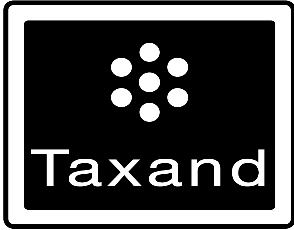

Quality tax advice, globally

Taxand Global BEPS Report

Impact of BEPS across Taxand jurisdictions

November 2015

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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.

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Executive summary

Country:	Canada	China	France
Legislative changes?	New legislation was introduced regarding a domestic treaty shopping rule but was put on hold by the Government pending a review of the final OECD recommendations on BEPS Action #6.	Updated Transfer Pricing rules are currently in the Draft stage and may be subject to further change.	No new proposed or implemented changes to date.
Impact on audit/tax enquiry?	Anecdotal evidence suggests that CRA is applying the proposed revisions to the OECD Transfer Pricing Guidelines that arose as a consequence of OECD's work on BEPS Actions 8, 9 and 10.	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.	The French Tax Authorities are targeting tax efficient companies. The French government identified and published seventeen tax schemes that may be presumed by Tax Authorities as abusive.
Country-by-country reporting?	No official position has been stated so far but the Department of Finance has indicated that legislative amendments would be needed in Canada to codify country-by-country reporting requirements.	Required under the new Draft, but may subject to further change.	Country-by-country reporting will be introduced. A preliminary draft is circulating totally in line with the Action 13 deliverables for an enforcement of the CbC report planned January 1st, 2017 at the latest.
Interest deductibility?	No official position has been stated so far.	A Special Report is required under the new Draft, but may subject to further change.	Limitation rules for the deductibility of interest expense have already been enacted in 2014.
Taxand's Take	Taxpayers should review existing cross-border structures from both a transfer pricing perspective and a treaty shopping perspective as Canada will likely fully endorse all transfer pricing related initiatives under BEPS as well as some form of the BEPS treaty shopping recommendations.	Clients should review cross-border transactions as the Chinese tax authorities will scrutinize payments over USD 500,000.	Carefully managed projects are still possible – companies should prepare a 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 for tax audit strategy.

Executive summary

Country:	Germany	India	Indonesia
Legislative changes?	Legislative proposal that provides for a denial of tax deductibility of expenses (e.g. interest or license expenses) if the corresponding earnings are not taxed in recipient territory. Strong opposition to harmful tax competition alongside France.	GAAR being proposed; may be affected by BEPS Action Plan and recommendations. Agreement with US for implementation of FATCA and enactment of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015.	Indonesian Tax Office ("ITO") is preparing several new regulations and amendments that will adopt the BEPS Action Plan, including the application of arm's length principle (BEPS Action Plan No. 8, 9 and 10); Transfer Pricing Documentation (BEPS Action No. 13 regarding CBC Reporting); and MAP and APA (BEPS Action Plan No. 14 regarding Dispute Resolution).
Impact on audit/tax enquiry?	Companies are audited much more frequently. Tax audits increasingly focus on transfer pricing and on whether permanent establishments are being created.	BEPS starting to influence tax audits, especially at early-stages. Tax authorities may not accept OECD interpretation of treaties, specifically in tax avoidance cases.	BEPS impacted the Tax Auditors' method of performing TP Audit, especially in relation to intangibles, such as the contribution of the company in development, enhancement, maintenance, protection and exploitation of an intangible.
Country-by-country reporting?	CbC reporting has been imposed only on banks, financial institutions, and companies active in the exploration of raw materials. Before further implementing the CbC reporting, the legislator has expressed willingness to wait until the results of the BEPS project are finalized.	Country-by-country reporting has been proposed, and will likely coincide with the implementation of other BEPS actions in 2017.	ITO is still in the process of preparing new regulation on Transfer Pricing Documentation, which will adopt BEPS Action Plan No. 13 regarding CbC Reporting.
Interest deductibility?	As of 2008, interest expenses exceeding interest income (net interest expense) are deductible up to 30 percent of the EBITDA.	The reaction to the BEPS initiatives regarding interest deductibility is expected to be part of the GAAR, which will be implemented in 2017.	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.
Taxand's Take	Clients are advised to seek detailed advice with regard to the increasing importance of transfer pricing documentation. Moreover, creation of permanent establishments should preventively be avoided by means of contractual arrangements.	Clients should keep up to date with changes being proposed and be wary of increased compliance requirements in future.	We recommend to review and arrange the related parties transactions commercially with reliable supporting evidence from the third party.

