KPMG

OECD BEPS Action Plan

Moving from talk to action in Europe

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Introduction

A whirlwind of international tax change continued to sweep the globe in the past year, and for tax executives in Europe, there is no end in sight. From broader requirements for tax transparency through more stringent transfer pricing policies to greater scrutiny of business substance, every country and every multinational company is feeling the impact.

With the release of all final recommendations on base erosion and profit shifting (BEPS) and their endorsement by the G20 and European Union (EU) in 2015, the Organisation for Economic Cooperation and Development (OECD) delivered a groundbreaking starting point for truly global tax coordination.

The EU member states have embraced the OECD BEPS recommendations, even though some — such as Cyprus, Croatia, Malta and Romania — are not OECD members. The European Commission has driven the EU legislative agenda for OECD BEPS recommendations. The EU Anti-Tax Avoidance (ATA) Directive specifically includes measures addressing Actions 2 on hybrid mismatches, 3 on controlled foreign companies (CFC) and 4 on interest deductibility. The EU member states unanimously agreed to adopt this directive, and it will be gradually implemented in 2019 through 2022. The member states also agreed on legislative actions to implement automatic Actions 5 on exchange of tax rulings and 13 on country-by-country (CbyC) reporting.

Further, 27 of the 28 EU Member States signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("Multilateral Instrument"), which also aims to improve dispute resolution mechanisms. Estonia, the remaining outlier, clearly intends to join shortly.

On top of the EU-led BEPS implementation, the European Commission (EC) has publicly committed to continue scrutinizing tax rulings that might constitute illegal state aid. The EC's 2016 decision against Ireland for providing a favorable tax ruling to a US multinational company resulted in an unprecedented EUR13 billion potential recovery. More high-profile cases in this area are expected to be decided later in 2017.

At the same time, countries remain committed to enhancing their own tax competitiveness — for example, by reducing corporate tax rates. Tax competition is expected to seize even more of the spotlight in the coming years as the United Kingdom negotiates its exit from the EU.

This report is the fourth in our series of updates 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 or in step with the OECD recommendations

— the changing attitudes of tax authorities as international tax reforms take hold

— how international companies are reacting to and managing these reforms.

Our findings are set out in the following pages, starting with an overview of BEPS-related trends across the region, 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.

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Overview

The OECD Action Plan on BEPS, introduced in 2013, set out 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 engaged in the OECD's work, and many other countries are either fully engaged or watching developments closely. Each government is now determining how the guidance will affect existing rules and undertaking 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

Over the past few years, the EC has consulted on and proposed new legislation and guidance in areas that overlap with the OECD's Action Plan items. As detailed in the table at the end of this section, steps taken by the EU already include:

— applying EU state aid provisions from the Treaty on the Functioning of the European Union (TFEU) to combat certain tax ruling practices in the EU

— introducing the new ATA Directive, including rules on limiting interest deductibility, hybrid mismatches, CFC and exit taxation, together with a general anti-abuse rule (GAAR)

— expanding the automatic exchange of information on cross- border tax rulings

— expanding the automatic exchange of information to cover all forms of financial income and account balances

— requiring greater corporate transparency by introducing CbyC reporting for extractive and logging companies and revising the Capital Requirements Directive (CRD IV) for banks and investment funds

— proposing more tax transparency by requiring public CbyC reporting for all multinational groups with a total consolidated revenue of 750 million euros (EUR)

— establishing a platform on good tax governance to deal with issues such as aggressive tax planning and tax havens

— developing an EU process for assessing and listing third-country non-cooperative tax jurisdictions, effectively potentially blacklisting some countries by the end of 2017

— recommending EU member states implement in their tax treaties the BEPS proposals on Actions 6 on treaty abuse and 7 on artificial avoidance of permanent establishment (PE) status, which many took up by the signing of the OECD Multilateral Instrument on 7 June 2017.

The EC's state aid investigations into the ruling practices of EU member states are outside the bounds of the OECD's work in principle, but clearly, the OECD's emphasis on BEPS has brought these practices into focus. The EC has shown 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. The decisions published so far indicate that the tax benefits granted by certain rulings are state aid and that affected taxpayers could be forced to repay up to 10 years of back taxes. These decisions are being challenged before the European courts.

The EC's latest actions

Most recently, on 21 June, 2017, the EC published a proposal for amending the directive on administrative cooperation in the field of taxation (Directive 2011/16/EU). The proposal would require intermediaries to disclose potentially aggressive cross-border tax planning arrangements and provide the means for tax administrations to exchange information on these structures automatically. The enhanced transparency requirement stems from recent revelations on harmful tax practices and the use of offshore companies (i.e. 'LuxLeaks' and 'Panama Papers') and the OECD's disclosure rules proposed in BEPS Action 12.

However, the EC's proposal does not define the term 'arrangement', so its scope is unclear. Does the proposal target general, marketable 'product' structures or does it also cover regular tax advice?

Also undefined is the concept of 'aggressive tax planning'. However, an annex to the proposal lists 'hallmarks' that are strong indicators of tax avoidance or abuse. A cross-border arrangement becomes reportable if it meets one or more of these hallmarks. For example, the hallmarks include arrangements involving:

— use of losses

— conversion of income into a lower-taxed category of revenue

— deductible cross-border payments that benefit from a preferential tax regime at the recipient level where the recipient is resident in a jurisdiction that imposes corporation tax at less than half the average rate in the EU or in a jurisdiction included on the EU tax haven blacklist.

Plan for coordinated implementation?

The 28 EU member states have committed to take a coordinated approach on all the items listed above. At the same time, some EU and non-EU countries have started implementing elements of the OECD BEPS recommendations unilaterally. Businesses have raised concerns over the uncertainty and complexity that is bound to result from this fragmented implementation of new rules among different countries.

In other regions, the divergence among countries' commitment to the project and uniformity and completeness of implementation is even wider. Countries in the Americas and Asia Pacific region fall on a spectrum that runs from full participation and commitment to non-engagement:

— At one extreme, countries that are both G20 and OECD members — **Australia, Canada, Japan, Mexico** and **the United States** — are highly engaged and made their views known as the BEPS proposals took shape.

— New OECD members, like **Chile** (joined in 2010) and **Colombia** (which is in the OECD accession process), are similarly on board. Countries that aspire to OECD membership, like **Costa Rica** and **Peru**, will probably follow the OECD guidelines as part of their efforts to develop their tax and financial systems.

— Along the middle of the spectrum are G20 countries, such as **Brazil, India** and **Indonesia**, which have engaged in the OECD discussions but could pick and choose to adopt only those aspects of the BEPS proposals that suit their domestic purposes.

— Many of the Caribbean countries that are perceived as low-tax jurisdictions, such as **Barbados** and the **Cayman Islands**, have watched the project unfold quietly on the sidelines to determine how changing international tax principles could affect their tax regimes. They are also pursuing bilateral exchange of tax information agreements in efforts to avoid being blacklisted as harmful tax regimes.

— Many developing countries in the Americas and Asia Pacific have shown little interest to date in the OECD's project. With scant foreign direct investment, low international activity and generally less developed taxation systems, these countries do not see BEPS as a priority.

In its July 2016 report to the G20, the OECD said that its inclusive framework had boosted the number of members in the BEPS project to 85 countries. Since then, membership has continued to climb, reaching the milestone of 100 members when Vietnam came aboard on 22 June 2017. Within this framework, the OECD is putting in place a peer review process to determine whether countries have implemented (part of) the BEPS recommendations during 2017 and 2018.

More tax complexity ahead

Just as domestic rules will be enacted at different paces in different places, it's also apparent that the interpretation and implementation of the OECD recommendations will vary considerably. The EC says that its initiatives are "very much aligned" with the OECD's BEPS reforms but are "shaped to meet the EU's own particular challenges and needs". 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 its Diverted Profits Tax (DPT) to counter perceived contrived arrangements to divert profits from the UK. The UK referendum outcome to leave the EU will likely raise more questions on EU alignment.

— **Hungary** and **Spain** introduced anti-hybrid legislation that took effect in 2015.

— **Italy's** legislation has introduced a tax on online transactions and proposed to introduce a 'virtual PE' concept, 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** was also constructively engaged in the BEPS process but is now looking at a structural corporate tax reform with potentially far-reaching implications. On 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 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, Malaysia, 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 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.

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 bring us 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 due to 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 at 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:

— **Public CbyC reporting:** Even companies that already take a cautious approach are performing impact evaluations to determine the skills and resources they need to comply with CbyC reporting. CbyC reporting requires translating results from several different jurisdictions into a single standard, and the administrative burden may be high, especially for smaller companies. If the EU decides to make public CbyC reporting mandatory, companies need to prepare for public scrutiny and consider the narrative on the data to include in their reporting.

— **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.

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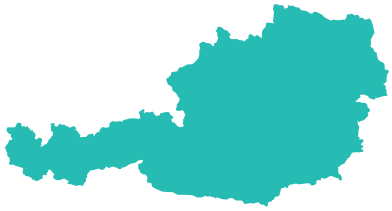
OECD Action Plan on BEPS — action items	Corresponding EU initiatives
Action 1 — **Address tax challenges of the digital economy**	EC Digital Economy Expert Group
Action 2 — **Neutralize effects of hybrid mismatch arrangements**	EU ATA Directive and Parent-Subsidiary Directive EU Code of Conduct Group — hybrid entities and hybrid PEs
Action 3 — **Strengthen controlled foreign company rules**	EU ATA Directive and EU Code of Conduct — inbound profit transfers
Action 4 — **Limit base erosion via interest deductions and other financial payments**	EU ATA Directive
Action 5 — **Counter harmful tax practices more effectively, taking into account transparency and substance**	EU Code of Conduct — review of third-country regimes EC State aid investigations — ruling practices EU Mutual Assistance Directive — automatic exchange of information on cross-border rulings EC external strategy initiative to blacklist third countries based on lack of good tax governance principles
Action 6 — **Prevent treaty abuse**	EU Parent-Subsidiary Directive — GAAR EU Interest and Royalty Directive — GAAR EU ATA Directive — GAAR EU member states opting in Multilateral Instrument's principal purpose test EC recommendation on tax treaty abuse
Action 7 — **Prevent artificial avoidance of permanent establishment status**	EC recommendation on artificial avoidance of PE status
Actions 8, 9 and 10 — **Ensure transfer pricing outcomes are in line with value creation** ***Action 8 — intangibles*** ***Action 9 — risks and capital*** ***Action 10 — other high-risk transactions***	EU Joint Transfer Pricing Forum and EU Code of Conduct — transparency on transfer pricing ruling practices and exchange of advance pricing arrangements (APA) between EU member states
Action 11 — **Establish methodologies to collect and analyze data on BEPS and the actions to address it**	No corresponding EU action
Action 12 — **Require taxpayers to disclose their aggressive tax planning arrangements**	Draft EU directive obliging intermediaries to disclose aggressive cross-border tax planning arrangements
Action 13 — **Re-examine transfer pricing documentation**	EU Accounting Directive — public disclosure of CbyC reports by companies in the extractive industry EU Capital Requirement Directive — public disclosure of CbyC reports by banks; EC consultation EU Mutual Assistance Directive — includes CbyC report template and exchange EU Accounting Directive — proposal for public disclosure of CbyC reports by all international companies
Action 14 — **Make dispute resolution mechanisms more effective**	EU political agreement, on 21 May 2017, on an EU directive improving mechanisms for resolving double taxation disputes between member states, requiring dispute resolution mechanisms to be mandatory and binding, with clear time limits and an obligation to reach results
Action 15 — **Develop a Multilateral Instrument**	27 of 28 EU member states signed the instrument on 7 June 2017; Estonia expected to join shortly

Source: KPMG International, 2017.

Countries in focus:

Implementation moves ahead

Austria



Austria has been affected by the tax morality debate, and there is public and political pressure to address the issue. 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.

Also driving this wait-and-see attitude is uncertainty about what specific tax law changes will result from the OECD BEPS project. The Austrian government has fully supported the BEPS initiative, and the indications are that it will implement the recommended reforms. Even though Austrian tax law already include a series of anti-avoidance provisions, some further measures are required to comply with the OECD and EU standards.

While the details are still 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 altered.

Interest deductibility

Due to a 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 where:

- the recipient (i.e. beneficial owner) of interest income is a group-affiliated corporation or a corporation under the controlling influence of the same shareholder as the payer, and
- the interest payments are at the level of the recipient:
  - tax-exempt
  - subject to a nominal tax rate of less than 10 percent
  - subject to an effective tax rate of less than 10 percent due to a beneficial regime in the receiving state, or
  - subject to a tax rate of less than 10 percent because of a tax refund (including tax refunds to the shareholders and tax refunds in later years).

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

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 will be relevant.

Additionally, interest deductibility is denied for debt-financed acquisitions of intragroup shareholdings.

In light of the forthcoming transposition of the EU ATA Directive's interest limitation rule, the Austrian government will have to reconsider the targeted interest restrictions currently in place. The Austrian legislator is expected to defer the implementation of the general interest limitation rule as long as possible (by 1 January 2024, according to the EU ATA Directive).

CFC taxation

Current Austrian taw law does not have specific regulations for CFC taxation. Therefore, Austria is obligated to introduce CFC taxation in line with Article 7 of the EU ATA Directive by the end of 2018. These rules are being drafted and expected to be published in 2018. The existing switch-over rules for dividend distributions will probably be amended or abolished as a result.

Transfer pricing

Austria implemented new rules governing transfer pricing documentation in line with Action 13, with effect for business years starting 1 January 1 2016. The legislation follows the three-tiered documentation approach included in the OECD's

final report. Thus, master and local files are required for Austrian companies that are part of a multinational group with sales exceeding EUR50 million in the 2 preceding financial years. CbyC reporting is required for multinational groups with global consolidated group turnover of EUR750 million or more. These requirements are adding more layers of effort and transparency for companies in Austria.

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 effort, the system provides a win-win in the long term: both sides get security and certainty, and animosity and its associated costs are avoided.

On the horizon

While some regulations have already been integrated into Austrian tax law (e.g. Action 13), we expect changes to other tax measures, such as hybrids, taxation of IP, CFC rules, PE regulations and general interest limitations. Given that Austrian tax law has not included CFC rules and general interest limitations so far, corporate tax legislation is expected to undergo fundamental reforms. The details and the transitional procedure of these changes are still to be determined.

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Belgium

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). In a tax mix shift implemented at the end of 2015, the government reduced social security contributions and individual income taxes for employees and the self-employed to stimulate employment, and introduced additional incentives for investment and innovation. Indirect taxes and taxes on financial income for individuals were increased.

The fight against tax fraud — a key responsibility of Belgium's Minister of Finance — remains a high priority. The government has just agreed on a corporate tax reform which reduces the corporate tax rate from 33.99 percent to 29.58 percent as from 2018 and 25 percent as from 2020.

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 implemented some specific anti-BEPS measures in direct response to the OECD project. Certain anti-abuse rules to safeguard the tax base of individuals and corporations against aggressive planning have existed for quite some time. Recently, the government has taken more steps that are in line with the spirit of the OECD BEPS project.

