TRADE UNION ADVISORY COMMITTEE
TO THE ORGANISATION FOR ECONOMIC
COOPERATION AND DEVELOPMENT
COMMISSION SYNDICALE CONSULTATIVE
AUPRÈS DE L'ORGANISATION DE COOPÉRATION
ET DE DÉVELOPPEMENT ÉCONOMIQUES

OECD Mid-Term Reports on the G20 / OECD Base Erosion and Profit Shifting (BEPS) Action Plan

Comments by TUAC Secretariat
Paris, 2 October 2014

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Executive summary

The OECD mid-terms reports on the BEPS action plan, released on 16 September 2014, are encouraging in as far as effective implementation is concerned. They suggest that OECD and G20 governments remain committed to live up to the expectations raised by the BEPS Action Plan when it was launched a year ago at the G20 Leaders Summit in St Petersburg.

Seven out of 15 action points were delivered, ranging from measures to prevent profit shifting (transfer pricing, harmful tax competition, abusive use of treaty benefits), base erosion ("hybrid mismatches"), to the implications of the changing business model of the digital economy and the feasibility of a new "umbrella" Multilateral Convention.

It is too early to make an informed judgement on the effectiveness of the seven action points. The simple fact that the BEPS Action Plan seems to be on track is a positive sign. Compared to the G20 process on financial reform, which is stalling, the action points can be considered as progress.

However, there are some specific key concerns: (1) The fact that no public disclosure is foreseen for the new country-by-country MNE reporting framework is a major disappointment; (2) A lot of uncertainty remains regarding the tax treatment of shadow banking and of private pools of capital; (3) Finally, the lack of participation (inclusion) of developing countries in the process needs to be dealt with urgently.

Traduction française du résumé

Rapports à mi-parcours de l'OCDE concernant son plan d'action G20 sur l'érosion de la base d'imposition et le transfert de bénéfices – Commentaires du Secrétariat du TUAC

Les rapports à mi-parcours remis par l'OCDE portant sur le plan d'action BEPS, publiées le 16 Septembre 2014, sont encourageants en ce qui concerne le respect des engagements et la mise en œuvre. Ils laissent espérer que les gouvernements de l'OCDE et du G20 seront à la hauteur des attentes suscitées lors du lancement du Plan d'action au Sommet des dirigeants du G20 à Saint-Pétersbourg il y a un an.

Il a ainsi été rendu compte sur 7 des 15 points que comportent le plan d'action, allant de mesures visant à prévenir le transfert de bénéfices (prix de transfert, concurrence fiscale dommageable, l'utilisation abusive des conventions fiscales), l'érosion de base («les montages hybrides»), aux implications de l'économie numérique et à la faisabilité d'une Convention multilatérale « chapeau ».

Il est trop tôt pour porter un jugement éclairé sur la portée des sept points du plan d'action pour lesquels l'OCDE a rendu compte. Mais le simple fait que le calendrier soit respecté est en soi un signe positif. Par rapport au processus du G20 sur la réforme financière, qui est clairement en perte de vitesse, voire à l'arrêt, les rapports à mi-parcours peuvent être considérés comme un progrès.

Néanmoins, les rapports à mi-parcours font transparaître des problèmes bien spécifiques: (1) Le fait qu'aucune divulgation publique ne soit envisagée pour le nouveau cadre de reporting pays-par-pays est extrêmement décevant; (2) Une grande incertitude demeure en ce qui concerne le traitement fiscal de la finance de l'ombre (shadow banking) et des fonds d'investissement privés (hedge fund et private equity); (3) le manque de participation des pays en développement dans le processus est une préoccupation majeure qui devrait être traitée d'urgence.

Overview

1. The OECD Base Erosion and Profit Shifting (BEPS) Action Plan is a two-year policy process containing 15 action items with the goal to curb aggressive tax planning by multinational enterprises, endorsed by the G20 in St Petersburg in September 2013. While the process is to be completed by the end of 2015[1], a first batch of OECD recommendations and reports was submitted to the G20 Finance Ministers meeting in Cairns on 20-21 September 2014[2]. These mid-term reports are also expected to be officially endorsed by the G20 Heads of State and Government at their meeting on 15-16 November 2014 in Brisbane.