Executive summary

Country:	Ireland	Italy	Japan
Legislative changes?	Recently amended securitisation legislation to eliminate double non-taxation and strengthened GAAR rules. Not a direct result of BEPS, but follows logic of BEPS.	Italy has already implemented both Hybrid Mismatch anti-abuse legislation and CFC regulation. The concept of abuse of law has been introduced in Italian legislation in 2015.	It is our observation that the annual tax reform in 2016 will contain some changes in relation to BEPS.
Impact on audit/tax enquiry?	Audits have been influenced, 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 formal authority audit.	Increasingly, tax authorities target large MNCs with tax inspectors trained vigorously in various tax areas including TP issues. The tax authorities also hope to challenge hidden PEs.	It is quite likely that the Japanese tax authorities are now trying to establish a new framework of preventing BEPS along with the OECD's initiative.
Country-by-country reporting?	CbC reporting will likely be introduced in line with the Action 13 deliverables, however no specific details have been released by local government.	No specific proposal exists to introduce CbC reporting. However, the tax authorities seem quite active in exchanging tax information on a voluntary basis.	It is our observation that CbC reporting will be adopted by as a part of the annual tax reform in 2016.
Interest deductibility?	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% EBTDA passive interest limitation was introduced.	Japanese tax law contains the Thin Capitalization rule and the Earning Stripping rule. There is no proposal to make amendments to these rules.
Taxand's Take	Clients are advised to review activities to ensure sufficient substance exists within Ireland, justifying nature and terms of the TP arrangements in place.	Evaluate level of 'tax aggression' in planning. Carefully analyse position to avoid criminal penalties and subsequent reputational damage.	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.

Executive summary

Country:	Luxembourg	Netherlands	Poland
Legislative changes?	There are imminent substance requirement amendments; however, scope unknown. Increased exchange of information between taxpayer and authority (FATCA now in force, CRS under implementation). Hybrid Instruments exemptions to be challenged following the implementation of the EU Parent-Subsidiary Directive.	A legislative proposal for the implementation of CbC reporting and the adjustment to the PS Directive was published on 15 September 2015. Minimum substance requirements published. New governmental agreements on spontaneous exchange of information APA/ATR.	The following changes are made or proposed: • CFC rules (in place) • CbC reporting rules (in force from 2016) • TP documentation rules (in force from 2017) • TP guidelines on low value adding services (in place) • limitation on deductibility of interests (in place) • changes in tax treatment of hybrid mismatch arrangements (planned).
Impact on audit/tax enquiry?	Audits less problematic in Luxembourg due to open disclosure to tax authorities. However, increasingly more TP documentation will be required.	Tax authorities discuss BEPS in any audit to pressure taxpayers into compliance.	Tax administration is more focused than before on transfer pricing issues, specifically: intra-group services, restructuring operations, and transfer of intangibles.Tax audits focus also on large MNCs and are identifying harmful tax scheemes possibly used by taxpayers.
Country-by-country reporting?	No proposals have been made yet to introduce the CbC reporting as proposed in the BEPS Action 13 Report.	A legislative proposal has been filed whereby the Netherlands will implement CbC reporting as of 1 January 2016.	CbC reporting obligations introduced by the amendment to corporate income tax bill will be in force as of January 2016.
Interest deductibility?	We do not expect the Luxembourg tax authorities to introduce any severe rule regarding the deductibility of interest payments.	Other than that the Netherlands have subscribed the overall BEPS initiative, no specific comments are made regarding interest deduction (Action 4) yet.	The more strict thin cap regulations were recently introduced: lowering thin cap ratio from 3:1 to 1:1 (D/E); thin cap rules extended to indirectly related parties owning at least 25% of the share capital; alternative method based on assets has also been introduced.
Taxand's Take	Thoroughly review before implementing any structure involving hybrid instruments as their use will be restricted. Attention to be paid to the appropriate level of substance.	Critically review existing structures and see whether action is required to mitigate risk and prepare for possible legislation in the future.	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.

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.	None except in the arena of exchange of information since 2013: the tax authority no longer needs a court order to examine foreign activities of a taxpayer. Updated transfer pricing guidelines issued by the tax authority in Jan 2015.	Although South Africa broadly follows the OECD, it has not yet adopted specific legislation as a consequence of the implementation of the action points covered by the BEPS Plan. However, it has over the past few years adopted legislation that is in line with the BEPS action points.
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 the Russian groups.	Continued focus on deductibility of expenses.	The South African Revenue Service (“SARS”) enforcement processes are in line with the action points under the BEPS Plan. In particular, SARS has embarked on an increased focus on cross-border transactions with a particular focus on transfer pricing, controlled foreign companies and leveraged funding arrangements.
Country-by-country reporting?	Russia is not proposing to introduce CbC reporting.	No, Singapore has not yet proposed CbC reporting requirements.	It has been recommended by the Davies Committee that South Africa should introduce compulsory country-by-country reporting for multinational businesses with a group turnover in excess of ZAR1 billion.
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 on 6 January 2015 issued an updated guideline on transfer pricing which sets out how arm’s length interest is to be determined.	Effective January 1, 2015, SA introduced legislation limiting the amount of interest that may be deducted by a SA subsidiary 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 SA 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 it is cognizant of taxpayers’ concern with compliance costs and clarifies in which situations transfer pricing documentation is not required.	Taxpayers should carefully consider their long-term tax strategies and decisions on tax planning to ensure that they are sufficiently resilient to withstand scrutiny in a country with increased socio-economic sensitivity.

