

# Base Erosion and Profit Sharing (BEPS)

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Why should my organization  
be concerned about BEPS?

Why should you act now  
in preparing for a BEPS strategy?

## Definition

Base erosion and profit shifting (BEPS) refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Under the inclusive framework, over 100 countries and jurisdictions are collaborating to implement the BEPS measures and tackle BEPS.

# A Clear Perspective, from Every Angle

- Multinational corporations and governments are preparing for “international tax reform” now that the Organization for Economic Co-operation and Development (OECD) has completed the G20 BEPS initiative
- Many tax authorities are actively working to develop supporting legislation that will take effect in the coming months
- New global tax requirements will result in the need for worldwide standardization of data collection and processes, centralized control, up-to-date monitoring of global transfer pricing legislation updates, and accurate risk assessment

What are the benefits of leveraging transfer pricing technology in a post-BEPS world?

# Background

- In September 2014, the countries participating in the OECD/G20 Base Erosion and Profit Sharing (BEPS) Project published:
  - “Guidance on Transfer Pricing Documentation and Country-by-Country Reporting”
  - This Report was presented to the G20 Finance Ministers at their September 2014 meeting in Cairns
  - This Report also presented to the G20 leaders at their November 2014 meeting in Brisbane, Australia

## Background, Cont.

- This Report described a three-tiered standardized approach to transfer pricing documentation. Standards consisted of:
  - I. A master file containing standardized information relevant for all MNE group members
  - II. A local file referring specifically to material transactions of the local taxpayer; and
  - III. A Country-by-Country Report containing certain information relating to the global allocation of the MNE group's income and taxes paid together with certain indicators of the location of economic activity within the MNE group (the "CbC Report")

# HEADLINES

Apple slapped with demand to pay  
billions in EU back tax

Brussels' €13bn tax bill clears way for  
further crackdowns on Apple

Why Apple's \$14.5 billion tax fine is  
worse for shareholders than it looks

US taxpayers will be affected by Apple  
tax fine, says White House

Apple ordered to repay record €13bn to  
cover unpaid EU tax

EU's Apple tax may be a boon for the UK

The EU is about to hit Apple with the  
largest tax penalty ever



# Evolution of BEPS

- 2011 starts with G20 Leaders declaration “Tackling tax havens and non-cooperative jurisdictions”
- OECD study in February 2013 (commissioned by the G20) gave a detailed overview about practice of multinationals to reduce (optimize) the tax rate to a low level less than 5%
- July 2013 - First draft of a BEPS action plan was launched (initiated by G20)
- August 2014 - First recommendations for 7 Action plans
- October 5, 2015 - Publishing of recommendations for BEPS action plan with 15 points
- October 8, 2015 - G20 conference of Finance Minister and National Central Banks in Lima / Peru – confirmation of BEPS action plan
- November 15, 2015 - G20 conference in Antalya/Turkey confirmation by Heads of Government

## Evolution of BEPS, Cont.

About 85 engaged countries

- G20 Members (19 countries plus EU) with about 90% of worldwide economic power as engine against BEPS  
Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, United Kingdom, United States, and European Union.
- OECD Members (35 countries)
- About 40 developing countries with regular conferences in Africa, Asia, Latin America and Caucasus joined the BEPS project and gave there input

## Evolution of BEPS, Cont.

### Result of the OECD study

Estimate 4% to 10% of the global CIT revenues are lost yearly up to USD \$240 billion a year

### Reasons:

- Aggressive tax planning by multinational enterprises
- Affiliates of multinationals in low tax countries report almost twice the profits of their global group (relation: profit to active assets)
- Interaction of domestic tax rules
- Lack of transparency and coordination of tax authorities
- Limited country enforcement
- Harmful tax practices

# Evolution of BEPS, Cont.

## Result of the OECD study

- OECD report concluded that no single tax rule on its own enables BEPS
- The interplay among different tax issues makes BEPS possible
- Domestic laws and rules are not coordinated cross border

## Target of BEPS action plan

- Increase of CIT revenues per country
- Taxation in country of economic activity and value creation
- Avoidance of double non taxation
- Comprehensive package of measures, implemented in domestic law and treaty provisions
- Supported by targeted monitoring and strong transparency
- Tackle the root causes and not merely the symptoms

## Example

Apple - 13 billion EUR tax payment to Ireland  
plus interest 6 billion EUR

Tax authorities of other European countries  
are interested in similar additional payment of taxes

## Next

Google, Amazon, Facebook (big four of silicon valley),  
Pfizer, Starbucks

## Current Activities - OECD

Implementation of an Inclusive Framework through OECD - confirmed by G20 in February 2016

- ✓ Finishing details of several action plans
- ✓ Monitoring – review of implementation into soft-law“ into „hard-law“
  - First step: implementation of minimum standards
  - Includes Action Plan 5, 6, 13 and 14
- ✓ Involvement of other countries and jurisdictions
- ✓ Implementation of BEPS action plans in OECD-Model Convention

## Current Activities – OECD Model Convention

- Realization of Action plans mainly through bilateral agreements
- BEPS Action plans includes recommendations to change the OECD-Model Convention
- Historical reason of DTT – Avoidance of DOUBLE TAXATION
- New function of DTT
  - Avoidance of Double NON Taxation
  - Avoidance of Tax fraud
  - Avoidance of Tax Avoidance
- First practical experiences: New DTT Germany-Australia agreement signed November 12, 2015 includes recommendations of the BEPS Action plan published October 5, 2015

## Current Activities – European Community

Implementation of an ATAP – Anti Tax Avoidance Package as new directive; In legislative procedure; Draft from January 28, 2016

Target: Coordination of member state activities

- Interest limitation rule (BEPS Plan 4)
- Exit taxation rule
- Switch-over clause
- General anti abuse rule
- Controlled foreign company legislative (BEPS Plan 3)
- Hybrid mismatches (BEPS Plan 2)



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