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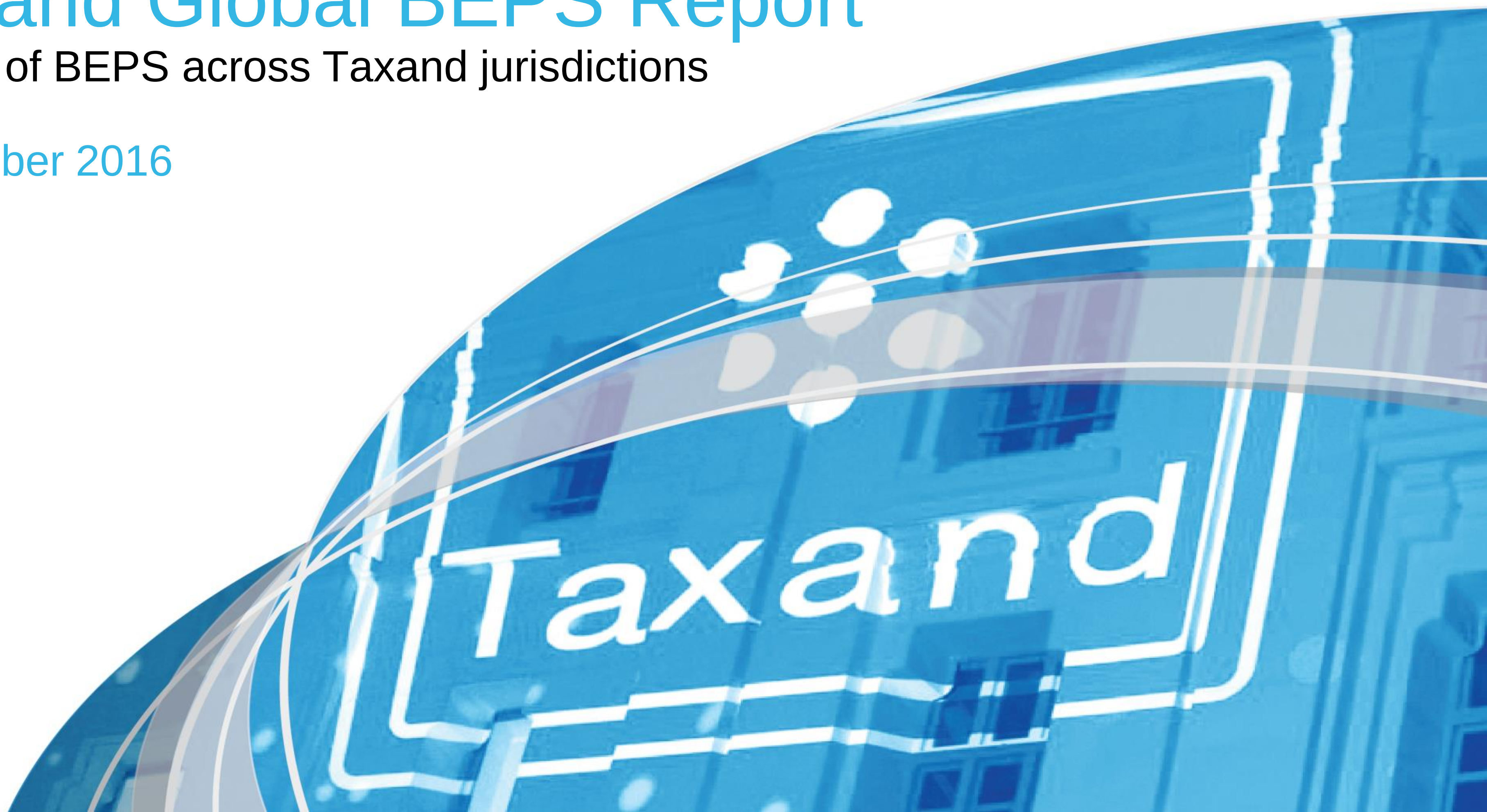
Taxand Global BEPS Report

Impact of BEPS across Taxand jurisdictions

December 2016



Contents

Objective

- The objective of this deck is to provide a summary of the impact to date of the OECD's BEPS project on local legislation and audits / tax enquiries.

- This deck is produced as a snapshot of current views in relation to BEPS, and will be updated as impending BEPS deliverables are received and implemented globally.

Executive summary

Country:	Argentina	Austria	Belgium
Legislative changes?	Treaties to avoid double taxation, signed during 2015, with Chile and Mexico (both still undergoing internal ratification procedures prior to their enforcement) have adopted several BEPS matters (including Limitation on Benefits ("LOB") provisions as well as "Principal Purpose Test", and additional considerations regarding the existence of a "permanent establishment"). No other specific legislative changes have been made or proposed based on BEPS, although an amendment to the Argentine income tax law regarding the transfer pricing ("TP") method generally applicable to commodity exports that use an international trader (the so-called "sixth method") is expected in the upcoming months. Certain matters addressed by BEPS are already regulated by Argentine tax law and/or case law (substance requirements, thin capitalization rules, restrictions to interest deductions, among others).	Austria is amending its TP guidelines to more closely align with BEPS recommendations. Further, Austria previously implemented a provision in 2011 to avoid double taxation on hybrid mismatches.	The Belgian Parliament has enacted a series of new rules on TP documentation, which will have a substantial impact on the substance and format of TP documentation (Program Law of July 1, 2016 and published in the Belgian Official Gazette of July 4, 2016).
Impact on audit/tax enquiry?	As of now, there is no specific impact on audits in light of BEPS. However, prior to the BEPS initiative, Argentine tax authorities have started to harden their position regarding the abuse of Double Taxation Treaties ("DTTS"), intra group services, cost sharing agreements, and intangibles.	Austria's tax authorities are already applying BEPS recommendations during audits. Additionally, hybrid capital instruments and substance issues are given increased scrutiny.	The frequency of transfer pricing audits has increased significantly over the last few years.
Country-by-country reporting?	No commitment yet to introduce country-by-country reporting ("CbCR") .	Starting in 2016 , a three-tiered standardized approach to transfer pricing documentation, including Master File, Local File and CbCR, is obligatory in Austria.	The new TP documentation rules also introduce a CbCR requirement which is compliant with OECD guidelines and EU legislation.
Interest deductibility?	No modification to interest deductibility regulations. Some pre-BEPS restrictions to interest deductions are still in force (such as thin capitalization rules, among others). Recently signed treaties to avoid double taxation (Spain, Switzerland, Chile and Mexico) expressly provide that their provisions do not preclude the application of thin capitalization rules existing under domestic legislations. As mentioned above, the treaties with Chile and Mexico have not yet been ratified.	General rules limiting the deductibility of interest have been discussed but were not adopted. Interest payments and license fees paid by an Austrian taxpayer to a foreign entity may be non-deductible if they meet certain criteria.	The Minister of Finance has stated that the existing Belgian thin cap rules are not far reaching enough, but that Belgium is awaiting the finalization of the EU Tax Avoidance Directive before introducing any new measures.
Taxand's Take	Argentina is rapidly shifting towards an alignment with OECD countries in international tax matters. Despite that, few amendments to the existing legislation have been proposed. Tax authorities have an increased focus on cross-border activities with their audits based, many times, on BEPS directives. Clients should assess transfer pricing policies, corporate investment structures and cross border operations to ensure compliance with current views of the Argentine tax authorities.	Clients should check their structures with respect to hybrid financing, CFC rules, limitations regarding the deductibility of interest as well as the newly increased substance requirements. Furthermore, proper transfer pricing documentation, in line with the Austrian statutory requirements, needs to be available upon request.	Belgian resident and non-resident corporate taxpayers need to consider the new requirements and take the necessary steps to comply with them.

Executive summary

Country:	Brazil	Canada	Chile
Legislative changes?	A bill that was designed to align with the BEPS action plan (particularly Action plan 12 – mandatory disclosure rule) was rejected by the Brazilian congress. No other legislative changes have been proposed.	New legislation has been proposed to adopt certain recommendations from the BEPS initiative, including: (i) TP, (ii) exchange of information and (iii) multilateral instrument introduction. The MLI was released by the OECD on November 24, 2016, and Canada is still considering the approach it will take on the MLI.	Chile has recently approved a tax reform program which makes changes to align with the BEPS initiative. These changes affect Controlled Foreign Corporation ("CFC") rules, general anti-avoidance rules, thin capitalization rules, transfer pricing rules, and disclosure of bank secrecy.
Impact on audit/tax enquiry?	Over the years, the Brazil tax authorities have already implemented rules that are coherent with the BEPS initiative. Because of this tax authorities are already vigilant in their audits.	It has been confirmed that the Canada Revenue Agency (CRA) is applying the revisions to the OECD TP Guidelines that arose as a consequence of the BEPS initiative.	The Chilean IRS is requiring taxpayers to update their accounting systems to new technical standards. This would allow Chile to audit taxpayers' online systems after giving them notice.
Country-by-country reporting?	Tax authorities have recently initiated a public consultation on new rules regarding CbCR. Such reporting is expected to be in force by the end of 2016 and the first filing will comprise 2016 transactions. Therefore, we believe that a CbCR will be implemented in the short-term.	New legislation has been proposed to adopt CbCR requirements.	The Multilateral Competent Authority Agreement was signed recently, that calls for exchange of CbCR. Additionally, taxpayers will need to inform the Chilean IRS if they participated in an international transaction that potentially produced tax savings.
Interest deductibility?	There was no direct reaction to Action Plan 4 as the local legislation already addresses its main points.	No official position has been stated thus far.	Interest paid abroad will be subject to thin cap rules, as well as financial commissions and any other surcharge paid to a foreign creditor. Additionally, the concept of excess of indebtedness was expanded to include local and foreign loans granted by either related or non - related entities.
Taxand's Take	We recommend that our clients take into consideration any consequences and risks in their tax planning with special attention given to aspects of the BEPS plan that is already in place for Brazil.	Taxpayers should review existing cross-border structures from both a TP perspective and a treaty shopping perspective as Canada has endorsed, and will codify, the TP related initiatives under BEPS, as well as some form of the BEPS treaty shopping recommendations.	We recommend that clients review and asses all transactions to see if they comply with Chilean tax reform and substance rules. Also, we advise that clients remain informed of any additional affidavits that may be issued due to the tax reform.

Executive summary

Country:	China	Colombia	Cyprus
Legislative changes?	On June 29, 2016 the State Administration of Taxation (SAT) issued new regulations, Public Notice No.42, to improve the reporting of related party transactions and contemporaneous documentation. These requirements and rules follow the BEPS initiative.	No legislative changes have been introduced with regard to the BEPS action plan. However, a tax reform bill will be introduced to Congress soon that may contain features in line with BEPS action plan. This bill has not been made public yet.	There have been some legislative changes in place for BEPS Action Plans 2 and 5. Concerning Action Plans 8, 9, 10, and 12, it is perceived that these plans would affect countries of higher tax rates and Cyprus may not need to introduce new regulations on these plans.
Impact on audit/tax enquiry?	Chinese officials are not yet separating audits relating to BEPS issues from standard audits. However, when TP enquiries are made, it is likely that there will be reference to BEPS.	BEPS is not currently impacting audits in Colombia.	The tax enquiries and audits in Cyprus have been increasingly focused on substance, specifically whether companies are tax residents in Cyprus and if they have a physical presence in the country.
Country-by-country reporting?	CbCR will be required if taxpayers meet one of the following conditions under the Public Notice No.42: (i) the taxpayer is the ultimate holding entity in the group and its group consolidated revenues in the previous fiscal year exceeds RMB 5.5 billion (approximately $814 million USD) or (ii) the ultimate holding entity of the taxpayer is outside P.R.C, but the taxpayer is assigned by the group as the reporting entity for the CbCR form.	CbCR has not been introduced or proposed in Colombia.	A number of meetings were held at the Cyprus Ministry of Finance in order to discuss the implementation of CbCR. It is expected that the introduction of TP rules inclusive of TP documentation is a development which will be duly materializing in Cyprus. Cyprus is one of the 55 Jurisdictions who opted for early adoption of the common CbCR in 2017.
Interest deductibility?	Special Issue File is required for taxpayers falling under the thin capitalization requirement under the Public Notice No.42.	There is no official reaction to Action 4 but Congress has approved a thin capitalization rule that applies to international and local indebtedness for corporations whether it is from related parties or not.	No legislation regarding interest deductibility is expected in Cyprus.
Taxand's Take	Clients should be aware of the new requirements of Public Notice No. 42 and start the TP documentation in advance of a potential audit.	Clients are advised to continue to monitor the BEPS progress in Colombia although no changes have been made yet.	We suggest that clients obtain opinions as to which issues are applicable to their organization and to improve their substance position so that they can better defend their structures, and potentially reorganize their structures if necessary.

Executive summary

Country:	Denmark	Finland	France
Legislative changes?	On May 1, 2015 a new international anti-abuse tax rule (GAAR), incorporated into section 3 of the Danish Tax Assessment Act (ligningsloven), became effective. The intended purpose of the new GAAR was to implement the expected outcome of BEPS Action Point 6.	There are no ongoing legislative initiatives or projects with respect to the OECD's BEPS project apart from proposals for revised documentation rules.	CbCR was introduced into French legislation by the 2016 Finance Bill and a decree stating the content of the French CbCR form has been recently released. No significant legislative changes are expected in the 2017 Finance Bill due to presidential election in the Spring of 2017.
Impact on audit/tax enquiry?	In the newly published plan, the Danish tax authorities list the BEPS project as a specific area of interest. As such, the Danish tax authorities will focus specifically on determining within which areas of existing Danish legislation the findings and recommendations of the BEPS project can be incorporated.	Revised chapters to the OECD Guidelines would be retrospectively applicable. However, according to the recent ruling from the Supreme Administrative Court, "non-recognition" of transactions would require the application of the general anti-avoidance rule provided in the Article 28 of the Tax Assessment Act.	The French Tax Authorities expect to improve their tax audit targeting. The French government identified and published 23 tax schemes that may be presumed by Tax Authorities to be abusive.
Country-by-country reporting?	A new provision relating to CbCR was introduced by the Danish Tax Ministry on November 10, 2015 and was incorporated into section 3B of the Danish Tax Management Act effective as of January 1, 2016.	A Government Proposal on new documentation rules that follow the BEPS guidance was issued September 15, 2016 and are planned to take effect starting in 2017.	The law introduced is in line with the Action 13 deliverables. The first CbCR filing will relate to FY 2016 and will have to be transmitted within a 12-month delay following the company's fiscal year end.
Interest deductibility?	Denmark already has rules on interest deductibility. Thus far, no new rules regarding BEPS Action Point 4 have been proposed.	In 2014, Finland introduced regulation which limits the deductibility of related party interest expenses in business taxation. There are no initiatives to extend the legislation to include interest deductions between unrelated parties, as suggested in the BEPS proposal.	Limitation rules for the deductibility of interest expense were enacted in 2014.
Taxand's Take	We advise clients to be ready for intense scrutiny by the Danish tax authorities regarding TP and withholding tax on dividends.	Even though Finland has not yet implemented new legislation in relation to the BEPS project's action plan, it is expected that Finland would follow other European countries with the initiatives. Therefore, we would recommend our clients closely monitor the initiatives and prepare TP structures and pricing of intra-group transactions to comply with the BEPS proposals.	Companies should prepare an audit and defence file and gather evidence demonstrating substance, especially for entities in low-tax jurisdictions. Companies should also remain as transparent and co-operative as possible.

Executive summary

Country:	Germany	Greece	India
Legislative changes?	The German legislator published a draft law to implement some of the OECD proposals on the BEPS project. The draft law implements the new TP documentation requirements as well as CbCR. Furthermore, this draft law provides a legal basis for the exchange of tax rulings.	Greece has already implemented changes that reflect BEPS Action Plans 3, 4, and 8. These changes address CFCs, thin capitalization, and TP rules.	Legislative proposals were introduced for an Equalization Levy, CbCR and a Patent Box tax regime. An agreement was reached with the U.S. for implementation of FATCA and the enactment of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015.
Impact on audit/tax enquiry?	Companies are now audited much more frequently. Tax audits have increasingly become focused on TP and on whether permanent establishments ("PEs") are being created.	Greek tax authorities have put more emphasis on reviewing cross border transactions that taxpayers have made, particularly focusing on TP and PE rules.	The BEPS action plan is starting to influence tax audits, especially at the early stages. Tax authorities may not, however, accept existing OECD interpretation of treaties, specifically in tax avoidance cases.
Country-by-country reporting?	The legislator plans to implement CbCR, in Sec. 138a General Tax Code, in line with the OECD requirements. The first report has to be prepared for 2016 and transmitted to the Federal Central Tax Office.	Greece has not yet implemented CbCR but has signed the Multilateral Competent Authority Agreement that obligates them to introduce it for tax years 2016 and onward.	CbCR has been introduced and is to be effective from financial year 2016-2017.
Interest deductibility?	As of 2008, interest expenses exceeding interest income (net interest expense) are deductible up to 30 percent of the EBITDA. Additionally, a new rule is planned to prevent double deduction of operating expenses with regards to tax transparent entities.	According to the earnings stripping rule, the net deductible interest of Greek companies was limited to 30% of EBITDA and only applies if net interest expense exceeds 3 Million Euros ($3.33 million USD).	The reaction to the BEPS initiatives regarding interest deductibility is expected to be part of the GAAR, which will be implemented in 2017.
Taxand's Take	Clients are advised to seek detailed advice with regard to the increasing importance of TP documentation. Additionally, the creation of PEs should be avoided by means of contractual arrangements.	We recommend our clients review their current level of substance given Greek tax authorities' emphasis on substance over form.	Clients should keep up to date with the changes that are being proposed and be prepared for increased compliance requirements and enhanced enquiries in future.

Executive summary

Country:	Indonesia	Ireland	Italy
Legislative changes?	The Indonesian Tax Office ("ITO") is preparing several new regulations and amendments that will adopt the BEPS Action Plan, including the application of the arm's length principle (BEPS Action Plan No. 8, 9 and 10); TP Documentation (BEPS Action No. 13 regarding CbCR); and amendments to the MAP and APA process (BEPS Action Plan No. 14 regarding Dispute Resolution).	Recently, Ireland has amended securitisation legislation to eliminate double non-taxation and strengthened GAAR rules. This is not a direct result of BEPS, but this follows the logic of BEPS. Further, Ireland has introduced CbCR legislation.	CbCR has been introduced by the Italian 2016 Budget Law. Italy has already implemented both hybrid mismatch anti-abuse legislation and CFC regulation. The concept of abuse of law was introduced in Italian legislation in 2015.
Impact on audit/tax enquiry?	BEPS has impacted tax auditors' method of performing a TP Audit, especially in relation to intangibles, such as the contribution of the company to development, enhancement, maintenance, protection and exploitation of an intangible.	Audits have been influenced by BEPS, focusing increasingly on substance. TP specific audits now occur as TP becomes a key focus of legislation. Companies are also asked to self-audit prior to a formal authority audit.	Increasingly, tax authorities target large Multinational Corporations ("MNCs") with tax inspectors that are trained in various tax areas including TP issues. The tax authorities also hope to challenge hidden PEs.
Country-by-country reporting?	The ITO is still in the process of preparing new regulation on TP Documentation, which will adopt BEPS Action Plan No. 13 regarding CbCR.	CbCR has been introduced for Multinational Enterprise ("MNE") Groups for accounting periods commencing on or after January 1, 2016.	The Italian 2016 Budget Law introduced CbCR. The regulations are, to a great extent, in line with the BEPS Action 13 deliverable.
Interest deductibility?	In 2015, the Minister of Finance issued Regulation Number 169/PMK.010/2015 regarding the Debt to Equity Ratio. Under this regulation, the acceptable Debt to Equity Ratio is 4:1 and it shall apply to all industries with certain exceptions.	There has been no government reaction to the Action 4 discussion draft released to date.	The Italian tax legislation regarding interest deductibility was modified in 2007 where a 30% EBITDA passive interest limitation was introduced.
Taxand's Take	We recommend clients review and arrange related party transactions commercially with reliable supporting evidence from third party comparables.	Clients are advised to review activities to ensure sufficient substance exists within Ireland, justifying the nature and terms of the TP arrangements in place.	Clients should evaluate the level of "tax aggression" in any tax planning. Clients should carefully analyze their position to avoid criminal penalties and subsequent reputational damage.

Executive summary

Country:	Japan	Korea	Luxembourg
Legislative changes?	In an effort to reflect BEPS Action 13, the Japanese Government has introduced a reporting system based on the three-tiered approach introduced in the 2016 tax reform.	In an effort to reflect the BEPS Action plan, the Korean Government has amended the relevant tax regulations including the Adjustment of International Taxes Act,("AITA"), which is in line with OECD guidelines.	Increased exchange of information requirements now exist between taxpayers and the tax authority (FATCA now in force and CRS implemented). Exchange of information on tax rulings has also been implemented. Hybrid Instrument exemptions may now be challenged following the implementation of the amended EU Parent-Subsidiary Directive.
Impact on audit/tax enquiry?	It is expected that tax authorities and taxpayers will come to a consensus regarding taxation. This could be achieved by balancing improved quality of the information submitted to the tax authorities and a reduction of the burden of fulfilling the corporate compliance requirements by the taxpayers through improvements in TP documentation.	The amendments require MNCs to submit international consolidated reports reflecting the corporate activity and transaction flow.	Audits are now less problematic in Luxembourg due to open disclosure to tax authorities. However, increasingly more TP documentation is required in audits.
Country-by-country reporting?	CbCR by certain designated MNC groups has been adopted by the tax reform. (OECD XML SCHEMA is planned to be used).	A taxpayer engaged in an international transaction with a foreign related party must file the international transaction schedule with the competent tax authority within three months from the last day of the month in which the fiscal year end falls.	Luxembourg has started implementing the EU Directive on CbCR.
Interest deductibility?	Japanese tax law contains thin capitalization and earning stripping rules. There are no proposals to make amendments to these rules.	The thin capitalization rule is applicable to any borrowing from a "foreign controlling shareholder" by a domestic corporation.	So far, no action has been taken and nothing has been announced with regards to interest deductibility. However, Luxembourg will have to implement the EU Anti-Tax-Avoidance Directive which includes limitations on interest deduction which need to be implemented by January 1, 2024 at the latest.
Taxand's Take	Tax planning should provide enough support so that a challenged transaction can be proved to be sustainable and legitimate during an initial stage of audit.	In order to be compliant with the statutory requirements for filing the international transaction schedule and international transaction integrated report, the subject company should prepare the relevant data and documentation in advance.	Clients should thoroughly review, before implementing, any structure involving hybrid instruments as their use will be restricted. Attention should be paid to the appropriate level of substance.

