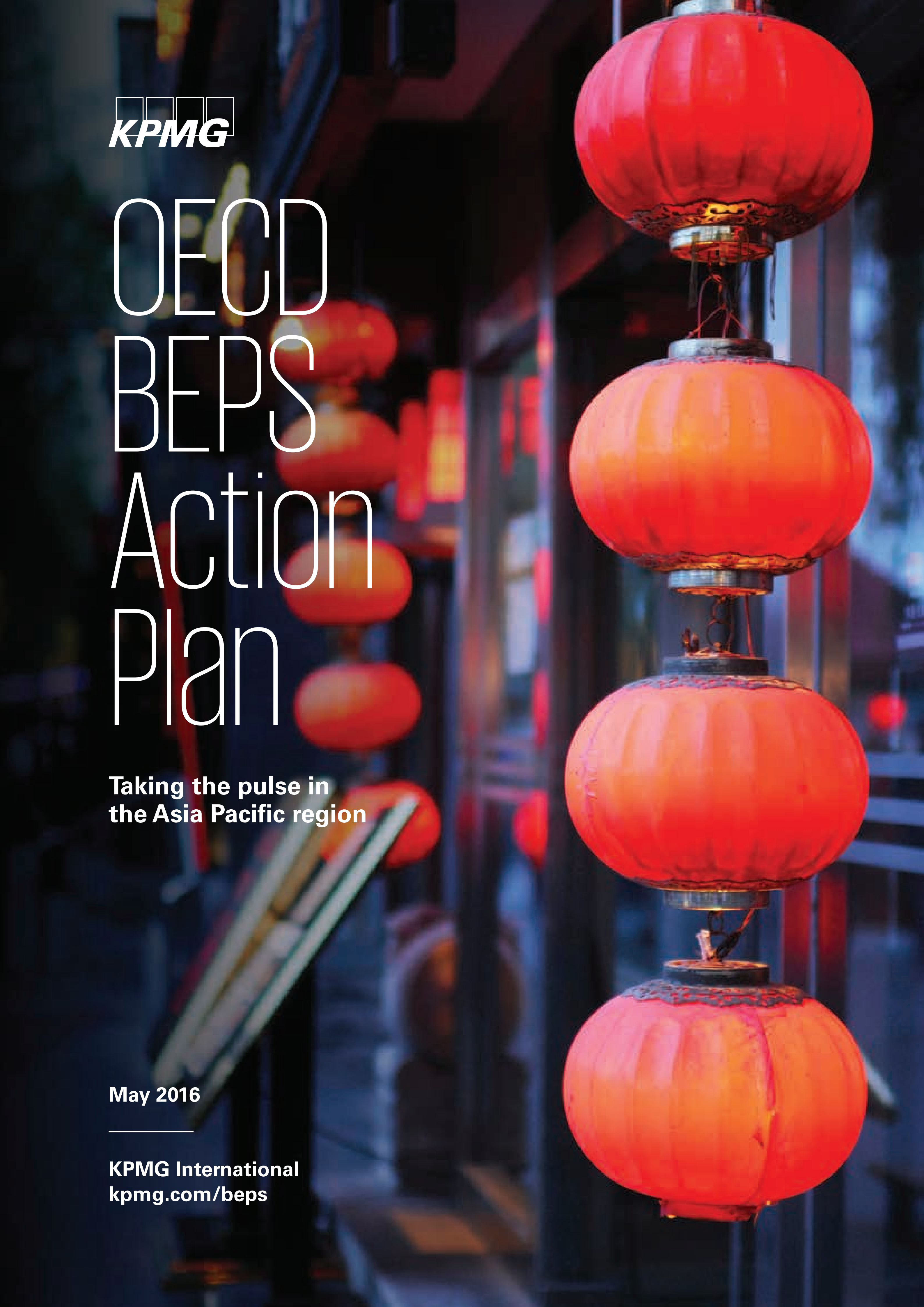

KPMG

OECD BEPS Action Plan

Taking the pulse in the Asia Pacific region

May 2016

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Introduction

Tax executives of international companies headquartered in the Asia Pacific (ASPAC) region face ongoing uncertainty over international tax rules as the future of tax in the region continues to take shape.

The Organisation for Economic Co-operation and Development's (OECD) original Action Plan on Base Erosion and Profit Shifting (BEPS)[1] is complete, and the G20 endorsed the final BEPS deliverables released in October 2015. The OECD is now putting in place mechanisms to monitor the implementation of the BEPS minimum standards for items requiring universal implementation. At the same time, the OECD continues to engage in extensive follow-up work flowing from the 2015 deliverables.

Currently the European Union (EU) appears to be taking the lead with its efforts to harmonize EU BEPS implementation, with significant impact on Asia Pacific headquartered companies with European operations. Australia, China and India have made major contributions to the final content of the BEPS recommendations, and they are at the forefront of BEPS implementation. Many other Asia Pacific countries are influencing — and being influenced by — the profound international taxation changes that are underway.

How is BEPS-related tax policy evolving in this diverse region? As we turn the corner from consultation to implementation, the time is right to take stock. This report is the third in our series of 'pulse checks' on how actions on BEPS policy are progressing in the Asia Pacific region.

For this report, we polled international tax leaders from KPMG's member firms across the region to get their views on trends and developments in the region. In particular, we asked:

— How are Asia Pacific governments responding to the OECD BEPS 2015 deliverables?

— Which Asia Pacific governments are implementing or plan to implement the newly formulated international tax guidelines?

— What unilateral actions to combat BEPS and aggressive tax avoidance are Asia Pacific governments taking outside of the OECD BEPS process?

— What are the implications for international companies doing business in the region?

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 Asia Pacific countries. We conclude with strategic advice that tax directors of all international companies should consider now to guard against adverse change and thrive in Asia Pacific's new tax reality.

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1 G20 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 BEPS Action Plan").

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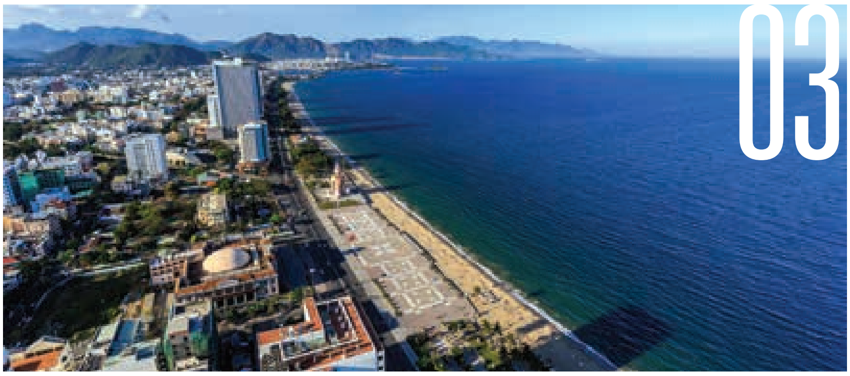

OECD BEPS Action Plan:

Taking the pulse in the Asia Pacific region 2016

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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. They also aim 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 gained the G20's approval on 16 November 2015.

Most OECD and G20 countries have been engaged in the OECD's work, and many other countries in the Asia Pacific region and worldwide are either fully engaged or watching developments closely. Each government will have to determine how the guidance affects its 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.

The OECD's goal is to achieve consensus on a coordinated implementation of uniform international taxation principles for the modern age. While European and North American countries have been particularly vocal, a number of Asia Pacific countries have come to the fore and have exerted significant influence on the BEPS proposals.

