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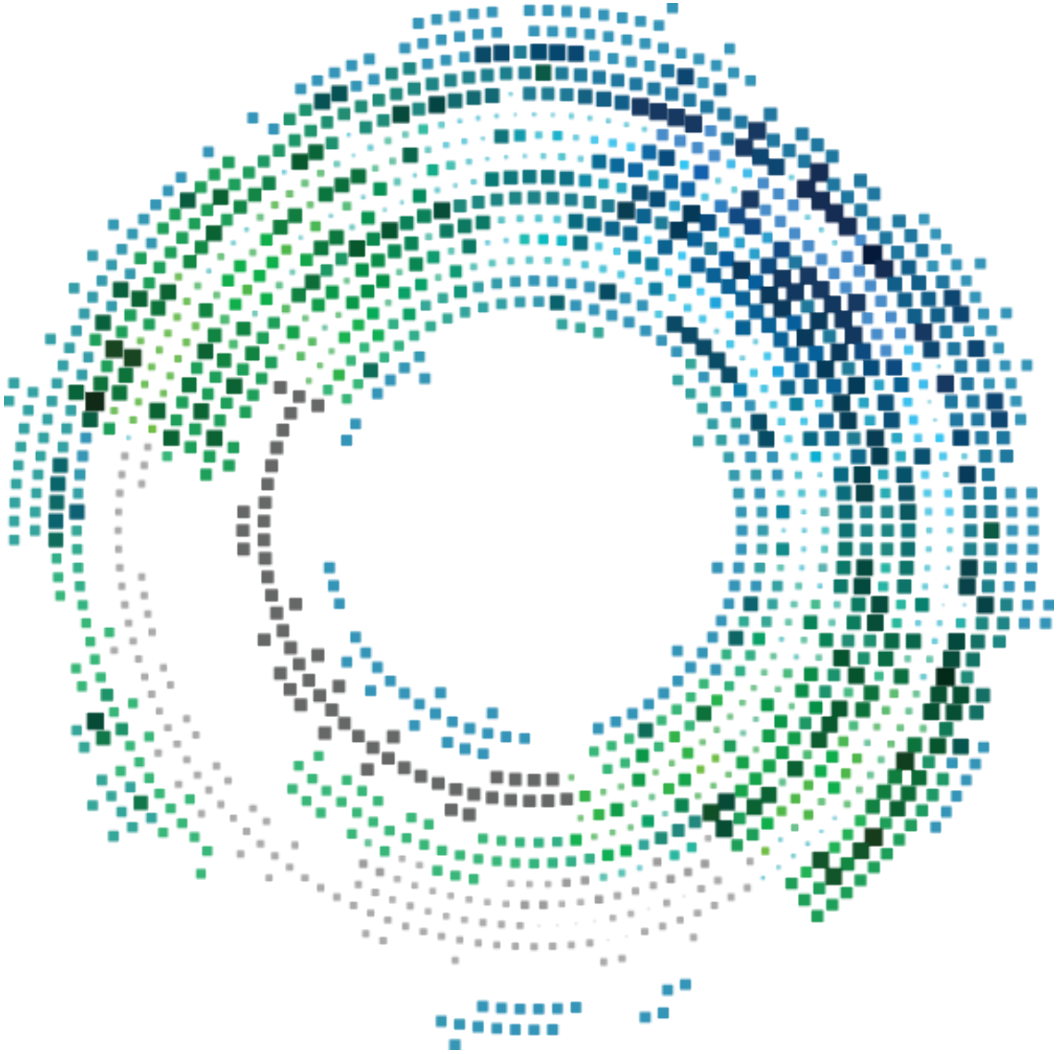

BEPS – India spotlight

Adoption and enforcement actions

September 2017

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Avoidance of permanent establishment status

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Aligning transfer pricing outcomes with value creation

Three tier transfer pricing documentation

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Understanding BEPS

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What are the BEPS Action Plans

15 Actions across 3 main pillars

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Address the tax challenges of the digital economy</td></tr>
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Neutralize the effects of hybrid mismatch arrangements</td><td colspan="2" rowspan="2">Action 6:
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BEPS Action Plans - implementation status in India

