"BEPS – a new context"
The Tax Dialogue 2016

Background and Objectives

- Globalization:
  - Companies increasingly place activities in countries where the tax burden is lowest
    - undermines and distorts the distribution of taxes between countries
    - This has challenged domestic law
- In 2012 G20 countries initiated BEPS – today more than 44 counties are participating
- OECD was mandated to carry through an international tax reform
- Non-OECD/G20 countries including developing countries are included in BEPS on equal terms with OECD members
- Income must be taxed where the economic activity is carried out and the value is created:
  - Consensus-based international tax rules
  - Protect domestic tax base
  - Increase legal certainty

Background and Objectives

Coherence
- Hybrid Mismatch Arrangements (2)
- Interest Deductions (4)
- CFC Rules (3)
- Harmful Tax Practices (5)

Substance
- Preventing Tax Treaty Abuse (6)
- Avoidance of PE Status (7)
- TP Aspects of Intangibles (8)
- TP/Risk and Capital (9)
- TP/High Risk Transactions (10)

Transparency
- Methodologies and Data Analysis (11)
- Disclosure Rules (12)
- TP Documentation (13)
- Dispute Resolution (14)

Digital Economy (1)

Multilateral Instrument (15)

Background and Introduction

	OECD BEPS	EU ACTION
Action 1: Digital Economy	The digital economy is the whole economy, so ring fenced solutions are not appropriate. OECD BEPS actions in general should address risks posed by digital economy.	EU agrees with OECD assessment that no special action needed. Situation will be monitored to see if general anti-avoidance measures are sufficient to address digital risks
Action 2: Hybrid Mismatch Arrangements	Specific recommendations to link the tax treatment of an instrument or entity in one country with the tax treatment in another, to prevent mismatches.	ATA Directive includes a provision to address hybrid mismatches.
Action 3: Controlled Foreign Companies (CFCs)	Best practice recommendations for implementing CFC rules.	ATA Directive includes provisions on CFC rules, for within the EU and externally.
Action 4: Interest Limitation	Best practice recommendations on limiting a company's or group's net interest deductions	ATA Directive includes provisions to limit interest deductions, for situations within the EU and externally

Background and Introduction

	OECD BEPS	EU ACTION
Action 5: Harmful Tax Practices	Tax rulings: Mandatory spontaneous exchange of relevant information. Patent Boxes: Agreement on "Nexus Approach" to link tax benefits from preferential regimes for IP to the underlying economic activity.	Tax rulings: Mandatory automatic exchange of information on all cross-border rulings and APAs from 2017. Patent Boxes: Member States agreed to ensure that their Patent Boxes are in line with the nexus approach (Code of Conduct Group, 2014).
Action 6: Treaty Abuse	Anti-abuse provisions, including a minimum standard against treaty shopping, to be included in tax treaties. Choice of either Limitation of Benefits (LOB) or Principle Purpose Test (PPT) or a combination of both.	ATA Recommendation on Tax Treaties encourages Member States to use an EU-compatible PPT approach. LOB clauses are less easily adapted to the needs of the Single Market.
Action 7: Permanent Establishment	Definition of Permanent Establishment (PE) is adapted in Model Tax Convention, to prevent companies from artificially avoiding having a taxable presence.	ATA Recommendation encourages MSs to use the amended OECD approach.

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Actions 8 -10: Transfer Pricing Intangibles Risk and Capital High Risk Transaction	Arm's Length Principle and Comparability Analysis confirmed as pillars of Transfer Pricing. More robust framework for implementing this standard.	Joint Transfer Pricing Forum (JTPF) working on EU approach to implementing BEPS conclusions. Work includes looking at more economic analysis in TP, better use of companies' internal systems, and improving TP administration.
Action 11: Measuring and monitoring BEPS	The OECD aims to publish new statistics on corporate taxation and the scope and revenue impact of BEPS.	EU study underway on the impact of some types of aggressive tax planning on Member States' effective tax rates. The tax rates are based on a representative firm and calculated by using a neoclassical investment model.
Action 12: Disclosure of Aggressive Tax Planning	Recommendation to introduce rules requiring mandatory disclosure of aggressive or abusive transactions, structures or arrangements	To be discussed in the Code of Conduct. The Commission will keep the issue under review, as part of its tax transparency agenda.

Background and Introduction

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Action 13: Transfer Pricing documentation and Country-by-Country Reporting	MNEs required to file an annual Country-by-Country report (CbCR) to tax administrations on key financial data, as well as a master file and local file. Information for tax authorities only – not public CbCR	ATA Package proposes legally binding requirement for Member States to implement the OECD CbCR provisions. EUTPD, broadly in line with the master file and the local file, but to be reviewed to take into account the conclusions of the BEPS project. Work ongoing on feasibility of public CbCR in the EU.
Action 14: Dispute Resolution	Resolution G20/OECD countries agreed to measures to reduce uncertainty and unintended double taxation for businesses, along with a timely and effective resolution of disputes in this area. A number of countries have committed to a mandatory binding arbitration process.	In 2016, the Commission will propose measures to improve dispute resolution within the EU, as foreseen in the June 2015 Action Plan.
Action 15: Multilateral Instrument to modify tax treaties	Interested countries have agreed to use a multilateral instrument to amend their tax treaties, in order to integrate BEPS related measures where necessary	ATA Recommendation sets out the Commission's views on Treaty related issues and their compatibility with EU law, which MSs should consider in their negotiations on the Multilateral Instrument.

Discussion

- Reactions:
  - Post BEPS world has led to strengthened tax legislation and practices across the globe
  - All EU countries have agreed to implement OECD/G20 BEPS reports
  - No global uniformity: US/China/India?
  - UN?
  - Denmark?

- Impact:
  - Recall that BEPS is only of significance if actually implemented!
  - Momentum
  - New public agenda?
  - Change in corporate behavior?

- Risks (the business perspective) double taxation will increase:
  - Over BEPS'ification (even stricter implementation)
  - Countries continue to introduce unilateral measures using BEPS momentum
  - Difference in implementation and interpretation
  - Continuously weak dispute resolution mechanisms

Action 14: Make Dispute Resolution Mechanisms More Effective

- *Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.*

- Preliminary results – not consensus based

- Three-pronged approach:
  - Political commitments to effectively eliminate taxation not in accordance with the OECD Model

  - Provide new measures to improve access to the MAP and improved procedures and

  - Establish a monitoring mechanism to check the proper implementation of the political commitment

Action 14: Make Dispute Resolution Mechanisms More Effective

- Political commitment guided by the following four principles:

  1) Ensuring that treaty obligations related to the MAP are fully implemented in good faith;

  2) Ensuring that administrative processes promote the prevention and resolution of treaty-related disputes;

  3) Ensuring that taxpayers can access the mutual agreement procedure when eligible; and

  4) Ensuring that cases are resolved once they are in the mutual agreement procedure