy document declares that Ireland's 12.5 percent corporation tax rate "should not and will not change... Ireland remains 100 percent committed to the 12.5 percent corporate tax rate. This will not change."<sup>1</sup>

This strong statement signals Ireland's desire to remain competitive internationally in the race for foreign investment by maintaining its low-tax status. At the same time, the Department of Finance is keen to ensure that Ireland is not viewed as a tax haven. Substance and transparency are vital to the country's corporate tax policy, which explicitly states the goal of maintaining an open and transparent tax regime.

While the Irish public is keenly interested in the media coverage of some high-profile cases, they are 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. 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.

### Balancing reputation and competitiveness

Reputational concerns were also at the heart of a 2014 legislative amendment to prevent Irish incorporated companies from being managed into 'statelessness' and therefore not taxable anywhere. Notably, the amendment was enacted well before the BEPS project's conclusion.

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. Ireland has had a mandatory reporting regime related to tax planning transactions with certain hallmarks for a number of years.

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

<sup>1</sup> Ireland, Department of Finance, *Competing in a Changing World: A Roadmap for Ireland's Tax Competitiveness*, pages 1 and 8.



as a tax jurisdiction is likely to inform any proposed changes.

Ireland stands to benefit as other jurisdictions seek to tighten their requirements for counterparty jurisdictions to have substance and to subject companies to tax. Companies that do not already have a substantial overseas presence may seek a low-tax jurisdiction such as Ireland in which to establish a home base.

### Knowledge Development Box

Following consultations and a feedback statement<sup>2</sup> released in 2015 on the introduction of a patent box – referred to as the ‘Knowledge Development Box’ (KDB) Ireland announced plans to introduce legislation in its 2015 budget for a KDB that meets the OECD’s substance requirements under the modified nexus approach endorsed by the OECD and the EU.

### Anti-haven rules

Ireland does not have specific anti-haven provisions, but various relief measures in Irish tax law (e.g. relief from source-country withholding taxes) are available only to persons who are tax-resident in the EU or in countries with which Ireland has entered into tax treaties.

### Digital economy

Like other EU member states, Ireland has introduced new place-of-supply rules for VAT purposes for digital supplies. The rules took effect from 1 January 2015 and apply VAT to 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 taxable to 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.

### Aligning 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’.<sup>3</sup> The department recognizes that mismatches arising within the current international tax framework can only be resolved multilaterally.

### Country-by-country reporting

Many view CbyC reporting as an effective deterrent to profit shifting. Ireland is an early adopter of the OECD’s Common Reporting Standard (CRS) for the automatic exchange of financial

account information. 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).

Ireland has generally supported measures for the cross-border sharing of tax information and has stated its support of the OECD’s CbyC reporting proposals.<sup>4</sup>

### Retaining stability and certainty

Changes to tax law are most assuredly coming, and while the nature of those changes remains uncertain, the level of complexity is bound to rise – not only in Ireland but also in other jurisdictions. Despite this, Ireland’s 12.5 percent rate of corporation tax regime promises to be well aligned with BEPS proposals and is underpinned by a government policy that is intent on retaining the stability and certainty of Ireland’s tax regime.



**Sharon Burke**  
Partner, International Tax  
KPMG in Ireland



**Adrian Crawford**  
Head of International Tax  
KPMG in Ireland

<sup>2</sup> Ireland, Department of Finance, The Knowledge Development Box: Feedback statement, 30 July 2015.

<sup>3</sup> Ireland, Department of Finance, *OECD Base Erosion and Profit Shifting Project in an Irish Context*, Public Consultation paper (May 2014), page 4.

<sup>4</sup> Ireland, Department of Finance, *Competing in a Changing World: A Roadmap for Ireland’s Tax Competitiveness*, page 10.



The Italian government has been quite active at the OECD in helping to shape the anti-BEPS recommendations and plans to comply with the OECD's BEPS proposals once they are finalized. Among measures made in anticipation of the OECD proposals, Italy has changed certain international tax rules, enacted a patent box regime in compliance with the modified nexus approach, and proposed to introduce a digital economy tax.

In September 2015, the Italian government enacted a legislative decree<sup>1</sup> aimed at growth and internationalization of companies. Moreover, in August 2015, Italy approved a legislative decree<sup>2</sup> concerning, among others, abuse of law and tax avoidance.

The decree on international tax matters introduces tax provisions that fall within the OECD BEPS Action Plan, such as the CFC rule, the black and white lists, and interest deductions. Rather than curbing BEPS, however, the decree is more aimed at other purposes, such as attracting foreign investment.

Even if the government does decide to adopt the OECD BEPS recommendations, some areas of Italian law will see little change. Italy already has 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 in light of the OECD's final proposals.

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.

### Country-by-country reporting

As CbC 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 released 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. A new corporate income tax proposal to tax online transactions introduced in April 2015 is currently pending in the Italian Parliament. The Italian Prime Minister announced recently that such proposal should be approved soon. The proposed measures introduce, among others, a new definition of PE, including the new concept of 'virtual' PE, triggered when a non-resident has online activities continuously for 6 or more months that result in payments to the non-resident exceeding EUR5 million in a year. Italy also proposes to introduce a 25-percent withholding tax on the consideration paid by Italian residents for online purchases of goods and services from non-residents. The proposals would require banks to inform the tax

<sup>1</sup> Decree n. 147, published in the Official Gazette on 22 September 2015 and in force from 7 October 2015.

<sup>2</sup> Decree n. 128, published in the Official Gazette on 18 August 2015 and in force from 2 September.



authorities when payments reach or exceed the EUR5 million threshold and act as withholding tax agents.

## Patent Box

In its 2015 budget, Italy's government introduced an optional patent box regime based on schemes already adopted by other EU member states. Under Italy's regime, companies can exclude part of the income attributable to the 'use' of qualifying intangible assets from the corporate income tax (IRES) and the regional business tax (IRAP) base.

In brief, under the new regime, 50 percent of income from the exploitation (i.e. royalties) or direct use of qualifying IP (i.e. software protected by copyright, patents, trademarks, designs, models, processes, secret formulas and industrial, commercial or scientific knowledge) is not taxable for IRES and IRAP purposes. The exemption is reduced to 30 percent for tax year 2015 and to 40 percent for tax year 2016. The election applies, irrevocably, for 5 years and is renewable.

When income is attributable to direct use of the IP, its amount will have to be agreed with the tax authorities through the international tax ruling procedure. The eligible portion of the tax base is computed as the ratio of the R&D costs incurred in maintaining and developing the IP to the total costs of producing IP.

Conforming to common international standards, the patent box aims to encourage companies to locate intangible assets in Italy and to invest in R&D in the country. The implementing decree, which clarifies how the proportion of income that benefits from the incentive is computed, makes the regime compliant with the 'modified nexus approach' endorsed by OECD.

