

Action 2

Neutralise the effects of hybrid mismatch arrangements

Potential policy change

Action Plan will look at the model treaty provisions and provide recommendations regarding the design of domestic legislation to neutralise the effect of double non-taxation, double deduction, long term deferral etc.

Considerations



Action 2

Neutralise the effects of hybrid mismatch arrangements

Action 2 calls for the development of:

“model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect of hybrid instruments and entities”

- On 16 September 2014, ahead of the G20 Finance Ministers’ meeting on 20-21 September, the OECD published its paper on Action 2.
- The OECD will be continuing its work on the remainder of the 15 Actions on Base Erosion and Profit Shifting (‘BEPS’) throughout 2015. It is clear that the G20 and OECD intend that final recommendations will form a comprehensive and cohesive approach. As a result, the proposed solutions, while agreed, are not yet finalised and may be affected by decisions and future work on BEPS in 2015, especially Action 3 (CFC) and Action 4 (Interest).

Changes to recommendations

- The recommendations in the 16 September paper are broadly in line with those included within the Discussion Drafts issued in March 2014.
- Key changes include:
 - Recommendations classified by type of mismatch rather than type of arrangement.
 - Scope is specific to the type of arrangement with a focus on structured arrangements/related parties/controlled groups.
 - Definitions of related parties/controlled groups have moved to 25%/50% thresholds.
 - Some further guidance that 'reasonable' timing differences are not in scope.
 - Definitions imply that interest free loans should not be caught by the rules.

Status

- Guidance, in the form of a detailed Commentary to enable domestic adoption, will be issued no later than September 2015 and include:
 - Practical examples;
 - Transitional rules if there are differing dates of implementation.
- Work will continue in respect of the outstanding substantive points with a view to reaching consensus and publishing along with the Commentary:
 - Certain capital market transactions (including on market stock lending and repos);
 - Imported mismatches; and
 - Hybrid regulatory capital that is issued intra-group; and
 - Whether income taxed under a CFC regime should be included in ordinary income.