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Executive summary

Country:	Malaysia	Malta	Mexico
Legislative changes?	The Malaysian Inland Revenue Board ("IRB") is preparing new regulations and amendments to existing rules that will adopt the BEPS Action Plan No. 13 regarding CbCR.	The Maltese authorities have indicated that companies incorporated in Malta may have to comply with additional requirements on substance (or value creation) to have physical and operational / effective presence in Malta. So far changes have already been introduced with respect to the automatic exchange of information and CbCR.	Regarding Action 12, Mexico has implemented a disclosure return that has to be filed several times during the year in which taxpayers must disclose a number of listed transactions that are considered "relevant", which will provide additional information of tax planning being carried out by taxpayers.
Impact on audit/tax enquiry?	Malaysian tax authorities are not yet focusing on audits relating to BEPS issues but normal TP audits are on the rise.	The Maltese tax authorities are increasingly focusing on TP issues and to a larger extent on substance, especially before issuing tax residence certificates.	Tax audits are beginning to be more substantive than formal and therefore requests for information are more and more detailed for authorities to analyze the economics of the payments rather than the formalities.
Country-by-country reporting?	The IRB is still in the process of preparing new guidelines on TP Documentation, which will adopt BEPS Action Plan No. 13 regarding CbCR. CbCR is expected to come into effect on January 1, 2017.	Malta has implemented / adopted the EU Directive on CbCR.	CbCR disclosure return, for Mexican multinationals with consolidated revenue that exceeds approximately US $615 million, will be required.
Interest deductibility?	Malaysia has rules in place to limit the deductibility of interest. However, these rules are only expected to take effect on January 1, 2018.	Malta does not have debt to equity ratios or thin capitalization rules which may limit the deductibility of interest payments and there are no official plans as of now to introduce any rules or amend the provisions regarding the deductibility of interest payments. However, should the EU Draft Anti-Tax-Avoidance Directive be adopted in its current form, Malta would have to implement such measures.	Mexico has included restrictions for deduction of interest payments to non-Mexican related parties when such interest is received by a transparent entity, when the payment is considered "non-existent" for tax purposes by the recipient, or the recipient does not consider such income as taxable according to the laws of its country of residence.
Taxand's Take	Clients should keep up to date with changes being proposed and be prepared for increased compliance requirements in the near future. Clients should revisit existing structures and ensure that profits are taxed where the real activities occur.	We strongly recommend clients to review and assess their current structure and issues related to substance, commercial considerations, and value creation to ensure that they are in line with the recommendations / requirements.	Clients should adequately document related party transactions to avoid penalties and rejection of deductions. Clients should also analyze the international impact of payments to assess if changes in supply chain are necessary.

Executive summary

Country:	Netherlands	Norway	Philippines
Legislative changes?	CbCR requirements entered into force as of January 2016. A legislative proposal has been published to bring the Dutch innovation box regime in line with BEPS Action Plan 5. New governmental agreements and legislative proposals on automatic or spontaneous exchange of information and tax rulings were published. Hybrid structures (Action Plan 2), CFC-regulations (Action Plan 3) or interest deduction (Action Plan 4) are covered in the EU Anti-Tax Avoidance Directive and should be implemented accordingly (no legislative proposal yet). Minimum substance requirements were published.	Norway has already implemented FATCA, CRS, CFC-rules (including with black and white lists), interest limitation rules, OECD TP guidelines and OECD TP documentation rules. It is proposed to implement CbCR, TP documentation (in accordance with BEPS Actions No. 8-10) and to enact a new written GAAR (currently case law).	There are no legislative proposals at the moment in relation to BEPS. The Philippines has not committed to anything that has come out of the BEPS process.
Impact on audit/tax enquiry?	Tax authorities now discuss BEPS in any audit to pressure taxpayers into compliance.	BEPS will likely have implications in terms of increased control, especially in relation to intangible assets and TP documentation. It should also be expected that tax audits will focus on MNCs and assumed aggressive tax planning.	At this time, the BEPS initiative has no visible impact on tax audits in the Philippines. However, the authorities recently strengthened and expanded their TP audit team with the recruitment of a number of experienced professionals.
Country-by-country reporting?	CbCR was introduced on January 1, 2016. The deadline to notify the Dutch tax authority regarding the identity of the filing group company is extended to September 1, 2017.	Norway has proposed that with effect for income years starting January 1, 2016, Norwegian multinationals with consolidated revenues exceeding BNOK 6.5 ($793 million USD) must comply with CbCR. The reporting time limit is Dec.31 the year after the income year (i.e. for 2016 the filing time limit is Dec. 31, 2017). The proposal to a large degree follows recommendations from the BEPS project. Norwegian subsidiaries of foreign multinationals and Norwegian PE are also required in the CbCR.	There are no proposals to introduce CbCR at the moment, although the Philippine Bureau of Internal Revenue ("BIR") has been monitoring all the BEPS developments, including Action 13, very carefully.
Interest deductibility?	No legislative proposal for interest deduction has been published. Earnings stripping rules should be implemented (in principle as of January 1, 2019) based on the EU Anti-Tax Avoidance Directive.	Interest limitation rules are already imposed in the form of an EBITDA rule. Moreover, the Government has stated that additional restrictions on the deductibility of interest will be imposed and that the rules likely will apply also to loans granted by unrelated lenders, in which case a Group exception may be introduced in line with the rules proposed within the EU.	There are no current proposals to introduce interest deductibility amendments.
Taxand's Take	Clients should critically review existing structures to assess whether action is required to mitigate risk and prepare for possible legislation in the future.	We advise clients to seek detailed advice with regard to their TP policies and to make sure the increased documentation requirements are met. We also recommend that clients prepare for new interest limitation rules and CbCR, if applicable.	We recommend that Philippine taxpayers ensure that they have robust and relevant TP documentation, preferably from taxable year 2013 and onwards to address any challenges from the tax authorities.

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Executive summary

Country:	Poland	Portugal	Romania
Legislative changes?	The following changes have been made or proposed: (i) CFC rules (in place), (ii) CbCR rules (in place), (iii) TP documentation rules (in force from 2017) , (iv) TP guidelines on low-value adding services (in place), (v) Limitation on deductibility of interests (in place), and (vi) Changes in tax treatment of hybrid mismatch arrangements (in the legislative process).	Portugal has implemented in the past few years several measures such as: an anti-hybrid clause for inbound dividends, interest barrier rules, GAAR complemented with SAARs, reinforcing of CFC and disclosure rules that may be BEPS aligned. Budget Law for 2016 includes CbCR and authorization to adjust the patent box to nexus principle.	Romania's accession as an associate to the BEPS Implementation Forum has been approved by the Romanian Government (following an official invitation from OECD Centre for Tax Policy and Administration) via a Memorandum signed in early June 2016, thus enabling Romania's participation in the implementation of BEPS measures.
Impact on audit/tax enquiry?	The tax administration is more focused on TP issues than in the past, specifically by challenging the arm's length character and the business substance of various transactions. Tax audits also focus on large MNCs and are identifying harmful tax schemes that could be used by taxpayers.	The BEPS initiative has not yet specifically affected tax audits. However, we do see transfer pricing issues, restructuring operations, and interest deductibility issues are under increased scrutiny within tax inspections.	The number of tax audits increased following the BEPS initiative with a focus on TP; several audits have already completed with significant TP adjustments. We expect that the number of tax audits (focusing on TP) will increase in the future periods.
Country-by-country reporting?	CbCR obligations introduced by the amendment to the corporate income tax bill are in force as of January 1, 2016.	CbCR implementation in 2016 is in line with the Action 13 deliverables with enforcement of the CbCR by the end of 2017 at the latest.	No CbCR requirements were implemented or have been introduced into local legislation yet.
Interest deductibility?	The more strict thin cap regulations were recently introduced, lowering thin cap ratio from 3:1 to 1:1 Debt to Equity. Thin cap rules were also extended to indirectly related parties owning at least 25% of the share capital. An alternative method based on assets has also been introduced.	Since 2013, interest expenses exceeding interest income (net interest expense) above €1m are only deductible up to 30 percent of EBITDA. No further rules expected.	No special measures regarding interest deductibility have been introduced into local legislation following completion of BEPS.
Taxand's Take	Clients should review their transfer pricing policies and existing tax structures and see if there is any action required to mitigate the tax risk since tax audits will be more frequent and thorough in challenging structures with no business substance.	Critically review existing structures and critical areas of risk such as transfer pricing, permanent establishment, intra-group financing to determine whether action is required to mitigate risk and prepare for possible BEPS oriented measures or audits.	We recommend clients carefully review their current TP policies and tax structures to ensure that appropriate substance is given to transactions.

Executive summary

Country:	Russia	Singapore	South Africa
Legislative changes?	New legislation has been enacted effective 2015, including new CFC rules, residency criteria, and the definition of beneficial ownership with regards to double tax treaties.	Singapore supports the key principle underlying the BEPS project, i.e. profits should be taxed where the real economic activities generating the profits are performed and where value is created. In October 2016, the Singapore tax authority has published a CbCR guide providing guidelines on the obligations, the format of CbCRs and how the reports are to be submitted to the tax authority, with the first CbCR expected to be due by December 31, 2018. Legislative changes are expected.	South Africa has published draft legislation in response to the implementation of the Action Plan 13. This Public Notice, which sets out the additional record-keeping requirements for "potentially affected transactions" (cross border related party transactions), was published on July 28, 2016. Regulations to implement the CbCR were published on April 11, 2016.
Impact on audit/tax enquiry?	BEPS initiative has not yet affected tax audits. However, the adoption of CFC rules is triggering tax restructurings for some Russian groups.	There is a continued focus on the deductibility of expenses.	The South African Revenue Service's ("SARS") enforcement processes are in line with the action points under the BEPS Action Plan. In particular, SARS has increased its focus on cross-border transactions, with particular attention being paid to TP, CFCs and leveraged funding arrangements.
Country-by-country reporting?	Russia is not proposing to introduce CbCR.	Based on the published guidelines, Singapore will implement CbCR for Singapore MNE groups from FY2017 onwards where the consolidated group revenue is at least S$1,125 million (approx. $791 million USD); and the Singapore MNE group has subsidiaries and operations in at least one foreign jurisdiction.	South Africa will introduce CbCR for financial year ends commencing on or after January 1, 2016 and the first CbCRs will be required to be filed with SARS from December 31, 2017. The CbCR threshold of ZAR10bn ($744 million USD) is lower than the OECD recommended threshold, but the information required does not go beyond what the OECD guidance recommends. CbCR filings and notifications must be completed no later than 12 months after the last day of the MNE Group's tax year. This aligns with deadlines for annual tax returns.
Interest deductibility?	Draft law has increased the sphere of application of the thin capitalisation rules, specifically to include loans made from sister companies. However, the Draft has not been adopted yet.	The Singapore tax authority has issued an updated set of guidelines on January 4, 2016 concerning transfer pricing setting out how arm's length interest is to be determined or approximated.	The tax review committee, appointed to make recommendations for possible tax reforms in South Africa, has not yet released any comments relating to the 2015 BEPS Action Plan deliverables, including Action Plan 4. Notwithstanding the above, effective January 1, 2015, South Africa introduced legislation which limits the amount of the interest deduction claimed on loans from a non-resident lender that is in a "controlling relationship" with the borrower where the interest amount is not subject to South African tax in the hands of the non-resident lender.
Taxand's Take	Clients should review group structure, identify companies which may be recognised as CFCs under the new criteria, and notify the tax office of any identified CFCs. Residency should also be examined under the new criteria.	New transfer pricing guidelines issued by the tax authority indicate that the prevention of price distortion is still in focus; at the same time, tax authorities are cognizant of taxpayers' concern with compliance costs and has clarified situations in which transfer pricing documentation is not required.	Taxpayers should carefully consider their long-term tax strategies and decisions regarding tax planning to ensure that they are sufficiently resilient to withstand scrutiny in a country with increased socio-economic sensitivity. It is also important to ensure that all business structures and restructures have commercial substance.

Executive summary

Country:	Spain	Sweden	Switzerland
Legislative changes?	The Corporate Income Tax Law ("CITL") and the Corporate Income Tax Regulation ("CITR") have developed several actions proposed by the BEPS project: (i) Limitation on deductibility of interest, (ii) Changes in tax treatment of hybrid instruments, (iii) Amendment of the CFC regime, (iv) Intangible assets, (v) TP rules amended, (vi) New TP documentation requirements, and (vii) CbCR.	A legislative proposal concerning the BEPS documentation package has been presented by the Swedish Tax Agency. The proposal is in line with Action 13 and first year covered by the CbCR will be 2016. If approved, the proposal will enter into force on January 1, 2017. The definition of PE and new interest deduction rules are expected during 2016	A Memorandum of Understanding with the EU exists but no deadline has been set. Corporate Tax Reform III bill aims to improve competitiveness of Switzerland whilst bringing privileged tax regimes in line with OECD standards. The Swiss Federal Council confirmed that Switzerland will endorse the OECD BEPS project. The Federal Finance Department is analyzing and elaborating proposals to implement the results of the BEPS project. Draft legislation for CbCR and the automatic exchange of rulings has been published.
Impact on audit/tax enquiry?	Tax administration has focused mainly on: (i) International fiscal plans, (ii) Correct application of the TP rules, (iii) Digital economy, and (iv) Low-value adding services.	The Swedish Tax Agency ("STA") commented in late 2015 that the BEPS reports are to be viewed as clarification of the existing arm's length principle and therefore could be applicable not only in the future but also retroactively.	This brings little impact since profits are typically moved into, not out of, Switzerland.
Country-by-country reporting?	CbCR obligations introduced by the CITR entering into force as of 2016.	The STA has presented a legislative proposal introducing the CbCR for financial years commencing on or after January 1, 2016. MNEs with a minimum turnover of seven billion SEK (approximately $784 million USD) will be covered. The proposal has not yet been approved.	Switzerland will endorse the OECD BEPS project, which includes the introduction of the CbCR (draft legislation published). Entry into force is expected for 2018. First automatic exchange is expected for 2020.
Interest deductibility?	Limitations on the deductibility of financial expenses have been introduced regarding both related and non-related party debt and with regard to hybrid instruments.	Limitation rules for interest deductibility were introduced in 2013. A new investigation has commenced and the committee is expected to present their results during 2016.	The currently applicable thin cap and interest deductibility rules may be amended based on the BEPS results in the future.
Taxand's Take	Evaluation of the activities' substance in Spain in light of BEPS emphasis, is needed as well as a thorough analysis of functions performed, assets used and risks assumed. Companies should remain as helpful and cooperative as possible with the Tax Administration in order to achieve tax efficient projects.	Taxpayers should review current TP structures to ensure that they are in line with the updated guidelines. MNE groups with revenue exceeding 750 Million Euros (approximately $833 million USD) should prepare for the CbCR.	Clients should do a thorough analysis of functions performed, assets used and risks assumed. Clients should also evaluate substance of activities in Switzerland in light of BEPS emphasis and also get prepared in view of the CbCR as well as the expected automatic exchange of tax rulings.

Taxand

Executive summary

Country:	Turkey	UK	Ukraine
Legislative changes?	There are four changes regarding the BEPS Action Plan in Turkey: (i) Interest deduction limitation rules, (ii) CFC rules, (iii) Transfer pricing documentation (i.e. master file, local file and CbCR), and (iv) Other changes regarding transfer pricing.	The UK continues to be a key supporter of the BEPS initiative, driving many of the proposals through the committees, indeed many reflecting current UK legislation. The UK has also been proactive in introducing BEPS initiatives into UK legislation in advance of the outcome of BEPS action plan (e.g. CbCR, Patent Box changes and DPT). On 24 March 2016, the Finance Bill (2) included the incorporation of BEPS Actions 8-10 into domestic legislation which is effective from 1 April 2016.	Following the Panama leaks scandal, in April 2016, the president of Ukraine issued a decree to create a task force for implementation of BEPS initiatives in Ukraine and drafted so-called deoffshorisation laws. In June 2016, the task force presented "deoffshorisation concept" with a summary of key provision to be included into draft of Ukrainian anti-BEPS laws. The draft laws have also been prepared but are not yet publicly available. These draft laws are not supposed to be approved and come into effect before 2017.
Impact on audit/tax enquiry?	The Turkish Tax Authority (TTA) has not initiated any audits relating to BEPS as of today.	The UK claims to be BEPS compliant – as such, little change has been initiated due to BEPS. General environment has grown hostile with BEPS, companies considered to have not paid fair share of tax may face increased exposure.	There has been no impact at this time on tax audits as a result of BEPS, as the relevant laws have not yet been approved.
Country-by-country reporting?	A Turkish resident parent company of a multinational enterprise group whose consolidated revenues are 2,037,000,000 TL (approximately $653 million USD) and above for 2016 are required to submit a CbCR electronically by the end of the 12th month of the following fiscal year.	On 5 October 2015, HMRC published a draft statutory instrument to implement CbCR. UK subsidiaries of foreign-parented groups will be required to file a CbCR for the UK sub-group if the foreign parent is not required to file in its own territory (or HMRC does not expect to receive the report from that tax authority).	There is a proposal to introduce CbCR and a group master file. As of November 2016 there is no obligation in domestic law to file these two documents, however in practice master files are sometimes filed as part of TP documentation.
Interest deductibility?	Effective from January 1, 2013, certain limitations have been introduced with the Article 41/9 of Income Tax Code and the Article 11/i of the Corporate Income Tax Code regarding the deductibility of the expenses and cost items relating to foreign resources being used by companies.	The UK government has published some of its proposals on how the UK will implement the recommendations from the OECD on BEPS Action 4 – restricting interest deductibility. The UK will implement a fixed ratio rule limiting UK corporation tax deductions for net interest expense to 30% of a group's UK EBITDA (earnings before interest, tax, depreciation and amortisation).	There is proposal to limit interest deductions to 10-30% of taxpayer's EBITDA with the possibility to carry forward the excess to future periods.
Taxand's Take	We recommend our clients review and assess their transfer pricing policies and prepare their annual transfer pricing report, TP documentation and benchmarking studies.	We recommend our clients gather relevant information to comply with new Diverted Profit Tax rules and consider whether further advise on existing structures should be sought. This includes assessing existing and potential new PE exposures as well as alignment of IP with value creation and substance.	Clients should continue to monitor Ukrainian legislative developments.

Executive summary

Country:	USA	Venezuela
Legislative changes?	Final regulations regarding CbCR were issued on June 29, 2016 and apply to taxable years of parents of US MNE groups that begin on or after June 30, 2016. The U.S. has also recently finalized rules expanding Treasury's ability to recast certain debt instruments issued to foreign related parties as equity in order to limit the deductibility of interest. These rules generally seek to recast certain debt instruments issued via a distribution, in exchange for stock of certain affiliates, or in exchange for property in an asset reorganization. These regulations put in place stringent documentation requirements for certain related party debt. Failure to fulfill these requirements may result in reclassification of the debt as equity.	No specific legislative changes have been made or proposed based on BEPS. Certain matters addressed by BEPS are already regulated by Venezuelan income tax law and/or case law (substance requirements, thin capitalization rules, restrictions to interest deduction, among others).
Impact on audit/tax enquiry?	No specific impact on audits in light of BEPS to date. However, increased exchange of financial and tax information as a result of BEPS will likely lead to increased scrutiny from tax authorities. The IRS has announced that its first campaign of transfer pricing audits in 2017 will focus on U.S. inbound distributors.	As of now, there is no specific impact on audits in light of BEPS. However, starting prior to the BEPS initiative, Venezuelan tax authorities have started to harden their position regarding transfer pricing ("TP") matters.
Country-by-country reporting?	Effective June 30, 2016, CbCR applies to multinational companies with a U.S. parent if consolidated revenue exceeds $850 million. This report is to be submitted on or before the due date (including extensions) of the annual tax return.	No commitment yet to introduce CbCR.
Interest deductibility?	Apart from the recently finalized Section 385 regulations, no other legislative proposals on interest deductibility are currently active.	No modification to interest deducibility regulations have been made. Some pre-BEPS restrictions to interest deductions are still in force (such as thin capitalization rules, among others).
Taxand's Take	We recommend our clients to review and monitor the U.S. situation regarding regulatory updates and maintain adequate TP documentation.	We do not expect that the Venezuelan tax authorities will shift towards an alignment with OECD countries in international tax matters. Despite that no amendments to the existing legislation have been proposed, tax authorities have an increased focus on TP matters. Clients should assess TP policies, corporate investment structures and cross border operations to ensure compliance with current views of the Venezuelan tax authorities.

Overview

- Base Erosion and Profit Shifting (BEPS) has been a key area of focus for the OECD, seeking to address concerns that many multinationals are not paying their 'fair share' of tax
- In addressing this issue the OECD has, in conjunction with numerous nations, produced a 15 point Action Plan, hoping to limit certain activities viewed as particularly damaging
- Local countries have chosen to adopt the BEPS initiatives in various ways, with some traditionally aggressive tax authorities (e.g. the UK, Germany and France) adopting numerous components of the Action Plan even before recent finalisation
- As will be seen in this report, territories typically fall within 3 categories:
    - Territories which have been involved in the discussions from an early stage, e.g. the UK, that view themselves as having comparatively little work to do as the majority of the recommendations are already within domestic law
    - Those that are supportive of the recommendations and may be 'cherry picking' certain Action Points to justify specific changes / improvements in the current legislation with a view to raising audit queries, e.g. Italy, Germany and France
    - Territories that are relatively distanced from the OECD and as such are adopting a 'wait and see' approach, e.g. Ukraine and China
- This snapshot seeks to capture some of the larger territories' responses to BEPS, particularly from a legislative and audit-risk perspective, addressing a key question Taxand clients are continuing to ask:

'What do I have to do to become BEPS-proof in the territories in which I operate?'

