KPMG

Poland Frontrunners in BEPS

Introducing the BEPS Thermometer

October 2015

BEPS in Poland

KPMG.pl

For today's tax executives, the future of international taxation has never been more uncertain. The global project to address tax base erosion and profit shifting (BEPS) is in full swing, and the Organisation for Economic Co-operation and Development's (OECD's) Action Plan on BEPS is at its final stages.

Given the voluntary (non-binding) character of the OECD framework cooperation individual countries' response to the BEPS initiative has been surprisingly active with Poland being among the front-runners.

In the recent months Polish government has been actively involved in the implementation of the BEPS ideas into the Polish tax environment. It appears that further changes are inevitable.

As a result of the above, Polish tax authorities are being equipped with more and more tools which will likely enhance their focus and scrutiny of international transactions.

Polish taxpayers should review their existing transactions and structures immediately to identify potential tax risk areas in light of the G20-OECD BEPS Action Plan, existing Polish regulations and upcoming proposals.

Such review should be followed by all necessary steps to ensure transparency and to maximally reduce potential tax exposure. With adequate preparation, Polish taxpayers 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.

Introducing the BEPS Thermometer

Below KPMG provides you with a short introduction into the BEPS world and specific changes it brings to Poland. We then follow with a health check tool which aims at identifying the key areas / weaknesses and symptoms of what we call "BEPS fever". We also offer you our resources in performing further reviews of your business operations and monitoring BEPS-related developments.

Marcin Rudnicki
Tax Partner

Jacek Bajger
Tax Partner

BEPS in a nutshell

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

The OECD's goal is to achieve consensus on a coordinated implementation of uniform international taxation principles for the modern age. The Action Plan's rationale is that globalization of the world economy has resulted in multinational enterprises shifting from country-specific models to global models with integrated supply chains, centralization of service functions, location of activities that are distant from the physical location of customers and increasing delivery of service and digital products over the internet. The OECD says these developments have opened opportunities for multinational enterprises to greatly reduce their tax burden, leading to heightened sensitivity on what paying one's fair share really means.

Anna Sińczuk
Tax Partner

The OECD BEPS Action Plan is only a first step. Once it is complete, it will be up to individual countries to translate their interpretation of the OECD' principles into their domestic laws. Some countries, like Poland, have already initiated the process.

CONCERNS?

According to the KPMG's survey, aspects of the OECD BEPS Action Plan that concern tax executives the most are:

- Transfer pricing rule changes
- Tax information disclosure requirements
- Changes to international tax rules

ACTIONS!

Tax executives are of the opinion that the most significant proactive steps to be taken now are:

- Determining that documentation and compliance is adequate
- Reviewing tax planning and operations
- Increasing efforts to take part in shaping BEPS-related tax policy

BEPS Action Plan

1	Address tax challenges of the digital economy
2	Neutralize effects of hybrid mismatch arrangements
3	Strengthen controlled foreign company rules
4	Limit base erosion via interest deductions and other financial payments
5	Counter harmful tax practices more effectively, taking into account transparency and substance
6	Prevent treaty abuse
7	Prevent artificial avoidance of permanent establishment status
8&9	Assure transfer pricing outcomes are in line with value creation – Intangibles & Risks and capital
10	Assure transfer pricing outcomes are in line with value creation – Other high-risk transactions
11	Establish methodologies to collect and analyze data of BEPS and the actions to address it
12	Require taxpayers to disclose their aggressive tax planning arrangements
13	Re-examine transfer pricing documentation
14	Make dispute resolution mechanisms more effective
15	Develop a multilateral instrument

BEPS is happening now

**The OECD has set a number of deadlines to conclude on the BEPS Actions.
The timeline below summarizes some of the key dates and stages of this process.**

Implementation

2015

Oct

On 5 October 2015, the OECD issued a final package of reports in connection with its Action Plan as well as a plan for follow-up work and a timetable for implementation.