Action Plan 1: Digital economy	Equalization levy introduced	1 June 2016
Action Plan 2: Hybrid mismatches	No amendment in Indian tax law	Not applicable
Action Plan 3: CFC Rules	Not implemented	Not applicable
Action Plan 4: Interest deductions	Limit on interest deduction	Financial year 2017-18
Action Plan 5: Harmful tax practices	Concessional tax regime for royalty on patents	Financial year 2016-17
Action Plan 6: Prevent treaty abuse	General anti-avoidance rule effective	Financial year 2017-18
Action Plan 7: Artificial Avoidance of PE	Indian tax treaties typically have wider definition of PE	-
Action Plans 8 – 10: Intangibles, Risks and capital & High risk transactions	Intangibles and others	Existing provisions
Action Plan 11: Data collection & analysis	Not implemented	Not applicable
Action Plan 12: Disclosure of aggressive tax planning	Not implemented	Not applicable
Action Plan 13: Transfer pricing documentation	Country-by-country reporting and Master file requirement introduced	Financial year 2016-17
Action Plan 14: Dispute resolution mechanism	Multilateral instrument is signed – to the extent agreed by the participating countries	-
Action Plan 15: Multilateral instrument	India signed the multilateral instrument on 7th June 2017	-

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Action plan 15

Multilateral instrument

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Action plan 15 - Multilateral instrument

Introduction

Background

- As on 17 August 2017, the MLI was signed by India and 70 other jurisdictions including Australia, Mauritius, Canada, China, Cyprus, France, Germany, Hong Kong, Japan, Luxembourg, Netherlands, Singapore and the United Kingdom.
- Interestingly, **United States, has not signed the MLI** whereas **Mauritius has not notified tax treaty with India as a Covered Tax Agreement**.
- As per provisional list, India has notified all its 93 double tax avoidance treaties indicating the intention of applying the selected MLI provisions to all treaties.

Operation of MLI

- MLI modifies the operation of existing tax treaties between MLI parties:
  - No change in treaties but MLI and treaty to be read together
- Flexibility to implement BEPS tax treaty measures in various ways
  - **Choices** where a minimum standard can be satisfied in multiple ways
  - **Choices** to apply optional and alternative provisions
  - **Reservations** to opt out of provisions or parts of provisions that are not minimum standards
- A provision of MLI would get adopted only when matching action happens i.e. both parties accept the provision. In absence of such matching, existing provisions of the tax treaties would continue

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Action plan 15 - Multilateral instrument

Introduction

Operation of MLI

- Does not impair India's powers to enter into new tax treaties and sign protocols to existing tax treaties.
- India can also opt in with respect to optional provisions or withdraw reservations made earlier or replace an earlier reservation with a more limited version.
- India can also completely withdraw from MLI by making appropriate notification.

Effective date

- The date from which the MLI provisions would become effective with respect to Indian tax treaties will depend on
  i. the date on which MLI enters into force for India and for the treaty partner countries
  ii. the date of entry into effect of the MLI, which in turn could depend on the choices made by India and the treaty partner countries.
- It is likely that the first modifications to covered tax treaties will become effective in the course of 2018

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Action plan 6

Treaty abuse

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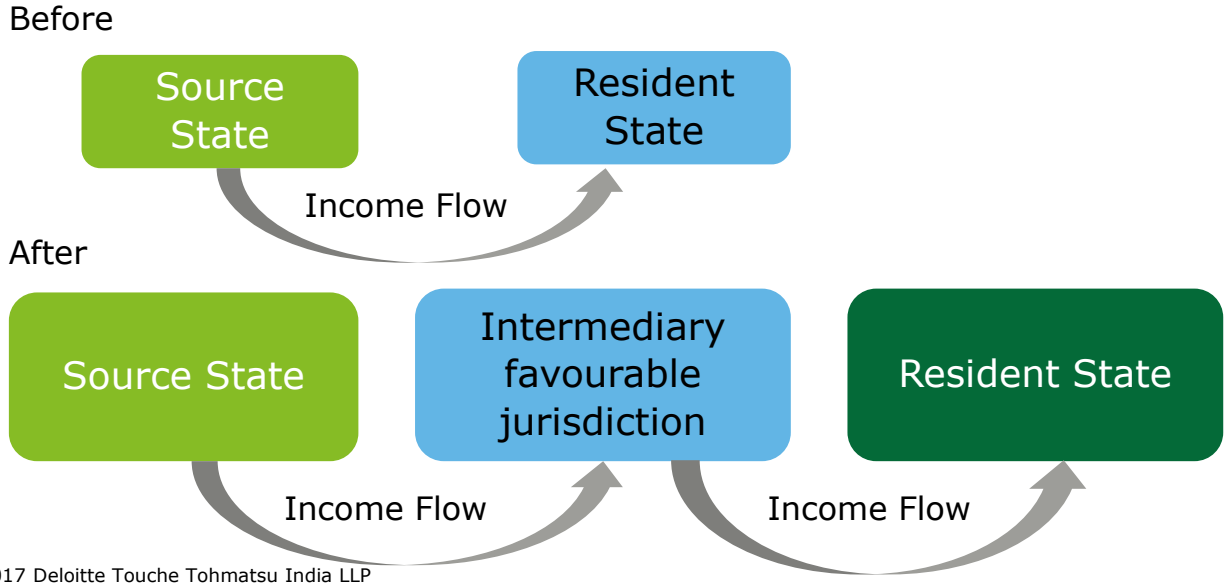
Action plan 6 - Treaty abuse