Summary of BEPS response: Argentina

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Treaties to avoid double taxation signed during 2015 with Chile and Mexico (both still undergoing internal ratification procedures prior to their entry into force) have adopted several BEPS matters (inclusion of LOB provisions as well as "Principal Purpose Test", additional considerations regarding the existence of a "permanent establishment"). No other specific legislative changes have been proposed or made in Argentina related to BEPS, although an amendment to the Argentine income tax law regarding the transfer pricing method generally applicable to commodity exports that use an international trader (the so-called "sixth method") is expected in the forthcoming months. Certain matters addressed by BEPS were already regulated by Argentine tax law (such as the so called "substance-over-form" principle for substance matters, thin capitalization rules, restrictions to interest deductions, among others).

How has the initiative impacted tax enquiries/ audits in your territory?

BEPS has not yet impacted the audits or tax enquiries performed by Argentine tax authorities. However, prior to the BEPS release, Argentine tax authorities had started to harden their position regarding the abuse of DTTs, intra group services, cost sharing agreements and intangibles.

Is your territory proposing to introduce country-by-country reporting, or has it already introduced country-by-country reporting (if yes, please provide details)?

Argentina has not introduced, as of today, CbCR. Despite this, tax authorities have informally discussed this matter, but no official statement as to the introduction of this mechanism has been issued.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Argentina has not yet reacted to the proposed BEPS initiatives regarding interest deducibility. However, certain regulations on matters addressed by this specific BEPS action have already been implemented into Argentine tax law (e.g., thin capitalization rules, direct link between interest and taxable income, among others). Recently signed treaties to avoid double taxation (Spain, Switzerland, Chile and Mexico) expressly provide that their provisions do not preclude the application of thin capitalization rules existing under domestic legislations.

Summary of BEPS response: Argentina

What do we recommend clients do to face the impending changes in your territory?

Argentine clients should be aware that Argentina is rapidly shifting towards an alignment with OECD countries in international tax matters. Despite the fact that no material amendments to the existing legislation have been proposed (other than specific clauses provided under recently signed treaties to avoid double taxation), tax authorities have an increased focus on cross-border activities based, many times, on the BEPS' directives. Therefore, we recommend investors perform a detailed analysis of their TP policies, corporate investment structures and cross border operations to ensure that they comply with the current views of the Argentine tax authorities in matters related to supporting documentation and substance requirements.

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Summary of BEPS response: Austria

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Action 1 – Digital economy

No legislative changes have been introduced regarding this Action.

Action 2 – Hybrid mismatches

In January 2011, Austria enacted a provision to avoid double non-taxation with regard to hybrid instruments. Dividends distributed by a foreign subsidiary to the Austrian shareholder are not tax exempt under Austrian law, if they are a tax deductible expense at the level of the subsidiary.

Action 3 – CFC rules

Austria has no CFC rules, however the international participation exemption regime, applicable for qualified international participations (> 10% participation, holding period > 1 year), is replaced by a credit method regime, whereby underlying foreign corporation taxes are credited against Austrian corporation tax, if the following two tests are met:

- The foreign subsidiary generates mainly passive income (interest, royalties, rental and lease income, capital gains from the disposal of shareholdings) (passive business focus), and
- The effective tax rate of the foreign subsidiary is 15% or lower.

This change of method only applies in the case of both of these criteria being fulfilled in the year in which the distributed profit was generated.

Apart from that, a switch-over between regimes is also applicable for international portfolio participations (≤ 10%) if the foreign distributing company is subject to low taxation in its country of residence, irrespective of the type of income. A low tax is defined as an effective tax rate of not more than 15%.

Summary of BEPS response: Austria

Action 4 - Limitation for interest deduction

As of March 1, 2014 interest payments and license fees paid by an Austrian entity to a foreign affiliated corporation are not tax deductible, if the payments:

- are not taxable in the hands of the receiving corporation due to a personal or objective tax exemption; or
- are subject to a nominal tax rate of under 10% in the hands of the receiving corporation; or
- are subject to an effective tax rate of under 10% in the hands of the receiving corporation due to a specific tax allowance for interest or license fee payments; or
- a tax refund to the receiving entity or the shareholders of the receiving entity is granted, resulting in an effective tax burden of below 10%.

It was the legislator's explicit intention to restrict deduction of interest and license fees that are subject to special tax relief regimes abroad (e.g. by way of fictitious tax deductions). The deductibility is however not affected if the effective tax rate under 10% is caused by making use of tax loss carry forwards or a group taxation regime.

If the receiving corporation is not the beneficial owner, the tax regime applied to the beneficial owner is relevant. In this way, back-to-back financing is also covered.

Action 5 - Transparency and substance; Action 6 - Treaty abuse

Under the Austrian corporate tax law a substance over form approach is applied. Thus, entities are ignored for Austrian tax purposes (look through approach) where they do not meet certain substance requirements (i.e. office space rented or owned in own name, employment of people, management carried out at the seat of the company).

Action 7 - Preventing Permanent Establishment (PE) status

To counter downsizing of sales structures, the Austrian tax administration views that a commissionaire constitutes a PE for its principal.

Action 8 - 10 - Aligning TP to value creation

We expect that the Austrian Transfer Pricing Guidelines issued by the Austrian Ministry of Finance will be amended to reflect the BEPS Actions 8-10. Although respective changes have not yet been made, we observe that tax authorities already apply a BEPS compliant approach in the course of tax audits.

Action 12 - Mandatory disclosures

In 2011, horizontal monitoring was implemented on an voluntary basis. Mandatory disclosures are demanded by some politicians, but are not yet implemented.

Summary of BEPS response: Austria

Action 13 - CbCR

On August 1, 2016 the Austrian Transfer Pricing Documentation Act was officially published in Federal Law Gazette. Therewith it became official that the three-tiered standardized approach to transfer pricing documentation, including Master File, Local File and CbCR, is obligatory in Austria.

The requirements for multinational groups will apply to fiscal years starting on of after January 1, 2016 if certain thresholds are exceeded.

Generally the transfer pricing documentation will be prepared in the German language. If the transfer pricing documentation is prepared in English, the tax authorities can request a certified translation at the cost of the tax payer.

a.) CbCR

A CbCR is required if the global consolidated group turnover was at least EUR 750 million in the previous year and the is supposed to provide a standardised overview concerning the global allocation of income, taxes and business activities by tax jurisdiction.

In general the ultimate parent company of a multinational group is required to file this report. If the ultimate parent company is not resident in Austria, an Austrian resident business unit of the multinational group may be obliged to file the CbCR if one of the following requirements is fulfilled:

- The ultimate parent company doesn’t have to file the CbCR in it’s country of residence
- No qualified agreement regarding the exchange of the CbCR exists, or
- Such a qualified agreement exists, but the automatic exchange of information was suspended if failed during a prolonged period

The report has to be filed electronically within 12 months after the end of the fiscal year. If the CbCR requirements are not met deliberately, a penalty of up to EUR 50,000 may be imposed. Gross negligence is punished with penalties of up to EUR 25,000.

b.) Master File and Local File

Generally these reports have to be prepared by all Austrian-resident business units belonging to a multinational group if the turnover of the business unit exceeded EUR 50 million in the two previous years.

Summary of BEPS response: Austria

While the Master File is focusing on the presentation of the whole multinational group, the Local File should contain specific information regarding the business transactions of the respective business unit.

The Master File and the Local File have to be filed at request of the relevant Austrian tax authority within 30 days after filing the tax returns of the respective fiscal year.

Action 14 - Dispute Resolution

Austria is a member of the EU Arbitration Convention. In relation to non EU countries Austria utilizes the respective agreements for mutual administrative assistance to solve qualification or transfer pricing conflicts.

How has the initiative impacted tax enquiries/ audits in your territory?

We recognize that hybrid capital instruments and substance requirements are actively questioned during tax audits. See also our comments relating to Action 8-10. Furthermore the Austrian tax authorities do not hesitate to initiate a mutual assistance procedure.

Is your territory proposing to introduce country-by-country reporting, or has it already introduced country-by-country reporting (if yes, please provide details)?

Please see our comments on Action 13.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Please see our comments on Action 4. General rules limiting deductibility of interest have been discussed but were not adopted.

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Summary of BEPS response: Austria

What do we recommend clients do to face the impending changes in your territory?

We would strongly advise our clients to check their structures with respect to hybrid financing, CFC rules and limitations regarding the deductibility of interest as well as substance requirements. Furthermore a proper Transfer Pricing documentation in line with the Austrian statutory requirements needs to be available.

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Summary of BEPS response: Belgium

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The Belgian Parliament has enacted a series of new rules on TP documentation, which rules will have a substantial impact on the substance and format of TP documentation (Program Law of July 1, 2016 and published in the Belgian Official Gazette of July 4, 2016).

This present contribution offers an overview of the new TP documentation rules applicable as from Tax Year 2017 (i.e. Accounting Year ending on December 31, 2016 or later).
As a result of this new legislation, Belgium has joined the group of tax jurisdictions that have introduced country-specific transfer pricing requirements. Belgian resident and non-resident corporate taxpayers need to consider the new requirements and take the necessary steps and actions to comply with these in due time.

With regards to Actions 5 and 7, the Minister of Finance indicates that a new Circular Letter redefining the concept of a “dependent agent” following the new guidelines would be useful and appropriate. However, the Minister does not indicate whether such a Letter is already in the pipeline.

<u>Action 13- CbCR</u>

a.) Master file and Local file

A Belgian entity (company or permanent establishment) of a multinational group will only have to file a master file and a local file if the entity exceeded one of the following criteria of its stand-alone statutory accounts in the preceding financial year:

- A total amount of operating and financial revenue of at least 50 million EUR (excluding non-recurring revenue); or
- A balance sheet total of 1 billion EUR; or
- An annual average payroll of 100 full-time employees

The master file should provide an overview of the structure of the multinational group, including a description of the type of operational activities, the intangible fixed assets, the intra-group financial activities and the consolidated financial and tax position of the multinational group, the overall group TP policy and the worldwide allocation of income and economic activities.

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Summary of BEPS response: Belgium

The local file consists of two parts. The first part provides general information on the kind of operations of the Belgian group entity and an overview of the intra-group transactions. The second part includes additional information on the intra-group transactions between related entities per business unit, including a detailed economic analysis. This second part is only required under Belgian legislation if a threshold of a total of 1 million EUR in intra-group transactions is exceeded. The latter threshold is to be considered per separate business unit.

The Master file should be filed no later than 12 months after the closing of the Accounting Year of the multinational group. The Local file should be filed with the corporate tax return of the Belgian entity (company or permanent establishment).

b.) Country-by-Country Report

The new TP documentation rules also introduce a CbCR requirement which is compliant with OECD guidelines and EU legislation. The CbCR should include the effective identification of each entity that is part of the multinational group, including the jurisdiction in which the entity is resident and a description of the main activities of that entity. The report should also provide quantitative information, including the overall income generated, the precise profit/loss position before tax, the paid corporate income taxes, the paid-in capital, the number of employees, etc.

This specific CbCR requirement will only apply to a Belgian ultimate parent entity of a multinational group with a gross consolidated group turnover exceeding 750 million EUR. However, in some cases this CbCR requirement will also apply to a Belgian resident group entity which is not the ultimate parent entity, if at least one of the following conditions applies:

- If the ultimate parent entity qualifies as a tax-resident company in a jurisdiction which does not impose CbCR filing: or
- In the case of absence of a qualifying agreement on the automatic exchange of CbCR between the tax jurisdiction of the ultimate parent and a competent authority to which Belgium is a party; or
- In the case of a notification by the Belgian tax authorities to the Belgian group entity that the tax jurisdiction of the ultimate parent company remains in systematic breach of its reporting obligation

CbCR should be filed no later than 12 months after the closing of the Accounting Year of the multinational group.

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Summary of BEPS response: Belgium

c.) Penalties

The new TP documentation rules provide for substantial penalties for companies and permanent establishments failing to comply with the new rules. Indeed, in a case of no report being filed, or in a case of late or incomplete reporting, administrative penalties ranging from 1,250 EUR up to 25,000 EUR will apply (article 445 Income Tax Code).

d.) Implementation of the New Documentation Rules

The new rules apply as from Tax Year 2017 (i.e. Accounting Year ending on December 31, 2016 or later).
The documentation format and the filing modalities for the CbCR, the Master file and the Local file have been determined by the Minister of Finance in three Royal Decrees all dated October 28, 2016 and published in the Belgian Official Gazette of December 2, 2016.

Is your territory proposing to introduce country-by-country reporting?

The new Belgian rules are based on international TP documentation guidelines, and more specifically on Action 13 of the OECD's set of "BEPS" rules ("Base Erosion and Profit Shifting"). More specifically, the new articles 321/1-7 of the Income Tax Code comply to a large extent with the three-tier TP documentation requirements imposed on multinational enterprises by the OECD guidelines: Master file, Local file and Country-by-Country Reporting.

How has the initiative impacted tax enquiries/ audits?

The amount of transfer pricing audits has increased significantly the last few years. In addition, we have noticed that there have been substantially more requests for information on the presence of permanent establishments of foreign entities conducting business in Belgium.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

In a Parliamentary response, the Minister of Finance has stated that the existing Belgian thin cap rules do not reach far enough, but that Belgium is awaiting the finalization of the EU Tax Avoidance Directive before introducing any new measures.

Summary of BEPS response: Belgium

What do we recommend clients do to face the impending changes in your territory?

For companies that are part of international groups, we highly recommend that they assess their current transfer pricing policy and, if available, start preparing Belgian compliant documentation. Pending the introduction of a formal transfer pricing documentation obligation, we already recommend taxpayers who do not yet have this in place, to draft such documentation in accordance with the OECD guidelines.

In addition, we advise foreign clients to be especially careful while setting up business in other states, especially with regards to commissionaire arrangements, in light of the new permanent establishment guidelines.

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Summary of BEPS response: Brazil

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

A set of rules involving disclosure of tax planning transactions was debated in the Brazilian Congress during 2015. The stated intention of the rules were to align Brazil with the OECD Action Plan on Base Erosion and Profit Shifting, particularly Action 12 – Mandatory Disclosure Rules. However, the original bill that aimed to create such rules were rejected by the Brazilian Congress.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Brazilian legislation regarding interest deductibility has historically adopted traditional unilateral anti-avoidance measures, especially the imposition of withholding tax upon the interest accrued or paid as well as the application of transfer pricing and thin capitalization rules. Although there has not been yet a direct reaction regarding BEPS Action 4 in Brazil, the domestic legislation already addresses its main concerns.

How has the initiative impacted tax enquiries/ audits?

Over the last couple of decades Brazil has enhanced its tax system in order to prevent base erosion and profit shifting arising in a cross-border scenario (e.g. by means of CFC, TP and thin cap rules). Although Brazil has not taken actions directly resulting from the BEPS initiatives in the context of tax audits, tax authorities have been vigilant to most of the concerns and distortions BEPS initiatives aim to tackle.

Is your territory proposing to introduce country-by-country reporting?

Brazil has recently initiated a public consultation on a new set of rules aiming at the introduction of CbCR as provided for in Action 13 (Guidance on the Implementation of Transfer Pricing Documentation and CbCR). According to the Brazilian tax authority, new rules regarding CbCR are expected to enter into force before the end of the current year (2016).

Summary of BEPS response: Brazil

What do we recommend clients to do to face the impending changes in your territory?

We recommend clients carefully assess the consequences and potential risks prior to the implementation of any form of tax planning in Brazil, with a special attention to the issues addressed in the BEPS initiatives that have been already part of the Brazilian tax system and practice.

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Summary of BEPS response: Canada

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Since the Canadian government's suspension of its efforts to craft a domestic treaty shopping rule due to the BEPS initiative, there has not been any significant indication that the Canadian government will resurrect the project for a domestic treaty shopping rule.

On March 22, 2016 the Canadian government released its budget for 2016 ("Budget 2016") in which it declared its intention to act on certain recommendations from the BEPS initiative. In particular, Budget 2016 proposes new legislation to introduce CbCR for large multinational enterprises consistent with Action 13 of the BEPS Action Plan on transfer pricing documentation and CbCR. Draft legislation on Canada's CbCR requirements was released on July 29, 2016 by the Department of Finance.

Budget 2016 also announced that the Canada Revenue Agency (the "CRA") is applying revised guidance arising from the BEPS initiative on transfer pricing by multinational enterprises, which provides an improved interpretation of the arm's-length principle. Effective April 1, 2016, the CRA will also undertake the exchange with other tax administrations of tax rulings that could potentially give rise to BEPS concerns.

Finally, Budget 2016 announced Canada's participation in efforts to develop a multilateral instrument to streamline the implementation of treaty-related BEPS measures, which include measures addressing treaty abuse. The MLI was released by the OECD on November 24, 2016, and Canada is still considering the approach it will take on the MLI. The MLI will enter into force three months after Canada ratifies the MLI and informs the OECD of such ratification.

Budget 2016 reiterated that the revisions to Transfer Pricing Guidelines arising from BEPS will be "clarifying in nature." This means that any changes brought forth from the BEPS initiative will be applied on a retroactive basis. The CRA can therefore use the revised guidance when conducting transfer pricing audits in Canada for past years. This may put many Canadian taxpayers in a difficult situation. If past years involve structures that seem to conflict with guidance proposed under BEPS, this will raise serious questions to what taxpayers should do relating to such years and what mechanisms and strategies can be drawn upon to minimize audit risks and any potential for transfer pricing adjustments.

Summary of BEPS response: Canada

How has the initiative impacted tax enquiries/audits?

BEPS will impact the nature and scope of audits performed in Canada especially as they relate to intangibles. Budget 2016 confirmed that the CRA is applying the revisions to the OECD Transfer Pricing Guidelines that arose as a consequence of the BEPS initiative. Historically, the level of profits allocated to Canada was heavily impacted, whether rightfully or wrongfully, on who owned and funded intangible development.

Consequently, the ownership of intangibles offshore often resulted in a large share of system profits being reported outside of Canada even though significant levels of "people functions" performed in Canada generated much of those profits.

The CRA has always put a heavy emphasis on "people functions", even before the introduction of BEPS. The CRA has always taken the view that "people functions", as opposed to strict legal ownership, should form the basis in determining how profits are allocated in a transfer pricing setting. The BEPS initiative has emphasized the need to put more weight on such "people functions". This view will only serve to give the CRA more tools in its tool kit to increase the number of audits in Canada with the likelihood of large adjustments more pronounced.

Is your territory proposing to introduce country-by-country reporting?

Draft legislation to implement CbCR was released on July 29, 2016 by the Department of Finance.

Under the draft legislation, a CbCR in prescribed form must be filed for fiscal years after 2015 by the Canadian resident ultimate parent of an MNE Group, or in certain circumstances, a Canadian resident subsidiary company. The proposed legislation exempts an MNE Group from the CbCR requirements for a particular year if it has a total consolidated group revenue of less than €750 million during the preceding fiscal year.

The CbCR must generally be filed within 12 months after the particular fiscal year end of the relevant company. Penalties will be imposed on a failure to file the CbCR on a timely basis.

Summary of BEPS response: Canada

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

No specific comments related to interest deductibility have been made public by the Canadian Government. As the issues regarding interest deductibility have been under constant review by the Canadian Government for decades, it is not clear whether any changes will be made in Canada as a consequence of these BEPS initiatives.

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What do we recommend clients do to face the impending changes in your territory?

We recommend that our clients be mindful of the BEPS initiative and structure transactions on a proactive basis to address the recommendations. In the context of transfer pricing and treaty shopping, special attention to every detail must be paid. In a transfer pricing context, given that the CRA interprets the BEPS initiative as clarifying in nature and, therefore, retroactive, it is important to assess the risks posed by any new legislation especially as it relates to “back” years. Tax advisors may need to provide clients with a framework for mitigating audit controversy through various means including self-initiated adjustments or using existing dispute resolution mechanisms (such as the APA program) to gain greater tax certainty for unaudited years. Failure to be proactive in this sense will increase the risks of an exhaustive audit due to BEPS.

Summary of BEPS response: Chile

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Recently a Tax Reform (Law N° 20.780) has been approved in Chile introducing changes in line with the BEPS recommendations.

Controlled Foreign Corporation (CFC) rules
Based on this new regulation, taxpayers who have obtained passive foreign income through CFC entities must include such income in their relevant tax returns. This regulation is in force as of 2016.

General anti-avoidance rules
This regulation has been introduced by the Tax Reform, based on contract simulations principles and the abuse of rights. Moreover, transactions or acts that do not produce any legal or economic result or effect but are solely executed for purposes of obtaining tax savings will be deemed to be “abusive”.

Thin capitalization rules
Even though Chile had introduced thin cap rules years ago, the Tax Reform changed several aspects of the associated rules.

As a result of these changes, not only interest paid abroad will be subject to thin cap rules, but also financial commissions and any other surcharge paid to a foreign creditor. Further, the concept of excess of indebtedness was expanded to include local and foreign loans granted by either related or not related entities.

Disclosure of bank secrecy
This regulation was enacted before the Tax Reform. The Tax Authority can request the disclosure of bank secrecy not only under a tax felony investigation but also during an audit process. Further, the Chilean IRS would be able to request disclosing bank secrecy in case a foreign tax authority has asked for.

Finally, if a taxpayer refuses to disclose their bank secrecy, the courts of justice can make the decision in this matter.

Transfer pricing rules
These rules were incorporated in 2012 which are based on the arm’s length principal.

Summary of BEPS response: Chile

How has the initiative impacted tax enquiries/ audits?

According to the Tax Reform, the Chilean IRS is empowered to require taxpayers to modify their original accounting systems to incorporate new technological methods. Further, the Tax Authority can audit taxpayers' electronic accounts by accessing such information online. However, the online access has to be previously communicated to taxpayers.

It is also now mandatory for taxpayers to communicate their investments abroad to the Chilean IRS. In this sense, the Chilean IRS has issued affidavits in order to comply with this obligation. For instance, investments in trusts or companies offshore must be included in such affidavits.

Is your territory proposing to introduce country-by-country reporting?

Chile has recently signed the Multilateral Competent Authority Agreement on the exchange of CbCRs.

In line with this, the Chilean IRS has issued an affidavit in which the taxpayers have to state if they were part of an international transaction that could obtain tax savings.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Tax Reform has changed the general principal regarding interest tax deductibility in foreign loans. In this sense, interest can be treated as a tax expense when such interest is effectively paid and the tax that would be due has been paid as well.

Further, thin cap rules were modified as explained above.

Summary of BEPS response: Chile

What do we recommend clients do to face the impending changes in your territory?

Substance evaluation should be performed for all transactions taking into account the new anti-avoidance rule. Further, a detailed review and assessment of any transactions determining potential business alternatives is now required; in line with the new regulations in force due to the Tax Reform. Further, clients should be aware of new affidavits that the Chilean IRS may issue due to Tax Reform in line with BEPS proposals.

