TRANSFER PRICING IMPLICATIONS OF BEPS ACTION PLAN

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BACKGROUND TO THE BEPS ACTION PLAN

BACKGROUND

- Base Erosion and Profit Shifting (BEPS) is a global initiative:
  - Tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions where there is little or no economic activity
  - Are not all illegal
  - Undermine the fairness and integrity of tax systems
  - Offer MNEs a competitive advantage over domestic companies
  - Undermines voluntary tax compliance
  - Often led to double non-taxation

BACKGROUND

- International tax policy reflects the relationship between:
  - ✓ Multinational Enterprises (MNEs)
  - ✓ Countries
  - ✓ National tax authorities
  - ✓ International organizations (OECD, UN)
- Each of these parties have influenced the **globalization of taxation** through:
  - ✓ **Structuring affairs to pay little or stateless income**
  - ✓ **International tax competition and avoidance**
  - ✓ **Efforts to coordinate national tax policies via BEPS Action Plan**

BACKGROUND

- BEPS practices are not a new phenomenon! OECD discussion report on harmful tax practices 1998 addressed:
  - ✓ Aggressive tax positions taken by countries to offer MNEs attractive regimes – **tax competition**
  - ✓ MNEs effort to lower their effective tax rates in various jurisdictions
- These practices generated media exposure during the Global Financial Crisis (GFC)

BACKGROUND

Factors that contributed to BEPS project:

1. Slow growth of economies and declining tax revenues
2. Economic nationalism e.g. U.S
3. Perception of MNE not paying ‘fair share’ of tax
4. Mainstream media, civil society and NGOs becoming vocal about corporate tax avoidance

BEPS became a global initiative led by OECD at the behest of G20

BACKGROUND

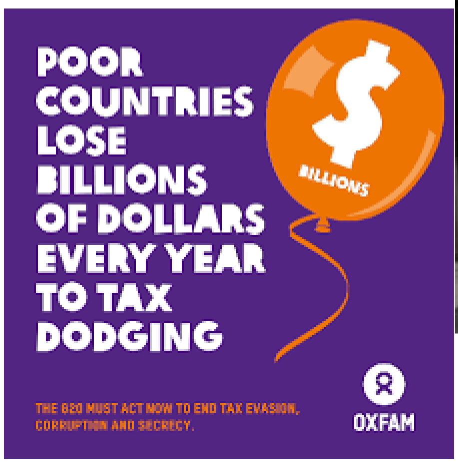
Mainstream media and NGO reports:


The Observer

£13 trillion: hoard hidden from taxman by global elite

- Figures show scale of tax havens
- Private banks help rich to hide cash

Bradley Wiggins increases lead and is poised to win Tour de France




FINANCIAL TIMES

Cheerful but not cheap
In the budget iPhone still too expensive? Page 19

You're hired, Lord Sugar takes on the BBC's bosses
Robert Shrimsley, Page 12

- Ireland, Luxembourg and Holland face scrutiny
- Starbucks and Apple in the spotlight

EU probes corporate tax sweeteners

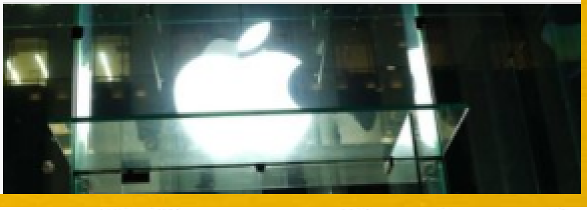
BEPS in the news…

Apple tax decision: Europe puts multinationals on notice after $20b ruling

The Conversation By Professor Kerrie Sadiq at QUT

Posted 31 Aug 2016, 8:36am

The European Commission is putting multinationals on notice with its order to tech giant Apple to pay $20 billion in tax to Ireland. It's signalling that it won't bow to pressure from the US. Now other countries may follow with similar action.



Starbucks pays UK corporation tax of £8.1m

Payment nearly matches total contributions paid over past 14 years but critics call for coffee chain's accounts to be more transparent

Starbucks has paid UK corporation tax at a rate of 24%, above the 20% rate. Photograph: Zhang

BUSINESS NEWS | Thu Apr 20, 2017 | 11:03pm EDT

Australian court dismisses Chevron appeal in landmark tax case

April 12, 2016. REUTERS/Lucy Nicholson/File Photo

BEPS in action - example

- Apple sells Chinese – made products all over Europe. Apple's US parent owns intellectual property that is the primary value driver in this products
- Apple's Irish affiliates have the rest of the world rights to that IP. So Apple's EU affiliates pay royalty to its Irish affiliates so that they reduce taxable income in their countries
- The only country left to tax Apple's income is Ireland which is a tax haven
- Ireland made a 'sweetheart' deal with Apple through APA

BEPS in action - example

- The APA allocated much of their income to imaginary remote head office – as if executives in Cupertino were remotely managing Irish operations.