Executive summary

Country:	Spain	Switzerland	UK
Legislative changes?	The CITL and the CITR develop several actions proposed in BEPS project: (i) limitation on deductibility of interests; (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; (vii) CbC reporting.	Memorandum of Understanding with EU exists but no deadline 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.	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).
Impact on audit/tax enquiry?	Tax administration focused on correct application of the transfer pricing rules, especially in complex corporate restructuring operations, intra-group services, cost sharing agreements and operations with relevant intangibles. Additionally, the "National Office for International Taxation" has been created.	Little impact since profits are typically moved into, not out of, Switzerland.	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.
Country-by-country reporting?	CbC reporting obligations introduced by the CITR entering into force as of 2016.	Switzerland will endorse the OECD BEPS project, which includes the introduction of the CbC reporting.	On 5 October 2015, HMRC has published a draft statutory instrument to implement CBCR.
Interest deductibility?	Limitations on deductibility of financial expenses have been introduced regarding both related- and non-related-party debt and with regard to hybrid instruments.	The currently applicable thin cap and interest deductibility rules may be amended based on the BEPS results in the future.	HMRC published a public consultation document seeking views from all stakeholders on how best to respond to BEPS proposals. The results from the consultation will be considered in the development of a future business tax road map.
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.	Thorough analysis of functions performed, assets used and risks assumed. Evaluate substance of activities in Switzerland in light of BEPS emphasis. Get prepared in view of the country-by-country reporting as well as the expected automatic exchange of tax rulings.	We recommend to 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.

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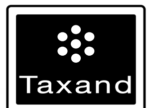
Executive summary

Country:	USA
Legislative changes?	No specific legislative changes made or proposed. Although not specifically driven by BEPS, Congress is proposing action on corporate inversions. This will, however, be a slow process. As an interim measure, the IRS, through its rule making authority, has issued Notice 2014-52 to place restrictions on inversion activity. Fuller implementation of BEPS, if adopted, will likely come through a combination of legislative changes through broader tax reform and through IRS rule-making to modify existing legislation to fit within BEPS.
Impact on audit/tax enquiry?	No specific impact on audits in light of BEPS to date. IRS remains focused on large cases.
Country-by-country reporting?	The US has made an informal commitment to introducing country-by-country reporting in the near future, although a formal discussion of timetables and structure has yet to occur.
Interest deductibility?	The US does not propose to make amendments to its interest deductibility regulations.
Taxand's Take	Clients undertaking large transactions/business reorganisation could apply for Advance Pricing Agreements (APAs) with IRS to manage transfer pricing uncertainty in the current environment .

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. Brazil and China
- This deck 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: Canada

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

Despite that the OECD's work on BEPS Action #6 had just started, on August 12, 2013 the Canadian government released a consultation paper on treaty shopping and, after the consultation period closed, quickly announced the framework for a proposed domestic treaty shopping rule. However, on August 29, 2014, it was announced that after engaging in consultations on the proposed anti-treaty shopping measure, it will instead await further work by the OECD and G20 in relation to the BEPS initiative.

The Canada Revenue Agency ("CRA") has recently announced it will treat any revisions to Transfer Pricing Guidelines arising from BEPS as "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 minimise audit risks and any potential for transfer pricing adjustments.

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. 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 emphasised 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.

Summary of BEPS response: Canada

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

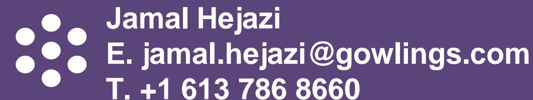
No official announcements have been made but it is anticipated that the Canadian Government will fully endorse the proposed country-by-country reporting. However, as Canada's current documentation requirements for transfer pricing transactions are currently set out in subsection 247(4) of the *Income Tax* Act, the Department of Finance has indicated that legislative changes to our tax laws would be needed to implement country-by-country reporting.

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.

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 transaction 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 is clarifying in nature and, therefore, retroactive, it is important to assess the risks posed by the 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.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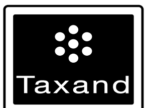

Summary of BEPS response: China

- 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 is invited to provide comments on the Draft by 16 October 2015.

The Draft fully embraces the internationally accepted arm's length principle and, in many instances, closely mirrors guidance issued in the course of the BEPS project. Changes mainly cover documentation requirements, intra-group services, intangibles transactions, transfer pricing methods, and advance pricing agreements (APAs).

Since the Draft is currently in a discussion stage and may subject to further changes, the final TP rule to be issued by SAT may have some differences with the contents in the Draft.

Summary of BEPS response: China

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, references to the BEPS initiatives will likely be made.

Even before the new China BEPS-related rules become effective, it is also possible that SAT will use the BEPS deliverables as an unofficial reference during their tax evaluations on cross-border transactions or Transfer Pricing of MNCs. 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 industries of digital economy and e-commerce;
- Business substances to support the validity of related party charges during foreign remittance procedures;
- Further detailed review of cross-border intercompany charges like interest, royalty, service fee, etc.;
- Attention to irregular transactions between cross-border related parties, such as transfer of intellectual property;
- Specific functions (like R&D, brand building, market penetration) and potential local intellectual properties in TP studies;
- More information disclosure requirements.

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

Under the Draft, 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 CBC Report.