2. The mid-term reports address 7 out of the 15 BEPS actions, including:

- Three analytical reports on the digital economy (Action n°1), the feasibility of a new "umbrella" multilateral convention (15) and on harmful tax practices to attract foreign investors (5);
- Four sets of proposals for new rules and/or amendments of existing OECD model convention and transfer pricing guidelines on "hybrid mismatches" leading to multiple deductions from the corporate income basis (2), treaty shopping (6), transfer pricing of intangibles (8) and country-by-country tax reporting (13).

3. Table 1 sets the seven deliverables of September 2014 in the context of the overall BEPS Action Plan, also in regard to their follow-up in 2015, and outlines expected deliverables for September 2015. A more detailed table is included in the Annex.

4. Looking at the state of implementation per se, the mid-term reports are encouraging in so far as they suggest that G20 governments remain committed to live up to the expectations raised by the BEPS Action Plan. The implementation of the BEPS plan has in fact the great merit of… being on track – although some of the deliverables of September 2014 are incomplete and would need further work and guidance. It compares very favourably with other G20 action plans, most notably the financial reform action plan, which is accumulating delays and is far from being completed five years since its inception.

TABLE 1: OVERVIEW OF THE IMPLEMENTATION OF THE BEPS ACTION PLAN

Action	September 2014	September 2015
1	**Report on the tax challenges of the digital economy**	*Input to Actions 3, 4, 7, 8-10*
2	**Rules to neutralise "hybrid mismatches":** multiple deductions from the taxable income base common methodology for test the substance of patent boxes exchange of info on rulings	*Pending issues with regard to:* ** banks' capital requirements under Basel III* ** shadow banking (stock-lending and 'repos')*
3		**Strengthening rules on controlled foreign company (CFC)** to address untaxed profits booked offshore.
4		Rules to limit **base erosion via interest deductions** and other financial payments
5	**Report on harmful tax practices**, intellectual	*Practical guidance and finalise agreement*

[1] OECD webpage on the BEPS Action Plan: http://www.oecd.org/ctp/beps.htm
[2] http://www.oecd.org/ctp/beps-2014-deliverables.htm

	property, and other, preferential regimes Minimum standard on LoB	
6	**Rules to prevent "treaty shopping"**	*Further work on collective investment vehicles, other than pension funds*
7		**Preventing the artificial avoidance of permanent establishment (PE) status**
8	**Revision of the TP Guidelines regarding the treatment of intangibles**	
9&10		**Revision of the TP Guidelines regarding capital and other "high risk transactions"**
11		**Data collection and economic analysis** on the impact of BEPS, including its spill over effects across countries
12		Set domestic rules requiring the **disclosure of aggressive tax planning arrangements**
13	**Revise the TP Guidelines regarding transfer pricing documentation and develop a new template for country-by-country reporting**	*Further guidance by February 2015 on the method of filing the c-b-c reporting*
14		Enhance the effectiveness of **dispute resolution mechanisms** among tax administrations
15	Report on the feasibility of implementing BEPS measures through a **multilateral instrument to modify the network of bilateral tax treaties**	*Negotiation of a multilateral convention to be launched in February 2015*

5. While implementation is on track, the risk remains that the process will be watered down subsequently or will lose steam in 2015. It is clear that not all G20 countries are on the same wave length with regard to the ambition and desired outcome of the Action Plan and the extent to which the deliverables should lead to binding commitments. While the September 2014 deliverables are overall welcome, there are remaining concerns on some specific issues, including country-b-country reporting, the tax treatment of banking and shadow banking activities, and the voice and active participation of developing countries.

Key features of the mid-term deliverables

6. In what follows, the key features of the seven BEPS deliverables of September 2014 are described in more detail. The chapter first looks at profit shifting-related measures (transfer pricing, harmful tax competition and abusive use of treaty benefits), then at base erosion through "hybrid mismatches", the report on digital economy and the feasibility report on the creation of a new "umbrella" Multilateral convention. Finally, a few comments are made on expected new measures to strengthen the participation of the developing countries.