Introduction

- OECD/G20 BEPS Action 6 identifies treaty abuse, in particular treaty shopping, as one of the most important sources of BEPS concerns.
- The BEPS report includes new treaty anti-abuse rules that provide safeguards against the abuse of treaty provisions and offer a certain degree of flexibility regarding how to do so.

Treaty shopping

- The first requirement to be satisfied by a person to claim treaty benefits is to be "a resident of a contracting state".
- There are a number of arrangements through which a person who is not a resident of a Contracting State may attempt to obtain benefits that a tax treaty grants to a resident of that State. These arrangements are generally referred to as "treaty shopping".



In the given scenario, a person who is resident of a third state (e.g. Resident state) is attempting to access indirectly the benefits of a treaty (e.g. between Source state and Intermediary favourable jurisdiction)

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Action plan 6 - Treaty abuse

Anti-abuse rules

Clear statement by the state on treaty shopping

- States that enter into a tax treaty required to include a statement that they intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements

Limitation-on-benefits ('LOB') rule

- Specific rule that limits the availability of treaty benefits to entities that meet certain conditions will be included in the OECD Model Tax Convention.
- Anti-abuse rules are based on the following conditions for an entity:
  - Legal nature of the entity;
  - Ownership in the entity;
  - General activities of the entity
- These rules seek to ensure that there is a sufficient link between the entity and its State of residence.

Principal purposes test or "PPT" rule

- A general anti-abuse rule based on the principal purposes of transactions or arrangements will be included in the OECD Model Tax Convention.
- It is included to cover treaty shopping situations not covered by the LOB rule
- Under the PPT rule, if one of the principal purposes of transactions or arrangements is to obtain treaty benefits, these benefits would be denied unless it is established that granting these benefits would be in accordance with the object and purpose of the provisions of the treaty

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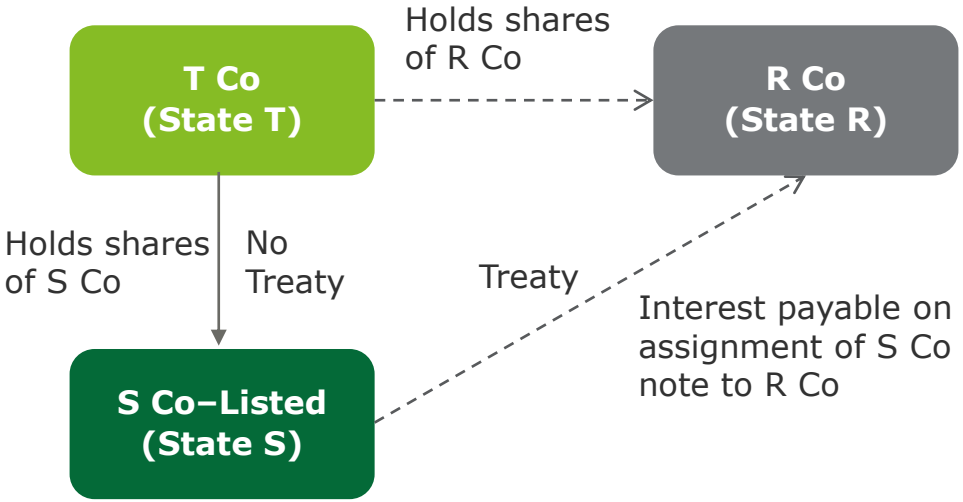
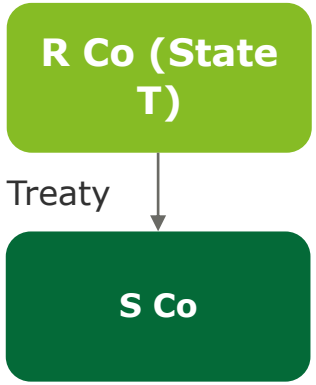
Action plan 6 - Treaty abuse