## Permanent establishment

The PE concept 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 PE in Italy.

As of 1 January 2015, a 'voluntary disclosure' procedure is available to taxpayers in Italy. Originally intended only for resident individuals in breach of tax reporting rules for financial assets and other investments held abroad, the procedure was extended to non-resident companies for non-compliance with income taxes (IRES, substitute taxes and IRAP) and value added tax on assets held both inside and outside of Italy. As a result, voluntary disclosure can be made, for example, by a non-resident company that failed to report income from a PE. The procedure allows for reduced administrative sanctions and, in most cases, avoidance of criminal penalties.

## Abuse of law

Tax authorities take a dim view of companies that use transactions to pay less than what is considered their fair share of tax. 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 planning. To give taxpayers more certainty and procedural guarantees, a legislative decree, approved on 5 August 2015, unifies the concepts of 'abuse of law' and 'tax avoidance' and newly defines 'abuse of law'. At the same time, a former anti-avoidance provision, applicable only to a list of transactions, was repealed. The new provision is more general: it does not include any transaction list and it applies to all income and indirect taxes (except for custom duties).

The new law clarifies that no criminal penalties will be applied as a result of abuse of law/avoidance.

## 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-saving opportunities may disappear.

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



**Domenico Busetto**  
Head of International Tax  
KPMG in Italy

## 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 a level playing field to ensure a fair application of international tax standards and to ensure a coherent implementation of the new tax rules worldwide.

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 toward 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 toward greater transparency in tax matters. For example, Luxembourg specifically promoted the introduction of the automatic exchange of information for tax purposes as a global standard and has, since January 2015, implemented 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 it 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 publicly – their tax strategy and the amount of taxes they 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.

### EU Parent-Subsidiary Directive

In August 2015, the government tabled a bill in the Luxembourg Parliament to transpose into domestic law two recent amendments to the EU Parent-Subsidiary Directive: the general anti-abuse rule and the anti-hybrid rule.

As a result, income deriving from a shareholding that falls within the directive's scope will no longer be exempt in Luxembourg if it is tax-deductible in another EU member state. In addition, the provisions of the directive will no longer be granted if the transaction may be considered as abusive, based on the directive's new wording. These provisions will be enacted with effect as from 2016.





## IP box regime

Following discussions on IP regimes occurring at the EU and OECD levels (notably within the frame of the OECD's BEPS Action 5 report), the Luxembourg government confirmed its willingness to modify the current Luxembourg IP regime in order to follow the 'modified nexus approach' as requested by the OECD. The legislative process to modify the Luxembourg domestic law is expected to start before the end of 2015.

## Transfer pricing

Luxembourg recently enhanced its transfer pricing regulations, fully in line with OECD guidelines by clarifying the relevant legislation. Furthermore, a specific provision on the documentation requirements for taxpayers performing transactions between related parties has also been introduced into the Luxembourg tax law, showing the high amount of attention being given to transfer pricing documentation.

## Tax rulings

As most EU countries, Luxembourg has a well-established practice of tax rulings. Since 2015, the existing ruling process has been formalized and modernized. One of the main features of this enhanced framework is the establishment of a central ruling commission that will provide binding rulings in response to written requests made by corporate taxpayers, provided that certain conditions are met and subject to a fee of EUR3,000 – 10,000, depending on the complexity of the request.

Furthermore, in line with the global trend toward increased transparency, Luxembourg's direct tax authorities will publish a synthetic and anonymized summary of the rulings in their annual activity report.

Since the beginning of the OECD's work, Luxembourg has been an active participant and has made the political commitment to apply the new regulations that will result from these

discussions. However, Luxembourg is also expected to take a pragmatic approach to implementation, and, unlike some other countries, has generally taken the approach of not moving unilaterally when it comes to anti-BEPS regulations. The government has indeed always stressed the need to promote a coordinated implementation of the BEPS actions at the international level to ensure a level playing field worldwide. Meanwhile, the government is working on a comprehensive tax reform for 2017 that will take into account some of the BEPS recommendations while ensuring a competitive tax framework, in line with the international tax rules.

## Preparing for a post-BEPS environment

Many multinational groups with a strong EU presence have already taken steps to address the new anti-hybrid and general anti-abuse rules recently implemented at EU level.



**Sébastien Labbé**  
Partner, Head of Tax  
KPMG in Luxembourg



**Louis Thomas**  
Head of International Tax  
KPMG in Luxembourg

## The Netherlands



Within the Netherlands, the OECD BEPS project continues to capture a good deal of public, media and parliamentary attention. With the spotlight on the taxation of multinationals, 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, including its transfer pricing rules and anti-hybrid provisions. Representatives of the Dutch government actively and constructively participate in the various OECD and EU initiatives.

### Treaties with emerging countries

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. As a result of this debate, the Netherlands approached 23 tax treaty (developing) countries to explore amendments to existing treaties to include enhanced anti-abuse provisions. To date, treaty negotiations with six of these countries have been concluded.

### Transparency

Dutch tax authorities are monitoring BEPS discussions in both the EU and the OECD and are keen to retain the country's reputation for business friendliness while ensuring a level playing field. At the same time, the Netherlands is seeking to emphasize its





own tax transparency. In particular, in light of the intense publicity surrounding the EC's investigation into the tax ruling practices of the Dutch and other tax authorities, the Netherlands has been eager to show that its dealings with taxpayers are above board.

In July 2015, the Netherlands signed an agreement with Germany for the spontaneous exchange of information on advance tax rulings and unilateral advance pricing arrangements (APA) that impact on the other state. This agreement comes on the heels of the EC's March 2015 proposal for a directive on automatic exchange of rulings between EU member states. The EC's Economic and Financial Affairs Council adopted the proposal on 6 October 2015, with the Netherlands' strong support.

### Country-by-country reporting

The Netherlands favors multilateral rules that apply equally to all countries and supports the OECD initiative on

CbyC reporting to tax authorities. In a May 2015 letter<sup>1</sup> to the European Commissioner, the Dutch Secretary of Finance also expressed support for the EC's consultation on CbyC reporting requirements for banks and extractive industries to all multinationals. The letter encourages the EC to put priority on its impact assessment regarding this proposal.

Furthermore, in September 2015, the Dutch government proposed draft legislation in order to implement the OECD BEPS action point 13 (CbyC reporting) from January 2016.

### Dutch Innovation Box

The Dutch government supported the 2014 agreement between the UK and Germany to strengthen substance requirements in the rules governing patent and innovation box regimes.

The substance requirements were included in the final OECD BEPS

recommendations and the Netherlands is committed to introducing these recommendations in its domestic law in the course of 2016.