China has taken a particularly active and constructive role in the various Working Party meetings that considered the Action Plan items. Building on this record, China is the host of the G20 and the Forum on Tax Administration (FTA) meetings in 2016. In a February 2015 communiqué, the G20 finance ministers and central bank governors announced that China would establish an international tax policy research center to drive thinking on international tax policy design and deliver technical assistance to developing economies.

Next steps?

Now that the Action Plan guidance is complete, different countries are proceeding at somewhat different paces in implementing the BEPS proposals. Businesses have raised concerns over the uncertainty and complexity that is bound to result from staggered implementation of new rules among different countries.

The OECD is currently drawing up terms of reference for a peer review system to monitor the implementation of the minimum standards agreed under BEPS. Going forward, the OECD will continue to develop guidance for implementing the BEPS changes, with ongoing work in 2016 to address, among other things, profit attribution for permanent establishments and guidance on the use of transfer pricing profit splits.

Which countries are on board?

In their engagement with the OECD BEPS Action Plan, countries in the Asia Pacific region fall on a spectrum that runs from 100 percent participation and commitment to non-engagement. At one extreme, the OECD members in the region are highly engaged and likely to adopt the full slate of BEPS proposals in accordance with the OECD guidelines. Australia has perhaps been most involved to date given its role as president of the G20 during 2014 and its desire to see real progress on BEPS during its tenure. With

Spectrum of engagement: Asia Pacific jurisdictions

No engagement on BEPS	Generally follow international tax trends — restrained by domestic capabilities	Partial involvement and interest — may adopt some measures	Involvement and interest — voluntary adoption of many guidelines	100 percent substantial involvement and likely adoption
Brunei Cambodia Laos Macau Myanmar Papua New Guinea Sri Lanka	Fiji Mongolia Vietnam	Hong Kong SAR Malaysia[‡] Pakistan Philippines[α] Singapore[‡] Taiwan Thailand	India[†] Indonesia[†]	Australia[*†] (G20 host 2014) China[†] (G20 host 2016) Japan[*†] Korea[*†] New Zealand[*]

Source: KPMG International, 2016.

* OECD member and accession
† G20 non-OECD
‡ Action Plan observer status
α Developing country invitee to Action Plan from Nov 2014

a Japanese Ministry of Finance official currently in place as chair of the OECD Committee on Fiscal Affairs, Japan is also highly invested in the Action Plan's successful outcome.

At the other end of the spectrum, many of the region's developing countries show little interest in the OECD's project. With modest levels of foreign direct investment, low international activity and less developed taxation systems, these countries do not perceive BEPS to be a significant problem. Further, many of these countries are members of the Association of Southeast Asian Nations (ASEAN), and their tax reforms have been driven by other priorities, including creation of the ASEAN Economic Community in 2015 (discussed below).

The middle of the spectrum comprises countries such as India and Indonesia, which have engaged in the OECD discussions and will implement some aspects of the BEPS proposals that suit their domestic purposes. Other countries, like Singapore, are monitoring the debates and actively engaging with the OECD and will likely adjust certain aspects of their tax systems in response to any new international norms. Another group of countries, which includes Malaysia and Vietnam, watch and follow international tax trends closely. The Philippines has taken an increased interest in the Action Plan following its appointment as one of the seven additional developing countries invited to participate in the various discussions and negotiations.

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. While many Asia Pacific countries have committed to follow the OECD's recommendations in principle, unilateral action taken to date suggests that, on implementation, individual countries will tailor the proposals to suit their own purposes. For example:

- In the area of transfer pricing, China, India and other Asian countries have publically stated their support for the BEPS transfer pricing outputs. However, their tax administrations have also noted a need to 'localize' the BEPS guidance to suit domestic circumstances. This allows domestic country attributes, such as specific market characteristics and intangible assets, to continue to be accounted for in determining value creation when allocating profits to the local country.
- Certain Asia Pacific countries (e.g. India, China) have led the way with anti-avoidance rules. While such rules were outside the original BEPS program's scope, they are taking center stage in the BEPS follow-up work for developing countries (e.g. indirect offshore disposal rules). In these fields, some countries in the Asia Pacific region lead the world in terms of practical experience.

Globally, these departures from the letter of the OECD recommendations are expected to multiply. For example, in February 2016, the European Commission presented its draft EU Anti-Tax Avoidance Directive for reforming corporate taxation in the EU. Overlapping with the OECD's work in many areas, the plan sets out a series of initiatives, falling under a 2015 EU action plan, to address tax avoidance, increase transparency, and improve EU coordination. Meanwhile, the US seems hesitant to embrace the OECD's recommendations due to concerns that the tax practices of US-based multinational companies are being unfairly targeted.

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 staggered and fragmented among regions and individual countries.

Developed and developing countries

The G20-OECD BEPS Action Plan builds on existing accepted international tax concepts of residence, source income taxing rights and the arm's length principle for transfer pricing. Alternative models, such as unitary or destination-based taxation, were not contemplated as part of the reform efforts. The exact balance to be achieved in working international tax concepts into international tax rules has always been a matter for debate, and commentators have noted some differences of position that may exist between developed and developing countries.

Many OECD members are traditional capital exporters or have broad balance in their inbound and outbound capital flows, whereas many developing countries are traditionally net capital importers. Developing Asia Pacific countries that have little in the way of outbound investment and significant inbound investment (e.g. Vietnam, the Philippines) may favor certain rule changes that expand source taxing rights. By contrast, traditional capital exporting countries (e.g. Japan, Korea) may not desire over-expansive revised source tax thresholds (e.g. permanent establishment) and retain an interest in residence-based taxation, which allows them to tax a bigger share of repatriated profits earned offshore.

In setting transfer prices, China and India reject wholesale adoption of income allocations purely based on the pre-BEPS OECD-style notions of functions, risk and value (e.g., based on the legal ownership of intellectual property holdings, product design and brand building). Rather, these countries seek augmentation of these rules to allow differentiated allocation of income based on additional value drivers. These include mid-value chain manufacturing activities conducted in their jurisdictions and marketing activities that seek to tap the huge potential of their domestic consumer bases.

As a result, these countries have sought clarifications of transfer pricing rules through BEPS that adjust the historic paradigm. The BEPS project's ongoing success will require accounting for these different voices to avoid perceptions that the proposals tilt too far toward the benefit of developed, capital-exporting countries.

The ASEAN factor

In addition to BEPS, the Asia Pacific region's international tax landscape is being transformed by the Association of Southeast Asian Nations, (ASEAN) creation of the an ASEAN Economic Community (AEC) in 2015. The AEC promotes the free flow of goods, services, skilled workers and capital among ASEAN's 10 member countries: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam. These reforms hold the potential to dramatically accelerate the region's economic growth.

As with the G20-OECD BEPS Action Plan, the ASEAN countries have had significant hurdles to overcome in a short timeframe. New laws to harmonize customs rules need to be adopted, for example, and there is no road map in place for harmonizing value-added taxes.

Further, since there are no plans to harmonize domestic corporate income tax systems, concerns over double taxation and tax competition are rising. Although corporate tax rates are going down and incentives are being broadened, significant variations in tax rates still exist. For example, the Philippines' 30 percent rate is almost double Singapore's 17 percent rate, which is much more favorable to foreign direct investment.

The AEC Blueprint 2025 states, "Tax cooperation serves as one of the key elements to support regional competitiveness in ASEAN by addressing the issue of fiscal barriers." In this sense, tax cooperation includes a network of bilateral tax treaties and improved exchange of information in accordance with international standards. An intriguing element recently added to the 2025 Blueprint is a commitment to "discuss measures to address the issue of base erosion and profit shifting to ensure fiscal health".