PPT Rule – Examples of application



- T Co hold the shares of S Co and R Co and lends $1 mn to S Co in exchange for a note (Interest at 7%p.a).
- No Treaty between State T and State S and, hence, any interest paid by S Co to T Co is subject to a withholding tax
- Under the State R-State S tax treaty, there is an exemption on source country interest withholding tax
- T Co decides to assign the S Co note to R Co in exchange for another note from R Co.

In the absence of other facts and circumstances, reasonable to conclude that one of the primary purposes of assigning the note was to enjoy a lower/ nil WHT and hence, granting of treaty benefit would be inappropriate



- R Co, in business of producing electronic devices is expanding rapidly to establish a plant in a developing country to benefit from lower manufacturing costs
- Preliminary review –3 locations shortlisted with similar economic & political environment
- State S is the only country with which State R has a treaty convention
- Decision taken to build plant in State S

- In this example, whilst the decision to invest in State S is based on tax considerations , the principal purpose of investment is expansion.
- Also, one of the objectives of tax conventions is to encourage cross border investment. Hence, cannot be reasonably concluded that one of the principal purposes for investment is tax benefits.

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Action plan 6 - Treaty abuse

Capital gains tax exemption under India's tax treaties

Signatories to BEPS multilateral instrument (PPT and PPT + simplified LOB)						
Signatories having capital gains tax exemption under Indian treaty (highlighted)						
Andorra	China	Gabon	Isle of Man	Malta	Romania	Sweden
Argentina	Columbia	Georgia	Israel	Mauritius	Russia	Switzerland
Armenia	Costa Rica	Germany	Italy	Mexico	San Marino	Turkey
Australia	Croatia	Greece	Japan	Monaco	Senegal	UK
Austria	Cyprus	Guernsey	Jersey	Netherlands	Serbia	Uruguay
Belgium	Czech Rep.	Hong Kong	Korea	New Zealand	Seychelles	
Bulgaria	Denmark	Hungary	Kuwait	Nigeria	Singapore	
Burkina Faso	Egypt	Iceland	Latvia	Norway	Slovak Rep.	
Cameroon	Fiji	India	Liechtenstein	Pakistan	Slovenia	
Canada	Finland	Indonesia	Lithuania	Poland	South Africa	
Chile	France	Ireland	Luxembourg	Portugal	Spain	
Other jurisdictions that have capital gains tax exemption under tax treaty with India						
Kenya, Philippines, Zamia and Malaysia						

Derivative/ bonds/ mutual funds interest in LLP Shareholding less than 10% Sale to non-resident

Mauritius has not notified Indian tax treaty as a covered tax agreement under the multilateral instrument

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Action plan 6 - Treaty abuse

Indian scenario – Measures taken so far

General Anti-Avoidance Rules ('GAAR') enforced by the domestic tax law is akin to PPT rule

The Concept

- GAAR empowers tax authorities to deny tax benefit in an arrangement which:
  - has been entered into with the main purpose to obtain tax benefit; and
  - lacks commercial substance; or
  - Creates rights and obligations which are not at arm's length principle; or
  - Results in misuse of tax law provisions or is carried out by means or in a manner which are not ordinarily employed for bona fide purposes;
- GAAR would override tax treaties
- For foreign investors GAAR would apply only where treaty benefits are claimed
- GAAR will co-exist with special anti-avoidance rules
- GAAR can be applied only after obtaining approval from Commissioner of Income Tax and Approving Panel

Exemptions & clarifications

- Under the current provisions, GAAR does not apply to:
  - Arrangements where annual tax benefit does not exceed INR 30 million (around US$ 500k)
  - Investors in FPIs
  - FPIs if they do not claim treaty benefits
  - Investments made prior to 1 April 2017
- GAAR not applicable if the entity is set up in a tax efficient jurisdiction for non-tax commercial reasons
- GAAR not applicable if LOB conditions in a treaty are met which sufficiently address tax avoidance
- Opt-in / Opt-out from a treaty not a matter to be decided by GAAR
- GAAR not to apply if a ruling from Authority for Advance Ruling is obtained to this effect
- Grandfathering benefit available to shares acquired through conversions and corporate actions after 31 March 2017 provided original investment was before 1 April 2017