BACKGROUND

- The BEPS Action Plan was implemented with a view to making fundamental changes to the current mechanism, in order to:

i. Prevent double non-taxation and perceived treaty abuse;

ii. Prevent no or low taxation;

iii. Cause multinationals to recognize and report taxable profits in jurisdiction of value creation.

BACKGROUND

- Fifteen actions have been developed by the OECD to tackle BEPS.
- These Action Plans are across four categories:

i. General actions directed at BEPS;

ii. PE and TP actions;

iii. Treaty-related actions; and

iv. Transparency and disclosure focused actions

BACKGROUND

Pulse check

- Many countries have already adopted or are poised to changes to their international tax systems based on OECD recommendation
- Some have taken unilateral action outside the OECD's recommendation to address perceived abuse

STATUS OF THE ACTIONS

STATUS OF ACTION PLANS

Snapshot of BEPS Action Plans

Action 1: Address the challenges of the digital economy	**Action 2:** Neutralise the effect of hybrid mismatch arrangements	**Action 3:** Strengthen Controlled Foreign Company rules	**Action 4:** Limit base erosion via interest deductions and other financial payments	**Action 5:** Counter harmful tax practices more effectively, taking into account transparency and substance
Action 6: Prevent treaty abuse	**Action 7:** Prevent the artificial avoidance of PE status	**Action 8:** Assuring that TP outcomes are in line with value creation Intangibles	**Action 9:** Assuring that TP outcomes are in line with value creation (Risks & Capital)	**Action 10:** Assuring that TP outcomes are in line with value creation (Other high-risk transactions)
Action 11: Establish methodologies to collect and analyse data on BEPS and the actions to address it	**Action 12:** Require taxpayers to disclose their aggressive tax planning arrangements	**Action 13:** Re-examine Transfer Pricing (TP) documentation	**Action 14:** Make dispute resolution mechanisms more effective	**Action 15:** Develop a multilateral instrument

STATUS OF ACTION PLANS

The reports to all Actions were finalized in October 2015 with a few exceptions:

Action 4

Updated report: December 2016
Final report: October 2015

Action 5
Peer review documents: February 2016
Exchange of tax rulings: July 2016
Final report: October 2015

Action 6
Peer review documents: May 2017
Final report: October 2015

Actions 8-10
Comments on discussion draft: September 2016
Comments on discussion draft: Chapter IX TP Guidelines – August 2016
Discussion draft: Profit Splits – July 2016
Discussion draft: Chapter IX TP Guidelines – July 2016
Final report: October 2015

Action 7
Comments on discussion draft: September 2016
Discussion Draft: July 2016
Final report: October 2015

Action 13
Guidance on implementation of CbyC Reporting; April 2017
Peer review documents: February 2017
Final report: October 2015

Action 14

Peer review documents: October 2016
Final report: October 2015

Action 15

Text of the Multilateral convention to implement tax treaty related measures to prevent BEPS: November 2016
Final report: October 2015

BEPS ACTION 4 - DEDUCTIBILITY OF INTEREST AND OTHER FINANCIAL PAYMENTS

ACTION 4

Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

- Financing facilities could include borrowing/lending of a short term/long term nature, provision of guarantees as a requirement for loans from financial institutions, issue of debentures and shares, among others.
- For TP purposes, intra-group financing refers to the provision of the financing facilities by one of the members of a multinational group to another member located in another country.
- The transaction ought to comply with the arms' length principle

ACTION 4

- Action 4 is focused on the use of intra-group debt to achieve excessive interest deductions or to finance the production of exempt or deferred income

How does BEPS arise on financial transactions?

- By use of third party debt – where one entity bears an excessive portion of the group's total third party interest expense;
- Structuring the group finances to ensure a group uses intragroup interest expense to shift taxable income from high tax to low tax countries

EXAMPLE

Country A – 35% CIT
Foreign source dividends
- exempt

Company A

Borrows – USD 100

Indi Bank

Provides USD 100 as equity
Dividends are not taxable
No interest expense for B
A sets off interest expense against income
Pre tax = USD 10, Post tax = USD 6.50
B Pre tax = USD 15, Post tax = USD 12.75
Group transaction pre tax profit = USD 5, post = USD 6.25

Country B – 15% CIT

Company B

Tax Savings

Borrows – USD 100
10% interest rate
Operating Profit = USD 15
USD 15 – Interest expense (USD 10) = USD 5
Post tax = USD 4.25

Indi Bank

ACTION 4

Current best practice approach used to tackle BEPS involving interest

a) Arm's lengths tests – comparing the level of interest or debt in an entity with a position that would have existed had the entity been dealing with a third party

b) Withholding tax jurisdictions – especially from the country remitting interest payments

c) Restricted interest rules – Jurisdictions which disallow a percentage of interest payable by an entity increase the cost of debt

ACTION 4

- The OECD advocates for the ‘separate entity approach’ in the analysis of intra-group transactions
- Separate entity approach involves the treatment of members of a MNC group as independent entities rather than part of a group

When is an intragroup service provided?