Chinese-parented multinational groups that have global revenues greater than 5 billion RMB are required to submit a CBC Report 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.

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

Under the Draft's requirement on TP documentation, a Special Report 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 likely to be required in more cases because the consultation draft expands the types of related party debt that are considered beyond loans to trade receivables, cash pooling balances and the like.

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Summary of BEPS response: China

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

The revisions to Circular 2 to be made by the Draft are 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 next year's May 31st 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; and
- Perform internal tax checks, especially on TP, function analysis, internal controls, and foreign exchange compliance.

If well prepared, the company should be able to face the upcoming changes in 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: France

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

No legislative changes relating to BEPS have been introduced in the modified Finance Bill 2014 or the Finance Bill for 2015 because the French government is still discussing the final recommendations of BEPS Action Plan.

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

Recently the French Tax Authorities have been increasingly focused on tax efficient schemes and selecting which companies to audit. Such schemes are being frequently reassessed. 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.

It should be noted that the French government published on April 1st 2015 a list of 17 tax schemes that they may presume as abusive. Such publication has no legislative value and constitutes a mere effort to inform taxpayers about tax authorities' position.

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

Country-by-country reporting will likely be introduced in line with the Action 13 deliverables, however no specific details have been officially released so far.

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

Limitation rules for the deductibility of interest expense are already in force since 2014. As a reminder, 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.

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Summary of BEPS response: France

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

Despite the new and expected legislative changes, 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 defence 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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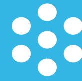
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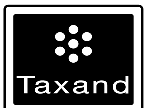

Summary of BEPS response: Germany

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 the OECD has recommended (including CFC measures, passive income controls, detailed transfer pricing documentation requirements, and interest barrier rules).

The Financial Committee of the German parliament has furthermore proposed a change in the law to counteract the double non-inclusion of income or a double deduction of operating expenses. However, this project has been postponed for the time being.

Germany is furthermore a key driver of the Information Exchange Agreement signed by more than 50 countries in Berlin in October 2014.

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 to 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.

The Financial Committee has proposed a change in the law to counteract the double non-inclusion of income or a double deduction of operating expenses. However, this project has been postponed for the time being. New rules on interest deductibility are therefore not expected before the BEPS project is concluded.

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Summary of BEPS response: Germany

How has the initiative impacted tax enquiries/ audits?

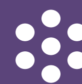
Taxpayers which are not covered by the definition of small or medium size entities are generally audited frequently in Germany. The tax audit is defined as an integral part of the tax assessment procedure. In the last few years, not only the Federal Tax Office, but also the local tax administrations 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?

CbC reporting has already been implemented with respect to banks, other financial institutions, and companies active in raw material exploration. The legislator has not yet officially announced an industry-wide adoption of CbC reporting. However, we believe CbC reporting is likely to be implemented broadly at the beginning of 2016.

What do 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 fulfil 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.



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Summary of BEPS response: India

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

Currently no legislative changes have been made as a direct result of the BEPS Action Plan. However, the General Anti-Avoidance Rule (GAAR) that was proposed to be introduced into the Indian legislative framework with effect from 1 April 2015 has been deferred for 2 years, up to 2017. There is an express statement that the onset of GAAR will coincide with the implementation of the BEPS Actions and hence some more changes to GAAR could be expected.

India and US 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.

While not directly connected with BEPS Actions, these legislative changes are a concerted effort intended to crackdown on tax base erosion, with a focus on cross-border exchange of information.

How has the initiative impacted tax enquiries/ audits?

The BEPS Actions 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, proposes to introduce country-by-country reporting. The Revenue authorities have mentioned this in the context of exchange of information and introduction of General Anti-Avoidance Regulations, coinciding with the implementation of BEPS actions in 2017.

Summary of BEPS response: India

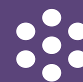
How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The reaction to the BEPS initiatives regarding interest deductibility is expected to be part of the General Anti Avoidance Rule which will be implemented in 2017. There is an express statement that the onset of GAAR will coincide with the implementation of the BEPS Actions (which may include the Action Plan affecting interest deductibility) and hence some more changes to GAAR could be expected.

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, as such changes would come into effect presently. 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 support documentation is robust and sufficient to substantiate any current tax positions being taken. Clients also need to be wary of additional documentation and compliance requirements which will be introduced in the years to come.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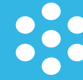
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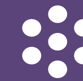
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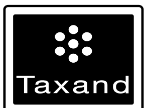

Summary of BEPS response: Indonesia

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

As the G20 leaders endorses the BEPS action plan, the Government of Indonesia, as a member of G20, is actively involved in discussing the BEPS action plan with the Organization of Economic Cooperation and Development ("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 Plan No. 8, 9 and 10; Transfer Pricing Documentation, which will incorporate the BEPS Action No. 13 regarding CbC Reporting; and MAP and APA, 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 Transfer Pricing Audit 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 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 also becomes more important. The importance of this process is particularly emphasized 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?

ITO is still in the process of preparing new regulation on Transfer Pricing Documentation, which will adopt BEPS Action Plan No. 13 regarding CbC Reporting. Currently, Transfer Pricing becomes an important issue for multinational companies in Indonesia because the ITO requires multinational companies to be more transparent.