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Action plan 4

Limiting interest deductions

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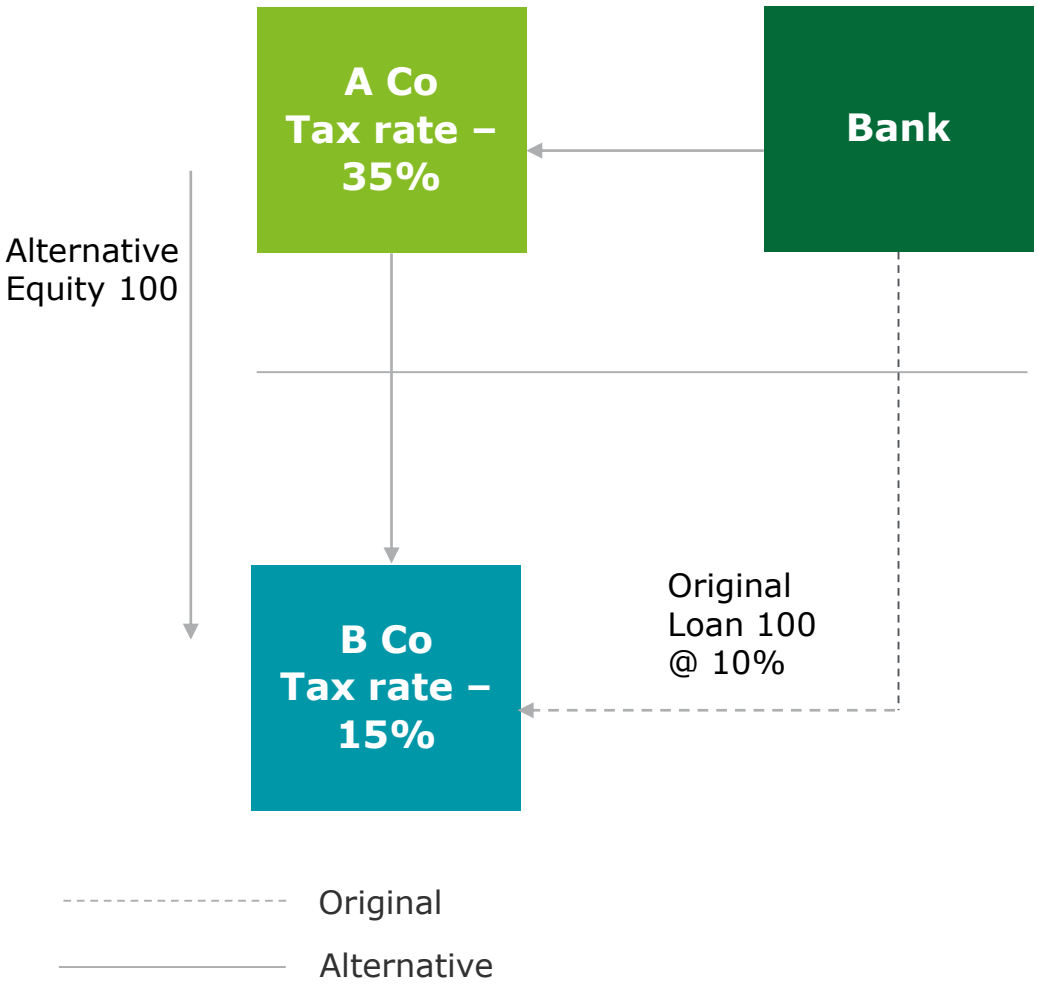
Action plan 4 - Limiting interest deductions

Why needed



Original

- A Co -high tax jurisdiction @ 35% and exempts foreign source dividend
- B Co –tax @ 15%
- B Co. borrows USD 100 from bank @ 10% and generates operating profit of USD15. After deducting interest of USD10, B earns pre-tax profit of USD 5 and post tax of USD 4.25