- An intragroup service is a chargeable service where the activity provides a member of the group with economic or commercial value to enhance its commercial position

ACTION 4

- Would a third party pay for the service? Focus is placed on the recipient of the services in determining chargeable services
- No intra-group service can be recognized in the event of merely being a member of a larger concern, without any specific activity being performed for that member (passive association) e.g. higher credit rating due to Group affiliation

ACTION 4

- The deductibility of interest expense can give rise to double non-taxation in both the inbound and outbound investment scenarios.
  - Interest from related party is deducted; by recipient and if loan holder is in a low tax regime, they benefit from favorable tax on the income.
  - Where debt is used in purchase of deferred/exempt income, both interest on the loan and income are deductible, deferred or exempt, respectively
- Question: To what extent do thin capitalization rules mitigate this?

BEPS ACTION 8 – 10: ALIGNING TP OUTCOMES WITH VALUE CREATION

ACTION 8-10

Introduction

- Cross border tax planning has in the past relied heavily on location of the group entities to define value creation;
- Group entities that own intangible property
- Group entities that assumed key business risk through inter-company contracts
- Operational affiliates
- Operational affiliates were assigned lesser ‘ routine profits’ while the residual profit was allocated to entities underwriting the business risks
- No assessment of an enterprise wide value chain was considered

ACTION 8-10

BEPS and value creation

- New guidelines require a much more robust review of company value chain and allocation of profits to the location where value is created through;

- People (entire workforce)
- Physical assets e.g. factories, retail stores and data centres
- Assets has to be connected to the people
- Less weight placed on other assets e.g. IP/ intangibles e.g. trade secrets or contractual rights.

Can the presence of local personnel with key customer interaction (sales agents) and generating and converting significant sales order create a PE?

ACTION 8-10

Understanding value chain impact

- BEPS is likely to have a great impact on two types of company;

- ✓ Multinational with highly integrated , end to end global supply chain – these entities run a business through a web of supplier located in many different countries and with end customers across multiple regions;
- ✓ Multinationals with significant high value intangibles – this includes global pharmaceuticals, technology and software conglomerates. These entities own valuable IPS (trademarks and patents) which could, pre – BEPS, be located in low tax jurisdiction while products are sold in higher tax countries

Key issue – Link Outcomes

Examples of BEPS impact

❑ Multinational consumer goods company

Pre – BEPS

- A US entity sells its products to customers in EU through a regionally principal company located in Netherlands. The company reports majority of its profits in Netherlands and enjoys a low effective tax rate due to a combination of available deduction permitted under Netherlands law

Under BEPS

- Because the majority of its EU workforce and assets are located outside Netherlands , the company may have to report substantially more profits in some highly taxed EU countries where it's making the sales, thus neutralizing the tax benefits (not necessarily the efficiency) of using a regionally based principal company

Examples of BEPS impact

❑ Multinational technology company

Pre – BEPS

- A UK reports a significant share of its foreign profits in a low taxed jurisdiction through centralizing its patents in an intangible property holding company located in a favorable tax jurisdiction. Group companies pay the patent owner for the right to exploit those patents in the company's foreign markets.

Under BEPS

- Without associated 'value creation' connected to people and assets, ownership of those patents will largely be disregarded in determining where the company reports its taxable profits. The company profits will be shifted away from the location of the IP holding company to where its people and asset are concerned i.e. the significant market or possibly even to UK

Examples of BEPS impact

❑ Multinational consumer electronics company

Pre – BEPS

A Singapore affiliate of a U.S affiliate of a U.S.-based multinational technology company enlists a third-party contract manufacturer in China to produce the company's featured products.

The Singapore company sells the products to affiliates in Europe at a substantial margin and is responsible for covering the costs of group companies supporting the supply chain.

Singapore compensates its Chinese affiliate to oversee the contract manufacturer's activities. The China affiliate also qualifies raw material suppliers throughout Southeast Asia and negotiates pricing.

Examples of BEPS impact

❑ Multinational consumer electronics company

Pre – BEPS

The suppliers send the raw materials to the China manufacturer, which assembles the finished product and then passes it on to a third-party logistics provider in the Netherlands.

Singapore compensates European affiliates for coordinating and managing the third-party logistics as well as operating a system of warehouses in the company's major European markets. These affiliates also play a significant role in the customer sales process.

Under BEPS

The company that has substantive operations and workforce across the globe is likely to owe more tax, and in more jurisdiction, that it did pre BEPS where substantial profit were recognized in Singapore. The reforms are geared towards finding a vale creation in location where the company supports its global supply.

ACTION 8-10

Marketing Intangibles

Include: trade name, customer lists, trademarks, customer relationships, proprietary market and customer data that is used or aids in marketing and selling goods or services to customers.

Which entities are entitled to returns from exploiting intangibles?

- Mere legal ownership of an intangible does not by itself confer any right to the return from its exploitation (risk free return).
- The economic return from intangibles, and the costs and economic burdens associated with intangibles, will be allocated to the entities that perform and control the important value-creating functions of developing, enhancing, maintaining, protecting and exploiting the intangibles (DEMPE function).