Stepped-up enforcement of anti-BEPS rules

Specific anti-abuse rules backed by a 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 invoked against the tax authorities if the authorities 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. About 100 specialized auditors have been allocated to this area, and this centralized team is steering the audits of large multinationals across Belgium.

Current BEPS trends in Belgian tax rules and practice are as follows:

— **Tackling offshore regimes:** The previous government introduced a rule requiring individuals to report on their tax returns whether they are the founder or beneficiary of legal constructions such as trusts, foundations and foreign low-taxed entities, as of assessment year 2014. The current government has gone a step further with its so-called 'Cayman tax'. Under this transparency tax, income received by the legal construction is 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. The latter exemption is not applied automatically but should be requested each year in the tax return.

— **Tax haven transparency:** In an effort to tackle the improper use of tax havens, Belgian tax law requires companies to report payments exceeding EUR100,000 to recipients based in a tax haven. A 'tax haven' is defined as any country outside the European Economic Area (EEA) with a nominal level of corporate taxation below 10 percent (recently extended to any country where companies are not subject to corporate tax on domestic or foreign income or with an effective corporate tax rate on foreign income below 15 percent), or any jurisdiction on the OECD blacklist. Payments made to such jurisdictions already indicate potential aggressive or abusive transactions and thus facilitate tax audits.

— **Thin capitalization:** Designed to address interest deductibility, Belgium's recently amended thin capitalization rule imposes a 5:1 debt-to-equity ratio limit. Finance charges are deductible provided they are at arm's length and the loan does not exceed 5 times the sum of the taxed reserves and 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' introduced in 2013 is due if a company distributes dividends but pays little or no tax on them because of overuse of 'bad' deductions (losses carried forward, notional interest deductions). 'Good' deductions (participation exemptions, patent income deductions, investment deductions) do not trigger the fairness tax. The fairness tax rate is 5.15 percent, and the tax is payable on top of the standard corporate income tax. The Court of Justice of the European Union recently found the fairness tax partly incompatible with EU law. The Belgian Constitutional Court will soon also pronounce on the legality of the fairness tax.

— **Transfer pricing audits:** Belgium's tax administration established a small team of auditors specialized in transfer pricing to examine transfer pricing issues, with 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.

— **Country-by-country reporting:** Belgium recently introduced CbyC reporting requirements that comply with the OECD and EU provisions. Qualifying groups (with a consolidated gross turnover exceeding EUR750 million) will have to file CbyC reports with the Belgian tax authorities within 12 months after the closing of the group's consolidated financial statements.

— **Transfer pricing documentation:** Belgium also introduced master file and local file transfer pricing requirements as of assessment year 2017 (i.e. financial years ending on 31 December 2016 or later) for each Belgian company or PE (of a multinational group) that satisfies one of the following thresholds (assessed on the basis of the non-consolidated financial statements of the Belgian company or PE for the preceding financial year):

  — combined operational and financial income of EUR50 million

  — balance sheet total of EUR1 billion

  — annual average of 100 full-time employees.

— **Patent income deduction:** The Belgian Parliament has approved a law modifying the Belgian patent income deduction regime. The law abolished the previous regime as of 30 June 2016, with a grandfathering period until 30 June 2021.

— **Deduction for innovation income:** A new patent box regime in line with the OECD's modified nexus approach has been introduced: the 'deduction for innovation income':
  — The scope is broader than the previous deduction, which was limited to patents in the narrow sense. For example, software and utility models also qualify for the new deduction.
  — Only the net amount qualifies. The previous patent income deduction was calculated on the gross amount, with deduction for depreciation of acquired patents only.
  — A 'tracking system' has been introduced.
  — Qualifying expenses are increased by 30 percent.
  — Where the new deduction for innovation income applies, grandfathering for the income of the particular patent is not available.

The new regime took effect as of 1 July 2016.

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France

The French government has responded to anti-avoidance sentiment by proactively redefining its strategies for preventing what it considers to be aggressive tax planning and by increasing tax transparency. Among other recommendations, authorities would 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 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. Such 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 tax uncertainty. Indeed, some measures that gained parliamentary approval were later struck down by the constitutional court.

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

Unilateral BEPS actions to date

France has implemented several measures to address BEPS issues — sometimes before the publication of BEPS final reports. These measures deal with hybrid instruments, CFCs, interest deductibility, thin capitalization rules, treaty abuse, PEs and transfer pricing documentation, among others.

— **Hybrid instruments:** A limitation on the deductibility of interest on intragroup financing was introduced for financial years (FY) ending on or after 25 September 2013. The deduction of interest is allowed only if the lender is subject to 'sufficient taxation' equal to at least 25 percent of French CIT during the same fiscal year (i.e. 8.33 or 8.6 percent, depending on the CIT surcharges). This restriction applies between related entities when the payer is established in France, regardless of where the payee is located.

  If the lender is a foreign tax resident, the level of sufficient taxation is determined by comparing the effective tax rate applied to the interest received by the foreign lender and the reference French CIT rate that would have applied if the lender were a French tax resident.

  In addition, profit distributions received by a parent company that were deductible from the subsidiary's taxable income are excluded from the benefit of the participation exemption regime.

— **Controlled foreign company rules:** Profits made by CFCs that are established in low-tax countries (where the corporate tax charge is more than 50 percent lower than the French corporate tax) and whose parent company is subject to French CIT are subject to CIT at the French parent company's level. This rule applies to foreign subsidiaries when the French parent company owns directly or indirectly more than 50 percent of its share capital (this threshold is reduced to 5 percent if more than

50 percent of the CFC is held by companies located in France or by companies that control or are controlled by companies located in France). The corporate tax paid by the CFC in its jurisdiction can be offset against the French corporate tax due by the parent company (if the corporate tax is similar to the French corporate tax).

— **Interest deductibility:** In addition to the anti-hybrid rule mentioned above, French tax law imposes thin capitalization rules, as well as a general limitation of the tax deductibility of net financing expenses and other specific rules limiting the deduction of interest (i.e. the Carrez and Charasse amendments).

— **Tax treaties:** All new tax treaties entered into by France include substance and anti-treaty shopping provisions. On 7 June 2017, France signed the Multilateral Instrument to amend its tax treaties in line with the OECD BEPS principles. In this context, the principal purpose test rule has been adopted by France.

— **Permanent establishment:** The new tax treaty between France and Colombia includes a new definition of PE that aggregates the period of presence of related companies to determine whether the PE threshold is reached. This treaty also introduces the notion of PE for services.

Following the signing of the Multilateral Instrument and the option chosen by France, similar modifications to existing tax treaties are expected. France has notably adopted the new definition of PE as recommended in BEPS Action 7 as well as Option B for specific activities, the anti-fragmentation rule and the contract splitting rules.

— **Transfer pricing:** Since 2010, the preparation of transfer pricing documentation (master file and local file) has been mandatory for all companies that have revenues or balance sheet assets exceeding EUR400 million or that belong to a group in which one of the companies exceeds these thresholds. In the event of a tax audit, this documentation must be made available to a tax inspector within 30 days of a request to provide it.

Since 2013, abridged transfer pricing documentation has been required to be filed each year with the tax authorities within 6 months of filing the annual CIT return. For FYs ending as from 31 December 2016, the requirement to file abridged transfer pricing documentation is applicable to companies that have revenues or balance sheet assets exceeding EUR50 million (instead of EUR400 million) or that belong to a group in which one of the companies exceeds these thresholds.

The CbyC reporting requirement was introduced under French tax law as of 1 January 2016 for companies whose consolidated turnover exceeds EUR750 million.

France signed the Multilateral Convention for the exchange of information regarding CbyC reporting on 27 January 2016. The requirement is applicable to FYs starting as from 1 January 2016.

Anti-avoidance rules

In keeping with the spirit of the BEPS project, the French Finance Bill for 2016 implemented a new anti-avoidance rule (transposing the GAAR included in EU Directive no. 2015/121 of 27 January 2015), with effect as of 1 January 2016. Under this rule, the parent-subsidiary regime is not applicable to a 'non-genuine' scheme that was set up only or mainly for tax purposes and produces advantages contrary to the regime's purpose.

Abuse-of-law procedure

The French tax authorities may use pre-existing abuse-of-law procedures under French tax law to counteract sham transactions and situations where a transaction is solely tax-motivated and the parties have obtained the tax benefit by literally applying the rules while disregarding their spirit. This procedure may be used to tackle hybrid mismatch arrangements.

Beneficial ownership register

France has implemented the Fourth Anti-Money Laundering Directive by introducing a Central Register of Beneficial Ownership to hold information on beneficial ownership for corporate and other legal entities incorporated in France. As of 1 April 2017, the register is accessible to tax authorities without any restriction, as the directive requires. The register is partially accessible to the public (i.e. to persons or organizations demonstrating a valid interest related to the combat against money laundering, terrorist financing, etc.).

Learning from neighbors

To supplement ongoing BEPS discussions at the OECD, French tax officials are 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 require entities of the same group to 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, establish internal rules and guidelines for the application of transfer pricing methods, and continuously 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. The task of ensuring consistency among all parts of one company in all its countries of operation will be monumental.

While tax managers are aware that change is coming, they can only do so much to prepare. They recognize that substance will be a key point in any reform. Room to use hybrid or stratified structures has shrunk 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 requiring broader sharing of information was introduced in France as of 1 January 2016. The requirements raise the risk of competitors gaining access to vital information and compromising a company's ability to operate.

In addition, investigations by the French tax authorities through taxpayers' information technology systems are increasing.

Control of the French Constitutional Court

The French Constitutional Court has recently censored several laws aiming at fighting tax avoidance on the basis that they are contrary to the freedom to create and invest (*liberté d'entreprendre*), which is protected by the French constitution.

For example, the Constitutional Court censored the requirement for tax and legal counsel to disclose tax optimization arrangements as provided for by the Finance Law 2014. Similarly, the court censored the application of a penalty to persons involved in the elaboration of tax arrangements that constitute an abuse of law, as provided for by Finance Law 2015.

More recently, the Constitutional Court censored the initiative to introduce public CbyC reporting in France.

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Germany

Spurred by greater-than-expected public attention, Germany's coalition government has shown strong interest in the OECD BEPS project. Following on the government's commitment to the 15-point OECD BEPS Action Plan, some laws covering central BEPS measures have already been implemented in Germany. The German government's primary objectives are adequate taxation of multinational companies, prevention of no or low taxation, and involvement of emerging and developing countries in the OECD process. Because Germany already has extensive anti-avoidance laws, reforms have caused little disruption.

Media coverage has made the tax affairs of multinational corporations a public issue. While media coverage and public anger toward tax evasion have 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 combatting perceived aggressive tax planning, strengthening transparency between different tax authorities and improving the coordination of national tax regimes. The tax authorities are cooperating 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.

Germany has also signed the Multilateral Instrument on 7 June 2017. However, as Germany has applied for the special notification procedure according to Article 35(7) of the instrument, the implementation of the chosen changes in the German covered tax agreements may take several years.

Auditors are paying more attention to issues discussed at the OECD, such as PEs, hybrid mismatches and transfer pricing issues. 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 could change in the future.

Country-by-country reporting

CbyC reporting is one area in which German enthusiasm for the BEPS project has waned during the BEPS discussions. 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 CbyC reports could cause the tax authorities in these markets to pursue a greater share of tax. Germany has already introduced CbyC reporting in its domestic law. However, the German tax authorities do not support the EC's proposal to make CbyC reports public.

Hybrid structures

Corporations in Germany have become much more aware of the risks associated with strategies involving, for example, hybrid structures. Where these structures are already in effect and being employed in accordance with respective regulations, some companies are monitoring them closely or have already resolved them as a precautionary measure. This is because Germany has already implemented some refinements to domestic law. More exhaustive law changes affecting hybrids are expected to be tabled after the German parliament elections in September 2017. These reforms will also implement the EU anti-tax avoidance directive.

Anti-avoidance rules

Germany already has anti-treaty shopping rules, CFC legislation and some anti-hybrid rules with a correspondence principle for dividends and expenses of a partnership member regarding their interest in the partnership.

In July 2016 and May 2017, the EU adopted the ATA Directives 1 and 2. Although the adopted rules are already in force in Germany for the most part (e.g. earnings-stripping rules, CFC rules, exit tax, GAAR, some anti-hybrid rules), the German legislator will need to introduce some new rules by 2019 or 2020.

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 have entered 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 considered.

Impact on businesses

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.

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Ireland

For Ireland, the implementation phase of the OECD BEPS project would end ideally with the country's tax regime seen as meeting the standards for substance and transparency while maintaining the country's reputation as a low-tax jurisdiction that encourages foreign direct investment (FDI). The first part of this goal should not challenge Irish tax policy makers as the country's tax policy is already largely in step with anti-BEPS proposals. But when it comes to attracting and retaining mobile FDI, Ireland faces ever more international competition.

Ireland's October 2016 international tax policy statement declares that "the cornerstone of our competitive offering remains the 12.5 percent corporation tax rate".[1]

This strong statement signals Ireland's desire to remain competitive internationally while 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. The policy explicitly aims to preserve an open, transparent regime so Ireland can maintain its relationships with key trading partners while providing more certainty to taxpayers in Ireland.

Tax competitiveness

Ireland offers a stable and consistent corporate tax offering underpinned by its 12.5 percent corporate tax rate on trading profits and balanced with anti-avoidance legislation. Ireland's corporate tax regime is generally structured in line with the anti-BEPS efforts of the OECD and the EU.

Ireland's 12.5 percent corporate tax rate applies only to active trading income whereas passive non-trading income is taxed at a rate of 25 percent. Ireland has had both a mandatory reporting regime for tax planning transactions with certain hallmarks and a GAAR for a number of years.

European Commission and tax rulings

Ireland has appealed against the state aid finding of the European Commission on tax opinions given to members of the Apple Group. Ireland has stated its intention to vigorously defend its position. The monies to be recovered from the company are to be held in escrow pending resolution of the appeal process, which now proceeds to the General Court of the European Union.

Implementation of BEPS actions to date

Ireland has committed to and was an early adopter of minimum standard recommendations from the OECD BEPS project. For example:

— CbyC reporting legislation was enacted in Ireland's Finance Act 2015, supported by regulations issued in December 2015 and updated with minor changes in 2016 to align Ireland's regime with the OECD- and EU-approved CbyC requirements. These measures apply to accounting periods beginning on or after 1 January 2016.

— Ireland has reaffirmed its commitment to the minimum standard on dispute resolution and other processes under mutual agreement procedures (MAP). Ireland has signaled its intent to adopt a mandatory binding arbitration mechanism in its tax treaties under the OECD's Multilateral Instrument. In a technical briefing note on Ireland's proposed choices under the instrument, Ireland's Department of Finance said, "Ireland is open to the type of arbitration that is used. Ireland generally supports arbitration being available wherever possible."

— Ireland proposes to adopt the minimum standard anti-abuse measures under the Multilateral Instrument, including the principal purpose test and many of the targeted anti-abuse measures. Ireland has stated

[1] Department of Finance, Update on Ireland's International Tax Strategy, October 2016, at p 4.

its intention to reserve adoption of the expanded PE definition for dependent agents under Article 12 of the Multilateral Instrument "due to continuing significant uncertainty as to how to test would be applied in practice".[2] Given the importance of international trade flows to its economy, Ireland is seeking to balance the introduction of more anti-abuse measures in its tax treaties against the preservation of certainty of access to tax treaty benefits for Irish tax residents.