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 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 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 to review and arrange the related parties transactions with reliable supporting evidence provided by the third party.

Transfer Pricing Documentation is a reliable source to assess whether a company has a potential risk in the future. Therefore, the clients should prepare a thorough Transfer Pricing Documentation, which is supported by reliable and sufficient documentations.

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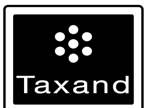


Summary of BEPS response: Ireland

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

Ireland has 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).

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?

Yes, Ireland will likely introduce CbC reporting in line with the Action 13 deliverables, however no specific details have been released by local government.

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

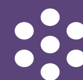
There has been no government reaction to the Action 4 discussion draft released to date.

Taxand

Summary of BEPS response: Ireland

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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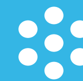

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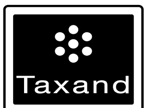


Summary of BEPS response: Italy

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

No specific rules have been introduced in Italian tax law following the BEPS Action Plan; however, certain rules have been introduced recently addressing BEPS concerns.

Patent Box regime

The 2015 Budget introduced a patent box regime, which grants a percentage of exemption on income derived from the exploitation or the direct use of a qualifying IP both for CIT and 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 trade marks 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:

- Limitation of the applicability of CFC rules to controlled companies (and no longer for affiliated companies);
- Repeal of 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. 772/2012/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 seems to exclude the concept of criminal offences for the legal representatives in case of 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 large investments in Italy (30 Million euro) 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 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 recharacterisation of intercompany loans into capital. As regard 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 performed functions and undertaking risks.

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

No specific proposal in order to introduce CbC reporting. However, the Italian tax authorities seem quite active in exchanging the tax information on a voluntary basis.

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

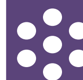
The Italian tax legislation regarding interest deductibility has been modified in 2007 where a 30% EBTDA passive interest limitation has been introduced. Beginning 2016 also dividends cashed in from non-Italian resident controlled companies will be included in the EBTDA computation. No more in the consolidation tax system the EBTDA 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 always more and more taken into consideration by Tax Authorities in their tax audits.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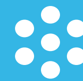
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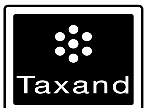

Summary of BEPS response: Japan

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

GAAR

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 in global multinationals. This GAAR has been applied against some global multinationals already.

Hybrid Mismatching Arrangement

Certain Japanese tax regulation and practice is dealing with anti-hybrid arrangements. For example, the DTT between US and Japan contains a linking rule (paragraph 6 of the article 4).

CFC

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.

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 arrangement 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.

Taxand

Summary of BEPS response: Japan

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

It is our observation that the country-by-country reporting will be adopted by as a part of the annual tax reform in 2016.

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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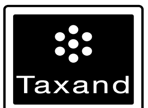

Summary of BEPS response: Luxembourg

- 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.

Countering harmful tax practices (Action 5)

The Luxembourg government has announced that all economic sectors taking up residence in Luxembourg will soon have to comply with new general requirements on substance to have physical and operational presence in Luxembourg. Even though the scope of this change is still unclear, and even though the Luxembourg tax law currently only requires that companies have either their registered seat or their place of effective management in Luxembourg, in practice, a lot of attention is already put to substance in order to make sure that foreign countries will not challenge Luxembourg tax residence.

It can therefore be expected that the new substance rules will only clarify or confirm the current practice and will be in line with the ones set out in the Luxembourg Transfer Pricing Circular on companies performing intra-group financing activities (local directors, etc.).

Luxembourg will repeal its intellectual property (IP) 80% income tax exemption regime as of July 1 2016 as well as its IP net wealth tax exemption regime as of 1 January 2017 and will at the same time introduce some transitional rules until 2021. A replacement regime in line with the OECD so-called nexus approach is not introduced yet, but will most probably be implemented at a later stage, as announced by the Government earlier this year.

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). This summer, a draft law was presented to Parliament which implements Common Reporting Standards (CRS) into Luxembourg Law. Financial information in relation to calendar year 2016 will be exchanged in 2017. The 2014 EU administrative cooperation directive is also in the process of being implemented into Luxembourg Law. Several amendments to the Luxembourg legislation have already been made: ratification of mutual assistance convention, ratification of EU administrative cooperation directive, FATCA agreement with the US (which entered into force this summer), and application of automatic exchange of information under the Savings Directive from 2015.

Summary of BEPS response: Luxembourg

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 harmonised 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 rather rely on a tax opinion and solid transfer pricing documentation.

Hybrid instrument changes (Action 2)

Both within the private equity field and the financial industry generally, hybrid instruments are a common tool within Luxembourg structuring. Changes have already occurred at 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 is currently implementing into its domestic tax law.

At a global level, changes impacting Luxembourg structures still remain uncertain as of today and would in any case require more time in order to be implemented.

Other changes

A substantive tax reform has been announced for 2016/2017 that should reinforce Luxembourg's appeal for international investors.

A progressive reduction of the corporate income tax rate has been announced for 2017 but no further details have been provided so far.