ACTION 8-10

<u>DEMPE Function</u>

D – Development

E – Enhancement

M – Maintenance

P – Protection

E – Exploitation

ACTION 8-10

DEMPE Function

- An entity performing DEMPE functions without legal ownership of the intangible is entitled to arms' length remuneration.
- An associated enterprise providing funding and assuming the risks but not performing the DEMPE functions for the intangibles can only expect a risk-adjusted return on its funding
- The associated enterprise providing funding but not exercising control over the financial risks associated with the funding can only receive a risk free return

ACTION 8-10

Challenges in ascertaining remuneration for intangibles?

i. Lack of comparability between intangible related transactions undertaken by related and independent parties

ii. Ownership and/use of intangibles by entities within the Group

iii. Difficulty in isolating the impact of any particular intangible on the Group income

iv. Different entities perform DEMPE functions of an intangible in a way and with a level of integration not observed in independent enterprises

ACTION 8-10

vi. Timing differences between the time contribution was made to the intangibles by the entities in the Group and the time the returns are realized

vii. Taxpayer structures may be based on contractual terms that separate ownership, risks, funding, control over risk and investment decisions that differ from independent entities and which may affect BEPS

ACTION 8-10

Hard to Value intangibles

Intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises,

(i) no reliable comparable exists; and

(ii) at the time the transaction[s] was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.

ACTION 8-10

Features of HTVI transactions:

i. The intangible is partially developed at the time of transfer

ii. The intangible is not expected to be used commercially until several years following the transaction

iii. The financial projections are highly uncertain

iv. The intangible, in absence of reliable comparables and the financial projections being highly uncertain, has been transferred to an associated enterprise for a lump sum payment.

ACTION 8-10

Challenges of HTVI Transactions

- Difficulty for tax administrations to test the pricing of HTVI transactions due to information asymmetry and time taken since the transaction was entered into
- Tax administrations are allowed to use ex-post evidence on the financial outcomes of an intangible transaction (information gathered in hindsight about how valuable an intangible has turned out to be) as presumptive evidence.

ACTION 8-10

<u>Presumptive evidence may not be used where</u>:

i. The taxpayer can demonstrate that the transaction projections were reliable;

ii. The difference between financial projections and actual outcomes does not reduce or increase compensation arising from the HTVI by more than 20% of the compensation determined at the time the transaction was entered into;

iii. A commercialization period of five years has passed and the difference between financial projections and actual outcome in this period has not been more than 20%; or

iv. The transfer of an HTVI is covered by a bi- or multilateral advance pricing agreement.

ACTION 8-10

Action 9: Risks and capital

- Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members.
- This will involve adopting TP rules or special measures to ensure that inappropriate returns will not accrue to an entity solely because it has contractually assumed risks or has provided capital.
- The rules to be developed will also require alignment of returns with value creation.
- This work will be coordinated with the work on interest expense deductions and other financial payments

ACTION 8-10

Action 10: Other high risk transactions

- Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties. This will involve adopting TP rules or special measures to:

i. clarify the circumstances in which transactions can be re-characterized;

ii. clarify the application of TP methods, in particular profit splits, in the context of global value chains; and

iii. provide protection against common types of base eroding payments, such as management fees and head office expenses.

OBSERVATIONS & CONCLUSIONS

- BEPS no longer a tax issue and has certainly redefined value creation and taxable presence
- MNE have to assess the impact of choosing between operating an optimal model and balancing between scarce resources of human & capital and corporate tax rate
- Re- emergence of 'sweetheart' tax deals to attract new investment– UK has proposed to reduced corporate tax rate from 20% to 17% in April 2020; US is likely to get in the game with proposals to reduce current federal tax rate of 35% to 15 or 20%

INTERACTIVE SESSION

Actions 11 and 13 New OECD Transfer Pricing documents

- Action 11 – Establish methodologies to collect and analyze data on BEPS
- Action 13 – Disclosure of supply chain information to tax authorities
- OECD BEPS and CbC Reporting
- Impact of BEPS CbC reporting on Multinationals

Action 11 – Establish methodologies to collect and analyze data on BEPS

ACTION 11

What is Action 11?

- Action Plan for measuring and monitoring of Base Erosion and Profit Shifting (BEPS) in Multi-national Corporations (MNCs).
- It is focused on **measuring the size and extent** of BEPS activities.

OECD's End Game with Action 11

1. Estimate the size of BEPS is MNCs;
2. Identify indicators of BEPS; and
3. Provide recommendations to tax authorities for the improved measurement of BEPS

ACTION 11

Collecting and analyzing data on BEPS

- Developing an economic analysis of the scale and impact of BEPS (including spillover effects across countries) and actions to address it.

What does it involve?