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Summary of BEPS response: China

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In 2014, the State Administration of Taxation ("SAT") released the Notice of Anti-Avoidance Examination on Significant Outbound Payments (Circular [2014] No.146), according to which SAT requests the local-level tax authorities launch a comprehensive tax examination on significant outbound service fee and royalty fee payments to overseas related parties of a MNC, with an aim to strengthen the tax administration on intra-group charges and prevent profit shifting.

In February 2015, SAT released a Public Notice [2015] No.7 that superseded the current Chinese tax rules in relation to the offshore indirect equity transfer. Notice No.7 presents a totally different tax landscape for foreign investors holding China Taxable Properties with a foreign intermediate holding company.

A much more important change responding to BEPS occurred on September 17th, 2015, where SAT issued a consultation draft circular "Implementation Measures for Special Tax Adjustments" ("Draft") which would replace the existing Guoshuifa [2009] No. 2 (Circular 2) (current effective China TP rule). The public was invited to provide comments on the Draft by October 16, 2015.

In June 2016, SAT issued new regulations, Public Notice No.42 to improve the reporting of related party transactions and contemporaneous documentation. Overall the information disclosure requirement is increased and the New Forms also include the CbCR form. Included with the contemporaneous documentation are three files: Master File, Local File and Special Issue File.

How has the initiative impacted tax enquiries/ audits?

Chinese tax officials are not currently separating audits relating to BEPS-specific issues; however, when a transfer pricing enquiry is raised by local officials, reference to the BEPS initiatives will likely be made.

With the Public Notice No.42, applying from 2016, the following items may become more sensitive and focused on by the Chinese tax authority:

- Review of actual control and management control of each entity under a complex group structure;
- More Permanent Establishment challenges, especially in digital economy and e-commerce industries;
- Business substance, supporting the validity of related party charges during foreign remittance procedures;

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Summary of BEPS response: China

- Further detailed review of cross-border intercompany charges like interest, royalty, service fees, etc.;
- Attention to irregular transactions between cross-border related parties, such as the transfer of intellectual property;
- Specific functions (like R&D, brand building, market penetration) and potential local intellectual property in TP studies;
- More information disclosure requirements.

Is your territory proposing to introduce country-by-country reporting?

Under the Public Notice No.42, transfer pricing documentation requirements would put China at the forefront of countries adopting the recommendations of BEPS Action 13. It implements Action 13's threefold approach to documentation, comprising the Master File, the Local File, and the CbCR.

Chinese-parented multinational groups that have global revenues greater than 5.5 billion RMB are required to submit a CbCR with their annual tax return (due May 31). At current exchange rates, the filing threshold is marginally lower than the EUR 750 million threshold set by BEPS.

If the ultimate holding entity of the taxpayer is outside P.R.C, but the taxpayer is assigned by the group as the reporting entity for the CbCR form, they shall also prepare a CbCR.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Under Public Notice No.42's requirement relating to TP documentation, a Special Issue File is required demonstrating that the taxpayer's related party debt levels are consistent with the arm's length principle if its debt to equity ratio exceeds specified ratios. While such documentation was previously required, it is required in more cases as the Public Notice No.42 expands the types of related party debt that are considered beyond loans to trade receivables, cash pooling balances and the like.

Summary of BEPS response: China

What do we recommend clients do to face the impending changes in your territory?

The Public Notice No.42 is very significant in the Chinese TP context. Now is the time for MNCs to assess their Chinese operations in relation to their worldwide tax structure and value chains and determine if any changes are appropriate, because they will have to prepare for stringent new documentation requirements in advance of 2017's June 30th deadline.

We recommend that our clients review their pricing strategy on cross-border transactions, even if the amount of the transaction is below the threshold for transfer pricing documentation. The Chinese tax bureau is routinely reviewing outbound payments over USD 50,000; therefore, even relatively 'small' transactions may trigger attention from the authorities within China.

Considering China's increasing incorporation of the BEPS Project, we suggest MNCs with Chinese entities adopt the following:

- Closely monitor Chinese BEPS-related updates;
- Review the rules/status of tax collection jurisdiction, tax residency and controlled foreign company regimes before setting up a new international operation;
- Review the implications of the unfinished or anticipated corporate transaction to see whether further amendment is necessary;
- Perform internal tax checks, especially on TP, functional analysis, internal controls, and foreign exchange compliance;
- Analyse potential Permanent Establishment risk created by current business model in the post-BEPS environment;
- Analyse the intercompany debt structure and conditions; and
- Assess overall supply chain profitability with reference to comparable companies' profitability in the same industry.

If well prepared, the company should be able to face the changes in a tax environment within China with a minimum increase of the cost of business operation and tax burden.

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Summary of BEPS response: Colombia

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

As Colombia is not a member of the OECD, no legislative changes have been proposed or implemented regarding the BEPS Action Plan. However the Colombian Government is planning to present before the Congress a tax reform which may introduce some features included within the Action Plan. The wording of the planned tax reform is not public yet.

How has the initiative impacted tax enquiries/audits?

The BEPS initiative is not currently impacting tax audits.

Is your territory proposing to introduce country-by-country reporting, or has it already introduced country-by-country reporting (if yes, please provide details)?

Colombia is not currently proposing to introduce CbC requirements.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

There is no official reaction to Action 4 on interest deductibility. As mentioned, there is no current certainty as to whether in the next tax reform, the Government will include proposals to introduce the Action Plan. Colombia is in the process of being considered as an OECD member (i.e., it is feasible that the BEPS Action Plan makes part of the next tax reform).

Note also that in 2012, for the very first time in Colombia, Congress approved a thin capitalization rule that is applicable not only to foreign indebtedness with related parties, but also to local and international indebtedness whether those are granted by related parties or not. This thin capitalization rule allows the tax office to control interest deductibility in a wider way than other rules in this regard (i.e., it is feasible that the Government does not propose any change to this rule).

Summary of BEPS response: Colombia

- What do we recommend clients do to face the impending changes in your territory?

Clients are advised to monitor legislative reform in Colombia.

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Summary of BEPS response: Cyprus

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In reference to BEPS Action 2 (neutralizing the effects of hybrid mismatch arrangements,) the Cyprus Income Tax Law has been amended effective January 1, 2016, whereby dividends received by a Cyprus tax resident company, which belong to the hybrid instruments category, will not be exempted from income tax. This amendment alters the existing situation where dividend income was altogether and unconditionally exempt from corporate income tax (CIT). Now, such dividends will be taxed as normal business income liable to Income Tax, and will be exempt from Special Contribution for Defense tax.

In reference to BEPS Action 5 (countering harmful practices more effectively & taking into account transparency and substance,) the Cyprus House of Representatives voted into law on October 14, 2016 the revised IP Box Regime. The relevant amendments were, as expected, to harmonize the relevant Cyprus legislation with the recommendations of Action 5 of the OECD which were issued on October 5th 2015 and the Action against BEPS as well as the Conclusions of the ECOFIN Council adopted on December 8, 2015.

The revised legislation is applicable from July 1, 2016 onwards and the specific provisions comprising the new IP Box Regime in Cyprus are summarized below.

<u>Qualifying intangible assets</u>
Qualifying intangible assets refer to assets that were acquired, developed or exploited by a person in the course of his business (excluding intellectual property associated with marketing) and which pertains to research and development activities for which economic ownership exists. Specifically these assets are:

- Patents as defined in the Patents Law
- Computer Software
- Other IP assets that are non-obvious, novel and useful, where the person which utilizes them in further development of a business that does not generate annual gross revenues exceeding Euro 7,500,000 (or Euro 50,000,000 for a group of companies) and which should be certified by an appropriate authority either in Cyprus or abroad.
- Utility models, intellectual property assets which provide protection to plants and generic material, orphan drug designations and extensions of protections of patents, all of which should be legally protected.

It should be noted that rights used for the marketing of products and services such as business names, brands, trademarks, image rights etc. are not considered as qualifying intangible assets.

Summary of BEPS response: Cyprus

Qualifying profits

Qualifying profits (income) relates to the proportion of the total income which relates to the fraction of the qualifying expenditure as well as the uplift expenditure which was incurred for the qualifying intangible asset. Such income, for example, consists of royalties in connection with the use of the qualifying intangible asset, capital gains arising on the disposal of a qualifying intangible asset etc.

Overall income

The overall income refers to the total income arising on the qualifying intangible asset within a specific tax year reduced by the direct costs for generating this income.

As with the previous IP Box Regime, 80% of the overall income as defined above is treated as a deductible expense, and in the same manner in the case of losses only 20% of the loss can be carried forward or be surrendered for the purpose of group loss relief.

Qualifying expenditure

Qualifying expenditure for a qualifying intangible asset relates to the total research and development costs incurred in any tax year wholly and exclusively for the development, improvement or creation of qualifying intangible assets and where costs are directly related to the qualifying intangible assets.

Examples of such qualifying expenditure includes wages and salaries, direct costs relating to the research and development, including costs which have been outsourced, supplies related to research and development, installations used for research and development etc.

An uplift expenditure is added to the above mentioned qualifying expenditure which is the lower of:

- 30% of the eligible costs, or
- The total amount of the cost of acquisition and outsourcing to related parties aimed at research and development in connection to the eligible intangible asset.

Accounting records

Proper books of account and records of income and expenses must be kept for each intangible asset by any person who wishes to claim the above described benefit.

Summary of BEPS response: Cyprus

Regarding Action 6 (preventing the granting of treaty benefits in inappropriate circumstances,) although the Cyprus Government has not taken any steps yet, it is anticipated that once the multilateral instrument which is amending the double tax treaties is adopted by the OECD, Cyprus will follow-up with the ratification of the instrument.

This would mean treaties entered into by Cyprus with other countries which are also ratifying the instrument, would be automatically considered as if they are including the relevant limitation - of - benefits provisions. Thereafter, companies which are using the double taxation treaties will have to amend their structure in a way that will take into consideration this benefits limitation, to gain tax treaty benefits.

Regarding Actions 8, 9 and 10 (aligning transfer pricing outcomes with value creation,) it is perceived that these actions will be more applicable to jurisdictions with higher income tax rates than Cyprus as they will wish to limit the transfer of profits to countries within which no risks are taken and where there is no added value. Thereafter Cyprus may not need to introduce new regulation in regard to these. However, as Cyprus is receiving income governed by these actions, it will be affected by the measures introduced by other countries which are more impacted by transfer pricing mismatching.

Additionally, regarding Action 12 for mandatory disclosure rules, it is again expected that this action will be thoroughly applied by countries which are at the receiving end of aggressive tax planning, (e.g. some countries like the UK already have strong provisions within their tax laws denoting that aggressive tax planning must be disclosed well in advance.)

Consequently, MNEs are maintaining their base in Cyprus will need to be aware of the amendments that will be embarked on by the jurisdictions within which they operate so as they can comply with their local requirements.

Finally, in regard to Action 15 (developing a multilateral instrument towards modifying bilateral tax treaties,) it should be noted that this action is relating to a mandate for the formation of an ad-hoc group in order to develop a multilateral instrument on tax treaty measures to tackle BEPS. This was approved in February 2015 by the OECD Committee on Fiscal Affairs and endorsed by the G20 Finance Ministers and Central Bank Governors. This Group began its work in May 2015 with its agenda including the conclusion of this work and the opening of the multilateral instrument for signature by December 31, 2016. Moreover, the latest meeting by this ad-hoc group was held in February 2016, while Cyprus has also set up a task force to look into the issue and decide upon what procedures will need to be implemented and followed once the multilateral instrument is ready.

Summary of BEPS response: Cyprus

Generally, it is believed that the effects of this group will be effective in 2018 or 2019 depending on the time of adoption of the instruments by the numerous countries. It should also be noted that the mentioned multilateral instrument will only apply to the double tax treaties when both countries involved are parties to the instrument.

How has the initiative impacted tax enquiries/audits?

The tax enquiries and audits in Cyprus have been increasingly focusing on substance recently, and in particular they are examining the following issues:

- If Cyprus resident companies are also resident elsewhere, documentation from the other jurisdiction where they also have tax residence may be requested, detailing information as to whether the majority of the Board of Directors' meetings take place in Cyprus and whether their minutes are prepared and kept in Cyprus as well. Additionally, information regarding whether the majority of the members of the Board of Directors are tax residents of Cyprus, as well as whether the shareholders' meetings take place in Cyprus too may be asked for. In addition, information as to whether the Board of Directors exercises control and makes key management and commercial decisions necessary for the company's operations and general policies may be asked for.
- Information as to whether the companies have issued any general powers of attorney, and the terms and conditions thereof, as opposed to companies only having issued special powers of attorney. Information as to whether the companies' corporate seals and all statutory books and records are maintained in Cyprus, whether filing and reporting functions are performed by representatives located in Cyprus, and whether agreements relating to the company's business or assets are executed or signed in Cyprus may also be requested. Also updates are requested as to whether all due tax returns have been filed, and all self-assessments for the tax years that are due have been paid.
- Moreover, recent enquiries concern whether companies have real physical presence in Cyprus, whether through an owned distinct office or via leasing space at a serviced business center, whether people are working part-time or full-time at the company's offices, and whether companies are having dedicated telephone, facsimile, and internet lines, as well as websites and e-mail addresses.

Summary of BEPS response: Cyprus

Is your territory proposing to introduce country-by-country reporting, or has it already introduced country-by-country reporting (if yes, please provide details)?

Following the January 28, 2016 announcement by the EU Commission on its anti-avoidance package (where the recommendations of Action 13 were proposed, including CbCR) a number of meetings were subsequently held at the Cyprus Ministry of Finance in order to discuss the implementation of these proposals.

It is expected that the introduction of transfer pricing rules inclusive of transfer pricing documentation is a development which will be duly materializing in Cyprus. In line with this action it is also anticipated that the relevant new rules and the new legislation or legislation amendments will be introduced by December 31, 2016 and will be applying retrospectively for periods commencing on or after January 1, 2016 to groups with turnover above EUR 750 million.

Cyprus is one of the 55 jurisdictions who opted for early adoption of the common CbCR in 2017.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

As per the BEPS Action 4 of limiting base erosion involving interest deductions and other financial payments, Cyprus would expect that this action will be more applicable to jurisdictions carrying relatively higher income tax rates and who will thus wish to limit the deduction of interest payable to third countries from their own taxable incomes. Therefore it is likely that Cyprus will not impose any particular new legislation regarding this action.

Nevertheless, as Cyprus is on the receiving end of interest income when Cyprus tax resident companies of financing operations grant loans to companies which are tax resident in countries of higher income tax rates, the introduction of measures under this action by other countries is anticipated to affect Cyprus.

Summary of BEPS response: Cyprus

What do we recommend clients do to face the impending changes in your territory?

While professional advisors are constantly familiarizing ourselves with the BEPS actions' corresponding provisions, as they evolve and get adopted by the various jurisdictions, we simultaneously encourage our clients to commence receiving professional tax consultation on these topics. We also usually suggest our clients obtain opinions as to which issues are applicable to their companies or group of companies and to improve their substance position so that they can better defend their structures, or even reorganize their structures if this proves necessary. Even in the instances where no new legislation is expected to be introduced in Cyprus, Cyprus based groups should still ensure that they are aware of changes introduced in other countries where they operate.

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Summary of BEPS response: Denmark

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Denmark has been very active in incorporating the BEPS project proposals into Danish law.

On May 1, 2015 a new international anti-abuse tax rule (GAAR) incorporated into section 3 of the Danish Tax Assessment Act (ligningsloven) became effective. The intended purpose of the new GAAR was to implement the expected outcome of BEPS Action Point 6.

How has the initiative impacted tax enquiries/ audits?

Each year the Danish tax authorities publish their activity plan for the year to come.

In the published 2016 plan, the Danish tax authorities list the BEPS project as a specific area of interest. As such, the Danish tax authorities will focus specifically on determining within which areas of existing Danish legislation, the findings and recommendations of the BEPS project can be incorporated.

Furthermore focus will be on transfer pricing compliance and payment of withholding tax on dividends, interests and royalties.

Finally, Danish tax authorities will focus more on specific industries, including the oil and financial industry, where there will be increased control.

Is your territory proposing to introduce country-by-country reporting?

CbCR was introduced by the Danish Tax Ministry on November 10, 2015 and was incorporated into section 3B of the Danish Tax Management Act (Skattekontrolloven) effective as of January 1, 2016.

The new provision is applicable to all industries and is a direct implementation of the OECD recommendation on BEPS Action Point 13.

As a main rule, Danish companies will only be required to submit a CbCR, if (i) the Danish company is the ultimate parent of a multinational enterprise group, and (ii) the multinational enterprise group has a consolidated turnover of at least DKK 5.6bn (approx. EUR 750 million), in the 12-month period for which the report must be filed.

Summary of BEPS response: Denmark

A Danish company which is not the ultimate parent may however still be required to submit a CbCR, if; (i) the foreign ultimate parent company is not legally obligated to completed and file a CbCR in its resident jurisdiction; (ii) there are no automatic exchange of information in place between the parent company's resident jurisdiction and Denmark, or (iii) there is a systematic error in the parent company's resident jurisdiction.

The CbCR must be submitted to the Danish tax authorities no later than 12 months following the last day of the income year covered by the report.

The CbCR requirement is applicable to fiscal years beginning on or after January 1, 2016. For Danish subsidiaries subject to reporting requirements in replacement of its parent company, the requirement should be applicable to fiscal years beginning on or after January 1, 2017.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Denmark already had rules on interest deductibility. Thus far, no new rules regarding Action 4 have been proposed.

Deductibility of interest in Denmark is subject to three specific limitations; (a) thin capitalization; (b) assets limitation; and (c) EBIT.

The thin capitalization restriction applies if; (i) the Danish borrower has controlled debt; (ii) which exceeds DKK 10 million; (iii) with a debt-to-equity ratio exceeding 4:1 at the end of the tax year; and (iv) the Danish borrower is unable to prove, that a similar debt would be available from an unrelated third party. The restriction applies only to the portion of the controlled debt which should be converted into equity in order to avoid the limitation of deductibility.

In addition, if all (controlled and third-party) net financing expenses exceed DKK 21.3 million (approx. EUR 2.86 million), the tax deductibility of net financing expenses will be limited to (i) an amount corresponding to 3.4% (2016) of certain qualifying assets (asset limitation); and (ii) 80% of earnings before income and taxes (EBIT limitation).

Summary of BEPS response: Denmark

- What do we recommend clients do to face the impending changes in your territory?

Considering the increased focus especially with regard to transfer pricing and withholding tax on dividends, we advise clients to be prepared for intense scrutiny by the Danish tax authorities, when carrying out business which relates to either one of those two areas.

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Summary of BEPS response: Finland

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

There are no ongoing legislative initiatives or projects with respect to OECD's BEPS project apart from proposals for revised documentation rules and CbCR.

A working group on coordinating the BEPS project and monitoring its the effects on a national level has been set up in January 2016. The working group will be involved in the preparations of the implementation process in Finland.

Also, in recent years, legislative changes have been implemented regarding the deductibility of interest to related parties and tax exemption of dividends from subsidiaries (with corresponding tax deducted payments).

How has the initiative impacted tax enquiries/ audits?

There has not been a direct impact. However, according to the Finnish Tax Administration's statement, guidance published by the BEPS project regarding transfer pricing (Actions 8-10) would be retrospectively applicable.

Is your territory proposing to introduce country-by-country reporting?

On September 15, 2016 the Finnish Government issued a proposal concerning TP documentation and CbCR. The proposal follows the recommendations proposed by the BEPS project (content and threshold for duty to file the CbCR). The renewed articles 14 A-E and 32 of the Act on Tax Assessment are planned to take effect from the beginning of 2017.

Summary of BEPS response: Finland

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

In 2014, Finland introduced a regulation generally corresponding to the BEPS recommendations which limits the deductibility of interest expenses on related party loans in business taxation.

The limitations will be applied only if the interest expenses exceed the interest income received by the company; i.e., if the company has net interest expense.

Interest may become non-deductible if the net interest expense exceeds 25 percent of the company's adjusted business profits (i.e., taxable business profits adjusted by the aggregate amount of interest costs, depreciations, losses and change in value of financial assets and group contributions received, deducted with the amount of group contributions paid).

The regulation contains a general safe haven of EUR 500,000 (approx. $552,000). If the net interest expense (including third-party and related-party interests) exceeds EUR 500,000, the interest limitation will be applied to the entire amount.

Interest payments for third-party loans will not be affected. However, third-party loans will be deemed intragroup loans if a related party pledges to an unrelated party a receivable as security for the loan and the unrelated party provides a loan to another related party, or the loan from an unrelated party is de-facto a back-to-back loan from a related party.

Further, the interest expense will remain fully deductible if the equity ratio of the company is equal to or higher than the consolidated equity ratio of the group. The regulation allows an indefinite carry forward of non-deductible interest expenses and deduction of such interest expenses, provided that the limitations are not exceeded.

In addition, EU's Anti-Tax-Avoidance Directive also contains amendments on the deductibility of interest. Finland has, along with other EU Member States, agreed on implementing the Directive, however no ongoing legislative initiatives have so for been issued. Member States shall implement the Directive by January 1, 2019. However, implementation of the interest deduction limitation rule can be postponed until OECD members agree on a minimum standard on the issue, but no later than January 1, 2024, provided the Member States already have equally effective national rules in place.

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Summary of BEPS response: Finland

What do we recommend clients do to face the impending changes in your territory?

Even though Finland has not yet implemented new legislation in relation to BEPS project's action plan, it is expected that Finland would follow other European countries with the initiatives. Therefore we would recommend our customers closely monitor the initiatives and prepare the transfer pricing structures and pricing of intra-group transactions so that they would comply with the BEPS proposals.

The revised chapters to the OECD guidelines would underline the importance of risk taking functions in the functional analyses. The risk allocation should be based on actual behaviour of the parties where intra-group agreements would form a starting point for the analyses. This would, in our opinion, create a risk for incorrect interpretations by the tax authorities and thus, we would emphasise the importance of Advance Pricing Agreements especially regarding the remuneration of R&D activities in the future.

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Summary of BEPS response: France

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

CbCR and the automatic information exchange between states have been introduced in the Finance Bill 2016.

The content of the French CbCR form was clarified by a decree issued in September 2016. As expected, it is fully in line with BEPS Action 13 final deliverables (10 quantitative items and information on main activities of Group companies).