How has the initiative impacted tax enquiries/audits?

Audits, even though their number has increased in recent years, are generally comparatively less problematic in Luxembourg at present, as the majority of large corporates used to clarify 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 appropriately treated.

Summary of BEPS response: Luxembourg

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

At this point in time, no proposals have been made to introduce the country-by-country reporting as proposed in the 2015 Report regarding BEPS Action 13.

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

We do not expect the Luxembourg tax authorities to introduce any severely restricting rules regarding the deductibility on interest payments. Moreover, the work on BEPS Action 4 will result in mere recommendations rather than binding guidelines.

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 future.

Further, considering the requirement for substance within Luxembourg and the upcoming entry into force of a new GAAR (as introduced by the EU parent-subsidiary Directive and in the process of being implemented into Luxembourg law), clients with operations in Luxembourg will 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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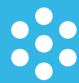

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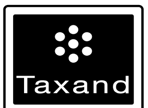

Summary of BEPS response: Netherlands

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

In the Netherlands there are currently no immediate legislative responses to the BEPS Action Plan. There are discussions about a major tax reform but it is very preliminary. If that reform were to be undertaken, it could be that the BEPS Action Plan would have some influence.

In anticipation of the overall discussion on tax avoidance, however, the Netherlands has published minimum substance requirements that apply to companies that request an APA/ATR and so called Financial Service Companies. Furthermore, the Netherlands are in agreement with several countries on spontaneous exchange of information on a APA/ATR from a tax payer.

How has the initiative impacted tax enquiries/ audits?

The Dutch Tax Authorities always 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 around undertaking aggressive tax planning for fear of how the tax authorities may use such initiatives in any subsequent audit.

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

The State Secretary of Finance indicated that the Netherlands are, in principle, an advocate for spontaneous as well as automatic exchange of information and for international agreements in this regard. Action 13 of the BEPS (including the Country-by-Country reporting) is therefore subscribed by the Netherlands. The OECD is currently reviewing what the pros and cons are of an exchange of information via tax treaties or direct inquiries to the tax payer. Should the outcome of this review be that the exchange of information will take place via tax treaties, the Netherlands will prefer to do so automatically.

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

Other than that the Netherlands have subscribed the overall BEPS initiative, no specific comments are made regarding interest deduction (Action 4) yet.

Taxand

Summary of BEPS response: Netherlands

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

We recommend our clients look critically at their existing corporate and tax structure to see whether action to mitigate risks and prepare for possible legislative changes may be necessary.

Many companies have set up supply chain structures previously without engaging in up-to-date monitoring of the structure for contemporaneous compliance. For businesses evolving rapidly there is a frequent risk that prior structures are both non-BEPS compliant, and further that their transfer pricing is potentially not reflective of the substance currently in place. Both features should be considered as routine ongoing tax reviews.

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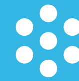

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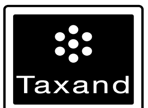

Summary of BEPS response: Poland

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

The following changes are made or proposed:

- 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
- CbC reporting rules (in force from 2016) - the largest Polish multinational enterprises (with consolidated revenues exceeding EUR 750 million) will be subject to CbC reporting requirements.
- TP documentation rules (in force from 2017) – depending on the scale of operations the taxpayers will be obliged to prepare Local File, Master File and CbC reports. Additionally, the taxpayer whose revenues or costs exceed EUR 10 million will be obliged to provide a benchmarking study (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.
- 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, however introduction of the general anti-abusive rules has been deferred. The CIT and PIT draft bills will enter into force on December 31, 2015, and will introduce an anti-abusive rule regarding dividends.

Taxand

Summary of BEPS response: Poland

How has the initiative impacted tax enquiries/ audits?

We observe an increasing 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.

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

Yes, Poland will introduce CbC reporting together with the new transfer pricing documentation regulations in 2016 and 2017, respectively. The bill introducing the changes has just been signed. The regulations are to a great extent in line with the BEPS Action 13 deliverables.

Summary of BEPS response: Poland

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.

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 recognized as CFCs under the new rules.
- Assess their transfer pricing model to mitigate risks of tax authorities challenging them.
- Prepare sufficient transfer pricing documentation and benchmarking analyses meeting the new requirements.

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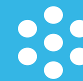

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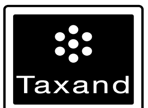


Summary of BEPS response: Russia

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 recognise 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

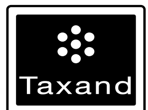
The new law also introduces new residency criteria for Russian tax residents. Under these rules, a "Russian tax resident" will include (1) Russian organizations; (2) foreign organizations recognised as Russian tax residents by a double tax treaty; and (3) foreign organisations whose place of management 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 country by country reporting.

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?

While no specific legislative changes have been proposed as yet, the Singapore tax authorities follow OECD developments closely. Currently, the more immediate areas of focus are country-by-country reporting, double taxation agreement provisions, treaty abuse and permanent establishment definition.

The stance of 'substance over form' traditionally taken by Inland Revenue will undoubtedly endure. The issue is how Singapore will align its substance criteria with the OECD notion of value creation. Transfer pricing will thus be another key area of focus in addressing BEPS.