- Assessing a range of existing data sources;
- Identifying new types of data that should be collected; and
- Developing methodologies based on both aggregate and micro-level data

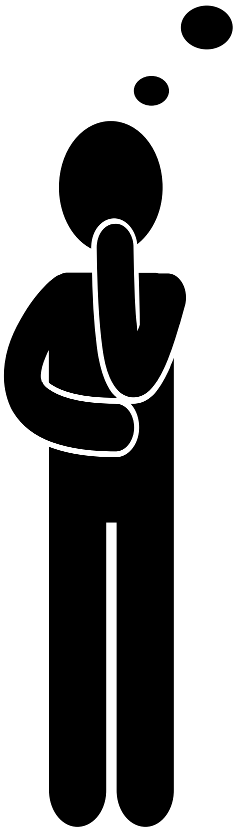
ACTION 11

Important factors to consider while collecting data

a) The need to respect taxpayer confidentiality; and

b) The administrative costs for tax administrations and businesses.

ACTION 11



<u>Why did OECD implement Action 11?</u>

- ❑ Profit shifting occurs through transfer mispricing, strategic location of intangibles and debt, and treaty abuse.
- ❑ The indicators of BEPS are constrained by limited data.
- ❑ Analysis of profit shifting is constrained by the difficulty in separating effects of BEPS from real economic factors.
- ❑ The OECD therefore sought to improve the analysis of available data.

ACTION 11

Indicators of BEPS activity between MNEs

a) Concentration of FDI relative to GDP;

b) Profit rates in MNC affiliates in low tax countries compared to those in high tax countries;

c) Profit rates of MNE affiliates in low tax countries compared with the profit rate of their own MNE groups;

d) The effective tax rates of MNEs compared to those of domestic-only enterprises;

e) The separation of intangible property from the location of its production;

f) the concentration of debt in MNE affiliates located in higher-tax rate countries

ACTION 11

Criteria for evaluating data for BEPS analysis

i. Coverage/representativeness: Data collected should be representative of all major sectors and industries

ii. Usefulness of separating real economic benefits from tax effects

iii. Ability to focus on specific BEPS activity - BEPS is driven by practices that artificially segregate taxable income from real economic activities that generate it

iv. Level of detail – BEPS involves cross-border transactions between related parties. As such information on related and unrelated party transactions are vital.

ACTION 11

v. Timeliness: Access to timely information enables policy makers to monitor and evaluate changes in BEPS environment and effects of legislation

vi. Access: Most BEPS behaviors cannot be identified from the tax returns or financial accounts. As such, data analysis is important to separate BEPS activity from real economic activity.

ACTION 11

ICPAK
Uphold Public Interest

Implications of Action 11

a) OECD estimated that countries lose 4% - 10% of corporate tax revenue due to BEPS;

b) Countries could use the data provided through Action 11 coupled with Country by Country reporting to produce BEPS indicators for each MNE;

c) Ultimately, the information gathered through this plan will facilitate implementation of the canon of equity in tax where each company pays its due share of tax

Action 13 – Disclosure of supply chain information to tax authorities

ACTION 13

<u>What is the role of the supply chain in Action 13?</u>

- ✓ The supply chain of most MNEs is located across various jurisdictions where each entity faces certain fiscal advantages that ultimately lead to lower tax liability for the group of companies
- ✓ Action 13 has been implemented by the OECD to facilitate accurate reporting on a jurisdictional and group basis to facilitate full disclosure and reduce evasive tax planning.