— 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 generally supports measures for the automatic cross-border sharing of tax information, introducing guidelines implementing the OECD guidelines on automatic information exchange taking effect 1 April 2016 and the EU directive on automatic sharing of tax rulings taking effect 1 January 2017.

Patent box

Ireland introduced in Finance Act 2015 a new patent box that aligns with the modified nexus approach endorsed by the OECD and the EU. Ireland's Knowledge Development Box offers a 6.25 percent rate of corporation tax on qualifying income. This should work together with Ireland's attractive 25 percent research and development (R&D) tax credit regime to encourage R&D and innovation activity in Ireland.

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 only available to tax residents of the EU and Ireland's tax treaty partners.

Digital economy

Like other EU member states, Ireland has introduced new place-of-supply rules for value-added tax (VAT) purposes for digital supplies. The rules took effect 1 January 2015 and apply VAT to supplies at the rate in force in the country of the consumer.

EU Anti–Tax Avoidance Directive

In its negotiations on the EU ATA Directive, Ireland's Minister for Finance "sought to ensure that Ireland's sovereignty on tax rates was fully protected and that anti-avoidance measures would not impact on genuine investment in Ireland."[3]

Ireland is expected to transpose the following requirements of the ATA Directive to meet the agreed deadlines:

— **Controlled foreign company regime:** By 1 January 2019. Ireland does not currently have a CFC regime.

— **Anti–hybrid mismatch measures:** By 1 January 2020. Irish domestic law already limits opportunities for specific hybrid structures. The law broadly requires that the income from such arrangements be 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.

— **GAAR:** It appears likely that Ireland's longstanding current GAAR meets the ATA Directive's minimum standard.

— **Exit tax:** By 1 January 2020. Ireland's current exit tax regime potentially applies where an Irish resident company ceases to be resident in Ireland and assets cease to be subject to Irish tax. However, the regime does not apply where an existing Irish resident company ceases to be resident but is ultimately at least 90 percent controlled by persons resident in jurisdictions having tax treaties with Ireland. A new exit tax is expected to be introduced in 2020.

Ireland's Minister for Finance commented that the interest limitation rules in the ATA Directive "are deferred until 2024 for countries, like Ireland, that already have strong targeted rules."[4] Ireland has sought to defer introduction of the ATA Directive interest limitation rule, which is aligned with the best practice recommendations in Action 4 of the OECD BEPS project.

Impact on businesses

Changes to tax law are most assuredly coming. While the details of those changes remain uncertain, the level of complexity is bound to rise not only in Ireland but also in other jurisdictions. One certainty is that Ireland's 12.5 percent corporation tax regime promises to remain a constant.

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[2] Department of Finance, Technical Briefing Note, Ireland's approach to the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.
[3] Department of Finance press release, Minister Noonan welcomes agreement on the Anti-Tax Avoidance Directive, 22 June 2016.
[4] Ibid.

Italy

The Italian tax authorities view the completion of the final OECD BEPS reports as a goal achieved with their active participation. This has contributed to perceptions that the BEPS proposals will not greatly affect Italian tax laws, regulations and the tax environment since many BEPS recommendations were already expected. In reality, the OECD BEPS project is spurring a certain degree of change. It could also prompt the Italian tax authorities to conform their approach more closely with the BEPS recommendations, to the benefit of the Italian tax system and Italian taxpayers alike.

Country-by-country reporting

The most immediate proof that the Italian tax environment is undergoing change is the implementation of CbyC reporting, which is based entirely on the OECD recommendations on BEPS Action 13. As required by a first set of implementing measures issued in February 2017, CbyC reports should disclose the international company's revenues, gross profit, and paid and accrued taxes by country, together with additional indicators of economic activities performed.

In line with the OECD recommendations, the first CbyC filings will be for FY 2016. Under an initial set of rules issued in February 2017, these filings are due within 12 months of the end of the corporate year after an election is filed with the annual tax return.

Italy's CbyC reporting obligation applies to:

- Italian tax residents that:
  - are the ultimate parent companies of a multinational group (based on control)
  - are required by law to file group consolidated financial statements
  - had consolidated turnover in the preceding FY of at least EUR750 million, and
  - are not controlled by other than individual persons.
- Italian resident companies controlled by foreign international companies that are required by law to file group consolidated financial statements in a state that:
  - has not implemented CbyC reporting
  - has no qualifying competent authority agreement to exchange CbyC reports with Italy, or
  - fails to meet its obligation to exchange CbyC reports.

Sanctions ranging from EUR10,000 to EUR50,000 may apply where CbyC reports are not filed or are incomplete or untrue.

Digital economy

The OECD BEPS project should not immediately affect Italian tax laws in the area of digital economy but not for lack of trying on the Italian government's part. Prompted by pressure from the media and the public, the Italian government has repeatedly introduced proposals that aim to ensure digital companies pay their 'fair share'.

Some of these proposals, which are enacted but not yet in force, disregard the OECD's BEPS work, contributing to an uncertain and uncoordinated environment.

For example, similar to rules in place targeting online gambling businesses, a September 2016 proposal disdains international tax law principles and unilaterally advances new nexus concepts. The proposal introduces the definition a "hidden

PE", which would exist, regardless of any physical presence in Italy, where a non-resident enterprise carries out more than 500 digital transactions and generates revenue of more than EUR1 million over a 6-month period.

Also, in a measure not restricted to the digital economy, a new law enacted in FY 2017 provides that foreign entities exceeding EUR1 billion in consolidated revenues and sales revenue in Italy of EUR50 million annually (together with related Italian entities) may elect into a special form of cooperative compliance, allowing it to disclose any PE in Italy and obtain favorable treatment in terms of penalties and criminal infringements.

It is hoped that such unilateral initiatives will be dropped definitively in favor of initiatives coordinated with the EU or OECD.

Permanent establishments

The Italian tax authorities were challenging commissionaire structures and artificially fragmented activities (Action 7) well before the OECD's BEPS project began, so Italian tax law should not need to be amended for this purpose.

Considering the success of the Italian tax authorities in using agency PE assessments and the OECD BEPS project's emphasis on expanding the factors that create PEs, the Italian tax authorities (and courts) may be less inclined to embrace extreme interpretations. Among others, these extreme interpretations include the concept that merely attending a negotiation meeting is deemed equivalent to the authority to conclude contracts in a dependent agency environment, and stretching of the concept of 'at disposal of' for fixed PEs.

While legislative change may not be strictly needed, an approach to PEs that is more consistent with the OECD and EU proposals could benefit the Italian tax system and help revitalize inbound investment.

Patent box

Italy's optional patent box regime, introduced in the 2015 Budget Law, substantially complies with the OECD Action 5 principles, except that it also covers trademarks and know-how. A new decree removed trademarks from the list of qualifying intangible assets, as of FY 2017. However, the list still includes know-how, so the regime does not completely align with the OECD.

Transfer pricing

Italy's transfer pricing legislation complies with the OECD guidelines and allows for optional documentation, which may offer penalty protection in the event of an audit.

A recent law decree amended the transfer pricing legislation by replacing the reference to 'normal value' with the OECD's 'at arm's length' value (i.e. conditions and prices that would have been agreed between independent persons operating at arm's length and in comparable circumstances).

Multilateral Instrument

Italy was a member of the ad hoc group that developed the OECD Multilateral Instrument. Italy signed the agreement on 7 June 2017, applying it to 84 out of its 94 tax treaties in force. Italy's main positions on signing the instrument are as follows:

- **Neutralize effect of hybrid mismatch arrangements (Action 2):** Italy opted out of Article 4 of the Multilateral Instrument on dual resident entities and Article 3 on transparent entities.
- **Prevent treaty abuse (Action 6):** Italy adopted the principal purpose test, and many of Italy's tax treaties already include a principal purpose test rule as described in Article 7(2).
- **Prevent artificial avoidance of permanent establishment status (Action 7):** Regarding the amended PE definition for dependent agents, Italy reserves the right, for the entirety of Article 12, to not have the new definition to apply to its covered tax agreements. By contrast, for preparatory or auxiliary activities (Article 13), Italy adopted Option A (i.e. listed activities are not per se preparatory or auxiliary and such character must be proved) and applied the anti-fragmentation rule. Italy also opted out of the clause preventing the split-up of contracts (Article 14).
- **Make dispute resolution mechanisms more effective (Action 14):** International tax rulings and MAPs are already part of the Italian tax system. Under Italian domestic law, as of 2017, corresponding tax adjustments resulting in lower taxable income in Italy apply not only after the conclusion of a MAP but also following audits carried out through international cooperation. Subject to a specific application by the taxpayer, corresponding tax adjustments also apply following a final transfer pricing adjustment, compliant with the arm's length principle, made in a foreign country with which Italy concluded a tax treaty allowing for adequate exchange of information. The Italian tax authorities will approve specific procedural rules in the future. For purposes of the Multilateral Instrument, Italy has adopted the mandatory binding arbitration procedure (Articles 18 and 19).

EU Anti–Tax Avoidance Directive

The ATA 1 Directive[5] compels EU member states to implement certain minimum standards in compliance with certain BEPS recommendations. Again, the Italian government claims the country's tax system largely complies with most of these standards already, as follows:

— **Interest deductibility:** Deductions for interest expense are already limited to 30 percent of a company's earnings before income taxes, depreciation and amortization (EBITDA). The ATA 1 Directive provides more relaxed rules by which the borrower can prove that its own equity-to-total-assets ratio is equal to or greater than that of its corporate group. The directive also allows full deduction up to EUR1 million and puts no limits on third-party borrowings.

— **Exit taxation:** The Italian tax system has incorporated the principles set out in the *National Grid Indus* case for years. The ATA 1 Directive extends the deferred exit tax payment to transfers of assets to and from a PE/headquarters company and shortens the deferral period to 5 years, compared to the 6 years provided in current Italian tax law.

— **GAAR:** Italy's GAAR has been in effect since 1 October 2015.

— **Controlled foreign companies:** Italian tax law related to CFCs is aligned with the ATA 1 Directive, except that Italian law uses the foreign nominal tax rate as a parameter to identify the CFC (the directive refers to 'actual corporate tax' paid abroad) and is tighter in some cases (i.e. within the EEA and for financial undertakings). The concept of 'genuine arrangements' is also interpreted differently, with the Italian tax authorities referring to definition set out in the European Court of Justice judgment in *Cadbury-Schweppes*.

— **Hybrids:** Italy has implemented anti-hybrid rules in line with ATA 1 Directive (as amended by ATA 2), albeit partially and only for hybrid instruments (not entities). As of 2016, income paid by an EU subsidiary that fulfills the conditions of the Parent-Subsidiary Directive to an Italian parent is 95 percent exempt for the amount that is not deductible from the taxable income of the subsidiary. The amount that the foreign payer cannot deduct is subject to tax in Italy (previously, the 95 percent exemption applied only if the income was fully non-deductible to the payer).

In short, the implementation of the OECD BEPS Action Plan and EU ATA Directive is not likely to bring many brand new concepts to the Italian tax system. Nevertheless, these implementations give Italian tax authorities the opportunity to initiate a 'new normal' — by abandoning previous aggressive positions that may impede the Italian economy's competitiveness.

[5] EU Council directive 2016/1174 of 12 July 2016.

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Luxembourg

Luxembourg has actively participated in the OECD BEPS project since its beginning and has implemented or is in the process of implementing the minimum standards. Luxembourg's signing of the Multilateral Instrument on 7 June 2017 again demonstrates the country's strong political commitment to swiftly applying the new rules. Meanwhile, the government continues to stress the need to promote the coordinated implementation of the BEPS Actions at an international level to ensure a level playing field worldwide. Luxembourg's approach to implementing the BEPS measures is also to be considered in a wider European context, one of its key steps being, as with other European countries, the implementation of the ATA 1 and 2 Directives.

EU anti-tax avoidance directives

Luxembourg will have to transpose most of the ATA 1 Directive's provisions before the end of 2018. The exit taxation rules (ATA 1 Directive) and most of the ATA 2 Directive's provisions on hybrid mismatches will have to be transposed before the end of 2019 (before the end of 2021 for the rules on reverse hybrids).

The following requirements of the directives are expected to be transposed:

- **Interest limitation:** The transposition of the ATA 1 Directive provisions should significantly change the current rules.
- **Exit taxation:** Luxembourg will need to slightly adapt the current rules to fully reflect the scope of the transactions that are covered as well as the extent of the tax deferral rules.
- **General anti-abuse rule:** It is expected that Luxembourg will adapt its long-standing current GAAR.
- **Controlled foreign company rules:** Luxembourg currently has no controlled foreign company rules.
- **Hybrid mismatches:** Luxembourg will need to extend the scope of its current anti-hybrid rules (which resulted from the transposition of the 2016 amendments to the EU Parent-Subsidiary directive).

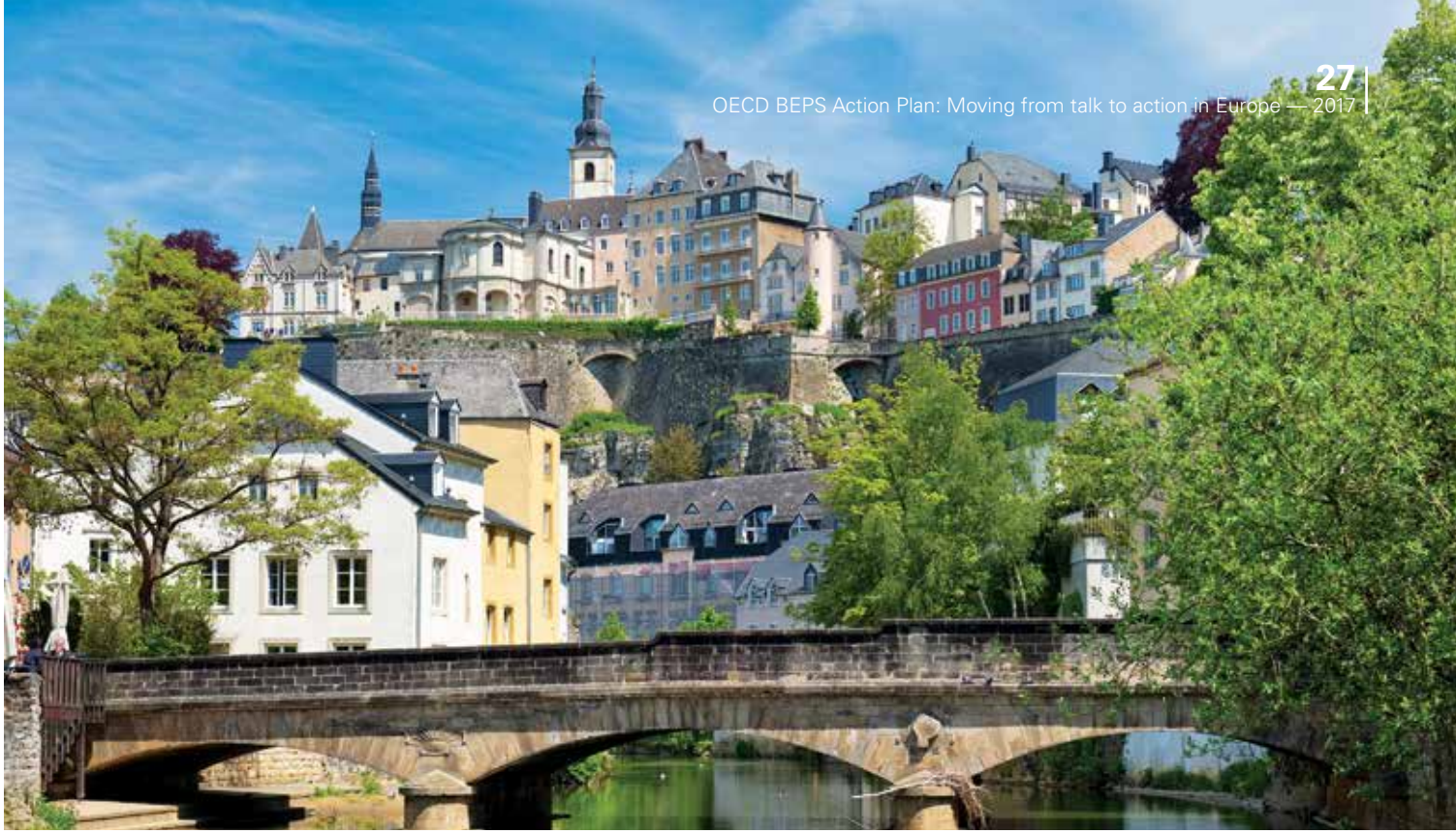
A first bill for the ATA 1 Directive transposition is not expected before early 2018. As the ATA 1 and 2 Directives provide only minimal protection for the internal market and lack detailed guidance, their implementation in Luxembourg will have to be closely monitored.