### 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.



**Vinod Kalloe**

Head of International Tax Policy  
KPMG Meijburg & Co,  
KPMG in the Netherlands



**Wilbert Kannekens**

Head of Tax  
KPMG Meijburg & Co,  
KPMG in the Netherlands

<sup>1</sup> See <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2015/06/02/public-country-by-country-reporting/public-country-by-country-reporting.pdf>

## Portugal



Portugal is on board with the OECD's Action Plan and is expected to adopt most of the OECD's recommendations in its domestic law. With an election pending in October 2015, current legislative proposals on transfer pricing are on hold. But whatever party wins power, the incoming Portuguese government's support for the OECD project is not likely to change.

Combatting tax evasion domestically and globally has been high on the Portuguese government's agenda. In January 2015, the government approved a 3-year plan that includes over 40 measures to tackle tax evasion and address the country's grey economy. According to Portugal's Ministry of Finance, its previous 3-year plan to fight tax evasion supported a 6.2 percent increase in tax revenues between January and November 2014.<sup>1</sup>

### Boosting tax competitiveness

Steps are also being taken to increase the country's tax competitiveness. At the beginning of 2014, Portugal introduced a corporate tax reform package that, among other things, decreased the headline corporate tax rate to 23 percent.

Within this corporate tax reform package, it was also determined that the corporate tax rate should be further decreased, to 21 percent for 2015 and to between 17 and 19 percent for 2016 (subject to analysis by a special commission convened to study the tax reform package).

Other incentives passed as part of this reforms are an extended participation exemption and a new patent box:

- Portugal's participation exemption regime for dividends and capital losses, previously only available for dividends from Portugal, Portuguese-speaking African countries or EU countries, was extended to all countries, excluding tax havens, provided some requirements are met (including a minimum 5 percent participation for at least 2 years in the payer company).

- Under the new patent box regime, income derived from patents and other certain intangible assets registered after 1 January 2014 is only taxable on 50 percent of its amount (subject to certain conditions).

Both of these mechanisms were designed with the OECD BEPS discussions in mind, and they are somewhat less aggressive than equivalent regimes in place in other EU countries.

### Transfer prices under scrutiny

Measures to strengthen Portugal's transfer pricing regime are being discussed, but they are unlikely to be enacted until after the country's national elections are held in October 2015 and the OECD's BEPS recommendations are finalized. In line with the OECD's proposals, Portugal's draft transfer pricing rules would aim to provide for (among other things) stronger mandatory documentation requirements.

KPMG in Portugal understands that the CbyC report itself will not result in an increase in tax assessments. However, it is expected that their use as an audit tool may increase as the Portuguese transfer pricing regime evolves.

While current proposals remain on hold, the Portuguese tax authorities have increased their scrutiny of transfer prices under existing rules. In 2012, the tax authorities established a 'large taxpayers unit' with the goal of increasing the control and inspection of corporate groups concerning transfer pricing issues. Recently, the tax authorities have been reviewing more

<sup>1</sup> "Portugal steps up fight against tax evasion," tax-news.com, 3 February 2015.



complex issues, with special focus on, for example, IP restructurings and on complex financing structures involving entities in Belgium, Luxembourg and the Netherlands.

## Unilateral BEPS action to date

Although Portugal is generally waiting for the OECD's work to be completed before proposing related BEPS reforms, the country has enacted several discrete BEPS-related measures over the past few years. For example:

- A new legal framework for online gambling and betting came into force on 28 June 2015, with the purpose of establishing a legalized online gambling market in Portugal.
- On 29 January 2015, the Portuguese government released a Strategic Plan to Fight Fraud and Tax and Customs Evasion for the period 2015-2017. Under this plan, the government intends to:
  - Increase the number of APAs to ensure predictability in the tax treatment of certain transactions.
  - Apply the transfer pricing rules for VAT purposes to transactions between related entities (subject to deduction rights in different rulings), in order to avoid abusive request for tax credits and reimbursements.
  - Evaluate current transfer pricing policy, particularly regarding international transactions and payments to related parties based in countries with more favorable tax regimes.
  - Increase the number of technicians assigned to the Portuguese Tax Authority's transfer pricing team.
- As part of the 2014 tax reform, Portugal tightened its CFC rules.
- In 2013, Portugal adopted broad new earnings stripping rules limiting the tax-deductibility of interest on financial costs.



- Portugal refined rules introduced in 2008 that require the disclosure of participation in certain aggressive tax planning schemes.

## Disclosure of tax rulings

Some multinational companies in Portugal are concerned about the implications of the EU proposal to introduce the automatic exchange of information between member states on their tax rulings. Currently, Portuguese tax rulings and advanced pricing arrangements are confidential and binding. Rulings are only made public on an anonymized basis if the same issue is ruled on more than three times.

Companies that have received unilateral rulings in Portugal could face the exposure of sensitive tax information

if the EU proposal proceeds. This development, combined with changes in the transfer pricing rules, highlights the importance of reviewing existing documentation to determine and address any potential exposure tax risk.



**Luís Magalhães**  
Head of Tax  
KPMG in Portugal



As an OECD member, Spain played an active role in all of the debates on BEPS Action Plan items. The Spanish government aims to implement most of the BEPS recommendations in domestic law, and representatives of the Spanish tax authorities have taken opportunities to explain the potential impact of the BEPS Action Plan on domestic legislation at many public events in Spain.

Modifications to Spanish tax law have already been enacted, either as part of Spain's new Corporate Income Tax Law, which took effect on 1 January 2015, or through measures introduced earlier. Some of these new rules may be amended in line with the OECD's final package of recommendations.

The Spanish tax authorities have been quick to bring anti-BEPS concepts into their increasingly aggressive audit practices. In fact, it is not uncommon for Spanish tax inspectors to raise tax abuse and anti-avoidance rules quite early in the audit process. Cross-border financial expenses of every kind have been particular audit targets in the past few years.

More recently, this aggressive scrutiny has spread to other, more complex payments and transactions. The Spanish tax authority's published audit focus includes transactions involving transfer pricing issues, treaty interpretation and cross-border transactions in general. In 2013, Spain's strengthened its transfer pricing capacity by creating a new office within the tax administration that is exclusively dedicated to issues involving transfer pricing and intangibles.

### Tax planning disclosures

Spain has not issued any rules requiring mandatory disclosure of tax planning, although the general anti-avoidance rule in the Spanish General Tax Law could be used to that effect. Nevertheless

the current hostility toward aggressive tax planning among the media and the public is causing some companies in Spain to share the details of their tax payments voluntarily to preempt any negative publicity. For the same reason, some Spanish companies have taken steps to wind down some tax planning structures or exit low-tax jurisdictions, even where a supportable business rationale and real substance exist.