SUPPLY CHAIN

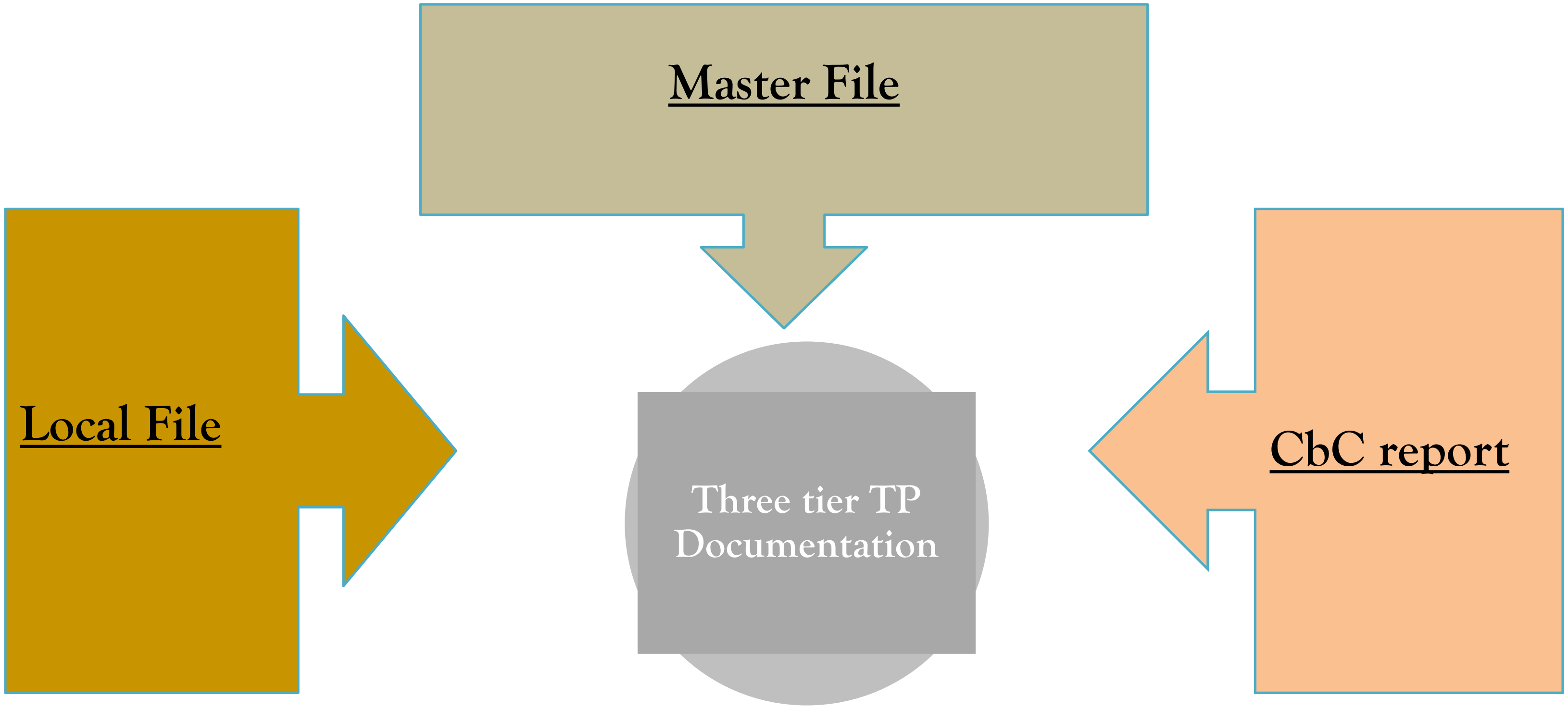
- A supply chain refers to the chain of process involved in the production and distribution of a commodity:

Beverage industry:

Purchase of raw materials: alcohol and packaging → Manufacturing process: fermenting and processing → Packaging and storage → Distribution

ACTION 13

In September 2014, the OECD issued a proposal advocating for a three-tiered approach in the presentation of TP documentation.



ACTION 13

- ✓ Master file – Contains high level information regarding the global business operations and TP policy of the Group.

Information in the master file includes;

i. Organization structure;

ii. Description of the MNC's business;

iii. MNC's intangibles;

iv. MNC's intercompany financial arrangements; and

v. MNC's financial and tax positions.

ACTION 13

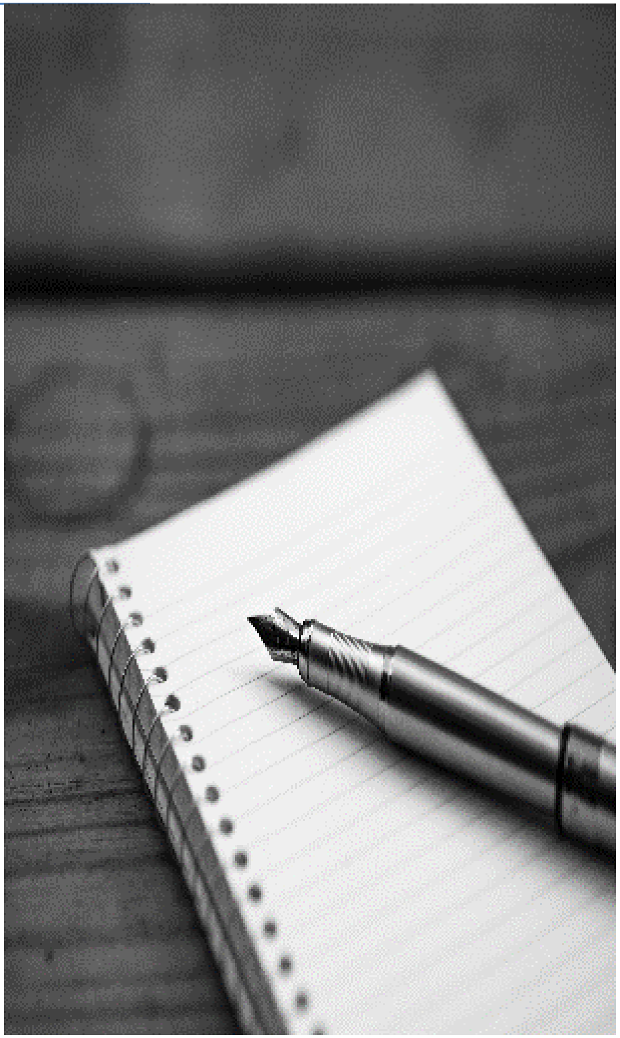
- ✓ Local file – Contains detailed TP documentation specific to each country. The local file is for the use of local tax administration including:

a) Identifying material related party transactions;

b) Amounts involved in the transactions; and

c) The company's analysis of the TP determination made.