By including this statement in the AEC Blueprint 2025, the ASEAN tax administrations are opening a door to future discussions about the potentially detrimental effects of tax competition within the region.

Emboldened tax authorities

Within Asia Pacific governments and societies at large, the debate over tax transparency and tax morality has not reached anywhere near the degree of emotional intensity that it has in western countries. Even still, with most tax authorities under pressure to raise revenue, it appears the global debate is giving them license to take a harder line in their tax collection and enforcement techniques. For example:

- For the past few years, India and China have scrutinized international tax structures that have been perceived to shift profits overseas. High-profile Indian cases, such as *Vodafone* and *Shell India*, and notable Chinese cases on treaty abuse and indirect transfer enforcement have set the tone.
- In Vietnam, a global soft drink company faced a widespread boycott after a tax official commented that the company paid no tax in the country.
- Thailand, Indonesia and Malaysia, among others, have boosted their international tax audit resources, resulting in more detailed audits and more assessments.

Further, it appears that some Asia Pacific countries, like China and India, may be relying on the OECD's project to vindicate their introduction of strict unilateral tax measures, such as anti-treaty shopping rules, which they were inclined to pursue in any event. The global BEPS debate is providing support for these tax policies, along with new tax principles and tools to implement them.

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. The establishment of a new globally inclusive tax framework, following the February 2016 invitation to all countries to join the OECD's Committee on Fiscal Affairs as 'BEPS associates', should strengthen this trend.

— **Engaging business:** Over the past 3 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 fall short of delivering an ideal tax world, it will still us bring many steps closer, especially where tax fairness and transparency are concerned.

The road ahead

As you will see in the individual country discussions that follow, even though the OECD BEPS Action Plan seeks to instill more uniformity and certainty in the international tax system, there is a high risk of that its implementation will be inconsistent among regions and individual countries. Coupled with a lack of effective dispute resolution, international companies in the Asia Pacific region could experience more uncertainty and tax controversy in the coming years than ever before.

Tax health check: Top five items for review

What can tax directors in the Asia Pacific region do to prepare for the coming wave of change? At the end of this report, you'll find general advice that all companies should think about, no matter where they operate. In examining their existing tax arrangements, companies in the region should give high priority to five specific areas:

1. Consider existing **investment holding structures** and ensure there is sufficient **business substance** in offshore business structures, especially those involving low- or no-tax jurisdictions.
2. Review the extent and nature of your **business presence in foreign jurisdictions** in light of potential changes to existing permanent establishment concepts.
3. Develop a central approach to **transfer pricing** and prepare processes and tools to enable **country-by-country tax reporting.** Examine that details that new transfer pricing documentation requirements may reveal about existing tax planning arrangements and consider whether additional supporting documentation, improved management protocols, or structural changes are needed to control tax risks.
4. Consider threats to existing **hybrid entities and structures** and investigate potential alternatives.
5. Prepare your **strategy for communicating your tax position** to your various stakeholders and decide what to communicate, to whom, where and when.

Above all, given the prospect of staggered and fragmented implementation of the OECD's guidance, companies should closely **monitor developments** and their **potential impact** on their tax processes and planning arrangements.

Countries in focus:

Moving from talk to action

Australia

At the political and social levels, the debate about tax transparency and ensuring global companies pay their fair share has resonated more in Australia than in most other Asia Pacific countries. Since the 2008 financial crisis, the Australian government has struggled with a string of budgetary deficits and a shrinking tax base, causing questions over the lack of Australian tax paid by some large foreign-controlled companies.

For many years, Australia has also been at the forefront of the global trend toward a risk-based approach to tax audits based on the strength of a company's tax governance, risk management and controls. As a result, Australian companies tend to have greater board-level engagement in tax matters and have become relatively conservative in their approach to tax planning.

Despite Australia's commitment to driving the OECD BEPS Action Plan forward, aspects of the plan could be detrimental to Australian businesses. For example, proposals that address hybrid mismatches could dramatically increase the cost of capital for Australian subsidiaries with foreign parents, especially in light of Australia's tight thin capitalization rules. Further, given the high level of Australian business activity in China, for example, a move toward attributing profits based on an expanded definition of permanent establishment could cause more onerous tax payment and filing obligations.

Nevertheless, the Australian government has already announced or enacted laws to target the following items of the OECD BEPS Action Plan:

- **Thin capitalization:** The Australian government has announced that for income years beginning on or after 1 July 2014, the thin capitalization safe harbor gearing limits will be reduced from a 75 percent gearing ratio to a 60 percent gearing ratio (Action 4).
- **Transfer pricing:** Australia recently changed its transfer pricing rules to move away from an arm's length price model to a whole economic analysis model (embracing an arm's length profit allocation), consistent with OECD standards. While this change preceded the release of the OECD BEPS Action Plan, it is consistent with the Australian government's increased focus on tax transparency and the use of OECD standards in Australian tax law (Actions 8–10) . In addition, the Australian government has recently enacted laws implementing country-by-country reporting into Australia's domestic income tax law for income years starting on or after 1 January 2016 (Action 13).
- **Documentation and transparency:** The former Australian government introduced rules that would require the Commissioner of Taxation to publish details of accounting profit, taxable income and tax payable for large corporate entities (those with annual revenue of greater than 100 million Australian dollars — AUD) (Action 11).
- **Multinational anti-avoidance law (MAAL):** The Australian government has enacted the MAAL, which is intended to counter the erosion of Australia's tax base by multinational enterprises with AUD1 billion or more of global annual income. In essence, the MAAL is a diverted profits tax aimed at preventing foreign entities from reducing their Australian tax liabilities by avoiding a taxable presence in Australia.

Disclosing foreign related-party transactions

As part of the Australian government's greater scrutiny of international corporate structures, the Australian Taxation Office (ATO) established a project titled International Structuring and Profit Shifting (ISAPS). Under this project, the ATO will send questionnaires to certain Australian companies with overseas related-party transactions requiring data at a level similar to the country-by-country data requested under the OECD BEPS Action Plan. The ATO will use this information to assign risk ratings to taxpayers and also determine whether to proceed to audit.

Given the ATO's underlying interest in the details of where volume arises in international supply chains, global groups with Australian subsidiaries should monitor what information these subsidiaries are disclosing under the new IASPS requirements. Even small Australian subsidiaries may have to make these broad disclosures, and the ATO is known to be proactive in sharing relevant tax information with other jurisdictions. Even groups with a minor business presence in Australia could find themselves subject to increased audit and enforcement activity in other countries as a result of the ATO's IASPS project.

Jumping the gun?

As noted in the introduction, Australia's zeal in getting ahead of the game in adopting BEPS proposals could work against the goals of the OECD BEPS project. Until an integrated set of new tax principles is finalized for all 15 BEPS Actions, countries that adopt early versions of this work in progress could complicate the global tax situation and hamper the implementation of commonly agreed and fully developed tax principles.

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China

China has been a strong proponent of the implementation of the BEPS outputs, building on the important contributions China made to the formulation of the BEPS 2015 deliverables. As China hosts the G20 and the Forum on Tax Administration in 2016, this year is set to be a crucial one for BEPS implementation in China. A range of new regulations will likely be issued, with major impacts for multinational companies.