How has the initiative impacted tax enquiries/ audits?

Please note that since 2015 the French government regularly published some tax schemes that they may presume as abusive. To date, 23 were established. Such publication has no legislative value and constitutes a mere effort to inform taxpayers about the tax authorities' position.

The French Tax Authorities have been increasingly focused on tax efficient schemes and these are being frequently reassessed for the last six months. In addition to the increase in the number of reassessments, the amount of tax at stake in these audits is much higher than seen previously. This upward swing has been occurring for a number of years; therefore, while not directly related to BEPS, it is aligned with the principles BEPS is advocating.

Is your territory proposing to introduce country-by-country reporting?

Yes, the CbCR shall be electronically filed by a legal entity satisfying the following criteria:

- The entity has a legal need to present consolidated financial statements
- The entity holds or controls, directly or indirectly, subsidiaries or has branches set up in foreign jurisdiction
- The entity achieves an annual consolidated turnover (exclusive of VAT) equal or greater to EUR 750 million
- The entity is not held by legal entities established in France liable to the CbCR obligation themselves or by legal entities established abroad being liable to the CbCR obligation in their own jurisdictions

Information will be required from 2016 onwards and must be submitted to the French Tax Authorities 12-months after fiscal year end.

Summary of BEPS response: France

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Limitation rules for the deductibility of interest expense have been in force since 2014. The deduction of loan interest paid by a company (subject to corporate income tax) to a related company is allowed, provided that the lender is subject to tax on profits on the interest received amounting to at least 25% of the tax, as determined under French tax rules.

What do we recommend clients do to face the impending changes in your territory?

Tax efficient projects are still possible if carefully managed, i.e. if particular attention to substance is given. So in order to defend such a scheme against challenges from the FTA during a tax audit, our recommendations are two-fold:

- Companies should prepare a defense file and gather any evidence demonstrating substance, particularly for related entities in low-tax jurisdictions.
- Companies remain as transparent and cooperative as possible for tax audit strategy purposes.

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Summary of BEPS response: Germany

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The majority of proposals suggested by the OECD have already been implemented in German tax law. Germany is a strong supporter of the BEPS initiative and has influenced numerous issues that the OECD has recommended (including CFC measures, passive income controls, detailed transfer pricing documentation requirements, and interest barrier rules). Most recently, the legislator published a draft law on the implementation of several BEPS-proposals. This draft law has already been approved by the German Federal Cabinet. It provides the following changes in domestic law:

- As regards Action 13 the German legislator plans to adjust Sec. 90(3) General Tax Code (GTC) in order to fulfil the new requirements for the Local File and the Master File. CbCR will be implemented in Sec. 138a GTC.
- With reference to Action 5 the German legislator plans to adjust the Administrative Assistance Law in order to enable the exchange of tax rulings between the EU member states.

It is expected that the draft law will come into force in the beginning of 2017.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Germany introduced earnings stripping rules effective January 1st, 2008. The basic German rule allows an unlimited deduction of interest expense up to the amount of interest income. Interest expense exceeding the interest income (known as net interest expense) is deductible up to 30 percent of the tax EBITDA. Germany thus takes an earnings-related approach depending on the EBITDA. General changes to the existing rules are not expected. However, the OECD mentioned that upper limits for interest deductions amounting to 20 or 30 percent of the EBITDA are seen as too high and are therefore inadequate to counteract BEPS.

With a draft law the Financial Committee has recently proposed to extend the draft law of July 13, 2016 by a new rule to counteract the double deduction of operating expenses with resect to tax transparent entities. According to this draft of Sec. 4i Income Tax Code, operating expenses of a tax transparent entity are only tax deductible in Germany if these expenses did not lower the tax base in another state.

Summary of BEPS response: Germany

How has the initiative impacted tax enquiries/ audits?

Taxpayers which are not covered by the definition of small or medium size entities are generally audited frequently in Germany. The tax audit is defined as an integral part of the tax assessment procedure. In the last few years, not only the Federal Tax Office, but also the local tax administrations have trained special teams with detailed economic knowledge for auditing transfer prices and other cross-border transactions.

In particular, the audit of transfer prices for intangible assets and the question of whether permanent establishments are constituted may be considered a focus in tax audits. Audits are generally much more frequent in Germany than in countries such as the UK. Last but not least, the German tax authorities recently published tougher rules for accounting and tax information systems.

Is your territory proposing to introduce country-by-country reporting?

CbCR has already been implemented with respect to banks, other financial institutions, and companies active in raw material exploration. The legislator plans to implement an industry-wide CbCR in Sec. 138a GTC in line the OECD requirements.

The first report has to be prepared for 2016 and transmitted to the Federal Central Tax Office, latest, by the end of 2017.

What we recommend clients to do to face the impending changes in Germany

Bearing in mind the growing importance of transfer pricing in a large number of German tax audits, we strongly advise clients to carefully comply with the documentation requirements. Moreover, we recommend avoiding permanent establishments by means of contractual arrangements or choosing other forms of doing business due to the uncertainties and risks related to PEs. Clients which are affected by the CbCR should start to take the necessary actions (data gathering etc.) in order to prepare and submit the reports in due course.

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Summary of BEPS response: Greece

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Greece has already implemented CFC and thin cap rules, which are in line with the BEPS reports on Actions 3 & 4, respectively. The rules in question have in fact been effective since January 1, 2014, and are part of the Greek Income Tax Code. In the field of transfer pricing, Greece has introduced, effective since January 1, 2014, an explicit provision governing intra-group business restructuring, focusing particularly on intangibles and their appropriate valuation.

This is also a provision that is in line with the BEPS report on Action 8 (TP & intangibles). Other transfer pricing rules, including transfer pricing documentation rules, make an explicit cross-reference to the OECD Transfer Pricing Guidelines. Therefore all changes introduced by the BEPS reports on Actions 8-10 are already impacting intra-group transactions performed by Greek enterprises.

Is your territory proposing to introduce country-by-country reporting?

Greece has not yet introduced CbCR requirements. However, Greece is among the 31 countries that signed the CbCR Multilateral Competent Authority Agreement in January 2016, taking the obligation to introduce such rules effective for years 2016 and onwards (initial reporting to take place in 2017, concerning transactions performed during fiscal year 2016).

How has the initiative impacted tax enquiries/ audits?

Tax authorities are now more keen to review cross-border transactions performed by Greek enterprises, focusing particularly on transfer pricing and permanent establishment issues. The contemplated interpretation of the General Anti-Abuse Rule (effective since January 1, 2014) is also a matter that remains to be seen in the near future.

Summary of BEPS response: Greece

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

As noted previously, an earning-stripping rule has been in force in Greece since fiscal year 2014 (art. 49 of Law 4172/2014-The Greek Income Tax Code). According to this rule, the net deductible interest of Greek enterprises is limited to 30% of EBITDA from January 1, 2017 (the limit was initially 60%, from January 1, 2014 and gradually dropped to 50% effective from January 1, 2015 and 40% effective from January 1, 2016).

The limit in question only applies if the net interest exceeds EUR 3 million per year (starting from January 1, 2016). This limitation applies in parallel with transfer pricing rules. Therefore, an arm's length interest expense may still be disallowed, if it falls within the earning stripping rule limitations.

What do we recommend clients do to face the impending changes in your territory?

Review the current level of substance of their existing intra-group structures, for purposes of proactively enhancing their structures (e.g. in terms of resources, functions, appropriate pricing) in view of the new era of tax audits moving away from form and focusing particularly on substance.

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Summary of BEPS response: India

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Certain legislative changes are being proposed in the Finance Bill of 2016 which were directly inspired by the BEPS action plans. The changes include implementation of an Equalisation levy – Action Plan 1, Patent box Incentive Regime – Action Plan 5 and CbCR - Action Plan 13. The General Anti-Avoidance Rule (GAAR) is proposed to be introduced into the Indian legislative framework that will be in effect starting April 1, 2017.

India and the U.S. recently signed an agreement to implement the Foreign Account Tax Compliance Act, effective September 30, 2015. The agreement promotes mutual information sharing, meaning that the US will share financial information on Indian residents who have investments in the US with the Indian Ministry of Finance.

The Government has also legislated the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("Black Money Act"), to tax foreign undisclosed income and assets of tax residents of India and non-residents who have invested India-sourced income in foreign assets.

How has the initiative impacted tax enquiries/ audits?

The BEPS Action plans that have been endorsed by the OECD/G20 in respect of CbC and Intangibles are gradually finding their way into audit inquiries and information requests. Specifically, in one Tax Court ruling of Watson Pharma, concerning clinical trials, the Tax Tribunal took cognisance of local comparables and placed reliance on the OECD revised guidance on Intangibles to hold that no location savings accrued over and above the profit margins of the comparable companies; i.e. that the profit margins of comparable Indian companies already had location savings built into them.

Is your territory proposing country-by-country reporting?

India, being part of the G20, introduced CbCR wherein, multinational enterprises having aggregate revenue equal to or more than EUR 750 million are covered under the new legislation effective from Financial year 2016-17.

Summary of BEPS response: India

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The reaction to the BEPS initiatives regarding interest deductibility is expected to be part of the General Anti Avoidance Rule (GAAR) which will be implemented in 2017. There is an express statement that the onset of GAAR will coincide with the additional implementation of other BEPS Action plans (which may include the Action Plan affecting interest deductibility) and hence some more changes to GAAR could be expected. However, there is no specific provision made on this issue.

What do we recommend clients do to face the impending changes in your territory?

We recommend clients keep themselves abreast of changes being proposed and adopted by the OECD/G20. In particular, clients are encouraged to engage with their advisors proactively to identify and assess the impact of CbC and exchange of information on their global businesses. Companies are also advised to actively participate in providing comments to the OECD in respect of BEPS Actions that are being put out due to the far-reaching nature of the changes.

Additionally, we recommend clients ensure that their support documentation is robust and sufficient to substantiate any current tax positions being taken. Clients also need to be prepared for additional documentation, compliance requirements and enhanced enquiries which may ensue in the years to come.

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Summary of BEPS response: Indonesia

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

As the G20 leaders endorse the BEPS action plan, the Government of Indonesia, as a member of G20, is actively involved in discussing the BEPS action plan with the OECD. Therefore, Indonesian Tax Office ("ITO") is preparing several new regulations that will adopt the BEPS Action Plan. The incoming regulations and the amendment of the existing regulations shall specify the application of arm's length principle, which refers to the guidelines from BEPS Action Plans No. 8, 9 and 10; transfer pricing documentation, which will incorporate the BEPS Action No. 13 regarding CbCR; and MAP and APA programs, which will incorporate BEPS Action Plan No. 14 regarding dispute resolution.

How has the initiative impacted tax enquiries/ audits?

BEPS impacted the tax auditors' way of performing TP audits especially in context of intangibles. A company's contribution to the development, enhancement, maintenance, protection and exploitation of an intangible is one of the major issues during a transfer pricing audit. It is often necessary to prove that an Indonesian company imports the intangible from an overseas company and has no contribution related to it.

Furthermore, in line with the development of the BEPS initiative, exchange of information has also become more important. The importance of this process is particularly emphasised by the tax auditors' determination to have access to the financial statements of Indonesian taxpayers' overseas counterparties in order to have the big picture of a group's supply chain.

Summary of BEPS response: Indonesia

Is your territory proposing to introduce country-by-country reporting?

The ITO is still in the process of preparing new regulation on transfer pricing documentation, which will adopt BEPS Action Plan No. 13 regarding CbCR. Currently, transfer pricing is an important issue for multinational companies in Indonesia because the ITO is requiring multinational companies to be more transparent than seen previously.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Indonesia has just issued a Minister of Finance Regulation Number 169/PMK.010/2015 regarding the appropriate debt to equity ratio. Under this regulation, the acceptable debt to equity ratio is 4:1 and it shall apply to all industries with certain exceptions.

The definition of debt under this regulation shall include the balance of long-term loans and short-term loans, including interest bearing accounts payable.

The Government of Indonesia plans to apply the Specific Anti Avoidance Rule by issuing this regulation to avoid the abuse of interest expense to reduce the corporate income tax.

What do we recommend clients do to face the impending changes in your territory?

We recommend clients review and arrange the related party transactions with reliable supporting evidence provided with reference to third party comparables.

TP documentation is a reliable source to assess whether a company has a potential risk in the future. Therefore, clients should prepare thorough TP documentation, supported by reliable and sufficient arm's length evidence.

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Summary of BEPS response: Ireland

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Ireland has introduced CbCR for MNE Groups for accounting periods commencing on or after January 1, 2016.

Ireland has also recently amended its securitisation legislation to eliminate double non-taxation and has recently strengthened GAAR rules. While these amendments were considered and implemented prior to the recommendations from BEPS, it follows the logic BEPS is hoping to implement particularly around the effects of hybrid instruments.

How has the initiative impacted tax enquiries/ audits?

Audits within Ireland are focusing increasingly on substance, including the specific activities currently being undertaken in Ireland, and the seniority of any staff members undertaking such activity. Further, as the transfer pricing rules have been introduced in Ireland relatively recently, transfer pricing has been a more prominent feature of audits (and indeed specific transfer pricing audits now occur).

The authorities have recently strengthened and expanded their transfer pricing audit team with the recruitment of a number of experienced professionals from both practice and industry backgrounds.

Additionally the transfer pricing audit process has undergone reform recently within Ireland with the introduction of a 'desk-audit' approach. Under this model companies are essentially asked to self-review their transfer pricing, via a Transfer Pricing Compliance Review (TPCR).

Should the authorities not be satisfied by the TPCR they may then initiate a formal tax-authority led audit. TPCRs and standard taxation audits are on the increase in Ireland.

Is your territory proposing to introduce country-by-country reporting?

Ireland has introduced CbCR for MNE Groups for accounting periods commencing on or after January 1, 2016.

Summary of BEPS response: Ireland

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

There has been no government reaction to the Action 4 discussion draft released to date.

What do we recommend clients do to face the impending changes in your territory?

Clients are advised to review their activities to ensure that adequate substance exists within Ireland justifying substance and transfer pricing arrangements currently in place.

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Summary of BEPS response: Italy

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Patent Box regime
The 2015 Budget introduced a patent box regime, which grants a 50% percentage exemption on income derived from the exploitation or the direct use of a qualifying IP both for corporate income tax (“CIT”) and Italian Regional Activities of Production tax (“IRAP”).

The regime is in line with the OECD ’nexus approach’ as described in the reports released on BEPS. The only feature of the Italian rules which is not in line with the OECD principles is the inclusion of trademarks within the scope of intangibles qualifying for the incentive.

Hybrid mismatch anti-abuse legislation
Italy has introduced a rule to limit the effect of hybrid mismatches, where income paid by a foreign company to an Italian shareholder (on shares or any form of securities or similar hybrid instruments) may only be taxable as a 'dividend' (and therefore substantially tax exempt) if it can be demonstrated that the same payment has not been deducted from the taxable income of the foreign company.

Controlled Foreign Company (CFC) regulation
In September 2015 Italy has revised the anti-avoidance provisions on CFCs:
- Limiting the applicability of CFC rules to controlled companies (and no longer for affiliated companies);
- Repealing the mandatory ruling procedure required to obtain exemption from the application of CFC rules (the ruling remains an option). “Business” test or “subject to substantial tax” test can be documented in case of tax audit.

Additional legislation
In August 2015, Italy approved rules that technically define the concept of 'abuse of law‘, according to the rules on aggressive tax planning provided by Recommendation n. 2012/772/UE. Taxpayers may ask for a general ruling to determine if the transactions that they are about to carry out may constitute abuse of law. No criminal charges would be linked to the “abuse of law” behaviour. Recent changes in the law seem to exclude the concept of criminal offences for the legal representatives in TP evaluation issues. New types of rulings were introduced in order to facilitate a common tax approach between taxpayers and tax authorities, including those for companies with considerable investments in Italy (EUR 30m) and effects on the levels of employees involved. An optional branch exemption regime has also been introduced.

Summary of BEPS response: Italy

How has the initiative impacted tax enquiries/audits?

In Taxand Italy's experience, the audit force is continuing to target large multinational organisations within Italy.

A specific division within the tax authority has been created in each region devoted to controls and auditing of 'large taxpayers', which are defined as companies with a turnover exceeding EUR 100m. The tax inspectors within this specialised division are generally high level staff who have received significant training on various tax avoidance / evasion schemes. As such these specific regional divisions are becoming increasingly efficient and effective in targeting such schemes as part of their audits.

Specific areas of challenge are regarding the existence of hidden Permanent Establishments (PEs) (relating to Action 7 of BEPS) and treaty abuses (Action 6). Additionally, transfer pricing issues are subject to ever increasing challenges, not only through the use of TP adjustments but also on the basis of re-characterisation of intercompany loans into capital. As regards the allocation of free capital to the branches of foreign entities, Italian tax law has expressly stated that it must be determined according to the OECD principles, bearing in mind functions performed and risks undertaken.

Is your territory proposing to introduce country-by-country reporting?

Yes, the Italian 2016 Budget Law introduced CbCR. The regulations are to a great extent in line with the BEPS Action 13 deliverables. An implementing decree will be issued in order to specify the procedural aspects.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Italian tax legislation regarding interest deductibility has been modified in 2007 where a 30% EBITDA passive interest limitation was introduced. Beginning in 2016, dividends cashed in from non-Italian resident controlled companies will be included in the EBITDA computation, and will no longer be included in the consolidation tax system the EBITDA of the non-Italian controlled companies.

Taxand

Summary of BEPS response: Italy

What do we recommend clients do to face the impending changes in your territory?

We are advising clients to review their current corporate and tax structure to assess the level of 'tax aggression'. The concept of “substance over the form” is taken into consideration to a greater and greater extent by tax authorities in their tax audits.

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Summary of BEPS response: Japan

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Action 1

VAT rules have been reformed and the activities that are described below, conducted by overseas business operators which were not subject to the Japanese VAT before, are now subject to VAT:

- Distribution of digital books, music, images and software (including various applications such as games) via the internet
- Services for utilizing software and databases via the cloud by customers
- Distribution of advertising via the internet
- Services for utilizing internet shopping and auction websites by customers
- Online sales of game software
- Hotel reservation and restaurant reservation websites (services fees will be collected from hotel and restaurant companies)
- Online foreign language lessons.

Action 2

The scope of the foreign dividends tax exemption regime has been amended such that dividend distributions from a jurisdiction which allows tax deduction of the dividend distributions are now excluded.

Certain Japanese tax regulations and practices deal with anti hybrid arrangements. For example, the DTT between the US and Japan contains a linking rule (paragraph 6 of article 4).

Action 3

Japanese tax law contains CFC regulations. Recently, there have been five court cases involving toll manufacturing arrangements between Hong Kong and mainland China concerning CFCs.

Action 6

An exit tax has been introduced that affects wealthy individuals: they will now be subject to tax on certain unrealized gains on assets upon moving their resident status overseas.

Japanese tax law does not contain a GAAR in the strict sense of its definition, but does contain a GAAR specifically applicable to cross border transactions between related parties within global multinationals. This GAAR has been applied against some global multinationals already.

Summary of BEPS response: Japan

Action 13

TP documentation rules have been amended to follow OECD recommendations by the 2016 tax reform.

How has the initiative impacted tax enquiries/audits?

In March 2015, the Tokyo High Court decided on the IBM tax litigation case, cancelling tax assessments against IBM in the years between 2002 and 2005. This settlement amounted to US $1.2 billion in total. One aspect of the case concerned hybrid mismatch arrangements. Following the case resolution the tax authorities amended the tax regulation to ban this structure, thus it is now unfeasible to conduct any similar arrangements in Japan.

There was no concept of BEPS and the hybrid mismatch at the time the case related to in 2005. Now, it can be concluded that the Japanese tax authorities are trying to establish a new framework for preventing BEPS alongside the OECD's initiative.

Is your territory proposing to introduce country-by-country reporting?

CbCR is now required for certain designated global corporate groups with total revenue on a consolidated basis of 100 billion yen or more during the most recent fiscal year (use of OECD XML SCHEMA is planned.)

A domestic corporation and a foreign corporation having a permanent establishment in Japan, which is a member of the specified multinational enterprise group (i.e. multinational enterprise group whose total revenue on the consolidated basis for the preceding year was 100 billion yen or more) must file the documents described below to the tax office through the e-Tax (electronic tax) filing system.

- Ultimate Parent Company Report
- CbCR, which requires the information described below.
  - Revenues, profit (loss) before income tax, income tax paid (on cash basis), income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash and cash equivalent
  - Name of the member, tax jurisdiction of resident, tax jurisdiction of home office if tax jurisdiction of resident is different, and their main business activities

Summary of BEPS response: Japan

- Any other information relevant to the above
- Master File, which requires the information described below.
  - Chart illustrating the specified multinational enterprise group's legal and ownership structure and geographical location of operating entities
  - General written description of the specified multinational enterprise group's business including:

- Important drivers of business profits;
- A description of the supply chain for the group's five largest products and/or service offering by turnover;
- A description of the supply chain for any other products and/or services amounting more than 5 percent of group turnover;
- A list and brief description of important service arrangement between the members other than research and development services;
- A brief written functional analysis describing the principal contributions to value creation by individual entities within the group;
- A description of important business restructuring transactions, acquisitions and divestitures.

  - Other items described I the article 22-10(5) paragraph 1 of Ordinance

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Japanese tax law contains the thin capitalization rule and the earning stripping rule. There is no proposal to make amendments to these rules.

What do we recommend clients do to face the impending changes in your territory?

Needless to say, all planned transactions should be structured in accord with the Japanese tax laws and relevant double tax treaties.

In addition, the planning should include a persuasive support documentation of the transaction to prove its legitimacy during an initial stage of tax audit.

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Summary of BEPS response: Korea

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In an effort to reflect the BEPS Action plan, the Korean Government has amended the relevant tax regulations including the Adjustment of International Taxes Act ("AITA"), which is in line with OECD Guidelines.