Transfer pricing: treatment of intangibles (Action 8)

7. The OECD proposal[3] is set to revise Chapter VI of the OECD Transfer Pricing Guidelines on "special consideration for intangibles" in its entirety. A well-known case of transfer pricing manipulation involving intangible (and hard to value) assets is the "Double Irish" scheme involving a US company, which pays for patent rights domiciled in Ireland (most often the "Double Irish" is coupled to a "Dutch Sandwich" which is a case of treaty abuse, see below). The revision does not suggest any significant departure from the market-based "arm's length principle", the preferred method by the OECD to calculate transfer

[3] http://dx.doi.org/10.1787/9789264219212-en

pricing, which treats MNEs' entities *as if* they were autonomous and independent from each other. The alternative formulary apportionment method, which is supported by civil society and labour as it would better reflect the economic unicity of the MNE groups, still is not considered as a credible approach by the OECD. At best, it is considered as an ad hoc solution (known as the "profit split method"), when there is a clear lack of market comparables and/or when the intangible asset is very hard to value in the first place.

8. The proposal of revision of the TP Guidelines nonetheless includes some welcome changes, where it recognises that the jurisdiction where the formal ownership of an intangible is held (say, in Ireland) is not necessarily the one, or the only entity where the income generated by the intangible are to be allocated, if other entities within the same MNE group have contributed to, or maintained the value of the intangible (say, in Palo Alto, California) (#6.47). In order to determine the allocation of income, MNEs should hence perform a "functional analysis" to identify which entities within the MNE group "perform and exercise control over development, enhancement, maintenance", which ones provide "funding and other assets" and which ones "control and bear the various risks associated with the intangible (#6.48).

Transfer pricing: documentation and country-by-country reporting (Action 13)

9. The OECD also proposes a fundamental redrafting of the Chapter V of the TP Guidelines covering transfer pricing documentation[4]. Compared with the current version of the Chapter – which is short, limited to general consideration and, on substance, is very concerned about limiting the burden of business – the new text offers a much more comprehensive reporting framework with standardised items for all jurisdictions. The proposal is overall welcome, not at least considering the current situation in which many G20 jurisdictions do not require mandatory reporting, as shown in table 3.

TABLE 3: CURRENT TP DOCUMENTATION REQUIREMENTS ACROSS G20 ECONOMIES

No statutory requirement	*Chile, Ireland, Saudi Arabia*
No statutory requirement, but required in practice	*Australia, Austria, Belgium, Brazil, China, Czech Rep, Finland, France, Italy, Japan, Luxembourg, Malaysia, New Zealand, Norway, Russia, Singapore, South Africa, Switzerland,*
Yes, statutory requirement. Short disclosure documentation	*Canada, Colombia, Iceland, Israel, Poland, Portugal, Turkey, US*
Yes, statutory requirement.	*Denmark, Germany, Greece, Hungary, Spain, Sweden, UK*
Yes, statutory requirement. Long disclosure documentation	*Estonia, India, Indonesia, Korea, Latvia, Mexico, Netherlands*

10. The OECD proposal consists of a three-tiered approach to transfer pricing documentation. MNEs would have to produce three types of documents:

- A "master file", to be submitted to all tax administrations in the jurisdictions where the MNE operates, would be providing a "high-level overview" of the MNE's global allocation of income and economic activity, including an overview of important agreements, intangibles and transactions, as well as of the group's organisational structure;
- a "local file" reproducing the content of the Master file but in a more detailed and national context specific manner to be submitted to each tax administration; and

[4] http://dx.doi.org/10.1787/9789264219236-en

- A “country-by-country reporting”, which is a disaggregating part of the Master file’s reporting requirements as shown in Table 4. In addition, reporting should also designate the business line of each entity (e.g. R&D, holding intellectual property, procurement, manufacturing, sales & marketing, back office, finance, etc.).

TABLE 4: REPORTING ITEMS OF THE COUNTRY-BY-COUNTRY REPORTING FRAMEWORK

Tax Jurisdiction		**Country A**	**Country B**	**Country C etc.**
Revenues	Unrelated Party			
	Related Party			
	Total			
Profit (Loss) Before Income Tax				
Income Tax Paid (on cash basis)				
Income Tax Accrued – Current Year				
Stated capital				
Accumulated earnings				
Number of Employees				
Tangible Assets other than Cash & Cash Equivalents				

11. In its proposal, the OECD stresses that country-by-country reporting is a risk assessment tool and should not substitute to transfer pricing documentation as required for/ in the master and local files. It would help signal the presence of aggressive tax planning schemes – for example Country A reporting USD1bn in revenues, no tangible assets and 10 employees, and Country B reporting USD10m in revenues, USD500m in tangible assets and 1000 employees. While the final version of the reporting template is a step back compared to the initial proposal made by the OECD in January 2014 (which contained twice as much reporting items), it can nevertheless be considered as an important and welcome achievement.