Patent box regime

Following the repeal of its intellectual property (IP) regime as of 1 July 2016, Luxembourg issued, in August 2017, a bill introducing a new IP tax regime in line with the "modified nexus approach" developed by the OECD in the BEPS report on Action 5. The bill provides for an 80 percent tax exemption on income derived from patents (including IP assets functionally equivalent to patents) and copyrighted software, as well as a full net wealth tax exemption of these assets. If passed, the new IP regime would be applicable from 2018.

Tax transparency

Luxembourg has implemented numerous measures to reinforce tax transparency in line with the recent EU directives and the BEPS minimum standards. This includes the implementation of the rules on the automatic exchange of information on tax rulings and the rules on non-public CbyC reporting. The Luxembourg government recently indicated that it is not in favor of the public reporting of confidential information and that information should be exchanged only between tax authorities.



Transfer pricing

Luxembourg has further enhanced its transfer pricing regulations by clarifying the legislation in line with the OECD Transfer Pricing Guidelines as laid down in the 2015 final report on Actions 8-10. With this enhancement, Luxembourg emphasizes that the arm's length principle must also be applied in the context of a wider value chain analysis.

The Luxembourg tax authorities also published, at the end of 2016, a new transfer pricing circular aimed at clarifying the transfer pricing rules for companies principally performing intragroup financing transactions. The new guidance highlights the importance of comparability analysis in the application of the arm's length principle.

Tax treaties

In the context of the Multilateral Instrument, Luxembourg has decided to insert in its covered tax agreements the principal purpose test rule as an anti-treaty abuse provision, as well as the rules for making dispute resolution mechanisms more effective, which are both minimum standards. Luxembourg has also chosen a few other measures, which are non-minimum standards. On hybrid mismatches, Luxembourg has chosen some of the rules on transparent entities as well as Option A for the application of methods for the elimination of double taxation. On the artificial avoidance of PE status, Luxembourg has chosen Option B of Article 13 on the specific activity exemption. Furthermore, Luxembourg has opted in for the mandatory binding arbitration. Considering the complexity of the rules, the concrete impact of those choices will have to be analyzed for each covered tax agreement.

In the context of new treaty negotiations, Luxembourg has already started to implement the OECD BEPS recommendations on Action 6. Luxembourg signed, in early 2016, a tax treaty with Senegal that adopts some of the minimum standards (e.g. GAAR, including a principal purpose test). It is expected that future treaties will include the same.

Tax competitiveness

During the last months and years, Luxembourg has consistently reaffirmed its political commitment to adapt its tax framework in line with the new international and European standards.

The choices generally made in the context of the implementation of the European directives or the Multilateral Instrument clearly reflect this commitment as well as Luxembourg's strategic vision to maintain its tax competitiveness.

To further enhance the country's attractiveness, some measures have been recently taken including the progressive decrease of the corporate income tax rate from 21 percent to 18 percent, leading to a corporate tax rate (combined with other business taxes) of about 26 percent in 2018. The Luxembourg government has indicated that it may consider further decreases in the future.

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Netherlands

Within the Netherlands, the OECD BEPS project generally and the EU's follow-up initiatives specifically continue to capture public, media and lawmakers' attention. With the spotlight on the taxation of multinationals, companies are increasingly weighing opportunities and risks, including the potential reputational damage related to international tax planning. The Dutch government has supported the OECD BEPS project from the outset and is currently implementing many of the BEPS recommendations adopted in the context of EU legislation, such as CbyC reporting and the exchange of tax rulings. The Netherlands is also preparing to introduce provisions from the EU ATA Directive, including CFC rules, limitations on interest deductibility and anti-hybrid mismatch rules.

OECD Multilateral Instrument and tax treaties with developing countries

On 7 June 2017, the Netherlands signed the Multilateral Instrument amending tax treaties and improving dispute resolution mechanisms, expansively opting in on many of the instrument's provisions:

— The Netherlands has listed 82 tax treaties as covered tax agreements and expects a match following the signing ceremony with at least 40 countries. This number is expected to increase if more of the Netherlands' treaty partners sign the instrument.

— The provisions on hybrid mismatches (transparent entities and dual resident entities) will apply to all covered tax agreements listed by the Netherlands, except for the provision on transparent entities in its treaties with Japan, the UK and the US, which already contain such provisions.

— Like all other signatories, the Netherlands has opted to apply the principal purpose test to all covered tax agreements. Unlike 12 other jurisdictions, the Netherlands did not opt for an additional simplified limitation on benefits test.

— In principle, the provisions that broaden the PE definition (e.g. provisions on commissionaire structures, definition of independency, specific activity exemptions and splitting of contracts) will all be implemented for covered tax agreements listed by the Netherlands, except for the splitting of contracts for exploring and exploiting natural resources.

The next step is the ratification process in the Netherlands, which is expected to start in the second half of 2017. Assuming the Netherlands ratifies the instrument in 2018, its provisions can enter into force as of 1 January 2019 for covered tax agreements with a match (i.e. listed by jurisdictions that have also ratified before 2019).

Dutch tax treaty policy is marked by its focus on developing countries and support for capacity building within their tax administrations. The Netherlands recently approached 23 of its developing country treaty partners to explore amending existing treaties to include enhanced anti-abuse provisions. Such provisions have been incorporated in new versions of a number of these treaties as a result.

Tax transparency

The Dutch government is actively participating in tax transparency discussions in both the EU and the OECD and is keen to retain the country's reputation for business friendliness while ensuring all countries have equal opportunities to compete. With the introduction of the automatic exchange of rulings between EU member states (taking effect 1 January 2017) and the equivalent OECD-agreed exchange under Action 5, the Dutch tax administration is now spontaneously and automatically exchanging information about advance tax rulings and APAs.

Country-by-country reporting

The Dutch government favors multilateral rules that apply equally to all countries and supported the OECD BEPS recommendations on CbyC reporting. As of 1 January 2016, a new chapter covering CbyC reporting and transfer pricing documentation was added to the Dutch Corporate Income Tax Act. International companies based in the Netherlands and foreign-based companies that have selected a Dutch entity as the reporting entity are getting ready for their first CbyC filings, many of which are due in 2017. To facilitate the exchange of CbyC reports with the US, the Dutch and US competent authorities entered a formal arrangement for exchanging CbyC reports.

Innovation box

The Dutch government has implemented the modified nexus approach set out in the OECD BEPS Action 5 recommendation relating to patent and IP taxation regimes, which is designed to encourage R&D. In 2015, the EU also endorsed this approach. The changes to the Dutch innovation box took effect on 1 January 2017, effectively introducing the modified nexus approach while maintaining a 5 percent (effective) corporate taxation rate for the innovation box.

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Portugal

Combatting tax evasion domestically and globally has been high on the Portuguese government's agenda. 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.

Recent tax law changes continue to reflect the Portuguese government's commitment to implementing the OECD BEPS Action Plan and associated recommendations. In line with other European countries, the Portuguese government's commitment to fighting tax evasion puts special focus on international cooperation, the tax treatment of hybrids and levels of substance in holding structures.

Tax competitiveness

In addition to its focus on tackling tax evasion and increasing tax revenues, the Portuguese government is taking steps to increase the country's tax competitiveness, by adopting a worldwide participation exemption regime and by reducing the statutory corporate income tax rate to 21 percent (from 25 percent in 2013).

Transfer pricing

Portuguese tax law requires mandatory CbyC reporting in line with BEPS Action 13 for multinational groups that meet specific requirements.

CbyC reporting applies for resident companies that:

— are required to prepare consolidated financial statements

— hold or control, directly or indirectly, one or more entities whose tax residence or PE is located in another jurisdiction

— have recorded in the consolidated financial statements of the last annual accounting period an amount of combined income of at least EUR750 million (where income includes sales, provision of services, government subsidies and other income), and are not held by:

  — one or more resident entities that are required to submit this financial and tax information return, or

  — one or more non-resident entities that are resident in a country with which an agreement for the automatic exchange of fiscal information is in force and are required to submit the same or a similar return, directly or through a designated entity.

— Portugal's CbyC reporting requirements may be extended to foreign companies, namely, resident entities participated in by non-resident entities that are not obliged to submit a similar form in their country and would be subject to a similar obligation if resident in Portugal. CbyC reporting is also required where the non-resident participating entity is resident in a jurisdiction that has not entered into an agreement for the automatic exchange of fiscal information with Portugal.

The information to be reported includes, among others, the allocation of income between related and unrelated entities, taxes due and paid, as well as specific economic indicators and a list of the main activities carried out by companies of the multinational group. Penalties apply for failure to prepare the CbyC report. The filing deadline for the first CbyC reports for 2016 tax periods has been extended to 31 October following the end of the period.

The domestic rules do not set any requirements or recommendations on, for example, the sources of

information to be used for CbyC reporting or the approach to follow to reconcile differences in accounting policies.

As part of its continuing efforts to boost transparency by international companies, Portugal has signed the Multilateral Competent Authority Agreement for the automatic exchange of CbyC reports. The agreement enables the consistent and swift implementation of new transfer pricing reporting standards developed under OECD BEPS Action 13. It ensures that tax administrations can understand how multinational enterprises structure their operations while safeguarding the information's confidentiality.

Unilateral BEPS action to date

Portugal has already enacted several unilateral anti-BEPS measures, namely:

- CFC rules
- earnings-stripping rules to limit interest deductibility based on EBITDA levels
- denial of the participation exemption regime where the dividends received give rise to a deduction for the subsidiary
- denial of the participation exemption regime on structures that lack economic substance
- obligation to disclose aggressive tax planning schemes
- revised patent box regime incorporating the nexus approach
- adoption of the 2014 EU directive on automatic exchange of tax information and exchange of information procedures under the Common Reporting Standard.

Multilateral Instrument

Portugal has signed the Multilateral Instrument regarding all of its tax treaties.

Exchange of tax rulings

Portuguese tax rulings and APAs are confidential and binding. Rulings are only made public on an anonymous basis where the same issue has been ruled on more than three times.

The fact this information may now be shared with other EU tax authorities, combined with changes in the transfer pricing guidelines, may bring additional complexity for multinational groups operating in Portugal.

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Spain

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, even before the BEPS project was finalized.

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

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 among the media and the public toward aggressive tax planning 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 unwind some tax planning structures or exit low-tax jurisdictions, even where a supportable business rationale and real substance exist.

Country-by-country reporting

Spain was one of the first countries to modify its domestic law to introduce mandatory CbyC reporting for transfer pricing documentation, and Spanish companies had to issue their first CbyC reports in 2016. The Spanish law meets all of the OECD's recommendations in terms of deadlines and implementation.

'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 information exchange agreements and tax treaties that include exchange of information clauses. Countries having such an agreement with Spain are automatically excluded from the blacklist.

After concluding new tax agreements with 13 countries, Spain removed these countries from the list. Pending agreements with another six countries are expected to reduce the list further.

Spain will probably review this list in the following months, following OECD and EU work in this area.

Tax treaties

Spain's current tax treaty policy is to negotiate the inclusion of anti-abuse clauses. Anti-hybrid provisions are also sought. Spain has also introduced unilateral measures to adjust the tax treatment of hybrid entities and instruments.

Spain has signed the OECD's Multilateral Instrument developed under Action 15 that allows countries to update all their bilateral tax treaties in line with the OECD proposals. Once the instrument enters into force, companies that rely on Spain's treaty network will need to determine by country which treaties are affected and the impact of the new treaty provisions.

Spain intends to apply the Multilateral Instrument to almost all of its 94 tax treaties. Determining the impact will be extremely complex, especially if individual countries sign the Multilateral Instrument on different dates.

Stronger controlled foreign company rules

As of 1 January 2015, Spain's CFC rules are much more restrictive than previously, requiring (among other things) additional substance in the CFC. The impact of this 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 interest and other payments. The Corporate Income Tax Law introduced rules further restricting the tax deductibility of interest payments under profit-participating loans.

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 adopting stricter positions on the related tax treatment.

Spain agrees with the OECD's modified PE definition. Even if a treaty in force maintains the former PE definition, the Spanish tax authorities would understand and interpret the concept according to the OECD's modified version.

Dispute resolution

Rising audit activity and complex new rules are increasing the volume of tax disputes. International companies in Spain are advised to make full use of the Spanish tax authorities' dispute resolution procedures. These include tax consultations and APAs that provide certainty over the acceptability of a company's tax policy. The Spanish tax authorities are adding more resources to improve the APA program.

As of January 2016, Spain shifted responsibility for its MAP regarding transfer pricing issues from the Ministry of Finance to the Spanish Tax Agency.

The OECD peer review on dispute resolution procedures and the new EU directive in this area are expected to help improve dispute resolution procedures in Spain.

Patent box

The Spanish State General Budget Law for 2016 significantly amended the Spanish patent box regime, which entered into force as of 1 July 2016. These amendments have adapted the domestic regulation in line with the modified nexus approach as defined by the BEPS Action 5 proposals. New transitional rules also entered into force as of 1 July 2016, in accordance with several legal amendments to the Spanish patent box regime in recent years.

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Switzerland

Switzerland is embracing tax reform and working on substantial corporate tax changes independently of the OECD BEPS project. In a referendum vote on 12 February 2017, the public denied proposed laws as decided by the parliament. The Federal Council nevertheless continues the reform work and accepted the cornerstones of a new reform in June 2017, maintaining its direction. The Federal Council intends for components of the bill to enter into force in January 2019 and in January 2020.