The transfer pricing of intangibles will not only depend on legal ownership but where other parties within the group perform, use or contribute assets, or assume risks or cost related to the enhancement, development, maintenance and protection of any intangible. The returns relating to the intangible must also accrue to such parties through arm's length compensation, reflecting the contribution of each party.

How has the initiative impacted tax enquiries/audits?

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 focus too will endure.

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

No, Singapore has not yet proposed country-by-country reporting requirements.

Summary of BEPS response: Singapore

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

In any event, cross-border related party credit facilities and loans are closely scrutinised by the Singapore tax authority. On January 6th, 2015, 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. Among others, 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 to do to face the impending changes in your territory?

Even though no specific legislative changes are in the pipeline, the multi-faceted approach taken in the BEPS action plan would no doubt have an affect on multinationals in Singapore. One needs to determine which transfer pricing structures will be acceptable under the BEPS Action Plan and which will no longer be acceptable. A profit centre, for example, which actively participates in the enhancement, development, maintenance and protection of the intellectual property may still be acceptable while a profit centre with limited functions, risks and assets and very few significant people functions may no longer be acceptable, if based in Singapore.

With more liberal exchange of information leading to expected greater transparency between jurisdictions, it is expected that companies set up in Singapore with very little substance will increasingly be scrutinised by other tax authorities. Depending on 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 documentation practice.

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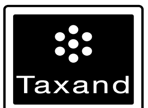

Summary of BEPS response: Spain

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

Amendment of the CFC regime

- A Spanish entity would be required to include in its taxable base income 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.

Transfer pricing rules amended

- The new Corporate Income Tax Law includes 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 would no longer be considered as a related-party transaction
  - “Best Method Approach” to value related-party transactions, according to 2010 version of OECD Guidelines
  - Simplified TP documentation regime for companies with a turnover of less than EUR 45M
  - Secondary adjustment: refund
  - Less onerous penalty regime

Spanish new Corporate Income Tax Regulations introduce several changes, concerning principally:

- CbC reporting obligations, as explained further
- New TP documentation requirements, mainly regarding:
  - Group’s activities and sources of income
  - Information concerning the group’s intangible assets: general description of the group’s overall strategy with respect to development, ownership and exploitation of intangible assets, description of the transfer pricing policy in this respect, among others.
  - Information concerning financing activities: general description of how the group is financed, general description of the transfer pricing policy related to financing agreements between group entities, among others.
- Re-characterization: Implicit authorization to the STA to re-characterize controlled transactions based on the real nature of the transactions and the conduct of the parties

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Summary of BEPS response: Spain

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

Limitation on deductibility of interest paid

- Limitation on deductibility of financial expenses to 30% of operating revenue
- 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%

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

Spanish new Corporate Income Tax Regulations introduce the obligation of country-by-country reporting:

- 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 €750 million
- Information will be required from 2016 onwards and must be submitted within the 12 following months
- Allowance to the STA to demand the CbC information from any subsidiaries (presumably Spanish resident), owned directly or indirectly by a non-Spanish resident entity which is not also a subsidiary of another entity, and resident in a jurisdiction where there is no CbC reporting requirement. This additional provision will enter into force in the tax periods commencing on or after January 1, 2018

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Summary of BEPS response: Spain

How has the initiative impacted tax enquiries/audits?

In the field of Transfer Pricing the following actions need to be emphasized with regards to tax audits:

- Correct application of the transfer pricing rules, especially in complex corporate restructuring operations, intra-group services, cost sharing agreements and operations with relevant intangibles
- Emphasis on an APA as an instrument of fraud prevention which eliminate the risks of the companies' transfer pricing policies

Aiming to achieve these actions, the Tax Agency created the 'National Office for International Taxation' (ONFI) whose tasks are the promotion of planning activities in risk areas, development of direct support actions and coordination with inspection units, in order to ensure uniformity in major and complex actions.

This is particularly relevant in international taxation context for its external impact and for the intergovernmental procedures that can be generated as a result of it.

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
- Companies should remain helpful and cooperative with the Tax Administration in order to achieve tax efficient projects

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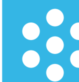

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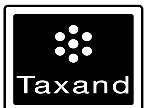

Summary of BEPS response: South Africa

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

South Africa has not yet adopted legislation as a specific consequence of the global BEPS Action Plan but has over the past few years adopted legislation that is aligned to the action points of the BEPS Action Plan. In particular, the updated version of the South African transfer pricing legislation which was introduced in 2012.

The Davies Committee was appointed to, *inter alia*, address concerns on BEPS. The Committee has released its first interim report on BEPS on 23 December 2014 ("Interim Report"), which to a large degree re-iterates the statements made by the OECD in the various BEPS reports, but also tries to look at base erosion and profit shifting through an African / emerging markets perspective. It proposes various amendments to South African tax legislation and strongly recommends a close following by South Africa of the action points under the BEPS Plan. It is likely that South Africa will adopt a number of these proposals and follow the recommendations under the BEPS Plan.