12. The major concern is not so much on the substance of the proposed requirements but on the way the reporting is to be filed. The OECD only considers filing of the country-by-country reporting with tax administrations and leaves the precise modalities of such filing open (either direct filing with every administration like the Master file, or filing with the administration of the jurisdiction where the MNE is headquartered) until 2015. Public disclosure, or even partial disclosure, of the reporting framework is not under consideration. This restrictive approach to corporate tax accountability will not help rebuild citizens’ trust in global businesses’ contribution to economic development. Neither will it help tax administrations in developing countries, which do not necessarily enjoy the same level of access to bilateral tax information treaties as their OECD counterparts (which would be required in the case when the filing is limited to the parent administration of the MNE). Moreover, it would not help stakeholders, and workers in particular, in their access to information about an MNE’s risk factors, information on which is a legal entitlement in a number of OECD jurisdictions. In several European countries for example, works councils have a right to information about the company’s business plan, including *foreseeable risk factors*.

Harmful tax competition (Action 5)

13. In its report[5], the OECD claims "substantial progress" in addressing the mutually destructive harmful tax competition between governments in seeking to attract foreign capital. Eliminating "harmful tax practices" has a decade long history at the OECD. After a promising OECD report in the early 2000s, the issue was left aside for years – under pressure from some key member states and only re-surfaced with the BEPS project and the controversies around the creation of "patent boxes" in some OECD countries (low or free-tax regimes aiming at attracting patent holdings from abroad). Table 5 lists the G20 countries that have such "patent box" in place.

14. The report presented in September further includes an agreement on (i) a common methodology to test the "economic substance" of preferential regimes and (ii) rules for exchange of information between tax authorities regarding "rulings" – which are secretive deals between a tax authority and an individual MNE regarding its tax treatment under a given preferential regime. While further guidance is needed, the agreement is very welcome if it lives up to expectations, it sets out for the time being. Amongst others, the OECD report raises concerns about the existence of provisions contained in MNE-specific rulings that in effect prevent effective exchange of information with other tax authorities. The current tax probe of the European Commission regarding the rulings of the Irish tax authorities benefiting Apple Inc. is a case in point of the need for greater transparency.

TABLE 5: G20 COUNTRIES HOSTING A "PATENT BOX" REGIME

	Preferential tax rate
Netherlands	5%
Luxembourg	5.90%
Belgium	6.80%
Switzerland	8.80%
Hungary	9.50%
UK	10%
China	0-12.5%
France	15.50%
Spain	60% of income tax exempted
Turkey	20%

Treaty abuse (Action 6)

15. Treaty abuse and "treaty shopping" are legal arrangements using empty shell companies and other artificial legal arrangements to unduly access the tax benefits of a bilateral tax treaty. A well-known case of treaty abuse is the "Dutch sandwich", whereby an empty shell company located in the Netherlands is exempted from withholding tax on sales shipped by an Irish company (the "Dutch sandwich" then combines with the "Double Irish" transfer pricing manipulation).

16. The OECD agreement[6] includes a "minimum standard" set of clauses to be introduced in bilateral tax treaties. The OECD Model Tax Convention would be amended accordingly. The standard would include:

[5] http://dx.doi.org/10.1787/9789264218970-en
[6] http://dx.doi.org/10.1787/9789264219120-en

- A). a clear statement in the preamble of treaties that the contracting states "intend to avoid creating opportunities for non-taxation" or "reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements"; and
- B). a specific anti-abuse rule based on the limitation-on-benefits (LOB) provision that already exists in some tax treaties concluded by the US, would set objective criteria and conditions for a person or an entity to be considered as a resident of one of the contracting state, and hence benefit from the treaty's provisions (for example for unlisted companies, at least 50% of voting power at the AGM must be held by residents);
- C). a more general and qualitative anti-abuse rule based on the "principal purposes of transactions" (PPT) to address some of the legal arrangements that are not covered by the LOB rule; or
- Alternative to B&C: some combination of the above LOB and PPT rules.