The Swiss Parliament has been driven to act in part by the same public outcry 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 align with the BEPS project proposals, and the Swiss tax authority has been actively monitoring the OECD discussions to ensure that new legislation conforms to the new standard. The most important elements of the legislation would abolish:

— the special holding company regime

— the mixed and domiciliary regime

— the finance branch regime

— 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. As substitutes for the abolished tax regimes, the following main measures would be introduced:

— patent box regime

— R&D super deduction

— a substantial reduction of cantonal income tax rates that would result in an overall effective income tax rate ranging from 12.4 percent to some 18 percent (depending on the canton)

— Although a notional interest deduction is not a cornerstone of the new reform, there is still some political activity to introduce such deduction limited to the cantonal level.

Stricter audits

Perhaps in anticipation of the coming reforms, the Swiss tax authorities have become 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 perceived 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 needed to comply with the expected new regulations. Current tax rules, introduced some 2 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 that unilaterally inhibits the misuse of treaty benefits, which still complements treaty regulations. In light of the international developments on the avoidance of treaty abuse and increasing international information exchange, this legislation has been partially replaced by treaty law.

Country-by-country reporting

Switzerland signed the multilateral agreement on the exchange of CbyC reports, and the Swiss parliament accepted the federal implementation act[6] on 16 June 2017 (the referendum period lapses on 5 October 2017). The federal act closely follows the OECD's proposals on Action 13. It is expected that legislation

[6] The Swiss Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (the "ALBA — Gesetz").

requiring CbyC reporting will come into force by end of 2017. Thus Swiss companies will be required to file their CbyC Reports for 2018 financial years in 2019 to enable the Swiss Federal Tax Administration to automatically exchange information with the countries concerned in the first 6 months of 2020. Earlier CbyC report filings (and subsequent exchanges by the tax authorities) for 2016 and 2017 financial years can be done by Swiss headquarters on a voluntary basis.

Exchange of rulings

Generally, valid rulings are to be exchanged spontaneously as of January 2018, where they meet the applicable criteria (in particular, where they have cross-border effect). The relevant Swiss ordinance is closely based on Action 5 of the BEPS Action Plan. Rulings on the special holding company, mixed and domiciliary and Swiss principal regimes are subject to the exchange. The Swiss regulation also covers a patent box regime.

Multilateral Instrument

On 7 June 2017, Switzerland took part in the signing ceremony for the Multilateral Instrument to prevent BEPS under Action 15. At the time of signing, Switzerland announced that it would only include 14 tax treaties as covered tax agreements, namely, the Swiss treaties with Argentina, Chile, India, Iceland, Italy, Liechtenstein, Lithuania, Luxembourg, Austria, Poland, Portugal, South Africa, Czech Republic and Turkey. Together with Switzerland, these partner states have agreed to negotiate precise wording for amending their existing treaties through the instrument. If agreements on the technical implementation of the instrument can be obtained with other treaty partners, the corresponding treaties would be amended at a later stage.

Switzerland focuses primarily on implementing the BEPS minimum standards, which could alternatively be agreed on via bilateral treaty amendments. This implies that Switzerland has reserved the right not to apply the Multilateral Instrument's provisions on matters that go beyond the minimum standards. These include the standards for transparent and dual resident entities (Articles 3 and 4 respectively), anti-abuse rules for PEs situated in third jurisdictions (Article 10), and the artificial avoidance of PE status through commissionaire arrangements (Article 12). On treaty abuse, Switzerland opted for the principal purpose test and inclusion of the instrument's mandatory binding arbitration clause.

The Federal Council is expected to publish and submit the Multilateral Instrument for public consultation before the end of 2017. The instrument will then undergo the standard parliamentary approval process before entering into force. Should it pass successfully, the Multilateral Instrument would enter into force by 1 January 2019 at the earliest.

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United Kingdom

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, even in advance of the OECD BEPS Action Plan being completed, introduced a DPT to counter arrangements that are perceived to divert profits from the UK. Representatives from HM Treasury, HM Revenue & Customs and other government departments continue to be active in discussions on the BEPS Action Plan. Now that there is significantly more clarity over how the UK will implement the BEPS recommendations, many UK companies are assessing the impact on their businesses going forward.

In 2014, former Exchequer Secretary to the Treasury David Gauke 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."[7]

With a number of high-profile government officials involved in finalizing the remaining aspects of 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. As noted, the government introduced a DPT, discussed in detail below.

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

In addition to the ongoing implementation of the BEPS initiatives, UK tax policy also needs to take into account the UK's exit from the EU. 'Brexit' is expected to happen in March 2019 at the earliest, and the application of all existing EU (or EU-influenced) legislation and regulation will continue in the interim. KPMG in the UK does not anticipate that Brexit will interrupt or change the UK's commitment to implementing BEPS measures or its overall plan to tackle tax avoidance. However, once the UK has left the EU, it may no longer be obliged to implement EU initiatives related to tax.

Diverted Profits Tax

The DPT, which is different from corporation tax, applies to diverted profits arising on or after 1 April 2015. The DPT applies at a rate of 25 percent, which is higher than the UK's current 19 percent corporation tax rate.

[7] https://www.gov.uk/government/speeches/david-gaukes-speech-to-the-lord-mayors-taxation-forum

The 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 restructuring as a result of the DPT are considering other changes that are being implemented as a result of the BEPS Action Plan.

In March 2016, the Chancellor of the Exchequer published an updated Business Tax Roadmap setting out the government's plans for business taxes to 2020. The document summarizes the UK's progress in implementing the OECD's recommendations and its priorities going forward. Summarized below are some recommendations of special interest, together with the latest developments in the UK.

Unilateral BEPS actions to date

Hybrid mismatch arrangements

In light of the OECD proposals on hybrid mismatch arrangements under Action 2 of the BEPS Action Plan, the UK has changed its domestic rules that apply to payments made on or after 1 January 2017. The UK rules closely follow the OECD's recommendations and replace the UK's previous anti-arbitrage rules.

Deductibility of corporate interest expense

The UK is introducing a new regime for the taxation of corporate interest expense that is expected to apply to payments made on or after 1 April 2017. Draft legislation and part of the draft guidance notes have been published, although the finalization of the legislation was delayed by the June 2017 UK election. The legislation's implementation date could change as a result. Based on draft documents published to date and the consultation process, it is clear that the new regime broadly follows the OECD's recommendations. Interest deductions are restricted to 30 percent of EBITDA, with a group ratio rule and various other exemptions and elections to provide flexibility in the regime's application.

Countering harmful tax practices

The UK introduced a reformed patent box regime, effective 1 July 2016, compliant with OECD recommendations.

Transfer pricing

A significant component of the OECD BEPS Action Plan relates to transfer pricing, particularly regarding the extent of documentation needed, hard-to-value intangibles, and risk and capital. The UK adopted the revised OECD transfer pricing guidelines as of 1 April 2016. Like the tax departments of other international companies, those of UK companies have historically invested considerable efforts in ensuring their transfer pricing policies are robust. This area is complex, and companies are working to implement the revised OECD guidelines to ensure minimal disruption of their business models.

Transfer pricing documentation and country-by-country reporting

The UK has implemented the BEPS Action 13 proposals on CbyC reporting, although it has remained silent on the Action 13 proposals related to master file and local file transfer pricing documentation. The UK is party to the automatic exchange of CbyC reports, and as of June 2017, has activated 39 exchange relationships. The UK rules for CbyC reporting took effect 1 January 2016. The UK government has also previously stated that it is in favor of the introduction of public CbyC, although there is no timetable for (or certainty of) this.

Multilateral Instrument

The UK was among the first signatories to the Multilateral Instrument on 7 June 2017. Regarding the instrument's four main areas, the UK has indicated it will:

— largely apply the provisions on hybrid mismatches

— apply the minimum standard provisions on treaty abuse, and thus adopt the principal purpose test in full (but not the simplified limitation on benefits provision)

— not adopt the PE recommendations except for the anti-fragmentation rules (or therefore the provisions on dependent agent PEs or the 'preparatory and auxiliary' tests)

— apply the arbitration provisions with the "baseball arbitration" option; however the UK has stated that it will also apply arbitration with countries that have opted for "reasoned opinion" arbitration.

On the horizon

As at 30 June 2017, the UK has implemented or committed to implement most BEPS measures. For the remaining BEPS Actions, UK tax policy is considered as largely consistent with the OECD's recommendations. Therefore, no material changes are expected to:

— **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)

— **give attention to transparency and substance going forward.** The government is mindful of the need for compatibility with existing international law and for the support of fair competition, as well as the acknowledgment of legitimate commercial decisions on R&D within the framework of globalized markets and operations.

— **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.

Impact on businesses

Now that the OECD has concluded most of the BEPS Actions, many UK-headquartered companies are responding to the legislative change that comes with local implementation of the OECD's recommendations. 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.

The OECD BEPS Action Plan items are complex and interdependent, and some of the proposals released to date (e.g. interest deductibility, treaty shopping) offer flexibility in their implementation. However, now that the OECD proposals are (largely) finalized, we are starting to gain clarity over how individual countries will transpose them into their domestic law. In many respects, the early adoption and clear statements of intent issued by the UK government have been helpful to UK companies that are determining 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 are in a strong position to adapt to the new corporate tax landscape quickly and effectively.

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Managing the impact

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 they have paid tax and how much 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 and the EU as BEPS implementation proceeds.

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: Many 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 in which they claim business.

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

Appendix:

Unilateral BEPS legislative actions in Europe

The OECD BEPS Action Plan final reports were published on 5 October 2015, and many countries are 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.

Action 1	**Address tax challenges of the digital economy**
Austria	Austria's advertising tax is expected to be extended to online advertisements.
Bulgaria	New place-of-supply rules for business-to-consumer supplies of telecommunication, broadcasting and electronically supplied services; introduction of simplified registration regime.
Cyprus	Cyprus has implemented the VAT rules for telecommunication, broadcasting and electronically supplied services as per the VAT Directive.
Finland	The Finnish Tax Administration is running a project to address tax questions related to electronic commerce.
France	Greater scrutiny of digital companies; new requirements for segmented accounts. Tax searches have significantly increased, with the French tax authorities searching the mailboxes and documents of IT companies to see if there is a PE issue.
Greece	The VAT Directive regulating the treatment of digital services provided to customers has been domestically implemented since 2015; new regulations on taxation of online gambling games were introduced, taking effect 1 January 2016. Greece signed the Multilateral Instrument, but it must still be ratified domestically. Reservation held not to apply the PE anti-avoidance rules, including artificial avoidance of PE through commissionaire arrangements and similar strategies, and through specific activity exemptions.
Ireland	Changes in VAT place-of-supply measures for digital supplies and related mini one-stop-shop requirements have been implemented.
Italy	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. An new PE definition was introduced in 2016 for online gambling businesses.
Norway	The Ministry of Finance is aware of the challenges related to digital supply of services but intends to wait for recommendations from the BEPS project before considering any income tax changes (e.g. new definition of "taxable presence").
Portugal	New legal framework for online gambling and betting.
Romania	New regulations on authorization and taxation of online gambling.
Russia	New VAT regulation for electronically supplied services.

Action 2	Neutralize effects of hybrid mismatch arrangements
Austria	Anti-hybrid rules address deduction/non-inclusion schemes by: (i) denying tax exemption for inbound dividends if the foreign distributing corporation is entitled to a deduction for the distribution (in line with the EU Parent-Subsidiary Directive); and (ii) disallowing tax deductibility of interest payments subject to no or low taxation at the level of the receiving group company. Anti-hybrid rules should be amended by 1 January 2020 due to the EU ATA Directive.
Bulgaria	Anti-hybrid provisions aimed at eliminating possibilities for double non-taxation were introduced in 2016. Income from inbound dividends is not exempt from corporate income tax where the distributed amounts are tax-deductible expenses and/or decrease the taxable result of the distributing entity, regardless of their accounting treatment at the level of the distributing entity.
Cyprus	Anti-hybrid provisions enacted for inbound dividends, denying equity treatment if a foreign-sourced dividend is deducted by the paying affiliate.
Czech Republic	As of 1 July 2017, the Czech Income Tax Act was amended to include limitation of tax exemption on dividends received by a Czech tax resident where the dividends are received from so-called 'hybrid loans'.
Estonia	New legislation on corporate dividends, in effect as of November 2016, allows tax exemption on dividends received from a foreign entity only if the foreign entity has not had the right to deduct the dividend from its taxable income (e.g. as interest).
Finland	Anti-hybrid rule implemented in accordance with the amended Parent-Subsidiary Directive, effective 1 January 2016.
France	Existing rules limit opportunities for hybrid instruments, including rules aimed at disallowing (i) participation exemption, if the amount of dividend has been deducted by the subsidiary; and (ii) deductibility of interest, if the amount is not subject to a minimum taxation at the foreign lender's level.
Germany	Anti-hybrid rules in place (correspondence principle for dividends and partnership-related expenses). Refinements to domestic law are expected due to the implementation of EU ATA directive.
Greece	Domestic rule targets hybrid loan arrangements between affiliated enterprises (profit participating loans), aiming to prevent double non-taxation of dividends distributed by EU-affiliated entities (subsidiaries) to their parents (Greek legal entities). Rules deny deductibility of expenses paid to tax residents in non-cooperative state(s) and state(s) with a preferential tax regime unless the taxpayer proves that such expenses concern real and ordinary transactions. Greece signed the Multilateral Instrument, but it must still be ratified domestically. Reservation held not to apply the provisions on hybrid mismatches concerning transparent and dual residence entities and methods for eliminating double taxation.
Hungary	A new anti-hybrid rule in effect since 2015 sets the 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 would include the relevant income in the taxable base.
Ireland	Existing provisions limit opportunity for hybrid structures. Ireland intends to implement measures in accordance with the EU ATA Directive by 1 January 2020.

