INTERNATIONAL TAX

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A. PRINCIPLES OF INTERNATIONAL TAX

There are two main principles of international taxation. Most countries employ, either statutorily or effectively, a mixture of these two principles.

1. Residence principle

Where a country taxes its residents (in the US both residents and citizens) on their worldwide income. To avoid double taxation, residents usually receive some form of relief (typically, tax credits) on taxes paid to the country where the income had originated. Also, according to this principle, no taxes are levied on income originating in that country that accrued to non residents.

2. Source principle

Where a country taxes all incomes originating within its borders, no matter whether they accrue to residents or non-residents. According to this principle, its residents' income from foreign sources is exempt from tax

Key areas of International Tax

a. Double Tax Agreements
b. Transfer Pricing
c. Permanent Establishment
d. Residence
e. Dispute Resolution
f. Exchange of information
g. Taxation of income

B. BEPS OVERVIEW

- Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit 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.

- Conservative estimates indicate annual losses of anywhere from 4 - 10% of global corporate income tax (CIT) revenues, i.e. USD 100 to 240 billion annually.

- BEPS is a global problem which requires global solutions. To develop a response, OECD and G20 countries worked together on equal footing for the first time ever in tax matters.

- The BEPS Action Plan, which was developed by the OECD Committee on Fiscal Affairs (CFA) and endorsed by the G20 Leaders in September 2013, identified 15 actions to address BEPS in a comprehensive manner, and set out deadlines to implement those actions. More than a dozen developing countries have participated directly in the work and more than 80 non-OECD, non-G20 jurisdictions have provided input.

BEPS ACTIONS (1)

MINIMUM STANDARDS	• Action 5: Harmful Tax Practices • Action 6: Prevent Treaty Abuse • Action 13: Country by Country Reporting • Action 14: Dispute Resolution
STRENGTHENING EXISTING INTERNATIONAL STANDARDS	• Action 7: Permanent Establishment (PE) • Action 8-10: Transfer Pricing • Action 13: Country by Country Reporting
BEST PRACTICES, RECOMMENDATIONS, COMMON APPROACH	• Action 1: Digital Economy • Action 2: Hybrid Mismatch Arrangements • Action 3: CFC Rules • Action 4: Interest Deductions • Action 12: Mandatory Disclosure Rules

Action 15: Multilateral Instrument

BEPS ACTIONS (2)

Substance	Transparency	Coherence
Harmful Tax Practices (5)	Harmful Tax Practices (5)	Hybrid Mismatch Arrangements (2)
Preventing Treaty Abuse (6)	Mandatory Disclosure Rules (12)	Interest Deductions (4)
Avoidance of PE Status (7)	TP Documentation (13)	CFC Rules (3)
TP Aspects of Intangibles(8) TP/ Risk and Capital (9) TP/ High Risk Transactions (10)	Dispute Resolution (14)	Methodologies and Data Analysis (11)
Digital Economy (1)		
Multilateral Instrument (15)		

1. Substance

- Artificial segregation of profits from the activities generating them
  - E.g. profits are created by activities in "high tax" jurisdictions but shown/booked/reported in "low tax" jurisdictions.

New substance requirements post-BEPS

- Profits should be taxed in the country where value is created

  i.e.

  - where assets used, functions performed, risk assumed during the economic activity;
  - where substance (organizational (institutional), legal, commercial (business), etc) is present.

2. Transparency

- Prevention of BEPS is only possible if more transparency is ensured by ending asymmetry of information between taxpayers and tax administrations.

Transparency requirements post-BEPS

- Improving the availability and analysis of data on BEPS
- Ensuring better information flow between tax administrations
  - Make sure that timely, targeted and comprehensive information is available
- Ensuring disclosure by taxpayers
  - Comprehensive and relevant information on tax planning strategies
- Providing improved TP documentation

3. Coherence

- BEPS issues may arise directly from the existence of loopholes, as well as gaps, frictions or mismatches in the interaction of countries' domestic tax laws
  - E.g. double non-taxation

    Payment is deductible in one country but non-taxable in the other country

Achieving coherence

- Complement existing standards with instruments that prevent double non-taxation and other issues related to incoherence of domestic laws

C.BEPS IMPACT/GLOBAL TRENDS

a.) Double Tax Agreements

i. Hybrid Mismatches - Action 2
ii. Treaty Abuse - Action 6
iii. Artificial avoidance of PE status - Action 7
iv. Dispute Resolution - Action 14
v. Multilateral Instrument – Action 15

b.) Transfer Pricing

i. Transfer pricing aspects of intangibles – Action 8
ii. Transfer pricing Risk and Capital – Action 9
iii. Transfer pricing Risk transactions – Action 10
iv. Country by Country Reporting – Action 13

c. Permanent Establishment – Action 7

i. Specific activity exemptions
ii. Commissionaire arrangements
iii. Splitting of contracts
iv. Dependent Agent PE

d. Residence

i. Tie-breaker test – Action 6

e. Dispute Resolution

i. Corresponding Adjustments – Action 14
ii. Mutual Agreement Procedure – Action 14

f. Exchange of information

i. Harmful Tax Practices – Action 5
ii. Country by Country Reporting – Action 13

g. Taxation of income

i. Taxation of the Digital Economy – Action 1
ii. CFC Rules – Action 3
iii. Interest Deductions – Action 4
iv. Mandatory Disclosure Rules – Action 12

Thats all Folks!