17. The LOB rule would grant automatic treaty benefit to NGOs and not-for-profit organisations provided that they are registered in one of the contracting jurisdictions, and to pension funds, provided that at least half of the members of the plan (presumably both active workers and retirees) are residents. The treatment of other collective investment funds, however, is more uncertain under the proposed LOB rule. Regulated funds, such as mutual funds in the US and UCITS funds in Europe, have governance and legal arrangements that do not fit the standards LOB criteria (they are not – necessarily listed – and, given their volatile and extremely diversified ownership, measuring the proportion of beneficiaries / owners that are residents of a contracting state would be a very challenging task.

Hybrid mismatches (Action 2)

18. "Hybrid mismatches" are legal arrangements between two or more jurisdictions that allow for a single transaction or assets to be treated differently per jurisdiction in order to achieve double non-taxation. A classic example is a financial product that is considered as debt in country X and as equity in country Y: a debt service is deductible from the corporate income tax base in country X, in country Y however, the same transaction is not treated as (taxable) debt income, but as a (tax-exempted) dividends. Other forms include the multiple deductions (in country X, Y, Z etc.) of a single expense (in country A). The most well-known recent case of hybrid mismatch is the Structured Trust Advantaged Repackaged Securities (STARS) scheme, which was operated by BB&T, a North Carolina Bank, with the support of Barclays and the tax experts of KPMG. Between 2002 and 2007, the STARS scheme allowed BB&T to evade over USD700m in tax liabilities.

19. The OECD draft recommendations[7] aim at preventing such kind of mismatch between jurisdictions, including through guidance on domestic rules and proposals for changes to the OECD Model Tax Convention. The OECD draft includes a "defensive rule" that would allow a given tax administration to take unilateral action to prevent hybrid mismatches even if the counterparty jurisdiction(s) or tax administration(s) remain passive or do not have the necessary regulatory tools. The effect of having such defensive rule is that a country does not need to rely on the domestic laws of another country in order to neutralise hybrid mismatches.

20. Some unresolved issues remain. In its recommendations, the OECD acknowledges difficulties in dealing with the tax treatment of bank financing, including capital requirements

[7] http://dx.doi.org/10.1787/9789264218819-en

under Basel III, and of the shadow banking system, including the inter-banking "repo" market and the practice of stock-lending involving banks, "non-credit" institutions such as money market funds, and private pools of capital such as hedge funds. This uncertainty about the tax treatment of the financial sector further confirms the need for the OECD to engage into a far more comprehensive approach on tax and finance than it has done so far.

Report on the digital economy (Action 1)

21. The challenges to the tax treatment of the digital economy – and the media exposure of the global tax avoidance schemes set up by the Google, Apple, Amazon et al. – was one of the triggering factors for the initial launch of the BEPS Action Plan. It is probably not coincidental that this is the first BEPS action item. Bearing this in mind, the long awaited OECD report[8] can be seen either as very disappointing or as… very promising. Its central conclusion is that the digital economy cannot be "ring-fenced" from the rest of the economy for tax purposes (i.e. all forms of business are gradually becoming digitalised). Accordingly, no comprehensive package of tax rules is proposed to specifically address the changing business model of digital companies. The report offers some promising avenues, in so far as it nevertheless identifies some "key features" of the digital economy that "exacerbate" BEPS risks, and which therefore must be addressed through other BEPS deliverables in 2015, including:

- Revision of the transfer pricing guidelines (8-10);
- Artificial avoidance of permanent status (PE) status (7); and
- Strengthening controlled foreign company (3).

22. Regarding the on-going review of the TP Guidelines, the digital report suggests greater reliance on the "profit split method" (by opposition to the marked-based arm's length principles) and on "value chain analyses" in situations where market comparables are not available. Regarding the PE status, the findings of the digital report should lead to proposals to restrict, if not eliminate altogether exemptions that are currently allowed under the OECD Model Tax Convention in 2015. A more ambitious direction, but one that has yet to find consensus among G20 countries, would consist of enhancing the PE status to introduce the notion of "significant presence" for enterprises engaged in fully dematerialized digital activities.

23. The digital economy report also proposes further analytical work outside the scope of the BEPS, most notably on VAT treatment of digitalised sales and on the implication of "multi-sided business models" of the internet (the fact that web user and consumers contribute to the value creation of the web products that they use / buy), which in turn could have broader implications in the policy debate on residence versus source taxation system and, on how to define a 'source' (if indeed consumers / costumers contribute to the production).