Italy	Anti-hybrid provisions already exist for inbound dividends, denying equity treatment if a foreign-sourced dividend is deducted by the paying affiliate; Italy lacks a provision on hybrid entities. On signing the Multilateral Instrument, Italy opted out of Article 4 on dual resident entities and Article 3 on transparent entities.
Lithuania	General anti-avoidance provisions based on the amended EU Parent-Subsidiary Directive were implemented as of March 2016 for inbound and outbound dividends.
Luxembourg	Domestic law was amended to include an anti-hybrid rule in line with the EU Parent-Subsidiary Directive. The ATA 2 Directive's provisions on hybrid mismatches must be transposed before the end of 2019 (before the end of 2021 for the rules on reverse hybrids). Regarding the Multilateral Instrument, Luxembourg has chosen to insert in its covered tax agreements the rules on transparent entities (Article 3.1) and Option A for the rules on the application of methods for the elimination of double taxation (Article 5).
Malta	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.
Netherland	Domestic law was amended to include an anti-hybrid rule in line with the EU Parent-Subsidiary Directive as of 2016.
Norway	Norwegian shareholders are denied tax exemption where the foreign distributing company is entitled to a deduction for the distribution, typically because the payment is classified as interest in the distributor's jurisdiction.
Poland	Rules on corporate dividends, introduced as of 2015, disallow participation exemption if the amount of dividend has been included in the tax-deductible costs of an entity paying the dividend.
Portugal	Rules regarding dividends from foreign entities revised under 2014 reform.
Romania	Treaty benefits and internal tax reliefs are denied for 'artificial transactions' (both internal and cross-border).
Slovakia	Received dividends are generally not taxable, but if they are tax-deductible in the paying country, they become taxable in Slovakia. Dividends may become taxable if they are received as a result of artificial arrangements. Anti-hybrid provisions have been enacted for inbound dividends, denying equity treatment if a foreign-sourced dividend is deducted by the paying affiliate.
Spain	Anti-hybrid legislation in force as of 1 January 2015.
Sweden	To comply with the amendments to the Parent-Subsidiary Directive, Sweden introduced a limitation to the participation exemption as of 1 January 2016. Accordingly, dividend distributions received by a Swedish company cannot benefit from tax-exempt status if the distributing entity is entitled to deduct the dividend as interest or a similar expense. This rule also applies to distributions from subsidiaries domiciled outside of the EU. In June 2017, the Swedish government proposed an interest deduction prohibition for certain cross-border situations (hybrid rules), with proposed effect on 1 July 2018 and affecting financial years starting after 30 June 2018. The proposal must be adopted by the Swedish parliament. On 7 June 2017, Sweden signed the Multilateral Instrument with reservations to Articles 3-5.

Switzerland	Current tax rules (introduced about 2 decades ago) do not allow Swiss parent companies to use hybrid structures with their immediate subsidiaries.
United Kingdom	New anti-hybrid regime implemented, applying to payments made on or after 1 January 2017.

Action 3	**Strengthen controlled foreign company rules**
Austria	No CFC legislation is in place, but it is expected to be introduced as of 1 January 2019 according to the EU ATA Directive; current switch-over rules for dividend distributions are likely to be amended.
Cyprus	No CFC legislation currently. CFC legislation will be enacted with effect from 1 January 2019 in line with the ATA Directive.
Czech Republic	No CFC legislation currently in force; CFC legislation is expected to be implemented as of 1 January 2019 due to the ATA Directive.
Finland	CFC legislation in force since 1995. The Ministry of Finance is running a project to develop means to prevent international tax avoidance overall; whether this will affect the Finnish CFC legislation is unknown.
France	CFC legislation in force.
Germany	CFC legislation in force; some adjustments expected due to the EU ATA Directive.
Greece	CFC rules apply from 2014 onward.
Hungary	Hungary was an early adopter of the new EU-driven CFC regulation under the ATA Directive. Hungary's CFC provisions took effect as of 18 January 2017.
Iceland	CFC legislation introduced in 2010.
Ireland	No CFC legislation currently; CFC rules are expected to be introduced by 1 January 2019 in line with the EU ATA Directive.
Italy	Existing rules were amended twice in 2015 and again in 2016, and seem substantially compliant with Action 3 (except for 'nominal tax rates' versus 'effective tax rates' as parameters to identify the CFC).
Luxembourg	The ATA Directive's provisions on CFCs must be transposed before the end of 2018.
Norway	CFC rules are in force, but a public hearing is expected. Changes being discussed include increasing the threshold for effective taxation to 3/4 (from 2/3; CFC rules apply depending on the difference between effective levels of taxation in the foreign jurisdiction and Norway) and removing the distinction between active and passive income (in tax treaty jurisdictions, CFC taxation only applies if income is mainly passive).
Poland	CFC rules introduced as of 2015. Poland plans to strengthen the CFC rules as of 1 January 2018.
Portugal	CFC rules in force.
Romania	Introduction of CFC rules currently considered.
Russia	CFC rules introduced in 2015, with the first CFC notifications made and taxes paid in 2017 relating to 2015. Blacklist of tax haven jurisdictions updated.
Spain	CFC rules recently strengthened.

Sweden	CFC legislation in force.
Turkey	CFC legislation introduced in 2006 and currently in force.
United Kingdom	CFC rules in force; new rules were introduced in 2013, and no further substantive changes are expected.

Action 4	**Limit base erosion via interest deductions and other financial payments**
Austria	In 2014, a specific anti-abuse rule was introduced in response to the BEPs initiative denying deductibility of intragroup interest that is low-taxed at the level of the recipient entity. Austria will likely defer the implementation of the new general interest limitation rule in the EU ATA Directive until after 1 January 2019, provided the current provision classifies as a targeted rule under the directive. Current provisions will have to be reviewed in light of the new interest limitation rule.
Belgium	Thin capitalization rules strengthened.
Cyprus	No thin capitalization rules in force. Rules limiting interest deductibility will apply as of 1 January 2019 in line with the ATA Directive.
Czech Republic	General debt-to-equity thin capitalization rules in place for intragroup loans (6:1 for banks and insurance entities; 4:1 for other companies). An EBITDA-based interest deductibility limitation is expected to be implemented due to the ATA Directive (as of 1 January 2019).
Estonia	Income tax on hidden profit distributions (loans). Estonian income tax regulation was complemented by a mechanism for identifying and determining hidden profit distributions which imposes additional obligations on companies providing intra-group loans. The obligations apply to loans given since 1 July 2017 (also applies to loan amounts that have been increased since 1 July 2017; and where the conditions of the loan agreements have been altered significantly since 1 July 2017).
Finland	Limits on deductibility of interest apply as of 2014; the limitation might be expanded to apply also to non-related-party interests due to the ATA Directive. The implications are not yet known.
France	Thin capitalization rules strengthened; interest deductibility limited where beneficiary is subject to low taxation.
Germany	Earnings-stripping rules in place; minor amendments expected due to the EU ATA Directives.
Greece	Stricter provisions for deductibility as of 2014, including thin capitalization rules and rules denying deductibility of expenses paid to tax residents in non-cooperative state(s) and state(s) with a preferential tax regime unless the taxpayer proves that such expenses concern real and ordinary transactions.
Hungary	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 pre-tax profit.
Iceland	A bill in relation to thin capitalization is with Congress but not yet approved.
Ireland	Existing targeted measures in place limit tax deductions for interest; Ireland has sought to defer implementation of EU ATA Directive interest limitation rule until after the general 1 January 2019 adoption date.

Italy	Existing restrictions on interest deduction (i.e. up to 30 percent of EBITDA) seem compliant with Action 4.
Luxembourg	The ATA Directive's provisions on interest limitation must be transposed before the end of 2018.
Malta	Malta plans to implement the provisions of the EU ATA Directive with effect as of 2019, except for the interest deduction limitation, which would take effect 1 January 2024.
Norway	Interest limitation rules in force. Deduction of intragroup interest is limited to 25 percent of tax EBITDA. The Ministry of Finance held a public hearing on new rules, aiming to expand them to include interest paid to unrelated parties that are part of a consolidated group. A 'safety valve' is included in the proposal, based on the group's equity ratio. The Ministry of Finance is reviewing the possible introduction of withholding tax on royalties and lease rental payments.
Poland	More restrictive thin capitalization regime introduced as of 2015 (equity-based alternative method available). Poland plans to replace current rules with an EBITDA-based interest deductibility limitation as a result of the implementation of the ATA Directive (as of 1 January 2018).
Portugal	Earnings-stripping rules introduced in 2013, limiting interest deductibility, were tightened under 2014 reform; increased scrutiny of transfer pricing practices.
Romania	Thin capitalization rules are currently included domestic legislation and may be amended in the future.
Russia	Extended, more sophisticated thin capitalization rules have entered into force; adoption of fixed ranges for interest deductibility purposes that prevail over transfer pricing rules.
Slovakia	Earnings-stripping rules implemented as of 1 January 2015 effectively limit interest deduction on related-party loans.
Spain	Stricter interest deduction rules in force as of 1 January 2015.
Sweden	In June 2017, the Swedish government proposed new interest deduction limitation rules for corporations in line with the BEPS Action 4 recommendations and ATA Directive, with proposed effect on 1 July 2018 and thus affecting financial years starting after 30 June 2018. As its main proposal the Swedish government advocates introducing a general limitation of interest deductions as an EBIT rule (capping the deduction at 35 percent of EBIT).
United Kingdom	New BEPS-compliant rules for interest apply to payments made on or after 1 April 2017.

Action 5 — Counter harmful tax practices more effectively, taking into account transparency and substance

Austria	A general anti-abuse clause in force targets transactions that are inadequate, unusual and solely aimed at tax avoidance. Tightening is expected in line with Article 6 of the EU ATA Directive.
Bulgaria	New rules introduced in 2016 on the automatic exchange of financial information between states and the economic and financial relations with companies registered in preferential tax treatment jurisdictions. The Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information entered into force for Bulgaria as of 1 July 2016. As of 4 August 2017, the provisions of 2015 EU directive on the automatic exchange of advance cross-border tax rulings and APAs were implemented in the Bulgarian legislation.

Cyprus	As of 1 July 2016, the Cyprus IP Regime has been aligned with the OECD modified nexus approach. A transitional period for the taxation on certain IP assets is in force until 30 June 2021. Legislation will be introduced to implement the automatic exchange of information on cross-border tax rulings under EU DAC 3.
Czech Republic	No preferential IP regime (i.e. patent box) in place. The amendment to the International Cooperation in Tax Administration Act introducing the automatic exchange of information on preliminary tax decisions and preliminary assessments of cross-border transfer prices entered into force as of 1 April 2017.
Estonia	New anti-abuse rules concerning foreign-dividend taxation took effect as of November 2016.
Finland	The Council of State has expressed support for implementing automatic exchange of information on cross-border tax rulings and has submitted its letter to the Parliament. Finland implemented the EU directive on administrative cooperation in taxation (and repealed the previously applicable directive) as of 1 January 2017. Thus, Finland participates in the directive's automatic exchange of cross-border rulings and APA scheme.
France	Substance is under scrutiny. The French preferential IP regime (reduced CIT rate of 15 percent on income deriving from certain IP assets) has been considered as inconsistent with the OECD's modified nexus approach. Some modifications may be made to the French tax law to comply with OECD's BEPS recommendations.
Germany	A new rule limits the deductibility of royalty payments to affiliates abroad that use a patent box regime that does not comply with the OECD nexus approach. Discussions on introducing R&D tax incentives are ongoing, pending the outcome of Germany's September 2017 election.
Greece	Special and general anti-avoidance rules introduced in 2014 incorporate the general substance-over-form principle. Mandatory automatic exchange of predetermined information with other EU member states (and the EC in some cases) applies for cross-border tax rulings and APAs issued, amended or renewed on or after 1 January 2017 (and on or after 1 January 2012, under specific conditions). Greece signed the Multilateral Instrument, but it must still be ratified domestically. Greece opted to adopt the principal purpose test.
Hungary	In 2016, significant amendments to the Hungarian patent box regime were introduced, which entered into force as of 1 July 2016. These amendments have adapted the domestic regulation in line with the modified nexus approach endorsed by the OECD and the EU. Parallel transitional and grandfathering rules also entered into force.
Iceland	A general anti-avoidance bill includes burdensome disclosure requirements for tax advisers in relation to CFC country advice. The bill has not yet been passed.
Ireland	Patent box (i.e. 'Knowledge Development Box' — KDB) provides a 6.25 percent tax rate on qualifying income as of 1 January 2016 and is compliant with the OECD's modified nexus approach. Detailed revenue guidance was released in July 2016. Guidelines have also been released for implementation of exchange of tax ruling information under both OECD requirements as of 1 April 2016 and the EU DAC as of 1 January 2017.
Italy	An anti-avoidance provision was 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 were repealed as of 2016. The Italian patent box regime, introduced in 2015, substantially complies with the modified nexus approach. The application of the benefit to know-how is not compliant with the OECD recommendations. Since 2017, the patent box is no longer available for trademarks, in compliance with Action 5.

Luxembourg	Old IP regime repealed with transitional period until 2021. Draft law on a new IP regime in line with the OECD modified nexus approach released on August 2017. The new regime will apply as from 2018. Application of the new regime is expected from 1 January 2018. Luxembourg has transposed DAC 3 (for the exchange of cross-border rulings and APAs as of 1 January 2017) and has been exchanging cross-border rulings and APAs under the BEPS Action 5 framework based on existing legal instruments (such as tax treaties).
Malta	GAARs under domestic law deny tax benefits where a transaction's purpose is to avoid Maltese taxes.
Netherlands	Changes to the Dutch innovation box took effect on 1 January 2017, effectively introducing the modified nexus approach and maintaining a 5 percent (effective) corporate taxation rate for the innovation box.
Norway	A general anti-avoidance standard has been developed by the courts. Transactions undertaken with little or no other purpose than avoiding tax under certain circumstances may be disregarded for tax purposes. However, the Ministry of Finance has initiated a process to review and prepare a proposal for a legislative amendment. The Ministry of Finance has also implemented automatic exchange of information on cross-border tax rulings.
Poland	Introduction of a specific anti-avoidance clause to the Polish participation exemption taking effect 1 January 2016. A GAAR was introduced as of 15 July 2016. Scope of merger/demerger anti-avoidance clause extended to share-for-share transactions as of 1 January 2017. Also on 15 June 2017, a beneficial owner clause was added to the exemption on interest and royalties. Poland plans to extend the scope of the merger/demerger anti-avoidance clause to cover in-kind contributions of business or organized part thereof as of 1 January 2018. On 4 April 2017, Poland implemented provisions on exchange of tax information (including automatic exchange of tax rulings, APAs and safeguarding opinions).
Portugal	Intellectual property regime modified to reflect the nexus approach.
Romania	Treaty benefits and internal tax reliefs are denied for 'artificial transactions' (both internal and cross-border); legislation amended to reflect new provisions of the Parent-Subsidiary Directive. Under general anti-abuse provisions (substance-over-form principle), transactions can be disregarded or adjusted for tax purposes.
Russia	Signed Mutual Competent Authority Agreement in 2016 and committed to undertake first automatic exchange of information starting as of 2018. Introduced law on obligatory disclosure of ultimate beneficial owners by companies. Substance over-form approach confirmed by various clarifications of the tax authorities and the courts. Draft law proposed to introduce unjustified tax benefit rules (GAAR) in tax law.
Slovakia	Substance-over-form principle broadened.
Spain	Substance-over-form approach strengthened (through modifications to the GAARs in the General Tax Law). New regulation adapting the Spanish patent box regime to the OECD's modified nexus approach applies as of 1 July 2016.
Sweden	From 1 January 2017, the Swedish legislation has been amended to comply with EU directive DAC 3 on the compulsory spontaneous exchange of information on certain tax rulings. Sweden is also striving to establish a common EU list of non-cooperative jurisdictions.