Alternative

- A Co. borrows money from bank and contributes to B Co. as capital
- B Co. earns a post tax profit of USD 12.75
- Assuming A Co. can set-off interest on loan from bank, its post tax cost is USD 6.5
- Transferring of interest expense from B Co. to A Co. results achieves better group result i.e. post tax profit of **USD 6.25**
- There could be multiple situations where placing a debt at a high tax jurisdiction could result into overall group benefit and result into base erosion
- In the Indian context, the tax deductibility of interest in the hands of A likely to be litigative

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Action plan 4 - Limiting interest deductions

BEPS recommendations vs India adoption

BEPS recommendations

***De minimis* monetary threshold to remove low risk entities**

- Based on net interest expense of local group

Fixed ratio rule (FRR)

- Allows an entity to deduct net interest expense up to a benchmark net interest/EBITDA ratio. Relevant factors help a country set its benchmark ratio within a corridor of 10%-30%

Group ratio rule (GRR)

- Allows an entity to deduct net interest expense up to its group's net interest/EBITDA ratio, where this is higher than the benchmark fixed ratio
- Carry forward of disallowed interest /unused interest capacity and/or carry back of disallowed interest
- Targeted rules to support general interest limitation rules and address specific risks
- Specific rules to address issues raised by the banking and insurance sectors

India adoption

Deduction

- Interest expense / similar consideration paid / payable to associated enterprise is restricted to 30% of its EBITDA

Coverage

- Indian company / PE of a foreign company in India, paying interest / similar consideration on any debt issued by a non-resident AE

Additional coverage

- Debt from third party lender deemed to be debt from AE where AE provides an implicit or explicit guarantee to the third party

Threshold

- Restriction applicable where interest paid to the AE exceeds INR 10 million pa

Carry forward

- Disallowed interest expense carried forward upto 8 years

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Action plan 4 - Limiting interest deductions

India – Limit on interest deductions

Illustration

Amount in millions

Particulars	Scenario 1		Scenario 2		Scenario 3	
EBITDA	200		200		200	
Total interest expenditure (A) - In relation to AE (A1) - In relation to other than AE (A2)	 30 70	 100	 Nil 100	 100	 100 Nil	 100
Maximum interest deduction allowable (30% of EBITDA)(B)	60		60		60	
Interest disallowed & carried forward, (C) lower of: Total Interest – 30% of EBITDA (A-B); or Interest in relation to AE (A1)	 40 30	 30	 40 Nil	 Nil	 40 100	 40
Interest allowed in computation of income* (A-C)	70		100		60	

* Presuming interest is deductible in computation of income chargeable to tax under the head 'profits and gains from business and profession'

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Action plan 4 - Limiting interest deductions

Global scenario – Steps taken by USA

The United States Treasury and the IRS have released final and temporary regulations under section 385 of the Internal Revenue Code that

(i) Impose contemporaneous documentation requirements that ordinarily must be satisfied in order for certain related-party debt by a US Corp to be treated as debt for tax purposes; and

(ii) Treat as equity certain related-party debt issued by US Corp that would otherwise be treated as debt for tax purposes.

The tax US reform template is expected to be released this week. The template will be called a consensus document that will lay out a clear tax reform framework

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Action plan 7

Avoidance of permanent establishment status

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Action plan 7 - Avoidance of permanent establishment status

Review of definition of PE

Illustrative list of impermissible 'preparatory and auxiliary activities' in Action plan 7 (Specific activity exemption)

- Maintaining a large warehouse for storage and delivery of goods sold online and where large number of employees work in the warehouse and the warehouse is an important asset of the enterprise
- Premises used only for purchasing of goods by an enterprise where the overall activity of the enterprise comprises of selling these goods"
- Management office set up to manage the entire or part of an enterprise (e.g.. all subsidiaries, branches, offices in a state)

Anti-fragmentation rule

- Hitherto, no remedy was available in existing Article 5 read with OECD Commentary to deal with cases where complementary functions were segregated among various related enterprises such that each place of business in isolation appeared to perform 'preparatory and auxiliary activities'.
- To tackle the above situation, anti-fragmentation rule are proposed to be introduced to clarify that it is not possible to avoid PE status by fragmenting a cohesive operating business into several small operations in order to argue that each part is merely engaged in preparatory or auxiliary activities that benefit from the exceptions of Article 5(4).