The relevant existing statutes provide the following provisions for taxation:

- Imposing taxes upon the actual beneficiary, not a nominal holder
- Imposing taxes associated with transfer pricing based on the arm's length price
- Interest paid to a foreign controlling shareholder will be deemed as a dividend and the relevant tax will be imposed accordingly (thin capitalization rule)
- In cases where a local resident invests in a foreign corporation having its headquarters in a country which taxes 15% or less of the actual income generated, the amount from a distributable reserve income of such foreign corporation at the end of each fiscal year belonging to the local resident will be deemed as a dividend paid to the local resident and will be taxed accordingly.
- Exchanging tax and financial information between nations

In particular, pursuant to the amendments to the AITA, a taxpayer engaged in an international transaction with a foreign related party must file both an international transaction schedule and an international transaction integrated report with the competent tax authorities. The BEPS Action Plan will be reflected continually in the relevant rules and regulations in the future.

How has the initiative impacted tax enquiries/ audits?

In brief, the amendments require multinational corporations to submit international consolidated reports reflecting the corporate activity and transaction flow. And by doing so, the competent tax authorities would be able to tax foreign companies in Korea such as Google and Apple. In the past, multinational corporations in Korea like Google and Apple operated in the form of a limited liability company (yuhan-hoesa), which are free from public announcements and external audits, it was quite difficult, if not impossible, to find out the precise sales volume and profit structure.

Summary of BEPS response: Korea

Is your territory proposing to introduce country-by-country reporting?

A taxpayer engaged in an international transaction with a foreign related party must file the international transaction schedule with the competent tax authority within three months from the last day of the month in which the fiscal year ends. In addition, pursuant to newly established Article 11 Section 1 under the AITA, a subsidiary must also submit the international transaction integrated report provided by Presidential Decree in regard to business activities and transaction details on anyone whose volume of foreign related party transaction of the subject tax year and taxpayer's sales exceed the amount prescribed by Presidential Decree.

In cases where the international transaction schedule and/or international transaction integrated report is/are submitted as described below, a profit and loss statement of a foreign related party must also be submitted together with the aforesaid schedule and/or report. If violated, a subsidiary may be subject to a fine not exceeding KRW 100 million.

<u>International Transaction Schedule</u>
In cases where the international transaction schedule is submitted, a profit and loss statement summary of a foreign related party evidencing international transactions with the foreign related party must also be submitted together with the schedule

<u>International Transaction Integrated Report</u>
With respect to the international transaction integrated report, a person/entity meeting both elements stated below must file said report with the competent tax authority:

- The total sum of transactions such as foreign related party transactions of the subject tax year involving goods exceeds KRW 50 billion; and
- The sales amount of the subject tax year exceeds KRW 100 billion.

A person/entity obligated to submit the international transaction integrated report must submit both a taxpayer's individual corporate report and integrated corporate report on all companies related to such taxpayer. Please note, however, so long as any one of the related companies submits the integrated corporate report, the rest of such related companies are not required to submit the same.

Taxand

Summary of BEPS response: Korea

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The thin capitalization rule is applicable to any borrowing from a “foreign controlling shareholder” by a domestic corporation. The debt/equity ratio of 6:1 applies in the case of a foreign parent (or head office) in financial industry and the debt/equity ratio of 2:1 applies in all other cases.

What do we recommend clients do to face the impending changes in your territory?

In order to be compliant with the statutory requirements for filing the international transaction schedule and international transaction integrated report, the subject company should prepare the relevant data and documentation in advance. In other words, an objective and fair transfer pricing method should be used, in cases of multinational corporations, a rational tax policy should be adopted by analyzing taxation details of each country and comprehensively analyzing the entire taxation details of all countries involved simultaneously.

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Taxand

Summary of BEPS response: Luxembourg

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Transfer Pricing

In 2015, the Luxembourg tax legislator formalised the application of the arm`s length principle and introduced certain transfer pricing documentation requirements into Luxembourg tax law. Notably, the new transfer pricing rules allow upward and downward adjustments when advantages are shifted between associated enterprises. Finally, the draft law on the 2017 budget introduces a new provision which provides fundamental guidance on the application of the arm's length principle under Luxembourg tax law and reinforces the authoritative nature of the OECD TP Guidelines for Luxembourg tax purposes.

Countering harmful tax practices (Action 5)

Luxembourg has repealed its intellectual property (IP) 80% income tax exemption regime effective as of July 1, 2016 as well as its IP net wealth tax exemption regime as of January 1, 2017 and at the same time introduced some transitional rules which will apply until 2021. A replacement regime in line with the OECD so-called nexus approach is not introduced yet, but is expected to be implemented at a later stage, in accordance with the announcement made by the Government.

Exchange of information / ruling process

Luxembourg has confirmed its support for the increased ease of exchange of information and belongs to the group of "early adopters" of the OECD Common Reporting Standard (CRS). CRS has now been implemented into Luxembourg law and financial information in relation to calendar year 2016 will be exchanged in 2017. Luxembourg has implemented the EU Directive 2015/2376 on automatic exchange of information on tax rulings. The 2014 EU administrative cooperation directive has also been implemented into Luxembourg Law. The mutual assistance convention and the FATCA agreement with the US have been implemented/ratified.

Additionally, the ruling process has been formalised and the filing of rulings is now subject to a fee ranging between EUR 3,000 and EUR 10,000. Moreover, a ruling commission is in charge of confirming the tax treatment rather than a single tax inspector. The introduction of this commission will make sure that the positions of the tax authorities are harmonized and it could render the process more efficient in the long run. Still, considering the recent changes that have made transfer pricing rules and documentation requirements become clearer, it may in certain cases be advisable for clients to rely on a tax opinion and solid transfer pricing documentation.

Taxand

Summary of BEPS response: Luxembourg

Hybrid instrument changes (Action 2)
Within the private equity field and the financial industry, hybrid instruments are generally a common tool within Luxembourg structuring. Changes have already occurred at the EU level, with the amendment to the EU Parent-Subsidiary Directive to stop double non-taxation created by the use of certain hybrid instruments, which Luxembourg has implemented into its domestic tax law. Additional changes may be introduced in accordance with the EU Anti-Avoidance Directive. Finally, once adopted at the EU level, Luxembourg will have to implement the recently released proposal of Directive on hybrid mismatches with third countries.

Other changes
A draft law on the 2017 tax reform has been presented to Parliament which should reinforce Luxembourg's appeal for international investors.

As part of this reform, a progressive reduction of the corporate income tax rate has been introduced, bringing the global corporate tax rate applicable in Luxembourg-city from 29.22% in 2016 down to 27.08% in 2017 and 26.01% in 2018. As from 2019, a further decrease of the rate is expected.

How has the initiative impacted tax enquiries/audits?

Audits, even though their number has increased in recent years, are generally less problematic in Luxembourg at present, as the majority of large corporations are used to clarifying the tax implications of their investments upfront with the tax authorities (ruling), requiring open disclosure with the tax authorities regarding the functions and structuring to be undertaken locally. However, the Luxembourg authorities are increasingly focusing on detailed transfer pricing studies and documentation, when considering the tax treatment of a Luxembourg company, and will look to ensure any functions that are anticipated to be based in Luxembourg are treated appropriately.

Is your territory proposing to introduce country-by-country reporting?

Luxembourg has started implementing into Luxembourg law EU Directive 2016/881 on CbCR.

Summary of BEPS response: Luxembourg

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

So far, no action has been taken and nothing has been announced in this respect. However, Luxembourg will have to implement the EU Anti-Tax-Avoidance Directive which includes limitations on interest deductibility. While most of the measures have to be implemented by January 1, 2019, the interest limitation rule has to be implemented at the latest by January 1, 2024.

What do we recommend clients do to face the impending changes in your territory?

Hybrid instruments are common within Luxembourg and it is recommended to solicit detailed advice regarding the current state of Luxembourg, foreign, and international legislation before implementing any Luxembourg structure involving such instruments. Even though the hybrid instruments at stake under the BEPS action plan are not always representative of the Luxembourg practice in terms of structuring, it is clear that the use of certain structures, for example profit participating loans, will no longer be an option in the future.

Further, considering the requirement for substance within Luxembourg and the entry into force of a new GAAR (as introduced by the EU parent-subsidiary Directive), clients with operations in Luxembourg will now have to confirm with their advisors that their structure is still in line with the current requirements and will have to adjust it appropriately, if needed.

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Summary of BEPS response: Malaysia

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Although Malaysia is not a member of the OECD, it has been actively participating in the discussions on the BEPS Action Plans. Primarily, the Malaysian Inland Revenue Board ("IRB") is preparing several new regulations that will adopt the BEPS Action Plan No. 13 regarding CbCR.

Amended Transfer Pricing Guidelines are also expected to be released including guidance on CbCR. Malaysia is a signatory to the Multilateral Competent Authority Agreement on CbCR. There has also been legislative changes to the exchange of information in order to facilitate the automatic exchange of information with other tax administrations.

How has the initiative impacted tax enquiries/ audits?

Malaysian tax authorities have not yet focused on BEPS issues. However, the IRB has indicated that the purpose of adopting BEPS Action Plan No 13. is to enable them to perform greater transfer pricing risk assessment and to obtain information on the global operations of the MNE group headquartered elsewhere.

The CbCR will encompass one of the IRB's risk assessment tools for purposes of case selection for transfer pricing audits.

Is your territory proposing to introduce country-by-country reporting?

Yes, Malaysia is intending to introduce CbCR requirements. The proposed effective date for CbCR is January 1, 2017. The due date for the first CbCR submission is expected to be December 31, 2018.

Summary of BEPS response: Malaysia

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Malaysia has legislation in place relating to thin capitalisation. However, this law has yet to take effect. Although the implementation of this provision has been deferred several times, it is now anticipated to become effective beginning January 1, 2018. To date, there has been no guidance on the acceptable debt to equity ratio and whether different ratios will be applied for different industries.

What do we recommend clients do to face the impending changes in your territory?

Clients should keep up to date with changes being proposed and be prepared for increased compliance requirements in the near future. Clients should revisit existing structures and ensure that profits are taxed where the real activities occur.

TP documentation and the CbCR will be used by the IRB in assessing whether a company has a potential risk in the future. Therefore, clients should prepare a robust TP documentation to prove that there is real substance to their transactions.

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Summary of BEPS response: Malta

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The Maltese authorities have indicated that companies incorporated in Malta may have to comply with “additional” requirements on substance (or value creation) to have physical and operational / effective presence in Malta. Even though the full scope of such a requirement are currently unclear, Maltese tax law currently only requires that companies have either their registered seat or their place of effective management in Malta. In practice however, the Maltese tax authorities are already putting a lot of attention to substance before issuing tax residence certificates.

Further, Malta has confirmed its support for the increased ease of exchange of information with respect to the OECD Common Reporting Standard (CRS) and the several tax transparency initiatives. Indeed, legislation has been amended to cater for the automatic exchange of information as provided for in the EU Directive.

Is your territory proposing to introduce country-by-country reporting?

Malta has already implemented / adopted the EU Directive with respect to country-by-country reporting. Relevant forms which must be completed and submitted to the tax authorities have also been implemented.

How has the initiative impacted tax enquiries/ audits?

Tax enquiries and audits are not a significant Maltese issue since in Malta there is a culture of discussing and obtaining written tax confirmation or advance revenue rulings from the tax authorities. However, the Maltese tax authorities are increasingly focusing on transfer pricing issues and to a larger extent on substance, especially before issuing tax residence certificates.

Summary of BEPS response: Malta

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Maltese tax legislation provides that interest is deductible for income tax purposes if it is wholly and exclusively incurred in the production of the income. Thus, sums payable by a person by way of interest upon any money borrowed, is deductible where the tax authorities are satisfied that the interest is payable on capital employed in acquiring the income.

Malta does not have debt to equity ratios or thin capitalization rules which may limit the deductibility of interest payments and there are no official plans as yet to introduce any rules or amend the provisions regarding the deductibility of interest payments.

However, should the EU Draft Anti-Tax-Avoidance Directive be adopted in its current form (i.e. including limitations on interest deductibility), Malta would have to implement such measures.

What do we recommend clients do to face the impending changes in your territory?

We strongly recommend clients review and assess their current structure and issues related to substance, commercial considerations, value creation to ensure that they are in line with the recommendations/requirements.

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Summary of BEPS response: Mexico

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

See below regarding transfer pricing, interest, royalties and technical assistance. Also, the negotiation of treaties with limitation of benefits clauses happens very frequently (including in renegotiations of treaties). Regarding Action 12, Mexico has implemented a disclosure return that has to be filed several times during the year in which taxpayers must disclose a number of listed transactions that are considered "relevant", which will provide additional information of tax planning being carried out by taxpayers.

Is your territory proposing to introduce country-by-country reporting?

Yes, in line with the recommendations issued by the OECD with respect to the BEPS action plan, several changes were introduced to the Mexican income tax law and federal tax code, specifically, the obligation to file different transfer pricing disclosure returns connected to the transactions performed by multinational enterprise groups with non-Mexican related parties. The disclosure returns that have to be filed are the following:

- Master file disclosure return (must include organizational structure, description of activity, intangibles and financial activities with related parties, as well as financial and tax position).
- Local file disclosure return which must include description of the organizational structure, strategic and business activities, as well as financial information of the taxpayer and of the operations or entities used as comparable for the transfer pricing analysis.
- CbCR disclosure return, for Mexican multinationals with consolidated revenue that exceeds US $615 million, approximately. CbCR to include information of worldwide distribution of turnover and taxes paid; indicators of localization of economic activities in the different countries in which the group operates detailing total turnover separated in related and unrelated, pre-tax earnings or losses, income tax effectively paid, income tax determined during the year, equity accounts, retained earnings or losses, number of employees, fixed assets and inventory. The information must also include a list of all the entities belonging to the multinational group and their permanent establishments, identifying for each, the main economic activities, jurisdiction of incorporation, as well as any other information that may be relevant to facilitate the understanding of this information.

Summary of BEPS response: Mexico

These returns must be filed no later than December 31 of the year following the one which is being reported, so the disclosure return corresponding to 2016 will have to be filed no later than December 31, 2017. A penalty for not filing these returns or for incomplete filings or with errors and inconsistencies consists of a fine that may go from MXN $140,540.00 to MXN $200,090.00 (between U.S. $7,200 and U.S. $10,300, approximately). Additionally, taxpayers that fall under any of these situations would not be able to be hired by the federal government or any of its departments.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Mexico has included restrictions for deduction of interest payments to non-Mexican related parties when such interest is received by a transparent entity, or when the payment is considered "non-existent" for tax purposes by the recipient, or the recipient does not consider such income as taxable according to the laws of its country of residence. (This rule also applies to royalties and technical assistance.)

How has the initiative impacted tax enquiries/audits?

Tax audits are beginning to be more substantive than formal and therefore requirements of information are more and more detailed so that they can analyze the economics of the payments rather than the formalities.

What do we recommend clients to do to face the impending changes in your territory?

Adequately document related party transactions to avoid penalties and rejection of deductions. Analyze the international impact of payments to assess if changes in supply chain are necessary.

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Summary of BEPS response: Netherlands

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Pro-active adjustments to Dutch tax law relate to CbCR for groups with a turnover exceeding EUR 750m, as in force per 1 January, 2016. In addition, groups with a turnover that exceeds EUR 50m are obliged to draft a master and local file.

A legislative proposal has been published to bring the Dutch innovation box regime in line with BEPS Action Plan 5. The new rules should be effective per 1 January 2017.

In the proposed rules it will be explicitly included that the innovation box only applies to self-developed IP. Small and medium enterprises (global turnover less than EUR 50m per year and expected gross revenue from IP less than EUR 7.5m per year) are eligible for the innovation box regime provided that they have obtained an R&D certificate. Large companies should meet further requirements to become eligible for the innovation box regime (e.g. patents or breeders rights should be obtained). The proposal also includes the “modified nexus approach” to implement the items included in the Action Plan 5.

Under this approach, the innovation box will not be fully available to taxpayers that outsource (part of) the R&D activities.

The Netherlands will furthermore actively participate in the exchange of information on tax rulings. A legislative proposal was published following the EU Directive 2015/2376/EU concerning the exchange of information on rulings in EU context. The new rules require basic information on the rulings to be exchanged with EU Member States and should be effective as from 1 January 2017. No specific proposal is published for exchange of information under BEPS, but such exchange should already be possible under tax treaties, tax information exchange agreements or the Convention on Mutual Administrative Assistance in Tax Matters.

As other OECD Member States, the Netherlands has committed to the OECD minimum standard concerning treaty abuse. The Dutch State Secretary has announced that the proposed anti-abuse rules will be part of treaty negotiations. On-going efforts to renegotiate tax treaties with developing countries in order to include an anti-abuse rule will continue.

It was additionally stated that the Netherlands will commit to the minimum standards for the existence of permanent establishments (Action Plan 7) and the overall adjustments to the OECD transfer pricing guidelines.

Up to now, no unilateral countermeasures are proposed by the Netherlands regarding hybrid structures (Action Plan 2), CFC-regulations (Action Plan 3) or interest deduction (Action Plan 4).

Summary of BEPS response: Netherlands

These topics are however covered in the EU Anti-Tax Avoidance Directive and it is expected that these rules will be implemented and effective as of 1 January 2019.

How has the initiative impacted tax enquiries/ audits?

The Dutch Tax Authorities discuss the BEPS Action Plan in any audit. Often they use this initiative as a way to pressure taxpayers to comply more easily. BEPS has created an atmosphere where taxpayers are becoming more cautious as to undertaking tax planning, well aware that the tax authorities may use such initiatives in any subsequent audit.

Is your territory proposing to introduce country-by-country reporting?

Yes, the Netherlands has implemented the TP-documentation and CbC-reporting rules fully in line with the implementation package included in Action Plan 13.

The new legislation entered into force on 1 January 2016. Dutch companies that are part of a group with a consolidated turnover of at least EUR 50m should thus maintain a master file and local file in their administration. The files should be available upon filing the 2016 tax return.

The Dutch ultimate parent company of a group with a consolidated turnover of at least EUR 750m should file a CbCR within 12 months after the end of its financial year. A Dutch subsidiary of such a group is obliged to file the CbC-report itself if the report is not disclosed to the Dutch tax administration by the foreign parent (HQ) or if the report is not submitted by the local tax authority.

Each Dutch company part of a group that falls in the scope of the CbCR rules is required to notify the Dutch tax authority whether they are required to file the CbCR or which other group company will file the CbCR. In general, this should be done before the end of the financial year concerned. For the first year, however, an extension of the deadline to 1 September 2017 is provided.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

No direct legislative changes are proposed, but interest deductibility is covered in the proposed EU Anti-Tax Avoidance Directive. As an EU Member State, the Netherlands will implement this Directive. A legislative proposal was published in September 2016, including various additional anti-abuse rules with regard to interest deduction.

Summary of BEPS response: Netherlands

What do we recommend clients to face the impending changes in your territory?

We recommend our clients critically review their existing corporate and tax structure to conclude whether action to mitigate risks and prepare for possible legislative changes is necessary.

We specifically recommend our clients verify whether they meet the new transfer pricing documentation requirements and the requirements for the innovation box regime and to take action if needed.

Where supply chain structures have been set up in the past, we advise clients to closely monitor whether they meet the compliance standards under the changing local (tax) laws. Rapidly evolving businesses bear a risk that prior structures are non-BEPS compliant, whilst their transfer pricing potentially does not reflect the substance currently in place. We advise to review both elements on an ongoing basis.

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Summary of BEPS response: Norway

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Norway has already implemented FATCA, CRS, CFC rules (including black and white lists), interest limitation rules, OECD TP guidelines and OECD TP documentation rules. Norway has started its intention to implement CbCR, and TP documentation in accordance with BEPS Actions No. 8-10 and to enact a new written GAAR (currently only existing in case law).

How has the initiative impacted tax enquiries/ audits?

BEPS will likely have implications in terms of increased control, especially in relation to intangibles assets and transfer pricing documentation. It should also be expected that tax audits will be focused on MNCs and assumed aggressive tax planning.

Is your territory proposing to introduce country-by-country reporting?

As of the income year 2016 (subject to approval by the Parliament during spring 2016) Norwegian based multinationals with consolidated revenues exceeding BNOK 6.5b must comply with the CbCR, which to a large degree follows recommendations from the BEPS project. Norwegian subsidiaries of foreign multinationals and Norwegian permanent establishments would also be required to provide their CbCR.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Interest limitation rules are already imposed in the form of an EBITDA rule. Moreover, the government has stated that additional restrictions on the deductibility of interest will be imposed and that the rules likely will apply also to loans granted by unrelated lenders, in which case a group exception may be introduced in line with the rules proposed within the EU.

Summary of BEPS response: Norway

- What do we recommend clients do to face the impending changes in your territory?

We inform clients to seek detailed advice with regard to their transfer pricing policies and to make sure the increased documentation requirements are met. We also advise that clients prepare for new interest limitation rules and CbCR, if applicable.

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Summary of BEPS response: Philippines

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

There have been no legislative amendments proposed at present in relation to BEPS. However, the Philippines does support the OECD's BEPS project. It is one of 10 developing countries that has participated in meetings of the OECD Committee on Fiscal Affairs (CFA) as well as its technical working groups. The incumbent Philippine Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares is one of the Vice-Chairs of the Ad hoc Group for the development of a multilateral instrument set up by mandate of the OECD CFA and the G20 Finance Ministers and Central Bank Governors.

The Group is tasked to develop a multilateral instrument which will allow participating countries to swiftly amend their tax treaties to implement the tax-treaty related BEPS recommendations. The CIR, however, has clarified that the Philippines has not committed to anything that emerged from the BEPS process.

How has the initiative impacted tax enquiries/ audits?

At this time, the initiative has no visible impact on tax audits in the Philippines. However, the term “Transfer Pricing Audit” is recently being mentioned among BIR examiners and in tax practitioners' circles. The BIR formally included “transfer pricing issues” as one of the 29 criteria for Priority Taxpayers/Industries in the latest BIR audit program for 2015. The BIR is also engaging in capacity building in terms of dedicated personnel and resources for transfer pricing.

Is your territory proposing to introduce country-by-country reporting?

There is no requirement at the moment to submit a CbCR although the Philippine Bureau of Internal Revenue (BIR) has been monitoring all the BEPS developments, including Action 13 (TP Reporting and CbCR) carefully.

Summary of BEPS response: Philippines

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

There are no proposed changes in this area.

What do we recommend clients do to face the impending changes in your territory?

We recommend that Philippine taxpayers ensure that they have robust and relevant transfer pricing documentation, preferably from taxable year 2013 and onwards to address any challenge from the tax authorities.