Feasibility of a BEPS Multilateral Convention (Action 15)

24. Finally, the OECD released a "feasibility" report[9] on a new "umbrella" Multilateral Convention that would automatically align the thousands of bilateral tax treaties with the

[8] http://dx.doi.org/10.1787/9789264218789-en
[9] http://dx.doi.org/10.1787/9789264219250-en

outcomes of the BEPS Plan. The conclusions on its feasibility are positive and the negotiations on the convention should be launched in March 2015.

Participation of developing countries

25. The OECD process for implementing the BEPS action plan has been severely criticised by NGOs and labour for its lack of participation of developing countries. The entire process is steered by the “CFA+” that consists of the 34 OECD member states represented at the OECD Committee on Financial Markets and representatives of G20 countries that are not members of the OECD, namely Brazil, Russia, Saudi Arabia, India, South Africa, Argentina, and Indonesia. The involvement of developing countries has relied exclusively on regional “consultations” organised on a punctual and ad hoc basis, which is far from satisfactory. The issue of the participation of developing countries goes beyond moral or ethical principles – it also has some very practical consequences: if developing countries have no voice in the process (or just a sporadic voice in conferences, workshops and seminars), the risk increases that they will not be able to meet the requirements, both due to regulatory and institutional capacity, of the final deliverables of the action plan.

26. It is perhaps in reaction to these criticisms that the OECD announced new measures to facilitate developing countries participation alongside the release of the 7 BEPS deliverables in September, stating that the engagement with developing countries “will continue and will actually be strengthened and institutionalised”. Concrete measures on how to “institutionalise” the voice of developing countries, should be decided by December 2014. Some possible avenues include enhancing members of the “CFA+” to a representative group of ten developing countries and/or establish formal process (not limited to one-time consultation) with existing regional tax organisations, including the African Tax Administration Forum (ATAF) and the Inter-American Center of Tax Administrations (CIAT).

Concluding remarks

27. It is too early to make an informed judgement on the effectiveness of the 7 deliverables and proposed measures that were released in September 2014. Something to welcome in the very least, is simply the fact that the BEPS action plan is on track. On that the process compares very favourably with the parallel G20 process on financial reform, which is accumulating delays.

28. There are some specific concerns however. The fact that no public disclosure is foreseen for the country-by-country MNE reporting framework is a serious disappointment. There remains a lot uncertainty about the tax treatment of how banks and of shadow banking – regard measures to prevent hybrid mismatch – and of private pools of capital – ion the context of preventing treaty abuse. Also, the lack of participation of developing countries in the process needs to be dealt with urgently.

Annex I: Implementation of the BEPS deliverables

The following table outlines the timetable of the 15 action points, including when these are to be delivered – marked in bold – and what the outcome and/or the input from other action points have been or should be – marked in italic.

Action	September 2014	*Outcome & key findings*	September 2015
1	**Report on the tax challenges of the digital economy**	** It is not possible to "ring-fence" the digital economy from the rest of the economy.* ** There are "key features" of the digital economy however that "exacerbate" BEPS risks and need to be addressed though BEPS actions.*	*The report should provide input to:* ** strengthening controlled foreign company (CFC) (3)* ** base erosion via interest deductions (4)* ** harmful tax practices (5)* ** artificial avoidance of PE Status (7)* ** transfer pricing (8-10)* *And further work on:* ** multi-sided business models and the participation of users and consumers in value creation* ** VAT treatment of digitalised sales*
2	**Rules to neutralise "hybrid mismatches":** multiple deductions from the taxable income base (in separate jurisdictions) for a single expense deduction without corresponding taxation in another.	*Draft recommendations on:* ** domestic rules, and* ** changes to the OECD Model Tax Convention*	*Pending issues with regard to:* ** capital requirements under Basel III* ** stock-lending and repos*
3			**Strengthening rules on controlled foreign company (CFC)** to address untaxed profits booked offshore. *Input from Action 1 report on digital eco.*
4			**Rules to limit base erosion via interest deductions** and other financial payments
5	**Report on harmful tax practices**, intellectual property, and other, preferential regimes	*Draft rules on:* ** information exchange of rulings between tax administration, and* ** common methodology to test the economic substance of IP regimes and "patent boxes"*	*Practical guidance (with examples) and finalise agreement on the substantial activity test*
6	**Rules to prevent "treaty shopping**"	*Draft changes to the OECD Model Tax Convention:* ** Preamble clarifying that tax treaties are not intended to be used to generate double non-taxation;* ** clause on limitation-on-benefits (L-o-B) provisions, on the model of US treaties; and* ** More general anti-abuse rule based on the principal purposes of transactions* *A minimum standard*	*Further work on the precise contents to make sure that these rules do not unduly impact collective investment vehicles (CIVs) and non-CIVs funds & in order not to hamper investments, trade and economic growth.*
7			**Preventing the artificial avoidance of permanent establishment (PE) status** *input from Action 1 on the digital economy:* ** reduce exemptions to the PE status (ex.*