Switzerland	Signed Convention on Mutual Administrative Assistance in Tax Matters (in force since 1 January 2017; applicable for spontaneous information exchange on tax rulings as from 2018) and the Multilateral Competent Authority Agreement, with the first automatic exchange of information starting for 2017 financial years. In the course of the current corporate tax reform, a patent box regime in line with the OECD's modified nexus approach should be introduced as of 2020 or so.
Turkey	Substance-over-form principle is already a general principle within the Tax Procedure Law. Tax inspectors sometimes stretch the principle to support their views. Turkey signed the convention and protocol on mutual administrative assistance on 3 November 2011. The agreement was ratified on 3 May 2017, and published in the official gazette on 20 May 2017. It is expected to be in effect for first automatic exchange of information in 2018. The intergovernmental agreement (IGA Model I) between Turkey and the United States was ratified on 25 February 2016, published in the official gazette dated 16 March 2016 and has entered into force.
United Kingdom	A new patent box regime came into force as of 1 July 2016, operating in parallel with the current patent box regime, which is grandfathered until June 2021.

Action 6	**Prevent treaty abuse**
Bulgaria	On 7 June 2017, Bulgaria signed the Multilateral Instrument to implement BEPS tax treaty measures and is expected apply its provisions to its tax treaties that are within the instrument's scope.
Cyprus	On signing the Multilateral Instrument, Cyprus committed to apply the principal purpose test in its existing and new tax treaties.
Czech Republic	No action required. In practice, the Czech Republic already imposes a beneficial ownership requirement that must be met for tax treaty purposes; a general abuse-of-law principle applies for tax matters including tax treaty applications. The Czech Republic signed the OECD Multilateral Instrument and intends to implement a principle purpose test in its tax treaties.
Finland	The Finnish Tax Administration is running a project that aims to promote Finland's international cooperation. Finland signed the Multilateral Instrument on 7 June 2017 and agreed to the minimum standard provided in Article 6 for tax treaty purposes. Finland also agreed to the principal purpose test in Article 7.
France	Anti-treaty shopping clause in new tax treaties. France opted for the principal purpose test rule in the Multilateral Instrument.
Germany	New German model tax treaty contains switch-over and subject-to-tax rules as well as specific anti-avoidance rules. The principal purpose test and other refinements will be introduced in German tax treaties based on the Multilateral Instrument.

Greece	Greece signed the Multilateral Instrument, but it must still be ratified domestically. Greece opted to adopt the principal purpose test in all its tax treaties and opted out of the simplified limitation of benefits clause. Greece opted to update special anti-abuse provision in its tax treaties concerning capital gains from the alienation of shares or interests of entities deriving their value principally from immovable property. Greece reserved not to adopt the instrument's provisions on dividend transfer transactions, anti-abuse rule for PEs situated in third jurisdictions, and application of tax agreements to restrict a party's right to tax its own residents.
Hungary	A new GAAR aims to deny tax exemption on income not taxable in any of the countries under a tax treaty due to different interpretation of the facts and/or the treaty itself.
Ireland	Ireland is proposing to adopt Multilateral Instrument measures including mandatory binding arbitration, the minimum standard principal purpose test and other targeted anti-abuse measures. Ireland has reserved its position on expanding the dependent agent provisions under Article 12, citing ongoing and significant uncertainty as to how the test would apply in practice.
Italy	On signing the Multilateral Instrument, Italy adopted the principal purpose test.
Luxembourg	First new treaty including some of the BEPS Action 6 recommendations was signed with Senegal in February 2016. Future treaties are expected to include the same. Regarding the Multilateral Instrument, Luxembourg decided to insert in its covered tax agreements the new preamble wording (Article 6(1) and (3)), the principal purpose test (Article 7(1) and (4)) and the rules on transparent entities (Article 3.3).
Netherlands	As of 1 January 2016, new rules on CbyC reporting and transfer pricing documentation have been introduced.
Norway	The government's white paper on proposed tax reform states that withholding taxes on interest and royalties should be reviewed and assessed for implementation. A public hearing has been announced. Further, the Ministry of Finance has increased the number of tax treaties with automatic exchange of information clauses. Norwegian tax authorities generally aim to promote international cooperation on tax issues.
Poland	Reviewing and amending tax treaties. Introduction of LOB clause, as provided in the MLI. However, Poland has made a statement that the LOB clause in the wording envisaged in the MLI is intended only as an interim measure as it is planned to renegotiate the DTTs in order to adopt the LOB clause in the DTTs in addition to or in place of the clause provided in the MLI.
Portugal	No reservations regarding the mechanisms in the Multilateral Instrument to prevent treaty abuse.
Romania	Currently, withholding tax of 50 percent applies for payments to companies resident in non-treaty countries in relation to artificial transactions; existing treaties are being updated to add information exchange and administrative cooperation clauses. Romania signed the Multilateral Instrument on 7 June 2017.
Russia	Significant number of tax audits on improper use of tax treaties have been conducted, with new court practice emerging in this area (especially on the beneficial ownership concept).
Slovakia	Whitelist of treaty states established; withholding and security taxes significantly increased on payments to non-treaty countries; payments to non-treaty countries deductible only after the required withholding, settlement and notification to tax authorities are complete.

Sweden	The 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. On 7 June 2017, Sweden signed the Multilateral Instrument with reservations to Articles 8, 9(1), 10 and 11.
Switzerland	For over 50 years, Switzerland has had legislation in place to unilaterally inhibit the misuse of treaty benefits, which still complements treaty regulations. However, in light of the international developments on the avoidance of treaty abuse and increasing international information exchange, this legislation has been partially replaced by treaty law.
Turkey	Renewing existing treaties to add information exchange and administrative cooperation clauses. According to Turkey's position paper on the Multilateral Instrument, Turkey reserved regarding Article 7 (Prevention of Treaty Abuse). Pursuant to Article 7(17)(a) of the instrument, Turkey considers its agreements with Kazakhstan, Lebanon, Malta and Senegal to contain a provision described in Article 7(2).
United Kingdom	Through the Multilateral Instrument, the UK intends to fully implement the proposed principal purpose test to counter treaty abuse.

Action 7	**Prevent artificial avoidance of permanent establishment status**
Austria	Austria will not implement the new rules for dependent agents in Articles 12 (1) and (2) of the Multilateral Instrument, the new rules for ancillary activities (Article 13(4), or the tightened PE definition for construction and assembly. Austria chose Option A regarding the exclusion of certain ancillary or preparatory activities from the PE definition (Article 12 (2)).
Czech Republic	No changes to the PE concept are expected in the near future.
Finland	Finland did not commit to the new PE definitions in the Multilateral Instrument.
France	New PE definition to be introduced in tax treaties. France adopted the new PE definition under the Multilateral Instrument, as well as Option B for specific activities, the anti-fragmentation rule and the 'contract splitting' rules.
Germany	No change to the PE definition based on the Multilateral Instrument. However, clear statements have been made that Germany will widen the PE definition based on economic principles in the near future following the changes to the upcoming new OECD Model Convention.
Greece	Greece signed the Multilateral Instrument, but it must still be ratified domestically. Greece reserved not to adopt the instrument's provisions on anti-abuse rule for PEs situated in third jurisdictions; tax agreements to restrict a party's right to tax its own residents; artificial avoidance of PE status through commissionaire arrangements and similar strategies; artificial avoidance of PE status through the specific activity exemptions; splitting of contracts; and definition of a person closely related to an enterprise.
Ireland	Ireland chose Option B of Article 12 in the Multilateral Instrument for the application of exemptions from the PE test and intends to adopt the anti-fragmentation measures. Ireland has reserved its position on expanding the dependent agent provisions under Article 12 of the instrument, citing ongoing and significant uncertainty as to how the test would apply in practice.

Italy	New provisions were introduced in 2016 on the attribution of profits to Italian PEs and a regulation on the determination of free capital of PEs in the banking industry recalls the OECD BEPS principles on the attribution of profits to PEs. More implementation of regulations is expected soon. The PE definition, as interpreted by case law and tax authorities, substantially complies with BEPS Action 7. In the Multilateral Instrument, Italy reserves the right for the entirety of Article 12 to not have the PE definition for dependent agents apply to its covered tax agreements. By contrast, for preparatory or auxiliary activities (Article 13), Italy adopted Option A (i.e. listed activities are not per se preparatory or auxiliary and such character must be proved) and will apply the anti-fragmentation rule. Italy also opted out of the clause preventing the split-up of contracts (Article 14).
Luxembourg	Regarding the Multilateral Instrument, Luxembourg decided to insert in its covered tax agreements Option B of Article 13 on the specific activity exemption.
Norway	Norway is expected to adopt the principal purpose test/limitation on benefits test in the Multilateral Instrument and bilateral negotiations.
Poland	Intention to put more emphasis on tax audits of entities doing business in Poland through unregistered PEs. Poland opted out of the Multilateral Instrument's provisions amending the PE regulations.
Portugal	Increased scrutiny of transfer pricing practices.
Romania	Romania signed the Multilateral Instrument on 7 June 2017, opting to include Option A on specific activity exemptions.
Spain	In practice, Spain's tax authority already broadens the definition of PE and applies a more economic concept.
Sweden	Registration rules for foreign employees present in Sweden have increased the Swedish Tax Agency's interest in determining whether these employees' activities can trigger PE status. No changes in the definition of PE in domestic law has been presented so far. On 7 June 2017, Sweden signed the Multilateral Instrument with reservations to Articles 12-15.
Switzerland	See commentary under Action 15 below.
Turkey	More audit scrutiny is being devoted to PE issues. According to Turkey's position paper on the Multilateral Instrument, Turkey reserved regarding Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies). Pursuant to Article 12(5) of the convention, Turkey considers its 90 covered tax agreements to include a provision described in Article 12(3)(a), and, pursuant to Article 13(7), the agreements include a provision described in Article 13(5)(a) regarding notification of existing provisions in listed agreements. Regarding the activity exemptions for artificial PE avoidance, Turkey's position paper states that has decided to apply Option A. On Article 14(3)(a) regarding the splitting-up of contracts, Turkey reserved the right for the entirety of Article 14 not to apply it to its covered tax agreements.
United Kingdom	New DPT (at a rate of 25 percent, rather than the current 19 percent for corporation tax) introduced 1 April 2015 to counter perceived contrived arrangements to divert profits from the UK. Through the Multilateral Instrument, the UK intends to implement the proposed anti-fragmentation rules.

Actions 8, 9 and 10

Ensure transfer pricing outcomes are in line with value creation

Action 8 — intangibles | Action 9 — risks and capital Action 10 — other high-risk transactions

Austria	The Austrian tax authorities published transfer pricing guidelines that generally follow the OECD guidelines, which are an essential interpretation aid. Transfer prices are under more scrutiny.
Belgium	More scrutiny of transfer prices.
Cyprus	Minimum profit margins (i.e. 0.125–0.35 percent) for back-to-back loan transactions were abolished as of 1 July 2017. From 1 July 2017, all related-party financing transactions must be supported by transfer pricing studies based on the relevant OECD transfer pricing guidelines.
Czech Republic	Follows OECD transfer pricing guidelines, which are indirectly implemented into Czech tax law by the arm's length provision and by reference in Guideline D-334. Once the BEPS amendments are incorporated into the OECD transfer pricing guidelines, they will apply in the Czech Republic. Since 2015, taxpayers also need to file with their tax returns a special transfer pricing disclosure with basic information about related-party transactions (e.g. transaction type, magnitude and country; separately for each related party). Substance, functions and risks allocation are now closely scrutinized in tax audits.
Finland	Although the revised transfer pricing guidelines have not been directly implemented in Finland, the OECD transfer pricing guidelines are generally regarded as soft law and followed in practice.
France	Increased tax audits and greater scrutiny of transfer prices.
Greece	Greater scrutiny of transfer prices.
Iceland	Transfer pricing regulations introduced 1 January 2014.
Ireland	In the past, Ireland has formally adopted OECD guidelines as its domestic transfer pricing guidance. Ireland is expected to review the updated OECD guidelines and formally adopt them as the basis for future Irish transfer pricing guidance.
Italy	Amendments to the OECD guidelines in light of BEPS Actions 8–10 should not require implementation, as Italian tax law directly refers to the OECD guidelines. Transfer pricing documentation disclosure allows taxpayers to be released from any assessed penalties. A 2015 decree on growth and internationalization clarifies that the arm's length standard does not apply to domestic transactions. According to the new decree, no criminal penalties should apply in cases of transfer pricing adjustments. As of 2017, reference is to the OECD's at arm's length value principle (not 'normal value' as previously). Corresponding adjustments resulting in a lower taxable income in Italy are not limited to MAP outcomes only.
Lithuania	Increase in transfer pricing audits, with special focus on related-party loans, management services and royalties.
Luxembourg	More detailed transfer pricing rules were issued with effect as of 1 January 2017.
Norway	Amendments to the OECD transfer pricing guidelines in light of BEPS Actions 8–10 should not require implementation, as the Norwegian Tax Act refers to the OECD guidelines. The OECD guidelines are generally applicable and followed in practice.

Poland	Increased tax audits and greater scrutiny of transfer prices.
Portugal	Increased scrutiny of transfer pricing practices.
Romania	Increased scrutiny of transfer prices and tightening of transfer pricing reporting requirements through the introduction of new legislation.
Russia	Russia is not a member of OECD, but the Russian tax authorities are aware of BEPS recommendations and can apply them in practice. In particular, during audits, the Russian tax authorities are scrutinizing transfer pricing for commodities, intragroup services and royalties, focusing on both the substance and form of transactions.
Slovakia	Transfer pricing rules broadened to also cover domestic transactions.
Spain	The Spanish Tax Administration follows the OECD approach in this area.
Sweden	The Swedish Tax Agency has declared that it considers the BEPS report *Aligning Transfer Pricing Outcomes with Value Creation* as merely clarifying the arm's length principle. Therefore, the Agency holds the position that the guidance in the report shall have both immediate and retroactive effect on the interpretation of the arm's length principle in Sweden.
Turkey	Increased transfer pricing audits. In a March 2016 draft communiqué, the Turkish Revenue Administration covered certain items of Actions 8, 9 and 10, including `comparability factors', such as location savings, local market features, multinational entity group synergies and transfer of IP, and cost contribution arrangements.
United Kingdom	Adopted the revised OECD guidelines as of April 2016.

Action 11	**Establish methodologies to collect and analyze data on BEPS and the actions to address it**
Finland	The Council of State set up a working group in January 2016 to assess the economic effects of BEPS actions and related EU initiatives in Finland.
Norway	Norway is expected to support any OECD work to publish corporate tax statistics relevant to an economic analysis of BEPS.

Action 12	**Require taxpayers to disclose their aggressive tax planning arrangements**
Belgium	Mandatory disclosure of tax haven payments.
Bulgaria	Mandatory disclosure of information about related-party transactions and transactions with low-tax jurisdiction entities is required to be filed with corporate income tax returns.
Czech Republic	No rules currently. As an EU member state, the Czech Republic would implement such rules if required by an EU directive within the required timeline.
Germany	No rules currently. Ongoing discussions and some intention to introduce such rules on the state level. Germany would have to implement the draft EU directive on public disclosure as soon as it has been adopted.