### Country-by-country reporting

Spain is one of the first countries to modify its domestic law to introduce mandatory CbyC reporting for transfer pricing documentation, and Spanish companies will need to issue their first CbyC reports in 2016. The Spanish law meets all of the requirements imposed by OECD in terms of deadlines, implementation and sanctions for non-compliance.

### 'Blacklist' of harmful tax regimes

A number of Spanish anti-avoidance rules target dealings with companies resident in harmful tax regimes, and many of these rules apply specifically to 48 countries included on Spain's blacklist. Spain has been working to broaden its network of tax treaties and tax information exchange agreements, and countries having such an agreement with Spain are automatically excluded from the blacklist.



As a result of new tax agreements with 13 countries, Spain removed them from the list. Pending agreements with another six countries are expected to reduce the list further.

### Targeting treaty abuses and hybrids

Spain's current tax treaty policy is to negotiate the inclusion of limitation on benefits clauses.

Under Spain's treaty policy, anti-hybrid provisions are also sought. Spain has unilaterally introduced measures to adjust the tax treatment of hybrid entities and instruments.

### Multilateral instrument

Spain is expected to sign the OECD's multilateral instrument being developed under Action 15 that will allow countries to update all their bilateral tax treaties in line with the OECD proposals. Once the instrument takes effect, companies that are relying on Spain's treaty network will need to determine by country which treaties are affected and the impact of the new treaty provisions. Since Spain currently has more than 80 bilateral tax treaty partners, this will be an extremely complex exercise, especially if individual countries sign the multilateral instrument on different dates.

### Stronger Controlled Foreign Corporation rules

As of 1 January 2015, Spain's previous CFC rules are much more restrictive, requiring (among other things) additional substance in the foreign CFC. The effect of this new legislation is still uncertain.

### Interest deductibility

Spain imposed strict rules for interest deductibility before the OECD's BEPS discussions commenced. Anti-abuse rules have been in place for many

years to limit the deductibility of not only interest but also other payments. The new Corporate Income Tax Law introduces new rules further restricting the tax deductibility of interest payments under a profit participation loan.

As the OECD BEPS discussions advance, the government is considering more restrictive rules regarding tax deductibility.

### Permanent establishments

Spain has not moved to legislatively amend its concept of PE to date. However, the country's tax authorities are taking a more economic approach to the PE definition in both theory and practice and are taking stricter positions on the related tax treatment.

In its domestic law, it appears that any modifications introduced by Spain in the future would follow any PE concept that the OECD ultimately proposes (e.g. in article 5 of the OECD Model Tax Convention or the related commentaries).

### Dispute resolution

Increasing audit activity and changing, complex rules are increasing the volume of tax disputes, and international companies in Spain are advised to make full use of the Spanish tax authorities' dispute resolution procedures. These include advance tax rulings, pre-audit consultation meetings and APAs that provide certainty over the acceptability of a company's transfer prices. The Spanish tax authorities have added more resources to improve the APA program, and taxpayers are achieving better outcomes more quickly as a result.

As of 2016, Spain is shifting responsibility for its Mutual Assurance Program from the Ministry of Finance to the Spanish Tax Agency. Currently, taxpayers are seeing their tax disputes resolved more efficiently through the MAP than through Spain's court procedures. Hopefully, the relative flexibility and efficiency of the current MAP will be retained after the change in administration.



**Carolina del Campo Azpiazu**

Partner, International Tax & Global Transfer Pricing Services  
KPMG in Spain



**Jaime Peiro**

Senior Manager,  
International Tax  
KPMG in Spain

## Switzerland



Switzerland is embracing tax reform. Independently of the OECD BEPS project, the Swiss government has undertaken substantial tax reforms. On 5 June 2015, the Federal Council issued a dispatch and a draft bill that will be discussed in parliament's next sessions. However, in view of an upcoming referendum, enforcement of any new rules is not expected to 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.



**Stefan Kuhn**  
Head of Corporate Tax  
KPMG in Switzerland





Debate about the tax planning undertaken by multinational companies has been especially vigorous in the United Kingdom. The government has been very publicly studying possible remedies and, in advance of the OECD BEPS Action Plan being completed, has introduced a new 'Diverted Profits Tax' to counter arrangements that are perceived to divert profits from the UK. Representatives from HM Treasury, HM Revenue & Customs and other government departments have been active in discussions on the BEPS Action Plan. With the knowledge that change is coming, many UK companies are assessing the impact on their businesses going forward.

Exchequer Secretary to the Treasury David Gauke has expressed the UK's support for the 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 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. The government has already introduced a new set of CFC provisions, and the regime has been

amended to ensure that groups are not able to utilize the rules to generate a UK tax advantage. Most recently, the government introduced a new Diverted Profits Tax, discussed below.

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 the 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.

### **Diverted Profits Tax**

The new Diverted Profits Tax (DPT), which is different from corporation tax, applies to diverted profits arising on or after 1 April 2015. DPT applies at a normal rate of 25 percent, which is

higher than the UK's current 20 percent corporation tax rate.

DPT applies to both UK and non-UK resident companies:

- For UK resident companies, the DPT applies where profits are considered to have been diverted from the UK through arrangements or entities lacking economic substance.
- For non-UK resident companies, the DPT applies where profits are considered to have been diverted from the UK by avoiding a UK PE.

Groups that are taking action to restructure as a result of DPT are also considering other changes that are expected to come in as a result of the BEPS Action Plan in due course.

## Transfer pricing

A significant component of the 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

In light of the OECD proposals in relation to hybrid mismatch arrangements under Action 2 of the BEPS Action Plan, the UK is proposing to change its domestic rules. The UK rules are likely to closely follow the

OECD's recommendations, and they are expected to apply to payments made on or after 1 January 2017.

## 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 OECD BEPS Action Plan. Entitled *Tackling Aggressive Tax Planning in the Global Economy: UK Priorities for the 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 evaluate transfer pricing to take technological advances into account.
- **Neutralize the effects of hybrid mismatch arrangements** with due consideration for intragroup hybrid regulatory capital instruments that are a direct consequence of regulatory requirements. The UK published a consultation document on 3 December 2014 on the UK's plans for implementing the OECD agreed rules for neutralizing perceived hybrid mismatch arrangements. The consultation closed 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 reporting 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 CbyC reporting template.
- **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 mindful of the need for 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 PE 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 (i.e. through measures such as the new DPT).



- **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. The UK is one of over 80 countries that

have so far said they will participate in the ad hoc group to develop a multilateral instrument to implement tax treaty measures to tackle BEPS.

- **Change the Patent Box regime** to reflect a 'modified nexus principle', which seeks to directly link IP regime benefits to the claimant company's contribution to the development of the IP in question.