			whether a local warehouse may constitute a core activity qualifying as a PE status) ** consider changes to the definition of PE, including introducing the notion of "significant [market] presence".*
8	**Revision of the OECD Transfer Pricing Guidelines regarding the treatment of intangibles**	*Draft revised chapter of the TP Guidelines* ** arm's length principle remains the primary method for transfer pricing* ** legal ownership of intangibles is not sufficient to determine income allocation, et needs to be backed by a functional analysis of the entities contributing to the value creation of the intangible*	*Several sections of the draft proposals are bracketed, pending the outcome of actions 9 and 10*
9 & 10			**Revision of the OECD Transfer Pricing Guidelines regarding capital and other "high risk transactions"** *Input from Action 1 on the digital economy:* ** consider greater reliance on the "profit split method" (by opposition to the marked-based arm's length principles) and on value chain analyses, including in situations where market comparables are not available*
11			**Develop methodologies to collect data and carry out economic analysis on the impact of BEPS, including its spillover effects across countries**
12			**Set domestic rules requiring the disclosure of aggressive tax planning arrangements**
13	**Revise the OECD TP Guidelines regarding transfer pricing documentation and develop a new template for country-by-country reporting**	*Revision of the TP guidelines, and adoption of a three-tier reporting framework:* ** master file,* ** local files and* ** template for country-by-country reporting (profits, sales, employees, assets, taxes paid and accrued). Public disclosure is not considered as an option*	*Further guidance by February 2015 on the method of filing the c-b-c reporting: to the HQ's tax authorities only (and transmission to other tax authorities via bilateral or multilateral treaties) or direct filing with all tax authorities where the MNE operates*
14			**Enhance the effectiveness of dispute resolution mechanisms among tax administrations**
15	Report on the feasibility of implementing BEPS measures through a **multilateral instrument to modify the network of bilateral tax treaties**	*Positive conclusion on feasibility*	*Negotiation of a multilateral convention to be launched in February 2015*

Annex II: TUAC papers and reports on BEPS

October 2013: ITUC/TUAC briefing on the BEPS action plan http://www.ituc-csi.org/economic-briefing-2-2013

December 2013: Report on a global unions meeting on corporate tax planning. Public report http://www.tuac.org/en/public/e-docs/00/00/0D/FE/document_doc.phtml Restricted access http://www.tuac.org/en/member/e-docs/00/00/0D/FC/document_doc.phtml

February 2014: Country-by-country tax reporting: TUAC submission to the OECD http://www.tuac.org/en/public/e-docs/00/00/0E/3D/document_doc.phtml

March 2014: OECD Task Force on Tax and Development Workshop Transfer Pricing and BEPS issues, 28th March 2014 OECD Conference centre, Informal notes by the TUAC Secretariat

May 2014: G2O Symposium on tax, 9-10 May, Tokyo, Report by TUAC Secretariat

May 2014: Country-by-country Corporate Tax Reporting: Testing the ambition of the G20 action plan on tax planning by multinationals, L20, 27 May 2014 http://www.ituc-csi.org/country-by-country-corporate-tax

June 2014 Submission to the OECD Committee on Fiscal Affairs http://www.tuac.org/en/public/e-docs/00/00/0E/D2/document_doc.phtml

September 2014: OECD Reports on Tax Avoidance: Encouraging Progress, but More Needs to be Done http://www.tuac.org/en/public/e-docs/00/00/0F/2C/document_news.phtml

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