Finland	'Aggressive tax planning' has no legal meaning, but Finland imposes comprehensive transfer pricing and CFC reporting obligations.
France	List of aggressive tax strategies published by the French tax authorities.
Ireland	Already has mandatory disclosure of tax planning in relation to Irish taxes with defined hallmarks.
Norway	The Norwegian government appointed a working group to review tax advisers' disclosure requirements and duty of confidentiality. A public hearing is expected.
Poland	Extended reporting requirements under transfer pricing and CFC regulations. Plans to require taxpayers and/or tax advisors to disclose tax planning schemes.
Portugal	Disclosure provisions introduced in 2008 and later refined.
Russia	CFC rules oblige Russian taxpayers to disclose participation in foreign companies (including trusts, funds and foundations). Foreign companies that hold Russian-situs immovable property must submit data about their chain of owners (up to 5 percent of indirect ownership).
Sweden	In April 2017, a government investigator was appointed to assess whether Sweden should implement mandatory disclosure rules and, irrespective of the answer, provide a legislative proposal for mandatory disclosure rules. The conclusion is to be delivered by 31 October 2018.
Turkey	A 30 percent withholding tax in the corporate tax law applies to payments to `tax havens', but no blacklist of tax havens has been published to date.

Action 13 — Re-examine transfer pricing documentation

Austria	Legally defined transfer pricing documentation requirements (master and local file) introduced for Austrian companies that are part of international groups and have sales of more than EUR50 million. CbyC reporting introduced in line with Article 13.
Belgium	Introduced CbyC reporting and transfer pricing documentation requirements as of the 2016 tax year, with the first reports to be filed in 2017.
Bulgaria	As of 4 August 2017, the provisions of the EU directive introducing automatic exchange of CyC reports were implemented in the Bulgarian legislation. The first CbyC reports are required for fiscal years starting in 2016.
Cyprus	After signing the multilateral agreement for the automatic exchange of CbyC reports on 1 November 2016, Cyprus issued a decree to apply the CbyC reporting requirements.
Czech Republic	No statutory requirement for transfer pricing documentation. Generally, OECD-style transfer pricing documentation (or BEPS-compliant) is expected to be presented during a tax audit. In January 2016, the Czech Republic signed the Multilateral Competent Authority Agreement for automatic exchange of CbyC reports. The amendment to the International Cooperation in Tax Administration Act introducing the CbyC is expected to be in force by the end of September 2017 (currently waiting for a signature of the President). Based on the CbyC legislation, the notification with name of the reporting entity should be filed with the Czech Specialized Tax Authority by 31 October 2017.

Estonia	Regulation on CbyC reporting was implemented into legislation (entry into force 1 April 2017). The first CbyC reports are required for fiscal years starting 2016.
Finland	The Ministry of Finance released a draft bill for public comment that would amend Finnish transfer pricing documentation requirements and introduce CbyC reporting. The amended legislation would be in force as of 2017, but it already applies to 2016 and later tax years. Updated transfer pricing documentation requirements implemented as of 1 January 2017.
France	Creation of an abridged transfer pricing declaration/CbyC reporting obligation for banking and mining sectors. Local and master file reporting already required by French law. The abridged transfer pricing declaration and CbyC reporting obligation, initially applicable for the banking and mining sectors, have been extended to all companies (under certain conditions).
Germany	CbyC reporting and amendments to transfer pricing documentation implemented and in force.
Greece	Stricter documentation requirements apply from 2014. On 1 August 2017, Greek legislation was enacted implementing the EU Council Directive 2016/881, introducing the obligation on MNE Groups to file a Country by Country Report. The obligation applies for fiscal years commencing on or after 1 January 2016 and must be filed within 12 months of the last day of the reporting fiscal year of the MNE. The law covers the automatic exchange of CbC Reports between the member states of the EU. Additional legislation is anticipated in relation to the automatic exchange of CbyC Reports between OECD member states according to Action 13 of the OECD Action Plan.
Hungary	Hungary recently introduced CbyC reporting. Through the amendment that entered into force on 31 May 2017, the automatic exchange of information in CbyC reports is transposed into domestic law. The aim of the directive is to facilitate information exchange between tax authorities, thereby supporting transfer pricing audits and improving efficiency.
Iceland	Iceland signed the agreement to adopt the Common Reporting Standard in October 2014.
Ireland	CbyC reporting legislation and supporting regulations have been enacted, effective for accounting periods beginning on or after 1 January 2016.
Italy	Italy introduced CbyC reporting obligations in its tax law. Under an initial set of rules issued in February 2017, first filings for FY 2016 are due within 12 months of the end of the corporate year after an election is filed with the annual tax return.
Lithuania	CbyC reporting legislation was enacted in 2017, effective for fiscal years starting on or after 1 January 2016. The first CbyC reports are due by 31 December 2017.
Luxembourg	The law transposing the directive on CbyC reporting was issued on 23 December 2016.
Malta	CbyC reporting requirements were implemented for financial years starting on or after 1 January 2016, with the first reports due in 2017.
Netherlands	As of 1 January 2016, new rules on CbyC reporting and transfer pricing documentation have been introduced.
Norway	Norway has enacted CbyC reporting regulations. The rules generally align with the Action 13 report, although the threshold for preparing CbyC reports is 6.5 billion Norwegian kroner (NOK). The rules include master file, local file and CbyC reporting.
Poland	Extended transfer pricing reporting requirements entered into force as of 1 January 2017 (local and master file, obligatory benchmarking for taxpayers exceeding certain thresholds); CbyC reporting for largest taxpayers and groups introduced as of 1 January 2016.
Portugal	CbyC reporting requirements implemented.

Romania	On 9 June 2017, CbyC reporting requirements implemented in domestic legislation.
Russia	Draft law introducing CbyC reporting, master file and local file requirements in line with Action 13 is being considered and expected to be introduced in 2017 (report for 2016 is voluntary at a taxpayer's discretion). In 2016, Russia signed the multilateral agreement on CbyC reporting.
Slovakia	Broadened the scope of transfer pricing documentation and the circumstances in which it is required. Due to the implementation of EC directive on mandatory automatic exchange of information, final CbyC reporting legislation entered in force on 1 March 2017.
Spain	CbyC reporting requirements implemented.
Sweden	Sweden introduced legislation based on BEPS Action 13 with effect from 1 April 2017. CbyC reporting applies for multinational groups with revenues above 7 billion Swedish kroner (SEK) (about EUR750 million). In Sweden, the first year for CbyC reporting is financial years starting on or after 1 January 2016. Master and local files will cover financial years starting on or after 1 April 2017.
Switzerland	Switzerland signed the multilateral agreement on the exchange of CbyC reports, and the Swiss parliament accepted the federal act required for its implementation on 16 June 2017 (the referendum period lapses on 5 October 2017). The federal act closely follows the OECD's Action 13 proposals. The CbyC act is expected to enter into force by end of 2017, so Swiss companies will be required to file their CbyC reports for 2018 financial years in 2019 in order for the Swiss Federal Tax Administration to automatically exchange information with other countries in the first 6 months of 2020. Earlier CbyC report filings (and subsequent exchanges by the tax authorities) for 2016 and 2017 financial years can be done by Swiss ultimate parents on a voluntary basis.
Turkey	The Turkish Revenue Administration adopted all Action 13 items (including master file, local file and CbyC reporting), along with additional local requirements, in a draft communiqué published for public comment in March 2016. A draft Council of Ministers' decree was published in 2017 to amend the current decree regarding the documentation requirements. As of May 2017, the Council of Ministers' decree and communiqué have not been finalized. The first CbyC reports are required for the fiscal year starting on or after 1 January 2016 by the end of 31 December 2017. The first master files must be prepared for the 2017 period within 2 months of filing of the corporate income tax return (June for calendar-year accounting periods) and submitted on request of the Turkish Revenue Administration.
United Kingdom	Legislation is now in force to incorporate the Action 13 CbyC proposals into UK law, effective 1 January 2016. The UK is party to the automatic exchange of CbyC reports.
For weekly updates on how countries are responding to Action 13, please visit kpmg.com/action13updates.	

Action 14	**Make dispute resolution mechanisms more effective**
Cyprus	Cyprus has committed to apply the minimum standard under Action 14 for the MAP and for arbitration under Action 15.
Czech Republic	No immediate action announced. However, an EU directive on double tax dispute resolution mechanisms is being proposed on the EU level. As an EU member state, the Czech Republic would implement such rules if required by an EU directive within the required timeline.
Finland	Finland committed to the arbitration scheme under Article 23(1) of the Multilateral Instrument.

Germany	Germany has opted for binding arbitration based on the Part VI of the Multilateral Instrument.
Greece	MAP minimum standards were introduced by law in 2017 in line with Greece's tax treaties and the EU Arbitration Convention, including implementation instructions. Greece signed the Multilateral Instrument, but it must still be ratified domestically. Greece made notifications regarding its tax treaties with a time frame for requests less than 3 years, tax treaties with no MAP, and tax treaties not providing for implementation of agreements reached under MAP. Greece reserved to apply a 3-year period for mandatory binding arbitration, instead of the instrument's 2-year limitation period. Greece is one of seven countries that opted to apply the independent opinion approach, by not permitting arbitration where a court or administrative tribunal decision is issued before or during the arbitration process. Although the arbitration decision will bind both treaty counterparties, they may agree otherwise within 3 months from the arbitration decision.
Italy	In signing the Multilateral Instrument, Italy adopted the mandatory binding arbitration procedure (Articles 18 and 19).
Ireland	Confirmed adherence to MAP minimum standard in October 2015, and formalized APA procedures in June 2016. Ireland has stated its intention to adopt mandatory binding arbitration in its tax treaties under the Multilateral Instrument and is open to the type of arbitration that is used.
Luxembourg	Following the Economic and Financial Affairs Council agreement reached on 23 May 2017 on the proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the EU, Luxembourg is expected to transpose the directive before 30 June 2019. Regarding the Multilateral Instrument, Luxembourg decided to apply, in its covered tax agreements, the minimum standards for making dispute resolution mechanisms more effective and opted for mandatory binding arbitration.
Norway	The clauses on improving dispute resolution in the Multilateral Instrument will generally apply for Norway.
Romania	Romania signed the Multilateral Instrument on 7 June 2017, implementing two of the four minimum standards to prevent BEPS, as set out by the OECD, with the additional aim of improving dispute resolution mechanisms.
Sweden	On 7 June 2017, Sweden signed the Multilateral Instrument reserving, among other things, the right to change the instrument's period for referring disputes to the arbitration panel to 3 years (instead of 2 years, see Article 19).
Switzerland	See commentary under Action 15 below.
United Kingdom	Through the Multilateral Instrument, the UK intends to implement the proposed 'baseball arbitration' provisions.

Action 15 — Develop a Multilateral Instrument

Austria	Austria is a member of the ad hoc group formed to develop a Multilateral Instrument for the amendment of tax treaties and has signed the Multilateral Instrument. Nevertheless, several reservations have been expressed (e.g. regarding artificial avoidance of PEs through commissionaire arrangements and similar strategies — see Action 7).

Bulgaria	Bulgaria is a member of the ad hoc group that developed the Multilateral Instrument and signed it on 7 June 2017.
Cyprus	Cyprus signed the Multilateral Instrument on 7 June 2017.
Estonia	Estonia has expressed intent to sign the Multilateral Instrument.
Finland	Finland signed the Multilateral Instrument and accepted the minimum standards.
Germany	Germany signed the Multilateral Instrument on 7 June 2017 and listed 35 of its tax treaties as covered tax agreements.
Greece	Greece is a member of the ad hoc group and signed the adoption of the MLI on 7 June 2017, obliging it to incorporate the minimum standard provisions suggested by the BEPS package for the combat of treaty abuse and improvement of efficiency of cross-border dispute resolution. Greece notified its intention to apply the MLI provisions to all DTTs concluded with other OECD member states while, it held a series of reservations and notifications. Ratification in domestic legislation pending.
Hungary	Hungary signed the Multilateral Instrument on 7 June 2017.
Ireland	Ireland is a member of the ad hoc group and was one of the signatories of the instrument at the 7 June 2017 signing ceremony.
Italy	Italy is a member of the ad hoc group and signed the Multilateral Instrument on 7 June 2017; the instrument covers 84 of Italy's 94 tax treaties.
Lithuania	Lithuania signed the Multilateral Instrument.
Luxembourg	Luxembourg signed the Multilateral Instrument on 7 June 2017.
Malta	Malta signed the Multilateral Instrument and will apply it to most of its treaties, except for certain reservations indicated on signing.
Netherlands	The Netherlands signed the Multilateral Instrument on 7 June 2017, taking an expansive approach and opting in to many of its provisions.
Norway	Norway has signed the Multilateral Instrument and has made public its positions under the agreement. Norway is also represented on the steering group for the inclusive framework on BEPS.
Poland	The MLI was signed on 7 June 2017.
Portugal	Portugal has signed the Multilateral Instrument to implement the anti-BEPS measures for all of its tax treaties currently in force.
Romania	Romania signed the Multilateral Instrument on 7 June 2017.
Russia	Russia signed the Multilateral Instrument, opting to choose the simplified limitation on benefits clause but rejecting mandatory arbitration.
Sweden	Sweden is a member of the ad hoc group and signed the Multilateral Instrument on 7 June 2017. Sweden made reservations to numerous articles (see Action 2, 6, 7 and 14 for some of the reservations).

Switzerland	Switzerland signed the Multilateral Instrument but has announced that it would only include 14 tax treaties as covered tax agreements, namely, the Swiss treaties with Argentina, Chile, India, Iceland, Italy, Liechtenstein, Lithuania, Luxembourg, Austria, Poland, Portugal, South Africa, Czech Republic and Turkey. Together with Switzerland, these partner states have agreed to negotiate precise wording for amending their existing treaties through the instrument. If agreements on the technical implementation of the instrument can be obtained with other treaty partners, the corresponding treaties would be amended at a later stage. Switzerland focuses primarily on implementing the BEPS minimum standards, which could alternatively be agreed on via bilateral treaty amendments. This implies that Switzerland has reserved the right not to apply the Multilateral Instrument's provisions on matters that go beyond the minimum standards. These include the standards for transparent and dual resident entities (Articles 3 and 4 respectively), anti-abuse rules for PEs situated in third jurisdictions (Article 10), and the artificial avoidance of PE status through commissionaire arrangements (Article 12). On treaty abuse, Switzerland opted for the principal purpose test and inclusion of the instrument's mandatory binding arbitration clause. The Federal Council is expected to publish and submit the Multilateral Instrument for public consultation before the end of 2017. The instrument will then undergo the standard parliamentary approval process before entering into force. Should it pass successfully, the Multilateral Instrument would enter into force by 1 January 2019 at the earliest.
Turkey	Turkey is a member of the ad hoc group. As an OECD member, Turkey signed the Multilateral Instrument on 7 June 2017, listing 90 covered tax agreements and declaring it would be applicable to other states as long as Turkey maintains diplomatic relations with them. Turkey also made reservations to some of the instrument's articles. The ratification process in Turkey is expected to start during 2017. If ratification by Turkey occurs during 2018, the instrument's provisions can enter into force for matching covered tax agreements as of 1 January 2019.
United Kingdom	On 7 June 2017, the UK signed the Multilateral Instrument, which applies to 119 covered tax agreements.

Source: KPMG International, 2017.

Note: This publication highlights the most significant BEPS-related developments in Europe. Legislation relating to BEPS is continually evolving, and we expect continued developments throughout the region. Please visit kpmg.com/beps often for more information and the latest on BEPS developments from around the world.

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