China's President Xi Jinping set the pace for China's BEPS implementation efforts when, addressing the 2014 G20 Leaders' Summit, he pledged China's support for global cooperation on tax reform. Since then, the Chinese State Administration of Taxation (SAT) has announced a series of prospective BEPS-related tax regulation changes encompassing transfer pricing, permanent establishment rules, controlled foreign company rules, and treaty shopping rules. These regulatory changes are augmented by stricter enforcement actions taken by the Chinese tax administration in recent years against perceived aggressive tax planning and close scrutiny of cross-border related-party royalty and service payments.

Comparatively, some of the BEPS Action Plan recommendations will likely have less impact in China due to its regulatory framework, which has limited the incidence of BEPS in some cases. For example, capital controls and foreign exchange controls curtail the use of hybrid instruments and debt planning.

In other areas, China has been at the forefront in adopting anti-base erosion initiatives beyond the initial BEPS program, such as in the area of offshore indirect disposal rules.[2] These rules are now a central part of the OECD BEPS follow-up work for developing countries.

Looking ahead, China's extensive involvement in global tax thought leadership and policymaking is set to grow steadily in coming years. Emblematic of this development is the G20's February 2015 announcement that China would establish an international tax policy research center for international tax policy design and research as well as technical assistance to developing economies.

Integrating BEPS actions in China's tax law and practice

A number of the key BEPS-relevant tax regulation announcements and enforcement developments are detailed below, followed by a fuller consideration of the upcoming revised Chinese transfer pricing guidance.

— **Permanent establishments:** The SAT has stated firm support for Chinese implementation of the BEPS permanent establishment proposals (Action 7):

  — Chinese tax treaties have started to be updated for the BEPS permanent establishment rules (e.g. China-Chile tax treaty signed on May 2015), and the SAT has said it would introduce updated permanent establishment recognition and profit attribution guidance in 2016.

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[2] See SAT Announcement [2015] No.7.

- An information exchange platform is being set up to help local tax authorities across China to track and target potential permanent establishment enforcement cases. The SAT has indicated that the existing Chinese treaty guidance on permanent establishments[3] can be used to support immediate application (i.e. before treaties are updated) of some of the expanded BEPS permanent establishment concepts.

- **Treaty abuse:** China has started introducing the minimum standards under BEPS Action 6 in its treaties, including the limitation on benefits (LOB) rule and principal purposes test (PPT), starting with the China-Chile tax treaty. To facilitate the use of the PPT to counter treaty shopping, in addition to China's general anti-avoidance rule (GAAR), China has introduced new procedural rules for accessing treaty relief.[4] These rules abolish tax authority pre-approvals and provide that withholding agents will apply treaty relief using a concept of beneficial ownership, which is more in line with international practice than the former commercial substance-focused concept.[5] The tax authorities will then apply follow-up procedures and use the LOB, PPT or GAAR as appropriate.

  Given the additional potential exposures for withholding agents, and the need for treaty relief claimants to prove reasonable business purposes and absence of tax avoidance purposes, businesses in China are already planning on improving procedures and documentation.

- **Controlled foreign company rules:** In a forthcoming circular on 'special tax adjustments', the SAT will provide extensive clarifications on China's CFC rules.[6] The types of income targeted by the rules are described in great detail. The latest draft draws extensively on the BEPS Action 3 recommendations on the design of controlled foreign company rules and includes an 'excess profits' test. These clarified rules aim to support recently increased enforcement efforts and are underpinned by enhanced controlled foreign company reporting rules.

- **Other actions:** The SAT has signaled an intent to roll out anti-hybrid mismatch rules (Action 2) later in 2016 and continues to examine possible taxation approaches to digital economy businesses (Action 1).

Transfer pricing and creation of value

The SAT's draft circular on special tax adjustments seeks to leverage the BEPS transfer pricing work (Actions 8–10, 13) to support China's existing approach to transfer pricing. Indeed, the SAT's efforts were influential in having reference to the transfer pricing concepts used by China integrated into the updated OECD transfer pricing guidelines.

In particular, the Chinese tax authorities make reference in transfer pricing administration to concepts of location-specific advantages (LSA) and the contributions of Chinese entities to group intangibles. They leverage these concepts to argue for allocating more profits to Chinese group entities.

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3 See SAT Circular [2010] No.75.
4 See SAT Announcement [2015] No.60.
5 See SAT Circular [2009] No.601.
6 See SAT Public Consultation Draft of a Circular on Implementation Measures for Special Tax Adjustments, issued on 17 September 2015.

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LSAs include cost savings, which are considered to arise from low cost China production, and market premium, which is considered to arise to foreign businesses selling to China's burgeoning consumer classes.

The draft special tax adjustments circular leverages the enhanced BEPS transfer pricing guidance on 'local market advantages' (an OECD concept equivalent to Chinese LSAs) to formalize the LSA concept in Chinese guidance. However, the Chinese tax authorities may push this concept further in practice than anticipated by the OECD and will probably call for transfer pricing comparability adjustments or use of the profit split method based on the circular's new value contribution allocation method.

The SAT's draft circular also leverages the new BEPS framework regarding the development, enhancement, maintenance, protection and exploitation (DEMPE) of intangibles for compensating group members for contributions to intangible asset value creation.

Note, however, that China has adapted the BEPS DEMPE framework to its own circumstances. The draft Chinese guidance adds (local) promotion to the framework. It emphasizes the contribution of manufacturers and marketers to the enhancement of intangible asset value and downplays the importance of high-level strategic planning and control of intangible asset development.

The draft guidance could thus lead China and other countries to arrive at different conclusions about the relative contributions of international group members to intangibles value creation, leading to different profit attributions and potential double taxation. China's position on intangible assets broadens the circumstances in which China may push for transfer pricing comparability adjustments and profit splits and seek to deny deductions for outbound payments for licensed intellectual property.

Regarding intragroup payments, the special tax adjustments circular takes a strict stance on the deductibility of outbound related-party service payments, particularly where such payments are made to deemed 'low function entities'. The harsh enforcement trend that emerged in this area in 2014 and 2015 continues.

Transfer pricing documentation is set to be radically overhauled under the new circular to support these efforts, replicating the BEPS Action 13 local file, master file, country-by-country documentation and reporting structure. The existing Chinese thresholds for contemporaneous transfer pricing documentation are also set to be adjusted. Pending the finalization of the special tax adjustments circular, the final content of the local file and documentation thresholds are still to be confirmed.

In view of the above, international companies have been re-evaluating the sustainability of their traditional Chinese transfer pricing positions. This is particularly true for companies with operations that have been rewarded on a limited-risk, cost-plus basis but which could arguably earn a higher return on the basis of the LSA and China intangibles contributions concepts (e.g. R&D facilities, marketing and distribution functions). Extensive functional and value chain analysis, together with detailed review of the quality of transfer pricing documentation, are vital steps for preemptively managing tax risk going forward.

India

India has been one of the pioneers and major contributors of the OECD BEPS initiative and is actively pursuing the BEPS agenda. India introduced some proposals to adopt OECD BEPS recommendations as part of the proposals in the recently announced Union Budget 2016–17. Perhaps the most significant change is incorporation of the concepts of master file and country-by-country reporting in the Indian transfer pricing regulations as of 1 April 2016.

Master file and country-by-country reporting

India, as one of the pioneers and major contributors of the BEPS initiative of the OECD and G-20 countries, introduced a few of the BEPS Action Plans as part of the proposals in the recently announced Union Budget 2016–17. The major one has been the introduction of master file and country-by-country reporting in the Indian transfer pricing regulations, with effect from the fiscal year beginning, 1 April 2016, in line with BEPS Action 13.

