OVERVIEW ON THE BEPS FINAL PACKAGE

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Some are of the view that we are witnessing a paradigm shift, others maintain that we are merely on the threshold of much more complex times embedded with an increased compliance burden.

With the release, on October 5, of the long-awaited final Reports on the OECD BEPS (Base Erosion and Profit Shifting) project, we are now about to enter the "implementation phase".

The BEPS final Package includes:

a. Minimum standards
b. Revision of existing OECD Standards
c. Common approaches and best practices guidance
d. Detailed report on measuring BEPS.

Minimum standards were agreed in areas in which no action by some countries would have created negative spill-overs (including negative impacts on competitiveness) on other countries, respectively on Actions 5 (Harmful Tax Practices), Action 6 (Treaty Abuse), Action 13 (Transfer Pricing Documentation and Country by Country Reporting) and Action 14 (Dispute Resolution Mechanisms).

On Action 5, there was consensus on an agreed methodology to assess whether there is substantial activity in a given preferential regime. The nexus approach for preferential intellectual property (IP) regimes demands an alignment of the benefits of such regimes along with substantive research and development activity; in addition, countries committed to transparency through the mandatory spontaneous exchange of relevant information on specific rulings.

As far as Treaty Abuse is concerned (Action 6), the minimum standards include model provisions developed to prevent treaty abuse to be included in the multilateral instrument available to countries for implementation of the agreed provisions on tax treaty issues into bilateral tax treaties. Taking into account that some of these provisions call for additional technical work, further developments are expected in years to come.

Minimum standards were also agreed on Action 13 (Transfer Pricing Documentation and Country by Country Reporting). MNEs with an annual consolidated group revenue equal or above EUR 750 million will need to report: revenues, pre-tax profits, income tax paid and accrued, number of employees, stated capital, retained earnings, and tangible assets in each jurisdiction where they operate.

CbCR should be filed in the ultimate parent company's jurisdiction and exchanged automatically through government-to-government information exchange procedures. In addition, it was acknowledged that the CbCR should be disclosed only to Tax Administrations and under specific conditions (ensuring confidentiality, and the proper use of information).

Finally, in the dispute resolution area (Action 14), agreement on a minimum standard to ensure progress on dispute resolution was reached. A large group of countries expressed their commitment to move quickly towards mandatory and binding arbitration.

The Minimum Standards were supplemented with OECD Standards and Recommendations: by revisiting existing standards (e.g., transfer pricing); by suggesting a common approach that will facilitate the convergence of national practices in other areas (e.g., hybrid mismatch arrangements, interest deductibility) and also best practice guidance (e.g., CFC, mandatory disclosure).

Please find here below a brief overview (based on OECD Reports) of the main developments in each action:

As the OECD BEPS Explanatory Statement released in October 2015 outlines, "Countries are sovereign. It is therefore up to them to implement these changes, and measures may be implemented in different manners,

Action 1	• A ring-fenced solution to the tax challenges it poses is not appropriate. • PE definition has been revisited (no agreement on a new nexus in the form of a significant economic presence) • In the area of indirect taxes, guidelines have been developed and implementation mechanisms identified to facilitate VAT collection based on the country where the consumer is located, which is particularly relevant for online ordering and delivery of goods and services.
Action 2	• A common approach: on domestic legislation and related treaty provisions where necessary to neutralize hybrid mismatches which undermine their tax base or the tax base of their partners. • Recommendations for the design of domestic rules and model treaty provisions have been agreed together with detailed commentary for their implementation.
Action 3	• The Report sets out recommendations in the form of building blocks of effective Controlled Foreign Company (CFC) rules, while recognizing that the policy objectives of these rules vary among jurisdictions. • It identifies the challenges to existing CFC rules posed by mobile income such as that from intellectual property, services and digital transactions and allows jurisdictions to reflect on appropriate policies in this regard.
Action 4	• A common approach which will facilitate the convergence of national practices by interested countries to limit base erosion through interest expenses, for example via intra-group and third party loans that generate excessive deductible interest payments. The common approach aims at ensuring that an entity's net interest deductions are directly linked to the taxable income generated by its economic activities and fostering increased coordination of national rules in this space.
Action 7	• Changes to the PE definition have been agreed to address techniques used to inappropriately avoid the tax nexus, including via commissionaire arrangements and the artificial fragmentation of business activities. • Follow-up work: additional guidance on profit attribution to the PE to be released. Follow-up work will also be needed in 2016 to incorporate the changes resulting from the report on Action 7 into the Model Tax Convention through an update of the Model
Action 8 - 10	• Existing standards have been clarified and strengthened, including guidance on the arm's length principle. • Changes to the TP Guidelines will ensure that the transfer pricing of MNEs better aligns the taxation of profits with economic activity. • The TP Guidelines are also being modernised in relation to intangibles (e.g., hard-to-value intangibles).

as long as they do not conflict with their international legal commitments. (...) ... the emergence of competing sets of international standards, and the replacement of the current consensus based framework by unilateral measures, could lead to global tax chaos marked by the massive re-emergence of double taxation."

As such, it is crucial to ensure consistent implementation and effective monitoring. We need implementation to be consistent at national level to ensure legal certainty and avoid a rise on adjustments by Tax Authorities, spill-overs, and an increase on double or multiple taxation. The BEPS implementation form that will be developed by the OECD is expected to enable/facilitate such effective implementation.

As far as monitoring, OECD needs to carry out effective and tight monitoring to survey national and internationally implemented measures.

The success will depend on countries' receptivity and single/consistent implementation; nonetheless, expected changes of behavior towards tax should be creating a friendlier, fairer and more transparent tax systems within the short-term.