The local file focuses on information relevant to TP analysis for intercompany transactions.



ACTION 13

- ✓ Country-by Country report – Prepared annually by MNCs and filed in each jurisdiction the MNCs does business.

The report documents:

a) Total amount of revenue;

b) PBT;

c) Tax paid;

d) Number of employees;

e) Share capital and retained earnings; and

f) Tangible assets in the tax jurisdiction.

The MNC is also required to identify each entity in the Group doing business in the jurisdiction and the nature of business conducted.

ACTION 13

Procedure for filing CbC reports

i. Timing of preparation and filing of the CbC reports: The OECD recommends that MNEs begin filing the report for the fiscal year **beginning on or after 1 January 2016**.

ii. MNEs required to file the report: The OECD requires all MNEs with a consolidated group revenue of **750 Million Euros** in the preceding fiscal year to file the report.

Any MNE with less revenue is not required to file the report.

ACTION 13

iii. Necessary conditions for obtaining and using the report: The OECD requires all countries using the CbC report to keep the contents **confidential**.

iv. Framework for government to government exchange of the CbC Report: The OECD recommends that the jurisdictions in which the ultimate parent companies of qualifying MNEs exist, require the parent company to file the report therein. The country would then exchange the information in the report with any relevant jurisdiction automatically.

ACTION 13

Intangibles

- The OECD Guidelines require that the Master file should provide for Transfer Pricing on intangibles.
- Specifically, the master file should present the following:

i. Description of the Group’s strategy for development, ownership and exploitation of intangibles, including the principal r&d facilities and r&d management;

ii. List of Group’s intangibles, and details of the entities which have legal ownership;

iii. List of agreements including cost contribution agreements, service agreements and license agreements;

ACTION 13

iv. General description of the Group's TP policies; and

v. Details of any transfer of interest in intangibles undertaken.

- This requirement forces Group's to identify and document their intangibles explicitly, hence provides visibility for tax authorities on the intangible assets being used by the Group to drive business value and taxable profits.

ACTION 13

Time frame

- The local file ought to be finalized no later than the due date for filing the tax return in the fiscal year.
- The master file should be reviewed and updated by the tax return due date for the ultimate parent.
- The date of completion of CbC may be extended to one year following the last day of the fiscal year of the ultimate parent.

Materiality

- Non-material transactions do not require full documentation in the local file.
- Individual country TP documentation requirements should have materiality thresholds.

ACTION 13

Document retention

- Documents to be retained as per specific legal requirements in the countries.
- However, documentation may be relevant for a subsequent year that is not time barred

Language

- Filing of TP documentation should be done in a common language.

Confidentiality

- Tax authorities ought to ensure that there is no public disclosure of confidential information and commercially sensitive information in the documentation package.

ACTION 13

<u>Frequency of documentation update</u>

- Periodic review of TP documentation to assess whether FAR is still accurate and relevant.
- Master file, local file and CbC report ought to be updated annually.
- To ease compliance burdens, tax authorities may determine that updates be done every three years provided that the operating conditions remain unchanged.
- Financial data for comparable should however, be updated annually.

OECD BEPS and CbC Reporting

OECD BEPS & CbC REPORTING

- The CbC report can be used to conduct high level TP risk assessments and in evaluating BEPS related risks.
- There is a model legislation in place to be used by countries that require MNEs to file CbC reports and competent authority agreements to facilitate exchange of the reports among tax authorities.
- CbC reports should include all tax jurisdictions that the MNC Group has a tax resident status, regardless of business size in that jurisdiction.

