
The OECD's BEPS Action Plan

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In brief

We present a brief summary of the final recommendations from the OECD's base erosion and profits shifting (BEPS) project received by multinational enterprises (MNEs) on 5 October. We include a brief description of the BEPS Action Plan, the fundamental ways in which the plan works and its impacts. Please do not hesitate to contact us for more information.

On 5 October, multinational enterprises (MNEs) received final recommendations from the OECD's base erosion and profits shifting (BEPS) project. The G20 and a number of non-G20 countries have been involved in work on the BEPS Action Plan and contributed to the proposals.

The OECD's BEPS Action Plan categorized its various areas of focus into three themes:

- addressing substance;
- coherence of the international tax system; and
- transparency.

Substance actions seek to align taxing rights with the relevant value-adding activity.

Coherence actions aim to remove gaps and 'black holes'.

Transparency actions are intended to provide significant additional disclosure.

In addition to the various actions grouped under these three themes, the BEPS Action Plan also seeks to address **digital business, improve**

dispute resolution and create a multilateral instrument for rapid updating of bilateral tax treaties. Finalized proposals for all of these areas are included in the package of measures released by the OECD.

We see three fundamental ways in which this OECD BEPS work will have a practical impact. First, and most obviously, there will be the direct application of the BEPS package itself, whether in the shape of changes to tax treaties (through amendment of the OECD Model Tax treaty and/or the multilateral instrument) and the Transfer Pricing Guidelines or through changes to domestic legislation as a result of individual recommendations of the BEPS action points. Second, there will be the change the OECD does not want to see, namely unilateral actions by states. Countries adopting such alternative unilateral measures will typically do so because they disagree with the

direction the BEPS package is taking or think the recommendations don't go for enough. Third, and in our view perhaps the most important direct impact of BEPS, will be its behavioural impact – specifically in emboldening the behaviour of tax administrations the world over.

The policy formulation stage of BEPS Action Plan will conclude at the end of this year, although it has been agreed that certain follow-on actions will take place during 2016 and beyond. The major focus of 2016 however will shift to the implementation and monitoring of the package.

There are a number of legislative and other regulatory changes which will result from the BEPS package. But the biggest issue is likely to be the impact on the behaviour of tax authorities, which are increasingly emboldened in their approach to dealing with MNEs.

For taxpayers, the most significant impacts are likely to be in the following areas:

- tax treaty access more widely constrained and in some cases uncertain;
- huge system requirements for TP documentation and the wider transparency agenda;
- increased focus on conduct as a relevant test in assessing TP compliance;
- materially wider PE risks and challenges – especially the increased proliferation of PEs and erratic interpretation of PE attribution rules;
- a wide variety of responses related to restrictions in the relief for interest and other financial payments;
- overall, a significant rise in the levels of controversy and numbers of disputes.

All taxpayers will be affected in some way by the BEPS package. Typically, we would expect one or more immediate vulnerabilities will need urgent consideration and possibly remediation (e.g., specific treaty access or PE issues). There will, of course, also be the need to address general systems issues raised by the broad transparency and documentation requirements. A wider consideration of the business of the group and group structure and financing arrangements, etc. in light of the BEPS changes is also likely to be warranted. It will also be useful to monitor the response of the tax authorities in the states where businesses conduct key operations given the possible variation in standards of enforcement and application of the BEPS package from country to country.

Tax departments will need to ensure they are equipped to deal with the expected uptick in levels of controversy and dispute in the post - BEPS environment. Finally, it will be important to ensure all parts of business understand the general impacts of the BEPS project regarding required substance and other standards underpinning their tax and business strategy.

The takeaways

The implementation of the BEPS action plan may affect the taxation of multinationals as well as conditions relating to the supporting documentation. It will be necessary to identify potential risks related to the existing structures and documentation and adjust them so as to meet BEPS requirements.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:



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“The global business environment remains challenging, with a continuing patchy economic picture, geopolitical issues creating uncertainty for business and fierce competition in the professional services market. Despite these challenges the PwC network performed exceptionally well in FY15 with growth of 10%, pushing revenues over the US\$35 billion mark for the first time,” said Dennis M. Nally, Chairman of PricewaterhouseCoopers International Ltd.

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The Academy