### Preparing for change

As the OECD nears the end of its consultations, many UK-headquartered



companies are gearing up to respond to the upcoming wave of legislative change. With company directors and upper management taking more interest in the business impact of changing rules in the UK and other countries, many tax executives are modeling various scenarios and potential responses, with particular focus on their legal structures, financing arrangements and operating models. UK companies have also started factoring potential BEPS legislation into their future plans, for example, for proposed mergers and acquisitions.

Planning for the future is particularly difficult in the current context. The OECD Action Items are complex and interdependent, and some of the proposals released to date (e.g. interest deductibility, treaty shopping) offer flexibility in their implementation. Until the OECD proposals are finalized and countries transpose them into their domestic law, UK companies will need to weather uncertainty over exactly how their tax positions will be affected. Companies that are taking steps now to review current and proposed structures in light of the BEPS project will be in a good position to act quickly when needed.

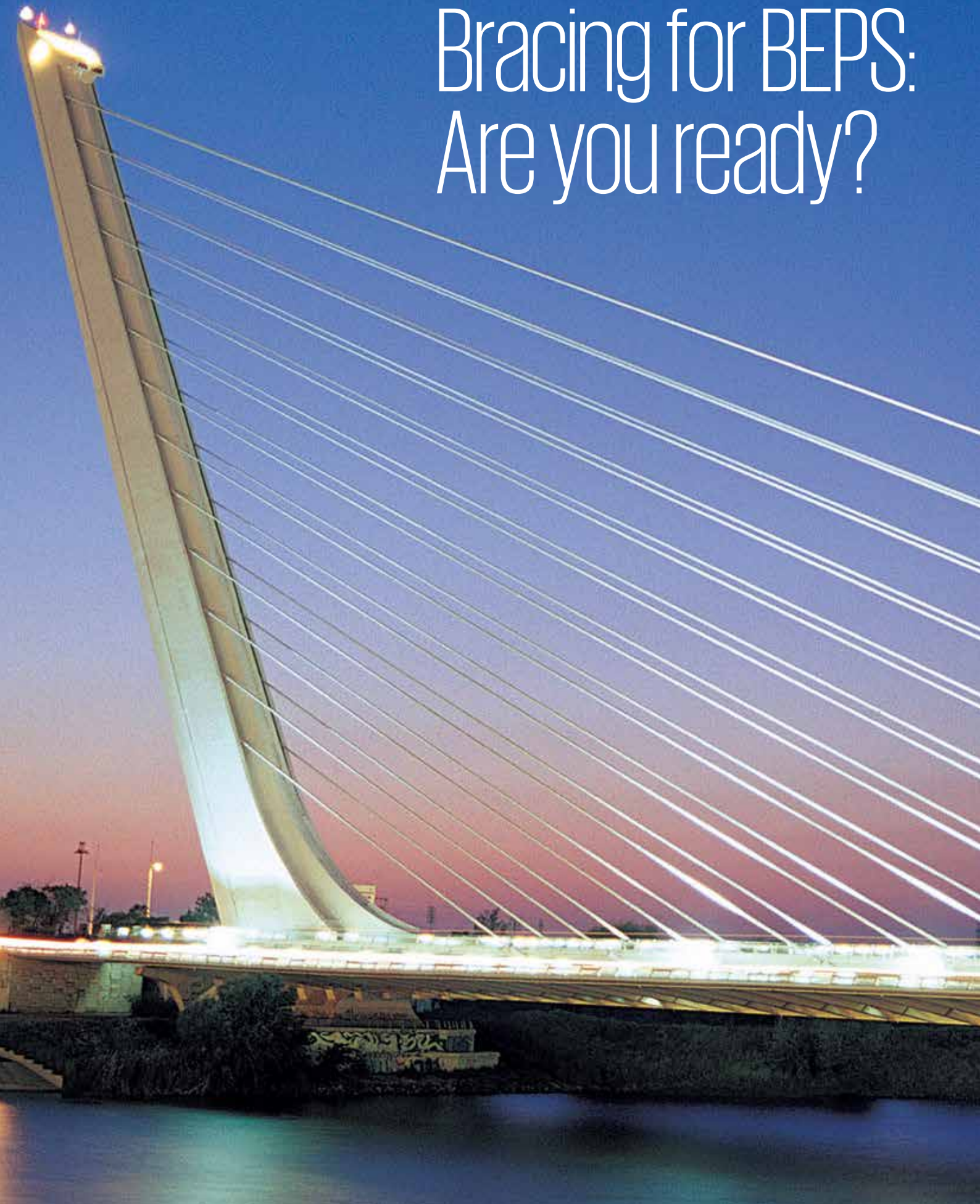


**Robin Walduck**  
Head of International  
Tax & Treasury  
KPMG in the UK





# 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.

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 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.

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



# Appendix – Unilateral BEPS legislative actions in EMA





Even though the OECD BEPS Action Plan Final Reports were only published on 5 October 2015, 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.

OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
<b>Action 1 – Address tax challenges of the digital economy</b>	<p><b>Finland</b> – The Finnish Tax Administration is running a project to address tax questions related to electronic commerce</p> <p><b>France</b> – Greater scrutiny of digital companies, new requirements for segmented accounts</p> <p><b>Italy</b> – New rules to tax online transactions pending in Parliament, including new PE definition (which introduces 'virtual PE' concept) and withholding tax on digital goods and services supplied by non-residents</p> <p><b>Portugal</b> – New legal framework for online gambling and betting</p> <p><b>Romania</b> – New regulations on authorization and taxation of online gambling</p>
<b>Action 2 – Neutralize effects of hybrid mismatch arrangements</b>	<p><b>Cyprus</b> – Expected to adjust relevant legislation to reflect the new provisions of the Parent-Subsidiary Directive</p> <p><b>Finland</b> – Expected to adjust its legislation to reflect the new provisions of the Parent-Subsidiary Directive</p> <p><b>France</b> – Existing rules limit opportunities for hybrid instruments</p> <p><b>Germany</b> – Anti-hybrid rules in place (correspondence principle for dividends)</p> <p><b>Hungary</b> – A new anti-hybrid rule with effect from 2015 declares as a principle that any differences between the legal classification of legal relations that are affected by international treaties cannot result in double non-taxation; if they do, Hungary will include the relevant income in the taxable base</p> <p><b>Ireland</b> – Existing provisions limit opportunity for hybrid structures</p> <p><b>Italy</b> – Anti-hybrid provisions already exist with respect to inbound dividends, denying equity treatment if a foreign-sourced dividend is deducted by the paying affiliate; existing rules to be reviewed</p> <p><b>Luxembourg</b> – Bill submitted in Parliament to adjust the relevant legislation to reflect changes to the Parent-Subsidiary Directive</p> <p><b>Malta</b> – Guidelines issued emphasizing that Maltese participation exemption does not apply to hybrid instruments in case of underlying debt; participation exemption system amended in line with EU Parent-Subsidiary Directive</p> <p><b>Norway</b> – In December 2014, a commission on international tax reform recommended adoption of anti-hybrid provisions</p> <p><b>Poland</b> – New rules on corporate dividends, introduced from 2015, would disallow participation exemption if the amount of dividend has been included in tax-deductible costs of an entity paying the dividend</p> <p><b>Portugal</b> – Rules regarding dividends from foreign entities revised under 2014 reform</p> <p><b>Romania</b> – Expected to adjust relevant legislation to reflect the new provisions of the Parent-Subsidiary Directive</p> <p><b>Spain</b> – Anti-hybrid legislation in force from 1 January 2015</p> <p><b>Sweden</b> – Introducing anti-hybrid rules in line with the latest amendments to the Parent-Subsidiary Directive</p> <p><b>Switzerland</b> – Current tax rules (introduced about 2 decades ago) do not allow Swiss parent companies to use hybrid structures with their immediate subsidiaries</p> <p><b>United Kingdom</b> – Published consultation on 3 December 2014 on the UK's plans for implementing the OECD agreed rules for neutralizing perceived hybrid mismatch arrangements. The rules are currently expected to be effective for payments made on or after 1 January 2017</p>

OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
<b>Action 3 – Strengthen CFC rules</b>	<p><b>Finland</b> – 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</p> <p><b>France</b> – CFC legislation in force</p> <p><b>Germany</b> – CFC legislation in force, no plans to tighten the rules</p> <p><b>Greece</b> – CFC rules apply from 2014 onwards</p> <p><b>Iceland</b> – CFC legislation introduced in 2013</p> <p><b>Italy</b> – Existing rules have undergone preliminary review and should be reviewed further</p> <p><b>Poland</b> – CFC rules introduced from 2015</p> <p><b>Portugal</b> – CFC rules tightened under 2014 reform</p> <p><b>Russia</b> – CFC rules enacted from 2015</p> <p><b>Spain</b> – CFC rules recently strengthened</p> <p><b>Sweden</b> – CFC legislation in force</p> <p><b>Turkey</b> – CFC rules in effect</p> <p><b>United Kingdom</b> – CFC rules in force; having introduced new rules in 2013, it is not expected that the UK's rules will require further substantive changes</p>
<b>Action 4 – Limit base erosion via interest deductions and other financial payments</b>	<p><b>Austria</b> – Restrictions on deductions introduced</p> <p><b>Belgium</b> – Thin capitalization rules strengthened</p> <p><b>Czech Republic</b> – 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; draft bill released to limit the tax-exempt status of dividends where the corresponding payment is deductible for the payer (refers to EU Directives 2015/121 and 2014/86).</p> <p><b>Finland</b> – Limits on deductibility of interest apply from 2014</p> <p><b>France</b> – Thin capitalization rules strengthened; interest deductibility limited where beneficiary is subject to low taxation</p> <p><b>Greece</b> – Stricter provisions for deductibility from 2014 onwards</p> <p><b>Hungary</b> – As of 2012, a more restrictive dividend definition was introduced to domestic law to tackle deduction/non-inclusion; under the rule, dividend income is tax-deductible only if the payer did not deduct it from its pretax profit</p> <p><b>Italy</b> – Existing restrictions on interest deduction have undergone preliminary review and will be reviewed further</p> <p><b>Norway</b> – In December 2014, a commission on international tax reform recommended a further tightening of the rules limiting interest deductibility and the introduction of withholding tax on interest and royalty</p> <p><b>Poland</b> – Tightening thin capitalization regime</p> <p><b>Portugal</b> – Earnings stripping rules introduced in 2013, limiting interest deductibility, tightened under 2014 reform; increased scrutiny of transfer pricing practices</p> <p><b>Romania</b> – Tightening thin capitalization rules</p> <p><b>Russia</b> – Extended thin capitalization rules are being drafted; fixed limits on interest deductibility are abolished; current limits are in line with transfer pricing rules</p> <p><b>Slovakia</b> – Earning stripping rules implemented with effect from 1 January 2015 effectively limit interest deduction on related-party loans</p> <p><b>Spain</b> – Stricter interest deductions rules in force from 1 January 2015</p> <p><b>Sweden</b> – Strict interest deduction rules introduced in 2013 deny deduction of intragroup interest cost; the Swedish Tax Agency is scrutinizing intra-group restructurings and stepping up audit activity in this area</p>

OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
<b>Action 5 – Counter harmful tax practices more effectively, taking into account transparency and substance</b>	<p><b>Finland</b> – Tighter scrutiny of transfer pricing practices and to taxation of carried interest structures</p> <p><b>France</b> – Substance under scrutiny</p> <p><b>Greece</b> – Tax authority requirements for transfer pricing tightened and tax avoidance rules introduced in 2014</p> <p><b>Ireland</b> – Announced plans to introduce a patent box ('Knowledge Development Box' – KDB) in early 2015 and outlined a proposed framework for the KDB in a July 2015 Feedback Statement based on consultations held in 2015; legislation to implement the KDB (in line with the OECD's modified nexus approach) will be announced in Ireland's Budget 2016 on 13 October 2015, with effect from 1 January 2016</p> <p><b>Italy</b> – Anti-avoidance provision replaced with a new definition of 'abuse of law' and unified concepts of 'abuse of law' and 'tax avoidance'. Restrictions to deduct costs from tax havens partly replaced by arm's-length also for uncovered transactions.</p> <p><b>Luxembourg</b> – IP regime to be modified to take into account the OECD work (modified nexus approach)</p> <p><b>Malta</b> – General anti-abuse rules under domestic law deny tax benefits where a transaction's purpose is to avoid Maltese taxes</p> <p><b>Norway</b> – In December 2014, a commission on international tax reform recommended (among others) incorporating current administrative anti-abuse rules into Norwegian tax law and expanding taxpayers' disclosure of ownership in foreign companies</p> <p><b>Poland</b> – Draft amendments introduced to add an anti-avoidance clause to the Polish participation exemption with effect from 1 January 2016)</p> <p><b>Portugal</b> – Increased scrutiny of transfer pricing practices</p> <p><b>Romania</b> – Under general anti-abuse provisions, 'artificial transactions' can be disregarded or adjusted for tax purposes</p> <p><b>Russia</b> – Convention and protocol on Mutual Administrative Assistance in Tax Matters entered into force in respect of Russia as of June 2015; committed to start first automatic exchange of information in 2018</p> <p><b>Slovakia</b> – Substance-over-form principle broadened</p> <p><b>Spain</b> – Substance-over-form approach strengthened (through modifications to the GAARs in the General Tax Law)</p> <p><b>Turkey</b> – Substance-over-form principle is already accepted by Turkey</p> <p><b>United Kingdom</b> – Put forward a proposal to the OECD Forum on Harmful Tax Practices to accept the OECD's Nexus approach in relation to its patent box regime; a new patent box regime is expected to come into force from June 2016, operating in parallel with the current patent box regime, which is to be grandfathered until June 2021</p>
<b>Action 6 – Prevent treaty abuse</b>	<p><b>Bulgaria</b> – Some tax treaties are being renegotiated to include explicit limitation on benefits clauses</p> <p><b>Finland</b> – The Finnish Tax Administration is running a project that aims to promote Finland's international cooperation</p> <p><b>France</b> – Anti-treaty shopping clause in new tax treaties</p> <p><b>Germany</b> – New German model tax treaty contains switch-over and subject-to-tax rules as well as specific anti-avoidance rules</p> <p><b>Hungary</b> – 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 deny the exemption</p> <p><b>Italy</b> – Existing rules to be reviewed</p> <p><b>Poland</b> – Reviewing and amending tax treaties</p> <p><b>Romania</b> – Increased withholding tax of 50 percent 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</p>



OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
<b>Action 6 – Prevent treaty abuse (continued)</b>	<p><b>Russia</b> – Establishing beneficial ownership concept in the Russian Tax Code; taxation of indirect sales of Russian real estate</p> <p><b>Slovakia</b> – 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</p> <p><b>Sweden</b> – Swedish government has been increasing the number of Swedish tax treaties in the past few years and is seeking to include tax information exchange clauses</p> <p><b>Switzerland</b> – For over 50 years, Switzerland has had legislation in place to unilaterally inhibit the misuse of treaty benefits</p> <p><b>Turkey</b> – Renewing existing treaties by adding information exchange and administrative cooperation clauses</p>
<b>Action 7 – Prevent artificial avoidance of permanent establishment status</b>	<p><b>Estonia</b> – New regulations expected ahead of OECD</p> <p><b>Greece</b> – Existing PE laws remain strict</p> <p><b>Italy</b> – Voluntary disclosure extended to, among others, non-residents that failed to report income from a PE</p> <p><b>Poland</b> – Intention to put more emphasis on tax audits of entities doing business in Poland through unregistered PEs</p> <p><b>Portugal</b> – Increased scrutiny of transfer pricing practices</p> <p><b>Spain</b> – In practice, Spain's tax authority already broadens the definition of PE and applies a more economic concept</p> <p><b>Sweden</b> – New registration rules for foreign employees present in Sweden have increased the Swedish Tax Agency's interest in determining whether these employees' activities trigger PE status for their employer</p> <p><b>Turkey</b> – More audit scrutiny is being devoted to PE issues</p> <p><b>United Kingdom</b> – New 'Diverted Profits Tax' (at a rate of 25 percent, rather than the current 20 percent for corporation tax) introduced from 1 April 2015 to counter perceived contrived arrangements to divert profits from the UK</p>
<b>Actions 8, 9, 10 – Ensure transfer pricing outcomes are in line with value creation</b>	<p><b>Austria</b> – New rules on transfer pricing likely</p> <p><b>Belgium</b> – More scrutiny of transfer pricing</p> <p><b>Czech Republic</b> – Increased scrutiny of transfer prices</p> <p><b>Finland</b> – Finland's government is studying risks and is expected to implement a domestic APA procedure</p> <p><b>France</b> – Increased tax audits and greater scrutiny of transfer prices</p> <p><b>Iceland</b> – Transfer pricing regulations introduced with effect from 1 January 2014</p> <p><b>Italy</b> – Transfer pricing documentation disclosure allows taxpayer to be released from any assessed penalties; a decree on international tax matters approved in August 2015 clarifies that the arm's-length standard does not apply to domestic transactions; a proposed bill provides that no criminal penalties should apply in the case of transfer pricing adjustments</p> <p><b>Lithuania</b> – Increase in transfer pricing audits, with special focus on related-party loans, management services and royalties</p> <p><b>Luxembourg</b> – More detailed transfer pricing rules are contemplated</p> <p><b>Poland</b> – Plan to introduce extended transfer pricing reporting requirements, including local benchmarking studies</p> <p><b>Portugal</b> – Increased scrutiny of transfer pricing practices</p> <p><b>Romania</b> – Increased scrutiny of transfer pricing and proposed tightening of transfer pricing reporting requirements</p> <p><b>Slovakia</b> – Rules amended to broaden scope of transfer pricing rules to also cover domestic transactions</p> <p><b>Spain</b> – The Spanish Tax Administration follows the OECD approach in this respect</p> <p><b>The Netherlands</b> – New transfer pricing decree introduced</p> <p><b>Turkey</b> – Increased transfer pricing audits</p>
<b>Action 8 – intangibles</b> <b>Action 9 – risks and capital</b> <b>Action 10 – other high-risk transactions</b>	

OECD BEPS Action Plan	Jurisdiction's unilateral responses to date
<b>Action 11 – Establish methodologies to collect and analyze data on BEPS and the actions to address it</b>	<b>No unilateral action in EMA to date</b>
<b>Action 12 – Require taxpayers to disclose their aggressive tax planning arrangements</b>	<p><b>Belgium</b> – Mandatory disclosure of tax haven payments</p> <p><b>Germany</b> – Disclosure rule for aggressive tax planning structures under discussion but not yet proposed</p> <p><b>Poland</b> – Plan to introduce a new ruling procedure that would guarantee that a particular tax plan is not abusive; extended reporting requirements to include information on restructurings undertaken</p> <p><b>Portugal</b> – Disclosure provisions introduced in 2008 and subsequently refined</p> <p><b>Russia</b> – New rules oblige Russian taxpayers to disclose participations in foreign companies (including trusts, funds, foundations); foreign companies that hold Russian-situs immovable property must submit data about their chain of owners (up to 5 percent of indirect ownership)</p> <p><b>Turkey</b> – 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</p>
<b>Action 13 – Re-examine transfer pricing documentation</b>	<p><b>Czech Republic</b> – New transfer pricing requirements introduced requiring disclosure of selected transactions with related parties and filed together with the corporate income tax return (effective from 2015 for submissions related to 2014 and later years)</p> <p><b>France</b> – Creation of an abridged transfer pricing declaration/CbyC reporting obligation for banking and mining sector</p> <p><b>Greece</b> – Stricter documentation requirements apply from 2014 onwards; no action taken yet for CbyC reporting</p> <p><b>Norway</b> – Amendment to transfer pricing documentation proposed to strengthen requirements; CbyC reporting required for extractive and mining industries</p> <p><b>Poland</b> – Proposals introduced to vastly increase the amount of data disclosed in documentation reports, including local benchmarking study analyses, description of restructuring processes, and a 'master file' approach to supplement previous 'local file' approach; proposed timeline published for CbyC reporting</p> <p><b>Portugal</b> – New transfer pricing rules currently being discussed, which include stricter requirements for documentation</p> <p><b>Romania</b> – Transfer pricing requirements currently under review</p> <p><b>Slovakia</b> – Broadened both the scope of transfer pricing documentation and the circumstances in which it is required</p> <p><b>Spain</b> – CbyC reporting requirements implemented</p> <p><b>Sweden</b> – The Swedish Tax Agency has proposed that the Swedish government take legislative action to make the new documentation requirements enforceable under domestic law</p> <p><b>United Kingdom</b> – On 22 September 2014, the UK government formally committed to implementing the new CbyC reporting template</p>
<b>Action 14 – Make dispute resolution mechanisms more effective</b>	<p><b>Romania</b> – Changes to procedures for APAs and advance tax rulings, as of 2016</p> <p><b>Sweden</b> – The advance tax ruling procedure is under review</p>
<b>Action 15 – Develop a multilateral instrument</b>	<b>United Kingdom</b> – The UK is a member of the ad hoc group that is developing the multilateral instrument on tax treaty measures to tackle BEPS