Impact of BEPS CbC reporting on MNCs

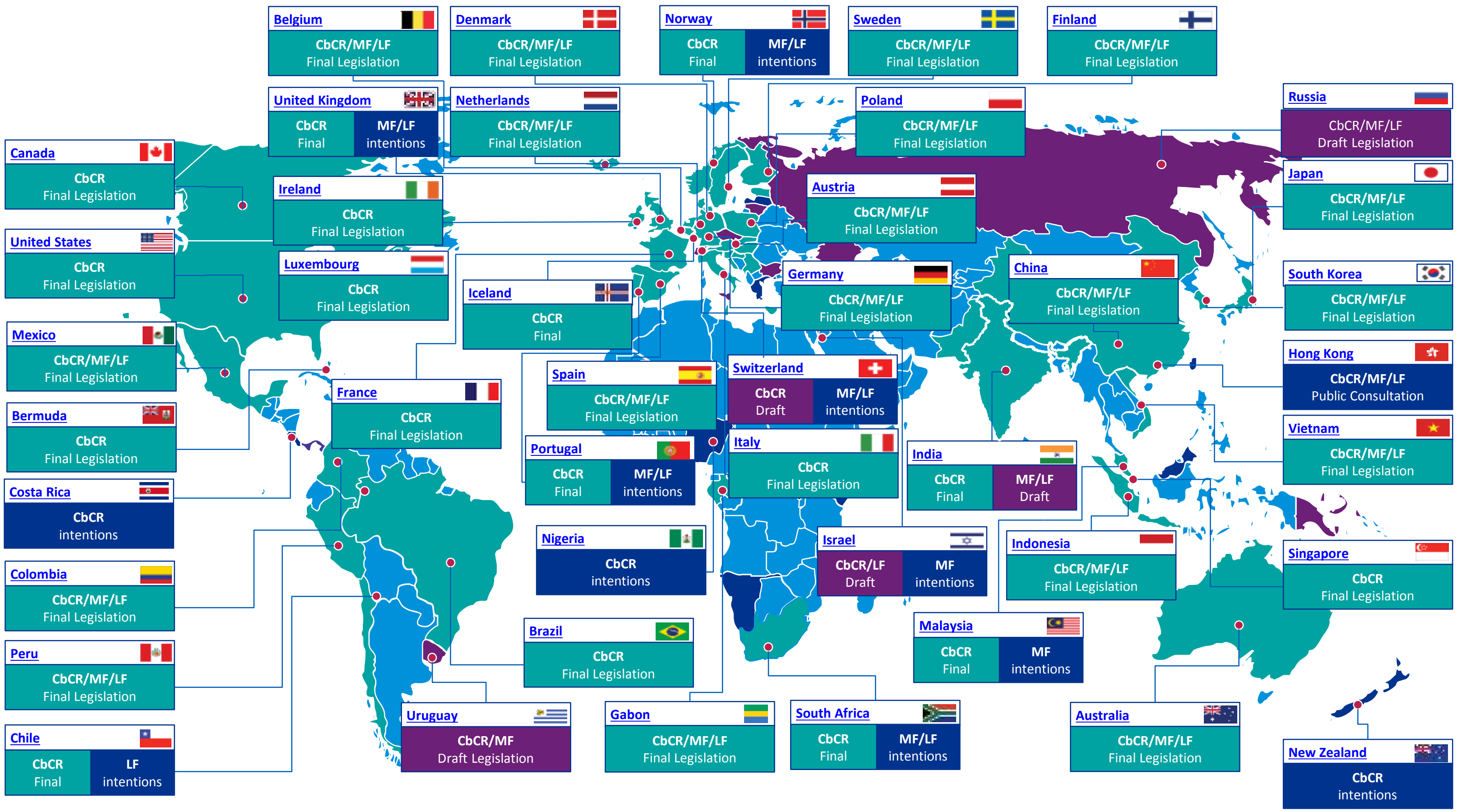
IMPACT OF BEPS CbC REPORTING ON MNCs

- Funding, liquidity and risk management activities – Restrictions on interest deductions, changes in the taxation of certain instruments, limits on the use of treaty benefits to reduce tax obligations.
- TP and supply chain business models – Companies may want to consider relocating offices or modifying the form of transactions. The tax efficiency of existing business models could be affected e.g. with regards to intangibles.
- Tax operations – There will be increased inquiries from tax authorities.

IMPACT OF BEPS CbC REPORTING ON MNCs

- Increased compliance responsibilities related to CbC reporting and expanded requirements for TP documentation
- MNCs will also face the practical requirement of reconciling public financial statements, legal entity books, local tax returns, and the template reports
- MNCs will need to put processes and controls in place to track developments in countries that are significant to their operations

BEPS Action 13: Country implementation summary



Key: Implemented Draft bills/Public discussion draft intentions to Implement

Source: KPMG International member firms

Countries that signed the MCAA on CbCR

Most of the signatories to the Common Reporting Standard Multilateral Competent Authority Agreement (MCAA) have adopted or indicated an intent to adopt CbCR, but some signatories have not. However, we believe signing the MCAA indicates a general intent to adopt CbCR.

Argentina	Estonia	Isle of Man	Mexico	Spain
Australia	Finland	Israel	Netherlands	Sweden
Austria	France	Italy	New Zealand	Switzerland
Belgium	Gabon	Japan	Nigeria	United Kingdom
Bermuda	Germany	Jersey	Norway	Uruguay
Brazil	Georgia	Korea	People's Republic of China	
Canada	Greece	Latvia	Poland	
Chile	Guernsey	Liechtenstein	Portugal	
Costa Rica	Hungary	Lithuania	Russian Federation	
Curacao	Iceland	Luxembourg	Senegal	
Cyprus	India	Malaysia	Slovak Republic	
Czech Republic	Indonesia	Malta	Slovenia	
Denmark	Ireland	Mauritius	South Africa	

Last updated: January 26, 2017

Total
58 countries

Source: OECD, https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf

CONCLUSION

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- There are significant limitations to existing data sources such that attempts to identify indicators, and assess scale and magnitude of BEPS are severely constrained
- All MNCs are required to file the annual template, unless the revenue is less than €750 million per year for the fiscal year beginning January 2016.
- CbC reports are due to be filed with the relevant tax authorities annually; there are no exceptions for any industry, non-corporate or non-public companies
- The three-tiered approach is helpful in tackling BEPS issues

INTERACTIVE SESSION