Sep

Detailed commentary to enable domestic adoption and help implementing new rules regarding hybrids (Action 2)

Jun

- Implementation Package for BEPS country-by-country reporting
- Discussion Draft on Action 8 (Hard-to-value intangibles)

May

- Discussion Draft on Action 7 (Preventing the artificial avoidance of PE status)
- Discussion Draft on Action 6 (Prevent Treaty Abuse)

Apr

- Discussion Draft on Action 8 (Cost contribution arrangements)
- Discussion Draft on Action 11 (Improving the Analysis of BEPS)
- Discussion Draft on Strengthening CFC Rules (Action 3)

Mar

Discussion Draft on Mandatory Disclosure Rules (Action 12)

2014

Dec

- Discussion Draft on Action 10 (Cross-border commodity transactions)
- Discussion Draft on Action 10 (Profit splits)
- Discussion Draft on Action 4 (Interest deductions)
- Discussion Draft on Action 14 (Making dispute resolutions more effective)
- Discussion Draft on revisions to the TP Guidelines, including risk, recharacterisation and special measures (Actions 8, 9 and 10)

Nov

Discussion Draft on Action 10 (Low value-adding services)

Oct

Discussion Draft on Action 7 (Preventing the artificial avoidance of PE status)

Sep

- OECD Interim paper on developing a Multilateral Instrument (Action 15) to modify bilateral tax treatment
- Guidance on TP Doc. including Country by Country Reporting (Action 13)
- Recommendation on TP Aspects of Intangibles (Part 1) (Action 8)
- Recommendation on Treaty Abuse (Action 6)
- Interim report on countering Harmful Tax Practices (Action 5)
- Recommendation on anti-hybrid rules (Action 2)

Mar

- Discussion Draft on Preventing the Granting of Treaty Benefits in Inappropriate Circumstances (Action 6)
- Discussion Draft on Neutralizing the Effects of Hybrid Mismatch Arrangements (Action 2)
- Discussion Draft on Addressing the Tax Challenges posed by the Digital Economy (Action 1)

Jan

Discussion Draft on TP Doc. including Country by Country Reporting (Action 13)

2013

Oct

The OECD memorandum on Transfer Pricing Documentation including Country by Country Reporting (Action 13)

Jul

- White Paper on TP Doc. (Action 13)
- Revised Discussion Draft on TP aspects of Intangibles (Action 8)

Feb

Action Plan on BEPS

KPMG

BEPS in Poland

Tax planning (aggressive tax planning)

Action 2 – hybrid mismatch arrangements

- new rules on corporate dividends aiming at disallowing participation exemption if the amount of dividend has been included in tax deductible costs of the subsidiary from 2015

Action 3 – CFC rules

- CFC rules introduced to the Polish tax system on 1 January 2015
- Income of a CFC taxable on an on-going basis at 19% rate
- Safe harbor for EU corporates (provided legitimate / real activities test is met)

Action 4 – interest deductions

- New thin capitalization rules from 1 January 2015
- Direct and indirect relationships covered
- New debt to equity ratio of 1:1

Transfer pricing

Action 13 – TP documentation

- Three-level documentation obligation incorporating the recommendations of the EU and the OECD, i.e.
  - detailed local file with the extensive range of information, including benchmarking study performed on the Polish market;
  - master file prepared at group level;
  - country by country reporting for largest taxpayers /groups.
- Statement signed by the member of the board confirming completion of the transfer pricing documentation requirements. Statement is filed under the personal criminal liability within 3 months from the end of the fiscal year.
- Detailed, additional reporting obligations presented on a transaction-by-transaction basis.
- Change in the definition of related parties and a new participation threshold (raised from 5 to 25 percent).

Treaties

Action 6 – treaty abuse

- A number of double tax treaties have been amended in recent years with the aim to eliminate certain planning opportunities or to introduce anti-avoidance mechanisms (e.g. treaty with Luxembourg, Cyprus). On-going renegotiation process with respect to other treaties (e.g. Netherlands, US).