The master file and country-by-country reporting requirements predominantly enforce the principle under BEPS Actions 8 to 10 on transfer pricing that the risks in, and value drivers of, business operations and their related rewards are closely associated with strategic functions or 'substance'. Thus they cannot be disassociated from each other merely through formal intercompany agreements between associated enterprises.

To ensure adherence to these principles, Chapter V of the OECD transfer pricing guidelines was re-written under the BEPS project to provide for more robust documentation and disclosure mechanisms. The goal is to provide tax administrators worldwide with the data they need to monitor whether risks, rewards and value align with substance and selectively identify cases for transfer pricing audits based on risk assessment.

Action 13 provided for three tiers of transfer documentation, namely, the master file, the local file, and the country-by-country report. Most countries with transfer pricing regulations, including India, already require 'local file'-type documentation from local entities on their transactions with foreign related parties. The master file and country-by-country reporting are new obligations.

The master file is expected to provide an overview of an multinational group's global business model, specifically covering:

- its organizational structure
- a description of the various businesses
- intangibles used in the businesses
- intercompany financial transactions
- financial and tax positions.

The guidelines ask taxpayers to use prudent judgment in determining the level of detail for master file information, keeping in mind the objective of providing tax administrators with a high-level overview of the multinational company group's global operations and policies.

Country-by-country reporting requires data about the functions performed, assets owned, personnel employed, revenue generated, profits earned, taxes paid, capital structure, retained earnings, and other information about each entity of the multinational group located in different countries. Thus, country-by-country reporting is the platform to vindicate the veracity of the blueprint provided in the master file. For tax administrators, the country-by-country report would highlight any possible mismatch between the level of profits or revenues residing in, or intangibles owned by, a group entity, along with the functions carried out by, or capital infused in, that entity.

The revised OECD transfer pricing guidelines provide that the master file would need to be filed by each entity of the multinational company group with the tax administrator of the respective country, at the time of audit, in addition to the local transfer pricing documentation. Country-by-country reporting would be prepared by the group's ultimate parent company and filed with the tax administrator of its country, who would in turn share the report with the tax administrators of other countries in which the group has subsidiaries or permanent establishments.

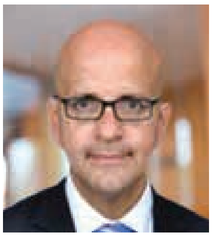
The OECD transfer pricing guidelines do not mandate which entity of the multinational company group should prepare the master file. However, since country-by-country reporting is the obligation of the ultimate parent of the multinational group, the master file should also be prepared by the ultimate parent. From an efficiency standpoint, the same entity is best suited to prepare the two complementary documents, and only the ultimate parent can have a comprehensive view of all various business lines within the group.

BEPS Action13 provides for a minimum threshold of consolidated annual turnover of 750 million euros (EUR) for multinational groups to be obliged to comply with country-by-country reporting, which the Indian government also seeks to follow. BEPS Action 13 does not set a threshold for master file reporting. Whether the Indian Revenue Board prescribes any monetary threshold in this regard remains to be seen. If not, small taxpayers may be saddled with an unneeded extra compliance burden.

In line with BEPS Action 13, the recent Union Budget 2016–17 proposes that every Indian entity that is a subsidiary or permanent establishment of a foreign parented or headquartered multinational company group shall disclose the name and country of residence of its ultimate parent entity to the Indian tax authorities. The Indian authorities would then obtain the group's country-by-country report from the tax authorities of the parent's company of residence under a mutual exchange of information arrangement.

Managing the impact of broadened transfer pricing disclosures

As these requirements take effect as of 1 April 2016, Indian parents of multinational groups should carry out clinical analyses of their businesses at the earliest opportunity. These reviews should aim to identify any exposures due to mismatches between risks, rewards and functions, and any needed corrective measures across their supply chains.



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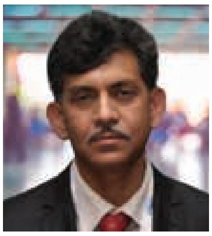

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Beyond the compliance challenges, Indian multinational companies should view the new disclosure requirements as an chance to revisit their supply chain models and identify opportunities to create value through efficiencies and synergies. Further, the in-depth analyses of the organizational and operational structures required by master file and country-by-country reporting could also help Indian multinational companies to identify and mitigate any possible exposures for their foreign subsidiary companies under the new regulations on the place of effective management.

'Equalization levy' or digital tax

The Union Budget 2016–17 also proposed to introduce an 'equalization levy' at the rate of 6 percent on cross-border payments for online advertisement services, where the non-resident service provider does not have a permanent establishment in India. This levy is in line with BEPS Action 1, dealing with taxation challenges for digital economy.

Such income is undoubtedly 'business income' for the non-resident company, which, in the absence of a permanent establishment, cannot be taxed in the host jurisdiction (in this case, India). The Union Budget 2016–17 has attempted to implement the treaty override indirectly, essentially by framing the levy as a transaction tax.

However, unless India's tax treaties are amended, any attempt to levy tax on such income under the Indian domestic tax law by expressly stating that levy of such tax would not be obstructed by any tax treaty, would be a direct attempt by the Indian government to override tax treaties through legislation in domestic tax laws. Such a unilateral treaty override would not only draw international criticism but it may also be unconstitutional. As a result, the Union government is expected to review this measure in detail before enactment of the Finance Bill, 2016, to ensure any equalization levy that is introduced is in line with India's constitution.

Japan

Japan is highly engaged in the OECD's BEPS consultations due to its G20 and the OECD memberships. Tsugumasa Asakawa, Director General of the International Bureau of Japan's Ministry of Finance (MOF) for Policy Planning and Co-ordination, is the current chair of the OECD's Committee on Fiscal Affairs. The minister is not only leading the discussion of international tax matters at the OECD level, he and other MOF officials are actively working to garner support for the BEPS initiative domestically.

Japan currently has tax rules in place that specifically address three OECD BEPS Action Plan items:

— **Limitation of deductibility:** Under Japan's 2012 tax reform, an earnings-stripping regime was introduced to prevent companies from taking excess interest deduction. The regime limits the deductibility of interest, royalty, lease and other payments where the interest payments to foreign related parties are excessive in comparison with the company's income (Action 4).

— **Anti-treaty shopping:** Under its tax treaty policy, Japan generally seeks to include limitation on benefits clauses in tax treaties. Japan's current tax treaties with Australia, France, the Netherlands, New Zealand, Sweden, Switzerland the United States and the United Kingdom include such clauses (Action 6).

— **Digital economy taxation:** In November 2013, the MOF submitted the report Consumption Tax Treatment of Cross-Border Supplies of Services and Intangibles to the International Taxation Discussion Group of the government's Tax Commission. The report discusses how cross-border supplies of services and intangibles should be treated for consumption tax purposes from the perspective of ensuring both tax neutrality and the taxing rights of Japan. The consumption tax for cross-border digital services was implemented as of 1 October 2015. The tax treatment of other cross-border services than digital services is still under discussion (Action 1).

Other anti-avoidance rules

Japanese tax law also includes a general anti-avoidance rule for closely held companies that allows the Japanese tax authorities to deny a transaction that, in their view, improperly decreases the company's tax burden due to improper or unique terms and conditions. Specific anti-avoidance provisions are in place for all companies related to corporate reorganization transactions and transactions. These rules give Japanese tax authorities similar rights as the general anti-avoidance provisions.