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Summary of BEPS response: Poland

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The following changes were made or proposed:

- Controlled Foreign Companies (CFC) rules (in place) Polish rules on CFCs concern companies resident in 'black listed' countries (tax havens) and if the following criteria are satisfied:
  - 50% or more of the revenue in any given tax year is from passive income, e.g. dividends
  - at least one type of passive income is taxed at a rate lower than 14.25%, or tax-exempted
  - the Polish parent company has held at least 25% of the shares directly or indirectly for at least 30 days
- CbCR rules (in place beginning 2016) - the largest Polish multinational enterprises (with consolidated revenues exceeding EUR 750m) will be subject to CbCR requirements.
- TP documentation rules (in force beginning the year 2017) – depending on the scale of operations the taxpayers will be obliged to prepare Local File, Master File and CbCRs. Additionally, the taxpayer whose revenues or costs exceed EUR 10m will be obliged to include a benchmarking study in the TP files (local comparables to be included).
- TP guidelines on low value adding services have already been introduced. The intention of this regulation was to reduce the administrative burden of documenting the LVA services; however, the taxpayers are still obliged to prepare a detailed TP documentation accompanied by source documents proving the business substance and rationale of the purchased services.
- More restrictive rules on deductibility of interests have already been introduced. Regulations on the thin capitalization rules were amended in order to prevent excessive interest deductions.
- Changes in tax treatment of hybrid arrangements mismatched are planned and first drafts of the general anti-abusive rules are already in Parlament. It is predicted that the anti-abusive rules may come into force in 2017 if not sooner.

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Summary of BEPS response: Poland

How has the initiative impacted tax enquiries/ audits?

We observe a constantly growing number of tax audits that focus on detailed transfer pricing analysis of international structures involving Polish companies.

The tax inspectors focus their audit efforts on multinationals, and specifically on restructurings, loss-making companies, group charges, transactions with low-rate tax jurisdictions, transfers of intangibles, financial transactions and other potentially tax optimizing structures.

The tax audits are supported by a new competent body created within the Polish Ministry of Finance, which specializes in transfer pricing and is responsible for (i) training the tax inspectors, (ii) investigating areas where effective transfer pricing / tax optimization structures are implemented, and (iii) selecting taxpayers for control.

The questions asked during the tax audits are more thorough and it is more and more difficult to defend the level of charges in inter-company transactions, especially without benchmarking studies or defense files presenting business substance of the transactions.

Is your territory proposing to introduce country-by-country reporting?

Yes, Poland has introduced CbCR starting from 2016. The first CbCRs will have to be ready by the end of 2017 (covering 2016).

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Recently Poland has introduced regulations against excessive interest deductions by amending the thin capitalization rules. The thin cap rules are extended to include indirectly related parties. Also the debt-to-equity ratio has been lowered from 3:1 to 1:1.

An alternative method based on assets has also been introduced where the deductible interest may not exceed the tax value of tangible assets, multiplied by the reference rate of the National Bank of Poland increased by an index of 1.25%. The deduction applies when the interest does not exceed 50% of the taxpayer's operational profit.

Summary of BEPS response: Poland

What do we recommend clients to do to face the impending changes in your territory?

We recommend clients review and assess their current transfer pricing policies and group tax structures to:

- Identify if they have subsidiaries which may be recognised as CFCs under the new rules.
- Assess their transfer pricing model to check if there are any risks of tax authorities challenging them.
- Prepare sufficient transfer pricing documentation and benchmarking analyses meeting the new requirements.

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Summary of BEPS response: Portugal

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Portugal has not adopted legislation as a direct consequence of key global BEPS Action Points but has over the past years adopted legislation that is already aligned to specific action points of the BEPS Action Plan.

For example, Portugal has implemented measures that may be considered BEPS aligned measures, such as: (i) anti-hybrid clause for inbound dividends, (ii) interest barrier rules, (iii) General Anti-Avoidance Rule (GAAR) complemented with Specific Anti-Avoidance Rule (SAARs) in areas of dividends and reorganizations (iv) strengthening of CFC rules; and (v) disclosure rules for aggressive tax planning arrangements that may be considered as BEPS aligned measures.

More recently, Budget Law for 2016 includes a specific measure for the implementation of CbCR and an authorization to adjust the Portuguese Patent Box regime to the nexus principle. These changes to the Patent Box are designed to ensure that the benefits of the Portuguese tax regime are only available where the research and development (R&D) expenditure required to develop the IP also took place in Portugal.

In the meantime, Portugal has also implemented Directive 2015/121 that establishes an anti-abuse rule for the purposes of transposition of the Parent Subsidiary Directive.

Is your territory proposing to introduce country-by-country reporting?

Yes, Budget Law for 2016 implements CbCR. The new CbCR obligations are effective for fiscal years starting January 1, 2016 and will generally apply to Portuguese tax resident entities which are the head of a group, to the extent the consolidated group's net turnover in the immediately preceding fiscal year exceeds EUR 750m. The CbCR applies provided the Portuguese resident entity head of a group is not at the same time a dependent of any other entity, whether they are a Portuguese resident or not, that is obliged to submit a CbCR.

In addition, the CbCR rules also apply to Portuguese entities which are, directly or indirectly, held by a non-Portuguese resident head entity when any of the following circumstances is met: (i) Portuguese resident entity has been appointed by its non-resident parent entity to prepare the CbCR; (ii) the country in which the entity is resident has not established CbCR obligations in similar terms to Portugal; (iii) the country in which the head entity is resident has not signed an automatic exchange of information agreement with Portugal.

Summary of BEPS response: Portugal

The CbCR will be filed on a 12-month period from the close of the financial and tax year – i.e. companies with FY2016 will need to file the CbCR by December 31, 2017. An electronic tax form will still be published by the Portuguese tax authorities for these purposes.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The 2013 Budget Law already replaced the old thin capitalization rules (a 2:1 debt-to-equity ratio applicable only to non-EU-resident lenders) with an interest barrier rule which limits the deductibility of net financial expenses (regardless of type of lender) to the higher of EUR 1m or 30% of adjusted EBITDA. The interest barrier rules also provide for a denied interest deduction and unused EBITDA carryforward clauses.

This measure included a phase-in provision according to which the EBITDA limit would be 70% in 2013 and would decrease 10 basis points per year until reaching 30% from 2017. It may be expected with the gradual increase of the number of companies covered by this regime that some of the issues raised in Action 4 of the BEPS Action Plan may well be revisited.

How has the initiative impacted tax enquiries/audits?

The BEPS initiative has not yet specifically affected tax audits but is likely to be raised as international exposure of BEPS action points increases.

In practice, we see growing concern in tax audits towards specific cross-border issues such as transfer pricing, restructuring operations and interest deductibility issues under increased monitoring under tax audits.

Another concern that we may expect in the future to be raised in tax audits will be points related to the definition of permanent establishment (specially in more decentralised models) as well as of economic substance (i.e. when does a company have sufficient local substance to manage its assets, operations and associated risks).

Summary of BEPS response: Portugal

What do we recommend clients to do to face the impending changes in your territory?

Critically review existing structures and critical areas of risk such as transfer pricing, permanent establishment, intra-group financing to determine whether action is required to mitigate risk and prepare for possible BEPS oriented measures or tax audits.

On the specific area of treaty benefits and abuse (BEPS Action 6) the fact that the OECD final report requires some progress ahead does not mean that entities should remain uncritical regarding principal structures, holding companies or finance companies and therefore we recommend revising the economic and business rational of those structures to align those (if necessary) with the tax treatment.

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Summary of BEPS response: Romania

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Romania's accession as an associate to the BEPS Implementation Forum has been approved by the Romanian Government (following an official invitation from OECD Centre for Tax Policy and Administration) via a memorandum signed in early June 2016, thus enabling Romania's participation in the implementation of BEPS measures. Romania's newly formed associate status to the Implementation Forum assumes working with OECD and G20 in developing of standards and monitoring of entire BEPS package implementation, including a firm commitment to introduce and apply the BEPS package locally, thus aligning to the international practices in the area.

Nevertheless, the new order on transfer pricing documentation regulations published in February 2016 re-iterates the master-local country file concept previously existing under the old rules, with certain amendments regarding the type of the information to be disclosed in the documentation in light of BEPS Action 13.

General anti-abuse rules were already implemented in the Romanian legislation dealing with:

- The substance over form principle,
- The possibility to disregard a transaction without business purposes, and
- The possibility to tax a domestic and EU cross border reorganization if such operation has led to fraud and tax evasion.

The new Tax Code applicable starting 2016 strengthened the existing anti abuse rules by:

- Including a provision which denies the applicability of the double tax treaties to artificial cross border transactions;
- Transposing the anti-abuse rule regarding taxation of EU dividend income.

Taxand

Summary of BEPS response: Romania

How has the initiative impacted tax enquiries/ audits?

The number of tax audits has increased recently with a focus on transfer pricing aspects; indeed, several audits were already concluded with significant transfer pricing adjustments. Tax inspectors focus their interest on multinationals and more specifically on loss-making companies, business restructuring, transfers of intangibles and, group charges with special attention on substance of the transactions and the supporting documentation available at the level of the local affiliate: specific industries (such as retailers, financing institutions) are, in addition, targeted more frequently. The inspection teams are well trained and we have noticed an increased level of specialization in transfer pricing.

We expect that the number of tax audits (focusing on transfer pricing) to increase in future periods, especially considering the changes brought by the new order on transfer pricing documentation (increased transparency, focus on restructurings, financing and group charges, mandatory annual documentation obligation for large taxpayers, etc.). Attention has to be paid to the criminal charges that may be brought to the representatives of the companies, if tax evasion is considered to have occurred (this seems to be the latest trend in this area).

Is your territory proposing to introduce country-by-country reporting?

No CbCR requirements were implemented into the local legislation yet. EU measures are closely monitored by the Romanian Government as well, but no actual measures have been considered yet.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

No special measures regarding interest deductibility were introduced in local legislation following approval of BEPS. Romania has already provided in its fiscal code a number of interest deduction limitations for financing obtained from other entities other than financial institutions as follows:

- Interest on foreign currency loans is limited, as of January 2016, to 4% (previously 6%); any excess above the mentioned threshold is permanently non-deductible;

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Summary of BEPS response: Romania

- Interest on local currency loans is limited to the National Bank of Romania reference interest rate; any excess above this threshold is also permanently non-deductible;
- Interest on long term loans taken from other entities other than financing institutions is temporarily non-deductible (provided the above thresholds are observed) if the debt-to-equity ratio is higher than 3 or negative.

EU measures are closely monitored by the Romanian Government as well, but no actual measures have been considered yet.

What do we recommend clients do to face the impending changes in your territory?

We recommend clients carefully review their current transfer pricing policies and tax structures to ensure that appropriate substance is given to transactions, and that transfer pricing rules are fully complied with sufficient supporting documentation made available to local affiliates.

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Summary of BEPS response: Russia

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

New legislation related to the BEPS Action Plan entered into force on January 1, 2015. This legislation introduced new CFC and residency rules for legal entities and defined beneficial ownership with regard to double tax treaties.

CFC Rules

The new law introduces CFC rules for Russian tax residents. The rules state that a foreign company may constitute a CFC if (1) an individual or legal entity owns (directly and/or indirectly) more than 25% of a foreign organization; and/or (2) an individual or legal entity owns (directly and/or indirectly) more than 10% of a foreign organization and if the combined participation of all Russian tax residents in the organization is greater than 50%. The law also contains a grace period during which the threshold is set at 50% until January 1, 2016. If the Russian owner does not receive dividends from the foreign company, they should recognize the portion of the profit of such legal entity as their income taxable in Russia. There is a list of certain cases when the income of the CFC is not taxed in Russia; for instance, if the CFC is an operational company.

Residency

The new law also introduces new residency criteria for Russian tax residents. Under these rules, a "Russian tax resident" will include (i) Russian organizations; (ii) foreign organizations recognized as Russian tax residents by a double tax treaty; and (iii) foreign organizations whose place of management is in Russia.

Beneficial Owners

Finally, the new law defines who is recognised as a beneficial owner with regards to double tax treaties. Specifically, a beneficial owner is defined as a person who by virtue of having participation interest (directly and/or indirectly) in an organization; or control over an organization; or by virtue of other circumstances has the right to independently use and/or dispose of such income. Failure to meet such requirements may prevent a recipient of foreign income from receiving treaty benefits from a Russian perspective.

How has the initiative impacted tax enquiries/ audits?

The new law has not yet affected tax audits. However, the adoption of CFC rules is triggering tax restructurings in certain Russian groups.

Summary of BEPS response: Russia

Is your territory proposing to introduce country by country reporting?

Russia is not currently planning to introduce CbCR.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

A law was recently drafted which would increase the sphere of application of the existing thin cap rules. It was proposed to extend these rules to loans from foreign sister companies to their Russian related party entities. Under existing legislation thin cap rules are only applicable on loans from direct and indirect parents to their Russian subsidiaries. Previous arrangements using foreign sister entities to avoid thin cap are thus no longer workable in Russia.

The draft of this new law was developed at the end of 2014. However, it has not been adopted yet.

What do we recommend clients do to face the impending changes in your territory?

We recommend, in light of new legislation, that clients review group structure and identify companies which may be recognised as CFCs under the new, stricter criteria. It is important to note that tax authorities must be notified about participation in a CFC.

We also advise that clients examine entities which may be treated as Russian tax residents based on their place of management and control.

As Russia's response to BEPS continues to develop, we recommend that clients consider pending legislation when planning business activities.

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Summary of BEPS response: Singapore

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The Singapore tax authority (IRAS) has published a CbCR guide on October 10, 2016 providing guidelines on: a) the purpose of a CbCR; b) the obligation to provide a CbCR; c) how to complete a CbCR d) how to submit a CbCR to the IRAS. The CbCR supplements the transfer pricing documentation to be maintained by MNEs. Broadly, CbCR will be required for a MNE group in relation to a financial year (starting from January 1, 2017) where:

- The MNE group is one in which the ultimate parent entity is tax resident in Singapore for the financial year in which the CbCR is prepared;
- The consolidated group revenue in the preceding financial year is at least S$1,125 million (approx. $791 million USD); and
- The MNE group has subsidiaries or operations in at least one foreign jurisdiction.

The CbCR must be filed with the IRAS within 12 months from the last day of their financial year.

The IRAS will also provide the CbCR to the tax authorities of jurisdictions identified in a CbCR pursuant to any applicable bilateral treaty for automatic exchange of CbCR information.

How has the initiative impacted tax enquiries/ audits?

Separate from CbCR requirements set to be introduced through legislation in the near future, there has always been a keen focus on deductibility of expenses. Interest-restriction, one of the OECD's focus areas, is embedded both in domestic legislation and tax administration practice. This emphasis will also remain.

Is your territory proposing to introduce country-by-country reporting?

CbCR is the key BEPS initiative to have been announced for administrative implementation, with the first filing of a CbCR to be due by December 31, 2018.

The IRAS is currently developing electronic services for receiving and sending CbCRs with sufficient level of encryption.

Taxand

Summary of BEPS response: Singapore

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Cross-border related party credit facilities and loans have been and still are closely scrutinized by the Singapore tax authority. On January 4, 2016, the Singapore tax authority issued an updated guideline on transfer pricing which sets out, among others, how arm's length interest is to be determined or approximated. The Singapore tax authority is expected to continue to counter the effect of what is perceived to be non-arm's length transaction between related parties.

What do we recommend clients do to face the impending changes in your territory?

Although subsidiary legislation for CbCR is in the pipeline, the primary legislative framework with penalty and enforcement provisions have already been introduced. With the IRAS' announcement of its adoption of CbCR, large multinationals should prepare themselves for the first filing of CbCRs by December 31, 2018.

With a more liberal exchange of information leading to an expected greater transparency between jurisdictions, it is expected that companies who set up in Singapore with very little substance will increasingly be scrutinized by other tax authorities. Depending on the circumstances, it may be worthwhile to assess whether active engagement with tax authorities would be an effective tax management strategy in addition to that of continued proper benchmarking practices.

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Summary of BEPS response: South Africa

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

South Africa has published draft legislation in response to the BEPS Action Plan 13. A Public Notice which sets out the additional record-keeping requirements for "potentially affected transactions" (cross border related party transactions) was published on July 28, 2016 and Regulations to implement the CbCR were published on April 11, 2016.

The effect of this Notice is that, once issued as final, it will become compulsory for large MNE's with potentially affected transactions that exceed or are reasonably expected to exceed the higher of :

- 5% of the person's gross income or
- R50 million

to keep specified records, books of account or documents on hand.

Records need to be kept in respect of any potentially affected transaction that exceeds or is reasonably expected to exceed R1 million in value.

In accordance with the Draft Regulations, it is proposed that where the ultimate parent entity of a multinational enterprise is a South African tax resident and has a consolidated group turnover of more than ZAR 10 billion, it must file a CbCR.

Legislation adopted:

- Additional record keeping requirements for transfer pricing transactions proposed
- CbCR proposed for financial years commencing on or after January 1, 2016
- Extensive CFC legislation
- Debt / equity arbitrage:
  - Hybrid debt instruments – equity coupon treated as interest
  - Third party backed shares – dividends treated as income
  - Hybrid equity instruments – debt coupon treated as a dividend
  - Hybrid interest deemed to be dividends
- Deductibility of interest on acquisition of shares
- Leveraged buy-outs, debt push-down transactions, limitation on interest deductions
- General anti-avoidance rules
- Reportable arrangements rules dealing with the disclosure of certain transactions to SARS

Summary of BEPS response: South Africa

<u>Davis Committee Proposals</u>
The tax review committee, headed by Judge Dennis Davis (the "Davis Committee"), which was appointed to make recommendations for possible tax reforms in South Africa, released comments relating to the 2014 BEPS Action Plan deliverables, including:

- South Africa must adopt new source rules to deal with the taxation of the digital economy in respect of non-residents;
- South Africa must consider introducing or revising specific and targeted rules to deny benefits arising from certain hybrid mismatch arrangements; and
- South Africa must introduce legislation to ensure spontaneous exchange of information regarding tax rulings with other countries.

The recommendations of the Davis Committee on the 2014 BEPS Action Plan deliverables, regarding the additional record-keeping requirements for transfer pricing and the implementation of CbCR were recently adopted in South Africa.

How has the initiative impacted tax enquiries/ audits?

Overall, SARS has become more aggressive in its audit processes and interactions with multinational companies in respect to their cross border transactions, both inbound and outbound. In particular, SARS is focussing on issues of transfer pricing, CFCs, leveraged funding and permanent establishment matters around centralised group functions/services.

Is your territory proposing to introduce country-by-country reporting?

South Africa has publicly committed itself to CbCR and is one of 31 countries that has signed the tax co-operation agreement to enable the automatic sharing of CbCR information.

The implementation of the CbCR standard by SARS will be effected through regulations issued by the Minister of Finance. A draft version of these regulations was published on April 11, 2016.

The draft regulations, which are proposed to come into effect for financial years commencing on or after January 1, 2016, apply to all multinational group enterprises with a consolidated group turnover of ZAR10 billion and do not require information that goes beyond what the OECD guidance recommends.

Summary of BEPS response: South Africa

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Davis Committee has not yet released any comments relating to the 2015 BEPS Action Plan deliverables, including Action Plan 4, but has commented in general that the rules governing the deductibility of interest in South Africa must be more holistic, without a proliferation of too many sections within the Act. The focus of these deductibility rules should be based on a principle rule and whether or not interest is deductible, as well as on mismatches rather than merely attacking a particular type of instrument.

In effect from January 1, 2015, South Africa introduced legislation that will limit the amount of interest that may be deducted by a South African borrower on loans from a non-resident controlling company or a non-resident company that obtained the funds from such controlling company where the interest amount is not subject to South African tax in the hands of the non-resident lender.

What do we recommend clients do to face the impending changes in your territory?

We recommend that clients should set tax strategies and approach tax planning in a manner that is sufficiently resilient to withstand scrutiny in the long term in a country with high levels of political and socio-economic sensitivity in this regard.

The non-tax, commercial considerations in setting strategies and policies are as important as the short term financial efficiency thereof and we recommend that clients keep this in mind when considering their tax strategies.

High risk areas that require particular focus are transfer pricing, leveraged funding, permanent establishments and CFCs. In particular, any structures or transactions that are considered “high-risk” transactions in terms of the BEPS actions, such as offshore distribution or procurement companies or offshore IP structures, should be reconsidered in light of the latest OECD guidance in the BEPS reports to ensure that the transfer pricing treatment is in line with the commercial value creation.

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Summary of BEPS response: Spain

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Amendment of the Controlled Foreign Company (CFC) regime

- Entities that are resident in Spain are required to include (in their taxable base) income that has been derived by a CFC from the transfer of assets and rights, or where the CFC earns service income and there are no material and personal resources at the level of the CFC.

Limitation on deductibility of interest paid

- Limitation on deductibility of financial expenses to 30% of operating profit (already in place before BEPS)
- Non deductibility of intragroup profit participating loans' interests

Changes in the tax treatment of hybrid instruments

Non deductibility of expenses incurred in related-party transactions when, with regards to different tax treatments:

- Income would not be subject to tax
- No income would be generated
- The income would be subject to a nominal tax rate of less than 10%

Transfer pricing rules amended

Several changes in the regulation of related-party transactions:

- Relatedness threshold (direct participation): 5% to 25%
- Remuneration satisfied by an entity to its administrators in the performance of their duties is no longer considered as a related-party transaction
- "Best Method Approach" to value related-party transactions
- Simplified TP documentation regime for companies with a turnover of less than EUR 45m
- Secondary adjustment: refund of the difference to avoid it
- Less onerous penalty regime
- Additional TP documentation requirements to those existing before
- Re-characterization: implicit authorization to the STA to re-characterise controlled transactions based on the real nature of the transactions and the conduct of the parties

Summary of BEPS response: Spain

Is your territory proposing to introduce country-by-country reporting?

New Spanish Corporate Income Tax Regulations have already introduced CbCR:

- Applicable to Spanish resident entities considered parent companies of a group, which are not the subsidiary of another company
- Information must be filed within the 12 months that follow the end of the tax period
- Only mandatory when the combined net revenues of all the persons or entities belonging to a group, during the 12 months preceding the start of the tax period, amount, at least, to EUR 750m
- Information will be required from 2016 onwards and must be submitted within the following 12 months
- CbC information must also be reported by entities that are residents in Spain who are subsidiaries of a nonresident entity in Spain, where any of the following conditions are satisfied:
    - They have been appointed by their nonresident parent company to prepare that report
    - There is no CbCR obligation on similar terms that is set out in the Spanish legislation in the country where such a nonresident enterprise has its tax residence
    - There is no automatic exchange of information agreement, with respect to that information, with the country where that nonresident enterprise has its tax residence
    - While an automatic exchange of information agreement with respect to that information exists with the country where that nonresident enterprise has its tax residence, it has been breached systematically, and the subsidiaries or the permanent establishments resident in Spain will be notified by the Spanish tax authorities within a certain time period.