Action 7 – artificial avoidance of permanent establishment status

- More emphasis will be put on tax audits of entities doing business in Poland through unregistered permanent establishments

GAAR

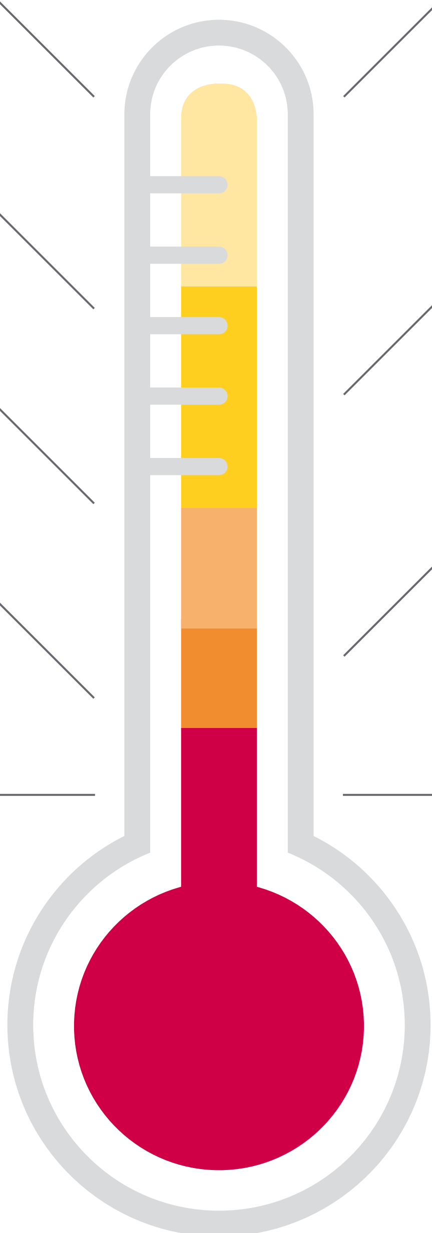
BEPS related

- Polish government initiated works on the proposed amendments to the Polish Tax Ordinance Act (general procedural tax law Act in Poland) which envisage introduction of a GAAR clause with the aim to combat tax driven and aggressive transactions aimed solely or mainly at avoiding / reducing tax liabilities.
- The draft law raised very strong objections from the private sector. Conformity of the proposed rules with the Polish constitution as well as EU law principles has also been challenged.
- At this stage it is expected that the new GAAR law will not come into force before 2017.

Do I need it?

BEPS fever symptoms

- Are you using any hybrid instruments / hybrid entities in your international dealings? ✓
- Are any companies from your group located in low-taxed jurisdictions? ✓
- Do you plan to undertake any internal restructurings? ✓
- Do you anticipate obtaining additional group financing? ✓
- Are you relaying on group loans / financing in your day to day operations? ✓
- Do you rely on double tax treaties in your international dealings? ✓
- Are you operating a commissionaire / agency or any other business structure of a similar nature? ✓
- Do you have / use group transfer pricing / benchmarking studies? ✓
- Are you relaying on any group IPs located in foreign jurisdictions? ✓



How to diagnose?
KPMG BEPS Thermometer

KPMG services

Tax functions and policy need to adapt to the rapidly changing Polish tax environment, addressing BEPS actions with mounting regulatory and cost pressures.

Knowing how to address these challenges can be a daunting task. Professionals at KPMG can help you assess the specific challenges you are facing and draw on our experience to develop and implement a tailored approach that works for your business.

BEPS mapping performed based on KPMG methodology will help your company and stakeholders to understand what are the risks and tax regulatory challenges connected to BEPS in Poland. Having this information ready, you will be able to actively manage the risks and prepare for the next steps to be taken to address these risks. Moreover, the report on BEPS mapping for your Polish operations can be used to discuss the findings within the Group and be a useful tool as a part of group tax planning policy.

- Our BEPS mapping review will include the analysis of holding and finance structures, tax rulings, accounting policy, code of conduct, tax procedures (both formalized and/or habitually applied), tax treaty reliance (from a Permanent Establishment and Withholding Tax perspective), selected types of transactions and their impact on the Effective Tax Rate, tax reporting tools and transfer pricing documentation. The review will be carried out based on samples of source documentation, agreements, governance documents, interviews and questionnaires.
- The main objective of the review is to identify potential tax risks arising from the content of the source documentation or from existing accounting, tax and governance processes.
- We will provide you with our findings in the form of **BEPS Thermometer: mapping report.**

Sabina Sampławska
Tax Director

Several BEPS action points aim at broadening the scope of tax-related information that international companies are required to disclose. We expect that our local authorities will follow this trend and in practice Polish taxpayers may face more scrutiny and questions about their tax planning practices.