Rising interest in tax planning techniques

For international Japanese-headquartered companies, the current BEPS debate and BEPS-related actions by emerging countries is spurring an unexpected attitudinal change. Historically, Japanese companies have not undertaken tax planning. Rather, they have viewed their tax contributions as a source of pride. A shift is occurring as Japanese companies contend with several factors:

— Despite recent corporate income tax rate reductions, Japan's current rate of 33.06 percent (as of 31 March 2016) is relatively high.

- As Japan's economy has begun to improve, taxable profits of Japanese companies are rising, creating more incentive to take steps to reduce the effective tax rate.
- Despite their historical lack of tax planning, Japanese companies are finding longstanding international tax structures under increasing threat of double taxation from aggressive tax audit practices and BEPS-related measures of countries such as India and China.

As beleaguered Japanese companies perceive their share of tax as increasing, many of them are showing more interest in ways to minimize their tax burden on a global basis.

Resisting different notions on allocation of profit

The stance of emerging economies toward allocations of profit is also driving many of Japan's positions as the OECD BEPS Action Plan proceeds. For example, as emerging economies have increasingly sought to allocate profit for treaty purposes based on beneficial ownership (e.g., looking through holding companies in low-tax jurisdictions), Japan has become increasingly interested in preserving allocations based on legal ownership.

Similarly, it is in the interest of Japanese companies to maintain transfer pricing principles that, for example, attribute value creation to intangible asset holdings developed and held by the parent company rather than value drivers in emerging economies, such as low-cost labor pools, extensive manufacturing operations and large consumer markets.

Japanese companies also have concerns that emerging countries will use data from detailed country-by-country tax reporting to further challenge the profit allocations among international groups.

However, even as Japan advocates for international tax principles best suited to global companies based in the country, Japan is expected to fully embrace the OECD BEPS Action Plan's final outcomes.

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As a member of both the G20 and the OECD, Korea is highly engaged in the BEPS consultations and appears likely to adopt many measures that the OECD ultimately recommends. Korea plans to gradually roll out the Action Plan by revising its domestic tax laws and renegotiating its tax treaties.

In response to Korea's BEPS-driven tax amendments, private consulting groups are offering customized services to large Korean companies as well as mid-sized companies with intercompany transactions. However, the latest survey by Korean Economic Federation shows that the majority of Korean big companies are still slow to adapt to the BEPS environment.

Korea is implementing the OECD BEPS Action Plan in response to the OECD's schedule and has set a priority on the minimum standard for implementing the OECD BEPS Action Plan (i.e. Actions 5, 6, 13 and 14).

Enhanced reporting of transfer prices

As of 2016, Korea has introduced a new transfer pricing documentation requirement that reflects the relevant BEPS Actions. Korea has suggested its reasons for adopting the new transfer pricing documentation rule are:

- to strengthen the management of international companies' transfer prices
- to ensure Korean companies timely respond to foreign fiscal authorities' enhanced reporting requirements by pioneering the introduction of full transfer pricing documentation.

Under the new requirement, as of 1 January 2016, taxpayers having annual sales revenue of 100 billion Korean won (KRW) or more and intercompany transactions of KRW50 billion or more are required to submit a 'comprehensive report' on international controlled transactions by the due date of filing of tax return.

The comprehensive report consists of an individual entity report ('local file') and integrated entity report ('master file'). Korea has not yet introduced the country-by-country report but may do so in the future, depending on foreign countries' legislation and implementation status.

Korea has already introduced legislation on several OECD BEPS Action Plan items. Two instances include:

- **Controlled foreign company rules on passive income:** To curb perceived tax avoidance through foreign retention, Korea is extending application of its controlled foreign company rule to passive income as of 1 January 2015. Obligations to submit information on controlled foreign companies have been strengthened, and a harsh new penalty of up to KRW100 million (about 92,000 US dollars (USD)) of additional tax may be levied for not complying with these rules (Action 3).
- **Exchange of information:** Korea has strengthened the intergovernmental exchange of information to prevent BEPS by entering agreements with more governments, including an agreement with the US under the Foreign Account Tax Compliance Act, wich took effect in July 2014. Korean exchange of information rules apply not only to non-resident and foreign entities but also to Korean residents and domestic companies. Financial institutions that fail to submit information as required face a new penalty of up to KRW30 million (about USD27,000).

Other anti-avoidance measures

Korean tax law contains a substance-over-form rule that allows the tax authority to re-characterize a related-party transaction based on its substance where the tax burden of a company has been unjustly reduced. Thin capitalization and transfer pricing rules are also in place. In recent treaty negotiations, Korea has worked to resolve treaty shopping problems by introducing limitation on benefits clause.

In addition, Korea's tax authorities have increased both the frequency and level of scrutiny of international tax audits, sharpening their focus on outbound investments, transfer pricing and foreign tax credit abuses in the past few years.

Carrot and stick approach

The Korean government has formed a task force consisting of National Tax Service officers and tax professionals to plan for the effective implementation of the OECD BEPS proposals. The Korean government has also set up a BEPS response center to help Korean companies respond to BEPS developments.

At the same time, the Korean tax authorities are working to raise awareness of the BEPS-based transfer pricing regulations among Korean companies and global companies doing business in Korea. Penalties for non-compliance with the new regulations do not appear harsh, but non-compliance could also trigger a transfer pricing tax audit. If an audit results in a transfer pricing adjustment, significant tax consequences would arise – a penalty of 10 percent of underpaid taxes for underreporting taxable income and a penalty of 10.95 percent of underpaying taxes. Further, if a transfer pricing adjustment is returned, the tax authorities may make a secondary adjustment by deeming the unreturned income as dividends.

Taxpayers can appeal transfer pricing adjustments through the domestic appeal process and mutual agreement procedures under an applicable tax treaty. However, it can take at least 3 to 5 years to reach the final conclusion through these routes, which can create substantially costs for taxpayers.

Serious shortage of tax skills

Despite government efforts, a recent survey by the Korean Economic Federation[7] indicates that the majority of the Korean companies are not well aware of details of the BEPS Action Plans. Larger Korean companies are increasing their tax resources and strengthening their tax risk management controls and processes. They are also investing in training to equip internal tax professionals with more sophisticated international tax skills. By contrast, small and medium-sized Korean companies are struggling to add substance and staff to their tax departments. Therefore, it is anticipated that larger Korean companies will be able to adapt to the BEPS environment, but small and mid-sized companies may suffer a competitive disadvantage.

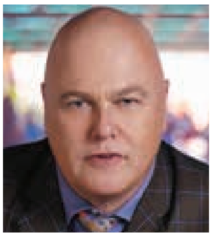
Rising challenges for Korean global companies

As Korean companies seek to expand operations and compete in the global economy, they are showing interest in global structures that could help reduce their effective tax rates. Compared with other global companies, however, Korean global companies have fewer in-house professionals with international tax skills. As a result, in the BEPS environment, Korean global companies will need to devote more of their limited in-house tax resources to compliance work at the expense of strategic planning activities, which may impede the ability of Korean global companies to compete.

[7] KEF Survey, released on 21 March 2016.

Singapore

Singapore has a track record of setting competitive tax and other policies that attract global and regional headquarters companies. Similar to the G20 countries, Singapore is engaged in the development of the OECD BEPS Action Plan. Singapore's government realizes the importance of the BEPS project and is interested in how the OECD BEPS Action Plan is unfolding.



