Developments in International Tax Focusing on BEPS

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May 2018

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Introduction

Introduction

- ❖ Transfer Pricing (TP) continues to emerge as a hot point of discussion all over the world

- ❖ This is mainly fuelled by:

  a) The growth in cross-border transactions

  b) Increased interest by revenue authorities

  c) Race to the bottom - treasuries are hurting!

  d) Activities of international bodies - OECD and EITI which are aimed towards enhanced transparency

Base Erosion and Profit Shifting (BEPS)

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- The OECD defines (BEPS) as tax planning strategies that exploit the gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid
- BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from MNEs
- Evolution of e-commerce

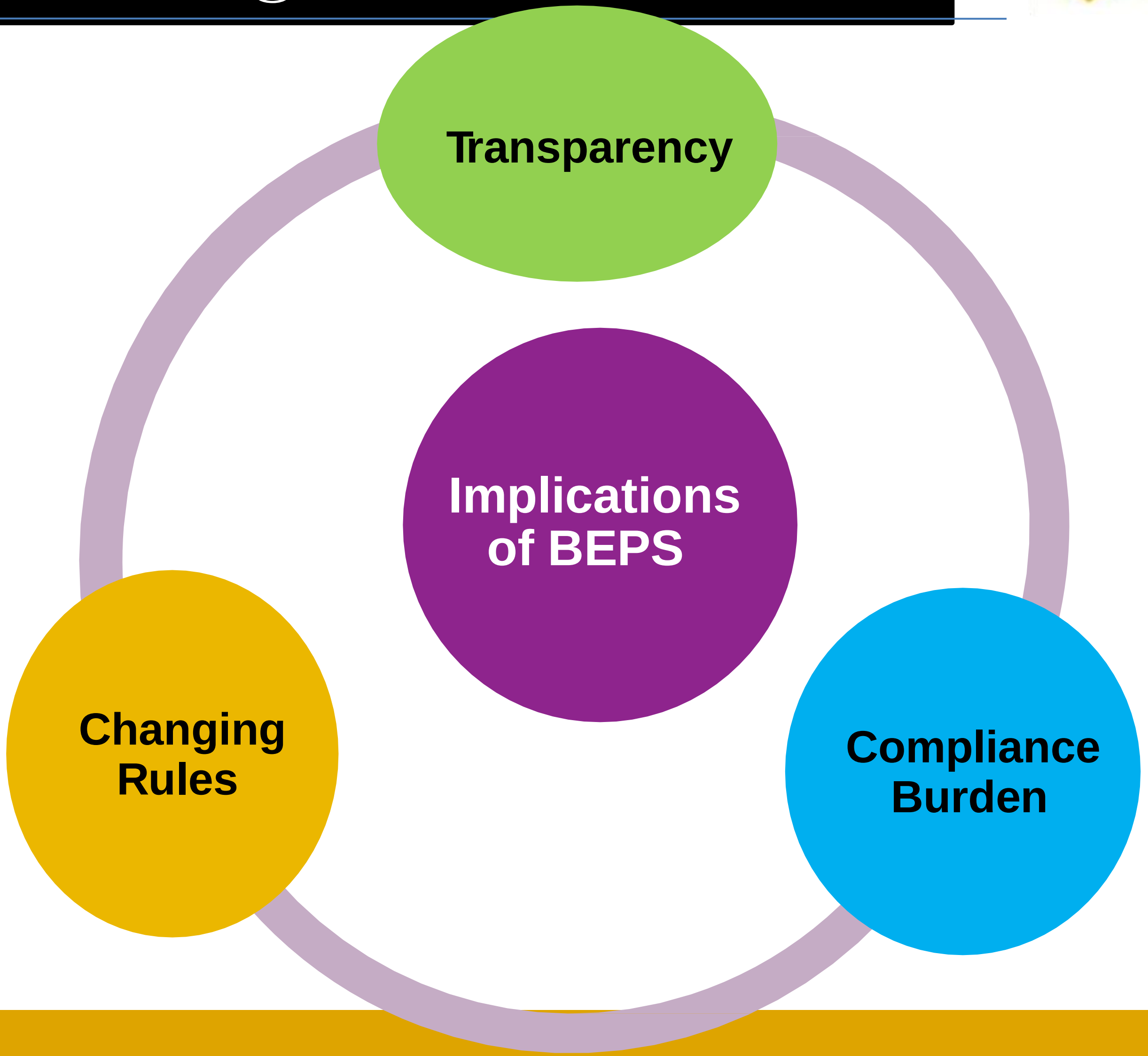
Base Erosion and Profit Shifting (BEPS)

MNEs minimize tax burden and:

- Governments are harmed due to less revenue and higher cost to ensure compliance
- Individual tax payers are harmed when others shift revenues outside their jurisdiction
- Businesses are harmed through reputational risk - MNEs shift profits to low tax jurisdiction areas - Starbucks

These are the challenges giving rise to BEPS

Base Erosion and Profit Shifting (BEPS)



Base Erosion and Profit Shifting (BEPS)

1
Address tax challenges of digital economy

2
Neutralize the effects of hybrid mismatch arrangements

3
Strengthen Controlled Foreign Company rules

4
Limit base erosion via interest deductions and other financial payments

5
Counter harmful tax practices more effectively,

6
Prevent treaty abuse

7
Prevent the artificial avoidance of PE status

8 - 10
Align TP outcomes with value creation

11
Measuring & Monitoring BEPS

12
Mandatory Disclosure Rules

13
Guidance on TP Documentation & CbyC Reporting

14
Make dispute resolution mechanisms more effective

15
Develop a multilateral instrument

Transparency requirements

Base Erosion and Profit Shifting (BEPS)

- In 2016, the United States government issued a white paper focused on the EU's investigations on state-aid and its implementation in European countries
- The concern? – U.S. taxpayers were "footing the bill" for state aid recoveries in the form of foreign tax credits that would offset the U.S. tax bills of some multinationals
- Affected companies included: Apple Inc, Starbucks, Uber and Pfizer Inc

Base Erosion and Profit Shifting (BEPS)

- The European Commission (EC) ordered Apple Inc to pay Ireland unpaid taxes of up to 13 billion euros ($14.5 billion)

- The EC concluded that Apple Inc and Ireland had set up a sweetheart deal which "substantially and artificially" lowered the tax paid by the company in Ireland since 1991

- The standard rate of corporation tax in Ireland is 12.5% while in the US, it is 35% (now 21%).

Base Erosion and Profit Shifting (BEPS)

- What does the Commission's demand reflect on Ireland's tax system?
- Do the rates granted by Ireland to Apple Inc comprise state aid? Is state aid moral?
- The US Treasury has accused the European Commission of becoming a supranational tax authority that reviews member state transfer price determinations
- Is the commission overstepping its mandate?

Some developments

Developments in BEPS

- Bilateral tax treaty amendments eg UK - India, Kenya - India, India - Mauritius
- Unilateral domestic law amendments - Sec 41 of the Income Tax Act
- Country by Country (CbyC) reporting - UK Extractive Industries Transparency Initiative (EITI) (Action 8-10, 13), RSA & Australia CbyC reporting regulations
- Multi-Lateral Instrument (MLI) - w.e.f 1 July 2018. 78 signatories as at 22 March 2018

Developments in BEPS

- Master and Local Files - TP
- Automatic Exchange of Information & Peer review mechanisms
- Mutual Administrative Assistance Agreements
- Tax Inspectors Without Borders support
- UN Secretary General's 25 Advisors

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