How has the initiative impacted tax enquiries/audits?

International fiscal transparency (CFC rules)

- Increased scrutiny of transactions performed:
    - By taxpayers that use hybrid instruments to reduce or eliminate tax burden in Spain
    - With companies that are residents in advantageous tax territories
- Detection of permanent establishments based in Spain for those taxpayers who are taxed as non-residents without a permanent establishment

Summary of BEPS response: Spain

Transfer pricing

- Increased scrutiny of:
  - Complex corporate restructuring transactions
  - Intra-group services provided or received
  - Operations with relevant intangibles

Digital economy

- Analysis of the available information in order to detect hidden activities or illicit traffic of goods
- Ensure adequate taxation in Spain of the income generated by manufacturers or service providers who distribute their products through the internet

Low-value adding services

- Assessment of declared expenses and of undeclared income

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Focus on leveraged acquisition of shares has increased considerably, mainly when the main purpose of the operation is to generate financial expenses.

What do we recommend clients do to face the impending changes in your territory?

- Substance evaluation of activities in Spain in light of BEPS initiative
- Thorough analysis of functions performed, assets used and risks assumed
- Review of the documentary evidence prepared by multinational groups in order to support their transfer pricing policies
- Increase "ex ante" certainty by means of fluent relationship with the Tax Administrations (e.g. APAs).

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Summary of BEPS response: Sweden

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Amendment of the Documentation rules
The Swedish Tax Agency has presented a legislative proposal in line with the BEPS documentation package. The new rules will come into effect January 1st, 2017. The master file and local file concept will be introduced, SMEs will be exempted from the rules. Partnerships and permanent establishments will be included (previously exempted).

The CbC rules will be introduced for financial years starting on or after January 1st, 2016. MNEs with a minimum turnover of seven billion SEK will be covered by the rules.

Companies in Sweden that belong to an MNE that are covered by the CbC rules should report to the Swedish Tax Agency which company in the group that is the reporting entity.

Sweden has also signed the automatic exchange of information agreement.

If approved, the proposal will come into force on January 1st, 2017.

New transfer pricing rules
The adjusted transfer pricing guidelines are, according to the Swedish Tax Agency, only clarifications of the existing guidelines and are therefore applicable now and retroactively.

- Is your territory proposing to introduce country-by-country reporting?

Yes, a legislative proposal covering the CbCR was presented in May 2016. If approved, the proposal will come into effect on January 1st, 2017.

- How has the initiative impacted tax enquiries/audits?

Transfer pricing
Increased scrutiny of:
  - Complex corporate restructuring transactions
  - Operations with relevant intangibles
  - Characterization of transactions

Income tax
Increased scrutiny of:
  - Interest deductions
  - Permanent establishments

Summary of BEPS response: Sweden

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

New interest deduction rules are expected during 2016. Current rules were introduced in 2013 and have been very debated. Sweden has received a formal notification from the EU Commission concerning the current rules. The new rules are expected to be in line with BEPS Action 4.

What do we recommend clients do to face the impending changes in your territory?

- Evaluation of activities in different entities and how these activities link to the value chain of the group.
- Thorough analysis of functions performed, assets used and risks assumed.
- Increased focus on handling and controlling risks.
- Due to increased uncertainty in how different countries will apply the new rules related to BEPS there will be an increased need for ex ante certainty by e.g. APAs.
- Test-run of CbCR for risk management.

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Summary of BEPS response: Switzerland

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The Swiss Federal Council confirmed that Switzerland will endorse the OECD BEPS project. The Federal Finance Department is analyzing and elaborating proposals to implement the results of the BEPS project. Draft legislation with regard to CbCR and the automatic exchange of tax rulings has been published. Entry into force is expected for 2018 (CbCR) and 2017 (automatic exchange of tax rulings).

<u>Corporate Tax Reform III</u>

Corporate Tax Reform III is a Swiss tax reform aiming to further strengthen Swiss tax competitiveness. In discussing its implementation the Swiss Federation will have to consider how it can formulate policies which are acceptable under international tax principles but also provide an attractive tax environment.

Specifically, under this proposal, privileged tax regimes will have to be abolished but an IP box taxation regime and R&D deductions as well as tax effective step-up regulations shall be introduced, in addition to other improvements to the tax regime. All measures shall be compatible with OECD standards.

Furthermore, and of key importance, corporate tax rates applicable to ordinary taxed entities (no special tax status) shall be lowered substantially to a range of 12 - 18%.

It is expected that the new legal provisions will enter into force in 2019. Currently, a political referendum, necessitating a general vote, has been raised.

How has the initiative impacted tax enquiries/ audits?

There has been little impact on tax audits and enquiries. Traditionally profits are typically moved into, not out of, Switzerland and therefore BEPS is not a top priority to Swiss tax authorities.

Summary of BEPS response: Switzerland

Is your territory proposing to introduce country-by-country reporting?

The Swiss Federal Council has published draft legislation for CbCR. It generally follows the OECD BEPS recommendations. CbCR obligations shall apply to Swiss headquartered multinational groups with annual consolidated group revenue of at least CHF 900m and in certain cases, also to Swiss group entities of non-Swiss multinational groups. It is expected that the new law will enter into force in 2018. The first automatic exchange of CbCRs is expected to take place in 2020. Swiss groups will be allowed to file a CbCR for fiscal years 2016 and 2017 for exchange purposes on a voluntary basis.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Since the Swiss Federal Council has confirmed that Switzerland will endorse the OECD BEPS project, the currently applicable thin cap and interest deductibility rules may be amended. Other than that, no particular steps have been undertaken so far in this regard.

What do we recommend clients do to face the impending changes in your territory?

- Thorough analysis of functions performed, assets used and risks assumed
- Evaluation of substance requirements for activities in Switzerland in light of BEPS emphasis
- Preparation in view of the CbCR as well as the expected automatic exchange of tax rulings

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Taxand

Summary of BEPS response: Turkey

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

There are four changes regarding the BEPS Action plan in Turkey; interest deduction limitation rules, CFC rules, transfer pricing documentation (i.e. master file, local file and CbCR) and other changes regarding transfer pricing.

The Turkish Revenue Administration released Draft General Communiqué no. 3 - Disguised Profit Distribution through Transfer Pricing to implement new transfer pricing reporting requirements for multinational enterprises in line with BEPS Action 13.

According to the Article 11/i of the Corporate Income Tax Code, companies whose external borrowings exceed its equity, up to 10% of the interest, commissions, delay interests, foreign currency losses and other costs and expenses other than the ones added to the cost of investments shall not be deducted from the corporate income tax base. In order to apply this regulation, Council of Ministers should determine and announce the non-deductible financing expense ratio related to external borrowings exceeding equity. As of today Council of Ministers did not determine the content and the rate, accordingly this article is not applicable at the moment.

Effective January 1, 2006, per the Article 7 of the Corporate Income Tax Code, non-resident subsidiaries are considered controlled foreign entities provided that at least 50% of their capital, dividend income or the voting rights are held directly or indirectly by resident real persons or entities, and these should be subjected to corporate tax in Turkey under certain conditions, regardless of whether such profits are distributed.

The Law on the Amendment of Certain Laws for the Improvement of the Investment Landscape (no. 6728) was published in the Official Gazette on 9 August 2016. Below are the changes regarding transfer piricing with the Law no 6728:

- Related party definition: It is decreed that to assess the concept of "related party" in practice part of transfer pricing as "partnership relation", partnership, vote or profit share right should be 10% at least.
- Transfer pricing methods: With the amendments of Law No: 6728, Transactional Profit Methods have been included to the Law No: 5520. Along with this regulation, Transactional Net Profit Margin Method and Profit Split Method can also be used as transfer pricing methods.

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Summary of BEPS response: Turkey

- Roll-back for Advanced Pricing Agreements: It is allowed that taxpayers may apply the APA (roll-back) retroactivly.
- Penalty protection: For taxes not accrued or accrued deficiently, loss of tax penalty shall be applied with a 50% discount provided that documentation obligations related to transfer pricing are fulfilled completed in time.

How has the initiative impacted tax enquiries/ audits?

Taxpayers subjected to a tax audit will be determined by performing a risk analysis by the Revenue Administration. The Turkish Tax Authority (TTA) has not initiated any audits relating to BEPS as of today. The below issues are the main topics that TTA has been focusing on during tax inspections:

- Cross-border intercompany charges such as service fees, management fees, royalties, etc.
- Activities in free trade zone
- Transactions exempt from CIT and VAT
- Doubtful trade receivables
- Sector specified audits (banking, pharmaceutical, chemistry etc.)
- Loss-making companies for the last 3 years

Is your territory proposing to introduce country-by-country reporting?

On March 16, 2016, the Turkish Revenue Administration released Draft General Communiqué no. 3 - Disguised Profit Distribution through Transfer Pricing to implement new transfer pricing reporting requirements for multinational enterprises in line with recommendations of the OECD and the G20.

The Draft Communiqué implements the three-tier documentation approach to transfer pricing documentation under Action 13. These three documents are a master file, a local file and a CbCR.

Summary of BEPS response: Turkey

Master File: Turkish corporate taxpayers, members of a multinational group, whose assets and net revenues exceeds 250m Turkish Lira or more in the previous year should prepare the “master file” by the end of the second month following the filing deadline of corporate income tax return to the Turkish Tax Authority or those authorized for tax inspection if requested.

Local File: Local file should be prepared by the time when the corporate income tax returns are filed. A local file should consist of three different components; Appendix 2 Transfer Pricing Form, Appendix 4 Transfer Pricing Form and the annual transfer pricing report.

CbCR: Turkish resident parent companies of a multinational enterprise group whose consolidated revenues are 2,037 billion Turkish Lira and above for 2016 are required to submit a CbCR electronically by the end of the 12th month following the fiscal year. For 2017 and beyond the revenue threshold shall be determined according to the Turkish lira equivalent of EUR 750m.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Effective from January 1, 2013, certain limitations have been introduced with the Article 41/9 of Income Tax Code and the Article 11/i of the Corporate Income Tax Code regarding the deductibility of expenses and cost items relating to foreign resources utilized in the companies such as interests, commissions, delay interests, foreign currency losses and other costs and expenses, other than the ones added to the cost of investments.

According to this regulation, if the amount of foreign resources exceeds the equity of the company, financial expense restrictions will be applicable.

The ratio of restriction for the concerned type of expenses shall be determined by the Council of Ministers, but this ratio will not exceed 10%.

As of today Council of Ministers has not determined the content and the rate accordingly this article is not applicable at the moment.

Summary of BEPS response: Turkey

What do we recommend clients do to face the impending changes in your territory?

We recommend clients review and assess their transfer pricing policies and prepare their annual transfer pricing report, TP documentation, and benchmarking studies. It is also important for the Turkish taxpayers to fulfill the documentation requirements relating to international tax issues such as intragroup transactions, PE issues, and services received from abroad.

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Summary of BEPS response: UK

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The UK continues to be a key supporter of the BEPS initiative, driving many of the proposals through the committees, indeed many reflecting current UK legislation. The UK has also been proactive in introducing BEPS initiatives into UK legislation in advance of the outcome of BEPS action plan.

Transfer Pricing (Actions 8-10)

On March 24, 2016, the Finance Bill (2) included the incorporation of BEPS Actions 8-10 into domestic legislation which is effective from April 1, 2016.

CbCR

The UK has been an early adopter of CbCR and has therefore acted swiftly to ensure that the OECD recommendations are enshrined in UK law. On October 5, 2015, HMRC published a draft statutory instrument to implement CbCR.

Diverted Profit Tax

The UK has introduced a new tax, the Diverted Profits Tax ("DPT") that is aimed at aggressive tax planning that erodes the UK tax base.

The DPT legislation has been fast tracked by the UK Government and has caught many by surprise. This legislation pre-empts any similar recommendations that the OECD may be considering.

The legislation is effective from April 1, 2015. It is a new tax (it is not corporation tax or income tax) and applies to all profits diverted on or after April 1, 2015. The applicable tax rate for diverted profits is 25 percent.

Diverted profits arise where there is an "avoided permanent establishment" or "insufficient economic substance". DPT does not apply where the only provision being made between the parties is a loan relationship. Companies have to notify HMRC (in writing, within the three months of the end of the accounting period, unless a designated HMRC officer has advised there is no need to notify) if they believe the rules could potentially apply, unless they have met one of several let-outs to the notification requirements.

HMRC have taken that DPT is not within the scope of existing tax treaties and that it is compliant with existing EU directives and BEPS initiatives. This is likely to be subject to dispute. However, such dispute is unlikely to be resolved in the short-term.

Interest Deductibility

HMRC published a public consultation document seeking views from all stakeholders on how best to respond to BEPS proposals. Deadline for responses to the public consultation was January 14, 2016.

Summary of BEPS response: UK

Patent Box

The UK Patent Box gives companies a reduced rate of tax on their profits from patents and similar intellectual property (IP). MNEs use gaps and mismatches in tax rules in different jurisdictions to shift profits to low tax jurisdictions where there is little or no economic activity. To tackle this, a new internationally harmonised framework for preferential IP regimes was introduced. The agreed Nexus Approach uses R&D expenditure as a proxy for substantial activity thus linking benefits to the requirement to have undertaken the R&D expenditure incurred to develop the IP.

The UK welcomes the introduction of this framework and has drafted a public consultation setting out how the UK proposes to modify its Patent Box to operate within the Nexus Approach, and seeking input from various stakeholders on the design of the modified Patent Box. The deadline for comments was December 4, 2015.

VAT and Digital Economy

The digital economy also creates challenges for value added tax (VAT) collection, particularly where goods, services and intangibles are acquired by private consumers from suppliers abroad.

Whilst not BEPS specific per se, it is important to highlight that the EU has changed the place of supply rules for VAT on the supply of digital services (broadcasting, telecoms and e-services) to consumers (i.e. non-business).

The place of supply is where the consumer is located rather than where the supply was made, therefore suppliers of digital services located in the UK will no longer charge UK VAT on sales to consumers located in other EU member states. This came into effect on January 1, 2015. This EU initiative was being undertaken outside of BEPS initiatives, however has a similar purpose to BEPS Action 1: Address the Tax Challenges of the Digital Economy.

How has the initiative impacted tax enquiries/ audits?

Due to the significant pre-existing BEPS compliant legislation, BEPS itself has not had a significant impact on the current UK audit activity. However, disclosures made through CbCR and the impact of notification made by companies in respect to DPT may increase enquires/audits in respect of large multinational enterprises.

Is your territory proposing to introduce country-by-country reporting?

On October 5, 2015, HMRC published a draft statutory instrument to implement CbCR. Key features of the draft statutory instrument include:

Summary of BEPS response: UK

- MNEs with a UK resident parent entity and a combined annual consolidated group revenue of £586m or more are to submit an annual CbCR to HMRC for the following period;
  - New rules take effect for accounting periods beginning on or after January 1, 2016, therefore, they require first filing by December 31, 2017;
  - A voluntary filing by a constituent entity ("surrogate parent entity") is allowed, meaning that where the ultimate parent entity is not required to file in its own tax jurisdiction or where that jurisdiction has not entered into exchange arrangements with HMRC with respect to CbCR.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The UK government believes that the new rules on interest deductibility as set out in BEPS Action 4 report are an appropriate response to the BEPS issues identified therein. The UK government has published some of its proposals on how the UK will implement the recommendations from the OECD on BEPS Action 4 – restricting interest deductibility.

The UK will implement a fixed ratio rule limiting UK corporation tax deductions for net interest expense to 30% of a group's UK EBITDA (earnings before interest, tax, depreciation and amortisation).

What do we recommend clients do to face the impending changes in your territory?

<u>CbCR</u>

As a result of Action 13, there is a significant concern among tax payers that they would not have the human and technological resources to cope with its demands. As a result, many MNEs are undertaking trial runs to identify the capability of the existing systems and assess how a tax authority might interpret the results of the CbCR and therefore allow for such interpretations to be addressed.

UK subsidiaries of foreign-parented groups will be required to file a CbCR for the UK sub-group if the foreign parent is not required to file in its own territory (or HMRC does not expect to receive the report from that tax authority).

Summary of BEPS response: UK

DPT

A company has up to three months after its financial year end to notify HMRC that the new provisions might apply. As such, we recommend clients gather relevant information and consider whether further advice on existing structures should be sought.

Permanent Establishments ("PE")

As the PE definition is being revised, companies are recommended to consider their existing and potential new PE exposures i.e. commissionaires structures. What constitutes "preparatory and auxiliary" activities should be clearly understood and properly documented going forward.

IP and the Nexus Approach

We recommend companies analyse IP structures to ensure value creation, i.e. development, enhancement, maintenance, protection and exploitation ("DEMPE"), aligns with substance.

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Summary of BEPS response: Ukraine

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In June 2016, a task force established by Presidential Decree presented a “de-offshorisation concept” with a summary of key provisions to be included into the draft of Ukrainian anti-BEPS laws. Draft laws have also been prepared but are not yet publicly available. These draft laws are not supposed to be approved and come into effect before 2017.

How has the initiative impacted tax enquiries/ audits?

There has been no impact at this time on tax audits as a result of BEPS, the relevant laws have not yet been approved.

Is your territory proposing to introduce country-by-country reporting?

There is a proposal to introduce CbCR and a group master file. As of November 2016, there is no obligation in domestic law to file these two documents, however in practice master files are sometimes filed as part of TP documentation.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

There is a proposal to limit interest deductions to 10-30% of a taxpayer’s EBITDA with the possibility to carry forward excess interest to future periods.

What do we recommend clients do to face the impending changes in your territory?

As no specific changes have been introduced in Ukraine, we advise clients to continue to monitor the legislative position in Ukraine.

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Summary of BEPS response: USA

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Final regulations regarding CbCR were issued on June 29, 2016 and apply to taxable years of parents of US MNE groups that begin on or after June 30, 2016. The U.S. has also recently finalized rules expanding Treasury's ability to recast certain debt instruments issued to foreign related parties as equity in order to limit the deductibility of interest. These rules generally seek to recast certain debt instruments issued via a distribution, in exchange for stock of certain affiliates, or in exchange for property in an asset reorganization. These regulations put in place stringent documentation requirements for certain related party debt. Failure to fulfill these requirements may result in reclassification of the debt as equity.

How has the initiative impacted tax enquiries/ audits?

So far there has been no impact on tax audits by the IRS in light of BEPS. The activity of the IRS in respect of tax audits remains unchanged, as they are focused on large cases, such as supply chain and IP migrations due to resource constraints. The IRS has announced that its first campaign of transfer pricing audits in 2017 will focus on U.S. inbound distributors.

Is the US proposing to introduce country-by-country reporting?

Effective June 30, 2016 CbCR applies to multinational companies with a U.S. parent if consolidated revenues exceed $850 million. This report is to be submitted on or before the due date (including extensions) of the annual tax return.

Summary of BEPS response: USA

How has the US reacted to the proposed BEPS initiatives regarding interest deductibility?

Apart from the recently finalized Section 385 regulations, no other legislative proposals on interest deductibility are currently active.

What do we recommend clients to do to face the impending changes in your territory?

We recommend clients undertake a detailed review and assessment of their current transfer pricing policies and ensure sufficient documentation and other support are in place with the BEPS initiative in mind.

Clients who are considering undertaking large business changes / reorganisations may also want to consider applying for an Advance Pricing Agreement (APAs) with the IRS to manage uncertainty in the current tax environment.

Clients should also be aware that uncertainty exists within U.S. in relation to the adoption of additional BEPS measures, as the different stakeholders continue to battle on whether to implement further regulations in relation to the Action Plan. Indeed, there is a broad expectation of wholescale tax reform, particularly in relation to international corporate tax, following the recent U.S. presidential elections.

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Summary of BEPS response: Venezuela

What legislative changes have already been made/proposed relating to the BEPS Action Plan?

No legislative changes have been proposed or made in Venezuela related to BEPS. However, certain matters addressed by BEPS were already regulated by Venezuelan Income tax law (such as the so called “substance-over-form”, principle for substance matters, thin capitalization rules, restrictions to interest deduction, among others).

How has the initiative impacted tax enquiries/ audits in your territory?

BEPS has not yet directly impacted the audits or tax enquiries performed by Venezuelan tax authorities. However, prior to the BEPS release, Venezuelan tax authorities had started to harden their position regarding transfer pricing matters.

Is your territory proposing to introduce country-by-country reporting, or has it already introduced country-by-country reporting (if yes, please provide details)?

Venezuela has not yet introduced CbCR.

How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Venezuela has not yet reacted to the proposed BEPS initiatives regarding interest deducibility. However, certain regulations on matters addressed by this specific BEPS action have already been implemented into Venezuela income tax law (e.g., thin capitalization rules, direct link between interest and taxable income, among others).

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Summary of BEPS response: Venezuela

What do we recommend clients do to face the impending changes in your territory?

We not expect that Venezuelan tax authorities will shift towards an alignment with OECD countries in international tax matters. Despite the fact that no amendments to the existing legislation have been proposed, tax authorities have an increased focus on transfer pricing matters. Therefore, we recommend investors perform a detailed analysis of their TP policies, corporate investment structures and cross border operations to ensure that they comply with the current views of the Venezuelan tax authorities in matters related to supporting documentation and substance requirements.

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Appendix 1 - BEPS Action Points

Action point	Description
1	Address the tax challenges of the digital economy
2	Neutralise the effects of hybrid mismatch arrangements
3	Strengthen CFC rules
4	Limit base erosion via interest deductions and other financial payments
5	Counter harmful tax practices more effectively, taking into account transparency and substance
6	Prevent treaty abuse
7	Prevent the artificial avoidance of PE status
8, 9, 10	Ensure that transfer pricing outcomes are in line with value creation
11	Establish methodologies to collect and analyse data on BEPS and the actions to address it
12	Require taxpayers to disclose their aggressive tax planning arrangements
13	Re-examine transfer pricing documentation
14	Make dispute resolution mechanisms more effective
15	Develop a multilateral instrument

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