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Further, as with companies from other developed countries in the region, Singaporean companies doing business in China and India are increasingly subject to aggressive tax investigations and adjustments in respect of their activities in these emerging countries. While the Singapore government has yet to introduce unilateral measures to counter BEPS, it may take steps in response to BEPS measures adopted by its neighbors and trading partners.

For example, Singapore is among the countries that endorsed the OECD declaration on 6 May 2014, committing them to implement a new single global standard on automatic exchange of information. This allows Singapore to share in this data exchange. Singapore has also signed an intergovernmental agreement with the United States on information exchange in connection with the US FATCA legislation.

Outside of the OECD BEPS process and as part of Singapore's efforts to encourage sound transfer pricing practices, the government regularly conducts transfer pricing audits on taxpayers. Transfer pricing has been an area of significant activity in recent years, with the Inland Revenue Authority of Singapore (IRAS) now vigorously applying a series of guidelines and circulars issued from 2006–10.
In early 2015, the IRAS adopted many of the BEPS Action Plan items relating to transfer pricing.

Focus on business substance

Singapore has an interest in being perceived internationally as a tax-friendly jurisdiction — but not as a tax haven. Thus Singapore's tax incentives and treaty benefits are generally only available to commercial arrangements with sufficient business substance.
In fact, Singapore's Prime Minister is on record as saying, "Profits made by companies should be rightfully taxed in jurisdictions where there are substantive economic activities."[8]

The arm's length principle is endorsed by IRAS and is set out in Section 34D of the Singapore Income Tax Act. According to Section 34D, where the pricing of related-party transactions is not at arm's length and results in a reduced profit for the Singapore taxpayer, the Comptroller of Income Tax may adjust and tax the profit of the Singapore taxpayer. In addition to the arm's length principle, Singapore also has other general anti-avoidance provisions in its tax legislation.

In summary, as the OECD BEPS Action Plan proceeds, Singapore is engaging with the OECD and carefully monitoring the international developments as well as weighing their implications to determine what, if any, unilateral legislative change may be needed to protect its tax base.

[8] "Improve Global Tax Rules," *Business Times*, 6 September 2013.

Bracing for BEPS: Are you ready?

Given current global tax developments, all signs suggest that we will continue to see increased pressure for more scrutiny of international transactions and structures, more transparency between taxpayers and the tax authorities, and more disclosure by companies on how much and where they pay tax. No matter what tax changes result or where your company does business, you need to create a tax management strategy to drive how your company communicates about tax, governs its tax affairs and manages tax risk.

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

— **Stay informed:** Keep on top of developments as they occur locally and internationally. Consider how these developments could affect your tax positions and planning.

— **Get involved:** Engage in BEPS-related consultations to ensure your practical business issues are raised and considered. Effective, widely accepted solutions can only be forged through broad consultation with tax professionals in business, government and public practice.

— **Conduct a tax health check:** Review your existing tax transactions and structures immediately to identify potential weaknesses, and take measures to rectify these areas. Identify potential weaknesses according to the OECD BEPS Action Plan and take steps to make improvements. This includes movement of functions, assets and personnel within the group, development of legal, tax and transfer pricing documentation as support, and preparation of internal controls and working guidelines to mitigate tax risks. With adequate preparations, multinational corporations will be able to adapt to the new tax landscape created by BEPS without causing unwarranted disruptions in business operation or incurring excessive amounts of tax costs during the transition.

— **Prepare for questions:** Be prepared to comment on your business and tax activity at any given moment (a particularly important capability in the era of social media). Ensure board members, C-suite executives and the core tax team are aware of potential questions and challenges that could come from any number of stakeholders such as regulators, investors, media and the general public.

— **Think reputational risk:** Ensure that decisions around tax are made taking into account potential reputational risks and not simply whether your organization has complied with the tax laws in various jurisdictions.

— **Assess your company's relationship with tax authorities:** Ensure that there is appropriate, open and respectful relationships with local tax authorities in all countries in which you operate.

"With adequate preparations, multinational corporations will be able to adapt to the new tax landscape created by BEPS without causing unwarranted disruptions in business operation or incurring excessive amounts of tax costs during the transition."

Appendix – Unilateral BEPS legislative actions in the Asia Pacific region

Since the OECD BEPS Action Plan final reports were published on 5 October 2015 and even before that date, many countries have started changing their tax legislation or administration in response. Below we summarize such actions taken so far by Asia Pacific jurisdictions regarding the Action Plan's 15 points.

OECD BEPS Action Plan	Unilateral responses to date
Action 1 — Address tax challenges of the digital economy	**India** — Union Budget 2016–17 proposed to introduce an equalization levy of 6 percent on online advertisement services rendered by non-resident companies that have no permanent establishment in India, with corresponding 'treaty override'. Likely to raise disputes and may be redrafted before enactment. Effective date to be notified. **Japan** — Consumption tax for cross-border digital services introduced from October 2015. **New Zealand** — Non-resident suppliers of digital content (i.e. software, media) and services to New Zealand consumers will need to register for and pay goods and services tax from 1 October 2016. **Taiwan** — Ongoing study of corporate income tax and valued added tax in the context of the digital economy.
Action 2 — Neutralize effects of hybrid mismatch arrangements	**Australia** — No immediate changes. The Board of Taxation will deliver a report to the Australian government in 2016 on whether to implement anti-hybrid rules. Any anti-hybrid laws resulting from this report are not expected to take effect until 2018. **China** — The SAT has informally indicated that anti-hybrid mismatch rules will be introduced in 2016. **Japan** — Foreign dividend exemption rule amended to comply with Action 2 as part of the 2015 tax reform. **New Zealand** — Some anti-hybrid measures are already in place (e.g. deductible foreign dividends are taxable; certain hybrid financial instruments are re-characterized as equity). A consultation document on Action 2 is expected to be issued in the second half of 2016. **Taiwan** — The OECD recommendations are being implemented in treaty negotiations.
Action 3 — Strengthen controlled foreign company rules	**China** — China's BEPS-aligned controlled foreign company rule will be clarified via a circular on special tax adjustments expected to be finalized in 2016. **India** — Controlled foreign company rules were introduced indirectly by incorporating the concept of 'passive income' for determining place of effective management (POEM), for purposes of tax residency of foreign companies in India, with effect from FY2016–17. The Indian Revenue Board issued draft POEM guidelines in December 2015. Final guidelines are not yet released. **Korea** — Introduced controlled foreign company rules on passive income. **Taiwan** — Previously proposed controlled foreign company rules are being revisited. **Thailand** — Introduction of controlled foreign company rules under consideration.
Action 4 — Limit base erosion via interest deductions and other financial payments	**Australia** — The Australian thin capitalization thresholds were tightened from a 75 percent gearing ratio to a 60 percent gearing ratio for income years beginning on or after 1 July 2014. **Japan** — Introduction of an earnings-stripping regime to prevent companies from taking excess interest deduction in 2012 (not directly linked to BEPS). **Malaysia** — Introduction of thin capitalization rules as of 1 January 2018. **New Zealand** — Legislation is expected in 2016 to strengthen and broaden existing withholding tax rules (i.e. to apply withholding tax in more circumstances and to payments meeting a wider definition of 'interest'). Consultation on interest deductibility is expected in the second half of 2016. **Taiwan** — Introduced thin capitalization rules in 2011 (not directly linked to BEPS). **Thailand** — Introduction of thin capitalization rules under consideration. **Vietnam** — Introduction of thin capitalization rules under consideration.