Source: KPMG International, 2015.





## Contact us

### Vinod Kalloe

**Head of International Tax Policy**  
**KPMG Meijburg & Co,**  
**KPMG in the Netherlands**  
T: +31 88 909 1657  
E: kalloe.vinod@kpmg.com

### Barbara Polster

**Partner, International Tax**  
**KPMG in Austria**  
T: +43 1 31 332 815  
E: bpolster@kpmg.at

### Hans Zöchling

**Head of International Tax**  
**KPMG in Austria**  
T: +43 1 31 332 259  
E: hzoechling@kpmg.at

### Eric Warson

**Head of International Tax**  
**KPMG in Belgium**  
T: +32 2 708 37 72  
E: ericwarson@kpmg.com

### Kalin Hadjidimov

**Partner**  
**KPMG in Bulgaria**  
T: +359 2 9697 700  
E: khadjidimov@kpmg.com

### Costas Markides

**Board Member, International Tax and Corporate Services**  
**KPMG in Cyprus**  
T: +357 22 20 92 46  
E: costas.markides@kpmg.com.cy

### Daniel Szmargowski

**Director, Tax**  
**KPMG in Czech Republic**  
T: +420 222 123 841  
E: dszmargowski@kpmg.cz

### Jussi Antero Järvinen

**Partner, Head of International Tax**  
**KPMG in Finland**  
T: +358 20 760 3077  
E: jussi.jarvinen@kpmg.fi

### Nathalie Cordier-Deltour

**Partner, International Tax**  
**Fidal, France**  
T: +33 1 55 68 14 54  
E: nathalie.cordier-deltour@fidal.com

### Franz Prinz zu Hohenlohe

**Head of International Tax**  
**KPMG in Germany**  
T: +49 89 9282 1186  
E: franzhohenlohe@kpmg.com

### Dr Gabriele Rautenstrauch

**Director, International Tax**  
**KPMG in Germany**  
T: +49 89 9282 4813  
E: grautenstrauch@kpmg.com

### Georgia Stamatelou

**Tax Partner**  
**KPMG in Greece**  
T: +30 210 60 62 123  
E: gstamatelou@kpmg.gr

### Effie Adamidou

**Tax Partner**  
**KPMG in Greece**  
T: +30 210 60 62 120  
E: eadamidou@kpmg.gr

### Gábor Beer

**Partner**  
**KPMG in Hungary**  
T: +36 1 887 7329  
E: gabor.beer@kpmg.hu

### Alexander G Eðvardsson

**Partner**  
**KPMG in Iceland**  
T: +354 545 6209  
E: aedvardsson@kpmg.is

### Adrian Crawford

**Head of International Tax**  
**KPMG in Ireland**  
T: +353 1 410 1351  
E: adrian.crawford@kpmg.ie

### Sharon Burke

**Partner, International Tax**  
**KPMG in Ireland**  
T: +353 1 410 1196  
E: sharon.burke@kpmg.ie

### Domenico Busetto

**Head of International Tax**  
**KPMG in Italy**  
T: +39 045 81 14 3 23  
E: dbusetto@kstudioassociato.it

### Birutė Petrauskaitė

**Head of Tax & Legal Services**  
**KPMG in Lithuania**  
T: +370 5 2102 600  
E: bpetrauskaite@kpmg.com

### Flora Castellani

**Director Knowledge Management**  
**KPMG in Luxembourg**  
T: +352 22 51 51 5353  
E: flora.castellani@kpmg.lu

### Louis Thomas

**Head of International Tax**  
**KPMG in Luxembourg**  
T: +352 22 51 51 5527  
E: louis.thomas@kpmg.lu

### Sébastien Labbé

**Partner, Head of Tax**  
**KPMG in Luxembourg**  
T: +352 22 51 51 5565  
E: sebatien.labbe@kpmg.lu

### André Zarb

**Head of Tax and Partner**  
**KPMG in Malta**  
T: +356 2563 1004  
E: andrezarb@kpmg.com.mt

### Anders H Liland

**Partner**  
**KPMG in Norway**  
T: +47 4063 9188  
E: anders.liland@kpmg.no

### Marcin Rudnicki

**Head of International Tax**  
**KPMG in Poland**  
T: +48 22 528 11 77  
E: mrudnicki@kpmg.pl

### Luís Magalhães

**Head of Tax**  
**KPMG in Portugal**  
T: +351 210 110 087  
E: lmagalhaes@kpmg.com

### Ramona Jurubita

**Partner**  
**KPMG in Romania**  
T: +40 372 377 795  
E: rjurubita@kpmg.com

### Anna Voronkova

**Partner**  
**KPMG in Russia**  
T: +7 495 937 4444  
E: avoronkova@kpmg.ru

### Ciran Tomas

**Partner**  
**KPMG in Slovakia**  
T: +421 2 59984 306  
E: tciran@kpmg.sk

### Carolina del Campo Azpiazu

**Partner**  
**International Tax & Global Transfer Pricing Services**  
**KPMG in Spain**  
T: +34 91 456 82 03  
E: cdelcampo@kpmg.es

### Tina Zetterlund

**Partner**  
**KPMG in Sweden**  
T: +46 8 723 92 84  
E: tina.zetterlund@kpmg.se

### Stefan Kuhn

**Partner**  
**KPMG in Switzerland**  
T: +41 58 249 54 14  
E: stefankuhn@kpmg.com

### Abdulkadir Kahraman

**Head of Tax**  
**KPMG in Turkey**  
T: +90 216 681 9000  
E: akahraman@kpmg.com

### Robin Walduck

**Head of International Tax & Treasury**  
**KPMG in the UK**  
T: +44 20 7311 1816  
E: robin.walduck@kpmg.co.uk

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