Project timeline

Phase 1 – **PREPARATION** 1 week

- Scoping
- Project planning and framework
- Understanding "as-is"

Phase 2 – **DATA GATHERING** 2-3 weeks

- Review of source documentation
- Interviews with management
- Data gathering
- Query resolution

Phase 3 – **REPORTING** 2-4 weeks

- Consolidation of data
- Reviews and analysis
- Drafting final report on BEPS mapping
- Design of guidance and recommendations

Phase 4 – **DEBRIEF** 2-3 weeks

- Debrief
- Recommendations
- Discussion on further steps

Monika Palmowska
Tax Director

The Polish tax authorities are being equipped with the advanced analytical tools. In order to be prepared for discussions with the tax officials, more attention should be put to planning the related party transactions and ensuring compliance.

Deliverables

Our recommendations may include suggestions to change the financing structure (to comply with thin capitalization rules), remodeling hybrid mismatches, updating and preparing benchmarking studies and transfer pricing documentation (including country by country reporting), introducing tax governance policy.

HEALTHCHECK

Michał Niżnik
Tax Director

Taxpayers will now need to review their contractual arrangements and, where necessary, to undertake proactive steps to make sure that all the BEPS sensitive areas are properly addressed within the organization.

Contact:

Peter Kay
Head of KPMG Tax
KPMG in Poland
T: +48 604 267 679
E: pkay@kpmg.pl

Jacek Bajger
Tax Partner
T: +48 604 496 385
E: jbajger@kpmg.pl

Rafał Ciołek
Tax Partner
T: +48 604 496 335
E: rciolek@kpmg.pl

Marcin Rudnicki
Tax Partner
T: +48 604 496 354
E: marcinrudnicki@kpmg.pl

Anna Sińczuk
Tax Partner
T: +48 508 047 503
E: akrawczyk@kpmg.pl

Karolina Dębska
Tax Director
T: +48 604 919 880
E: kdebska@kpmg.pl

Michał Niżnik
Tax Director
T: +48 600 960 195
E: mniznik@kpmg.pl

Monika Palmowska
Tax Director
T: +48 508 047 524
E: mpalmowska@kpmg.pl

Sabina Sampławska
Tax Director
T: +48 664 080 180
E: ssamplawska@kpmg.pl

Przemysław Szywacz
Tax Director
T: +48 664 718 605
E: pszywacz@kpmg.pl

Find us:
kpmg.pl
youtube.com/kpmgpoland
facebook.com/kpmgpoland
twitter.com/kpmgpoland
linkedin.com/company/kpmg_poland
instagram.com/kpmgpoland
pinterest.com/kpmgpoland
kpmg.com/pl/app
itunes.com/apps/KPMGThoughtLeadership
itunes.com/apps/KPMGGlobalTax
itunes.com/apps/KPMGPolandCareer

Scan the code
to visit kpmg.pl

Available on the App Store

KPMG Poland

KPMG offices in Poland:

Warszawa
ul. Inflancka 4A
00-189 Warszawa
T: +48 22 528 11 00
F: +48 22 528 10 09
E: kpmg@kpmg.pl

Kraków
al. Armii Krajowej 18
30-150 Kraków
T: +48 12 424 94 00
F: +48 12 424 94 01
E: krakow@kpmg.pl

Poznań
ul. Roosevelta 18
60-829 Poznań
T: +48 61 845 46 00
F: +48 61 845 46 01
E: poznan@kpmg.pl

Wrocław
ul. Bema 2
50-265 Wrocław
T: +48 71 370 49 00
F: +48 71 370 49 01
E: wroclaw@kpmg.pl

Gdańsk
al. Zwycięstwa 13a
80-219 Gdańsk
T: +48 58 772 95 00
F: +48 58 772 95 01
E: gdansk@kpmg.pl

Katowice
ul. Francuska 34
40-028 Katowice
T: +48 32 778 88 00
F: +48 32 778 88 10
E: katowice@kpmg.pl

Łódź
al. Piłsudskiego 22
90-051 Łódź
T: +48 42 232 77 00
F: +48 42 232 77 01
E: lodz@kpmg.pl