Legislation adopted

- 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

Davis Committee Proposals

South Africa must adopt new source rules that will deal with the taxation of the digital economy in respect of non-residents.

South Africa must consider introducing or revising specific and targeted rules denying benefits in the case of certain hybrid mismatch arrangements.

South Africa must introduce legislation to ensure spontaneous exchange of information regarding tax rulings with other countries.

It is recommended that SARS revises its current practice note on transfer pricing to be in line with the revised OECD Transfer Pricing Documentation Guidelines in Chapter V of the OECD Transfer Pricing Guidelines.

South Africa should introduce compulsory country-by-country reporting for multinational businesses with a group turnover in excess of ZAR1 billion.

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 of 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?

It has been recommended by the Davies Committee that South Africa should introduce compulsory country-by-country reporting for multinational businesses with a group turnover in excess of ZAR1 billion. However, no further detail is available at this stage as to when and how exactly this will be implemented.

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Summary of BEPS response: South Africa

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

The Davis Committee has commented 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 and the rules should be based on mismatches rather than merely attacking a particular type of instrument.

With effect from 1 January 2015 South Africa introduced legislation that will limit the amount of interest that may be deducted by a South African subsidiary 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 SA 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 policy are as important as the short term financial efficiency thereof and we recommend that clients consider this 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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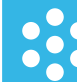
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Summary of BEPS response: Switzerland

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

In Switzerland there have been no actual legislative responses to BEPS. However, 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. A Memorandum of Understanding was signed in June 2014 with the EU which, in essence, committed Switzerland to abolish favorable taxation regimes, but no deadline was set for legislative implementation.

Corporate Tax Reform III

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 (e.g. abolishment of the one-time 1% capital duty on equity contributions from shareholders). 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 – 15%.

It is expected that this tax reform will, however, only be enacted by 2019 or later due to the complex political processes in Switzerland.

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.

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

The Swiss Federal Council has confirmed that Switzerland will endorse the OECD BEPS project and introduce the country-by-country reporting. Since so far no transfer pricing documentation requirements exist in Switzerland, comprehensive new legislation will have to be introduced.

Summary of BEPS response: Switzerland

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 country-by-country reporting as well as the expected automatic exchange of tax rulings

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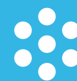

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Summary of BEPS response: UK

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.

Country-by-Country Reporting ("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 5 October 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 1 April 2015. It is a new tax (it is not corporation tax or income tax) and applies to all profits diverted on or after 1 April 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 in 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 is 14 January 2016.

Patent Box
The UK Patent Box gives companies a reduced rate of tax on their profits from patents and similar intellectual property (IP). MNEs uses 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.

Summary of BEPS response: UK

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 is 4 December 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 1 January 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 CbC reporting and the impact of notification made by companies in respect of DPT may increase enquires/audits in respect of large multinational enterprises.

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

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

(i) 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;
(ii) New rules take effect for accounting periods beginning on or after 1 January 2016, therefore, they require first filing by 31 December 2017;
(iii) 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 no entered into exchange arrangements with HMRC with respect to CBCR.

Summary of BEPS response: UK

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.

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 is 14 January 2016. The results from the consultation will be considered in the development of a future business tax road map.

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

CBCR

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.

DPT

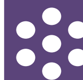
A company has up to three months after its financial year end to notify HMRC that the new provisions might apply. As such, we recommend to gather relevant information and consider whether further advise on existing structures should be sought.

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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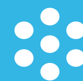

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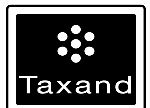

Summary of BEPS response: USA

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

There have been no legislative changes made or proposed. There is momentum to consider new legislation in respect of US anti-inversion rules but this is still in early stages of the legislative process. Although not driven directly by BEPS, the concepts are similar as they address questions around the tax domicile of businesses managed in the USA (ie restricting base erosion). As interim measure, the IRS issued Notice 2014-52 to impose restrictions on inversion activity.

If the outcomes of the BEPS Action Plan are adopted by the USA, the USA Internal Revenue Service (IRS) is likely to introduce relevant regulations rather than formal legislative changes, as it is unlikely that the relevant section of the USA tax code dealing with transfer pricing (Section 482) would be changed as a result of the BEPS work. Rather the IRS would issue changes to the regulations to update local transfer pricing compliance in line with the BEPS positions that are adopted.

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. Current tax audits have not indicated any preliminary views of the IRS in respect of the various issues raised through BEPS.

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

The US has indicated a willingness to implement country by country reporting, and numerous informal announcements have been made. At this stage only a suggested timetable of implementation has been discussed, without a formal declaration.

Summary of BEPS response: USA

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

The US has not proposed any amendments to existing regulation or legislation in relation to interest deductibility.

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.

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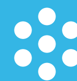
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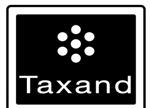
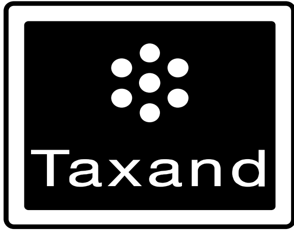


Appendix 1 - BEPS Action Points

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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