OECD BEPS Action Plan	Unilateral responses to date
Action 5 — Counter harmful tax practices more effectively, taking into account transparency and substance	**Australia** — Multinational anti-avoidance law (de facto diverted profits tax) legislated with effect for income years beginning on or after 1 January 2016. **China** — The tax incentive for high and new technology was modified to allay concerns raised by other countries during the BEPS process. **Hong Kong** — Introduced measures to enact a Corporate Treasury Centre regime; Action 5 specifically referenced during the legislative process. **India** — Union Budget 2016–17 proposed to introduce a patent box regime, offering a 10 percent tax rate for royalties earned from licensing patents developed and registered in India. **Korea** — A substance-over-form rule allows the tax authority to re-characterize a related-party transaction based on its substance where the tax burden of a company has been unjustly reduced. **New Zealand** — New Zealand has committed to implementing automatic exchange of (financial account) information from 1 July 2017 and will start automatically exchanging unilateral tax rulings with treaty-partner countries in 2016.
Action 6 — Prevent treaty abuse	**Australia** — BEPS treaty anti-abuse rules are included in the new Australia-Germany treaty (signed in November 2015). **China** — BEPS treaty anti-abuse rules are included in the new Chile-China treaty (signed May 2015). Treaty relief administration procedures in China were reformed in November 2015 to facilitate application of new treaty anti-abuse approaches. **India** — Introduced or expanded limitation on benefits concept in recent tax treaties. **Japan** — Some tax treaties include limitation on benefits clauses. **Korea** — In recent treaty negotiations, Korea has worked to introduce limitation on benefits clauses. **Mongolia** — Cancellation of certain treaties due to abuse. **New Zealand** — Newer tax treaties contain limitations on benefits provisions, but none to date explicitly follow the OECD recommendations. New Zealand's treaty with Australia may be a test case as it is due for review by both countries. New Zealand will be involved in OECD multilateral instrument discussions and negotiations. **Papua New Guinea** — New treaty negotiations are suspended; the government will wait to see what actions other countries are taking on treaties before re-commencing negotiations. **Taiwan** — The OECD recommendations are under study and being considered in current treaty negotiations.
Action 7 — Prevent artificial avoidance of permanent establishment status	**China** — Among various measures, BEPS permanent establishment concepts are included in the new Chile-China treaty (signed May 2015); new permanent establishment recognition/profit attribution guidance is anticipated in the second half of 2016: and the SAT has clarified that some aspects of BEPS permanent establishment concepts may be applied by Chinese tax authorities under existing guidance on permanent establishment recognition. **New Zealand** — To date, no New Zealand tax treaties explicitly follow the OECD recommendations. New Zealand's treaty with Australia may be a test case as it is due for review by both countries. New Zealand will be involved in OECD multilateral instrument discussions and negotiations. **Taiwan** — The OECD recommendations are under study and being considered in current treaty negotiations. **Vietnam** — The domestic 'permanent establishment' definition is more aggressive than the OECD BEPS proposed policy.

OECD BEPS Action Plan	Unilateral responses to date
Actions 8, 9, 10 — Assure transfer pricing outcomes are in line with value creation **Action 8 — intangibles** **Action 9 — risks and capital** **Action 10 — other high-risk transactions**	**Australia** — Multinational anti-avoidance law (de facto diverted profits tax) legislated with effect for income years beginning on or after 1 January 2016. **China** — BEPS transfer pricing guidance will be substantially incorporated into Chinese transfer pricing guidance (with significant 'localization') via a circular on special tax adjustments to be finalized in 2016. **India** — The Indian revenue authority deviates from the OECD's position on location savings. India views such savings as an intangible that would result in extra profit and thus should be attributed on related-party transactions. When planning for the cross-charge for services that involve intangibles, international companies need to ensure that transfer pricing outcomes are in line with value creation. **Malaysia** — Transfer pricing guidelines in place. Malaysia tends to adopt OECD guidelines when finalized. Additional measures were introduced in 2015 to tighten transfer pricing compliance. **New Zealand** — No unilateral action to date. New Zealand will be involved in OECD Working Party work on transfer pricing recommendations. **Singapore** — In early 2015, the Inland Revenue Authority of Singapore adopted many of the BEPS Action Plan items relating to transfer pricing. **Sri Lanka** — Measures implemented to enforce transfer pricing as of the 2015/16 fiscal year. **Taiwan** — Transfer pricing assessment rules are expected to be updated in 2016. **Thailand** — Transfer pricing rules are expected to be enacted late 2016. **Vietnam** — Revisions to the transfer pricing regulations, potentially in line with BEPS, are being considered. The timeline for such regulatory changes is unclear.
Action 11 — Establish methodologies to collect and analyze data on BEPS and the actions to address it	**Australia** — Recently passed laws to improve the transparency of the Australian corporate tax system require the Australian Taxation Office to publish tax-related information of large corporate taxpayers, with effect from the 2013–2014 income year. Information disclosed includes name and Australian business number of the entity; total income and taxable income for the income year; and income tax payable for the income year after applying available tax offsets.
Action 12 — Require taxpayers to disclose their aggressive tax planning arrangements	**No unilateral action in Asia Pacific countries to date.**

OECD BEPS Action Plan	Unilateral responses to date
Action 13 — Re-examine transfer pricing documentation	**Australia** — Legislation has been passed to implement country-by-country reporting under Australian domestic law (applicable for income years beginning on or after 1 January 2016. **China** — Country-by-country reporting will be introduced via a circular on special tax adjustments to be finalized in 2016. **India** — Union Budget 2016–17 proposed to introduce master file and country-by-country reporting for FY2016–17. The monetary threshold for country-by-country reporting is retained at consolidated annual turnover of greater than EUR750 million, with no threshold for master file reporting proposed to date. On enactment of the proposals, the Indian Revenue Board will release detailed rules that will likely align with Action 13. **Japan** — Introduced new transfer pricing documentation rules as part of the tax reform in 2016. **Korea** — A new transfer pricing documentation requirement was introduced in 2016 that requires local and master file reports; country-by-country reporting may be introduced depending on the actions of other jurisdictions. **Malaysia** — Country-by-country reporting will be implemented for the financial year 2017 (to be submitted 12 months after the close of financial year 2017). Revised local Transfer Pricing rules and guidelines will be issued in 2016 to address matters on Action 13. **Mongolia** — Large taxpayers in Mongolia are required to disclose related-party information and transaction details. **New Zealand** — New Zealand will be involved in the OECD Working Party work on transfer pricing recommendations. **Taiwan** — Transfer pricing assessment rules are expected to be updated in 2016. **Thailand** — Transfer pricing documentation requirement will be included in the upcoming transfer pricing laws. Master file requirement is under consideration. **Vietnam** — Revisions to transfer pricing regulations are being considered, including the transfer pricing documentation and country-by-country reporting.
Action 14 — Make dispute resolution mechanisms more effective	**New Zealand** — New Zealand will be involved in OECD multilateral instrument discussions and negotiations. Note that New Zealand was prepared to commit to the mutual agreement procedure. **Taiwan** — Draft mutual agreement procedures guidelines are expected to be issued in 2016.
Action 15 — Develop a multilateral instrument	**New Zealand** — New Zealand will be involved in OECD multilateral instrument discussions and negotiations.

Source: KPMG International, 2016

A note on omitted countries

Please note that this publication highlights the most significant BEPS related developments in countries in the region. Legislation relating to BEPS is continually evolving, however, and we anticipate other countries in the region to begin implementing various aspects of BEPS. Please visit kpmg.com/beps often for more information and the latest on BEPS developments from around the world.

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