Requires detailed analysis of activities undertaken by an organization to identify complementary functions that are part of a cohesive business operation

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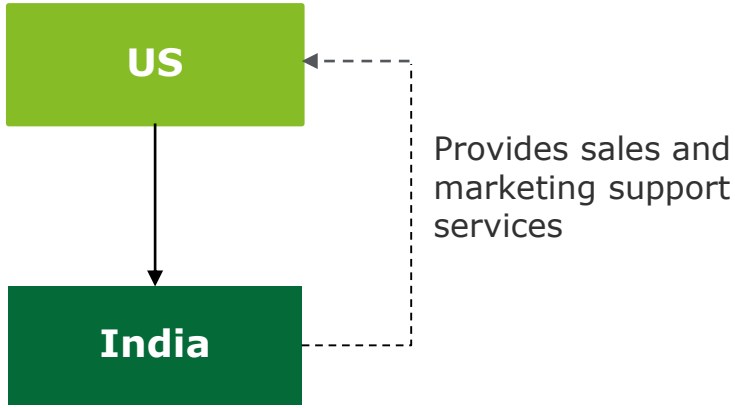
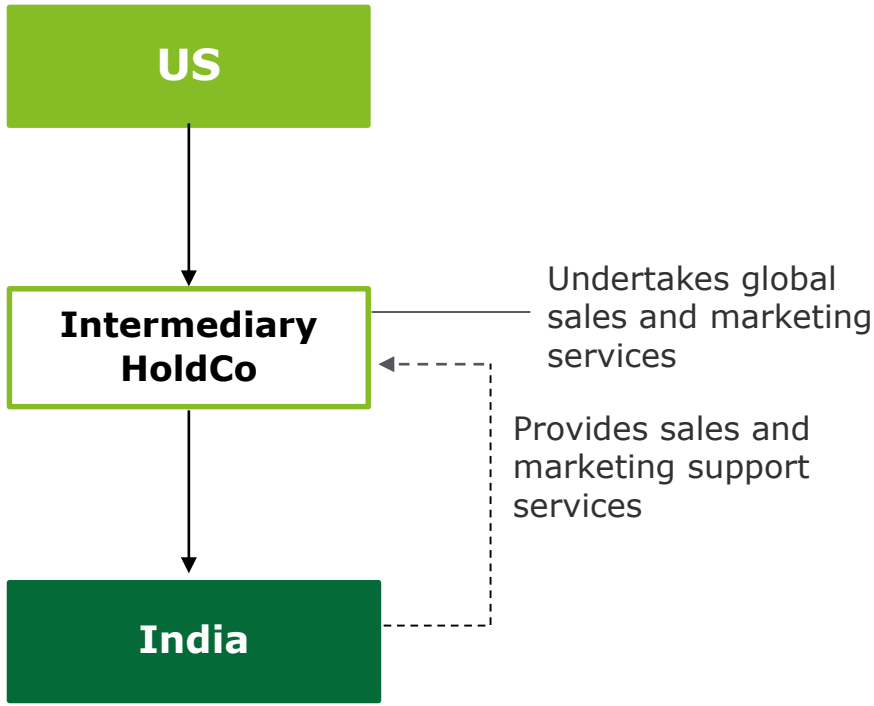
Action plan 7 - Avoidance of permanent establishment status

Illustration



Contracts negotiated in India but finalized in US

US is not a signatory to MLI



Contracts negotiated in India but finalized by Intermediary HoldCo

Intermediary HoldCo is situated in country which is a signatory to MLI

- Activities that would trigger a high risk to PE exposure (illustrative list):
  - Actively pursuing customers to solicit orders
  - Persuading/ convincing customers to provide orders
  - Direct nexus between efforts and orders obtained
  - Oral contract (e.g.. Acceptance of offer to enter into a contract with customers or holding out to have that authority (although contract may be signed outside India)

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Action plan 7 - Avoidance of permanent establishment status

Impact analysis

Business model

- Permitted activities for a liaison office in India contained in FEMA regulations
- Ratio laid down in Court rulings* in relation to the issue of whether a liaison office in India constitutes a PE of the foreign enterprise in India

Liaison offices

Impact

- Court rulings in the past have already held that if the LO is engaged in activities (e.g.. Negotiating with customers, convincing, persuading etc.) it could result in creation of a PE in India
- Amendment in PE definition will now reinforce the ratio laid down in these rulings

Business model

- The typical business model for E-commerce companies is that customers purchase goods from an online portal.
- Stock of goods are stored at a large warehouse engaging significant personnel for storage and delivery of goods.
- Goods are delivered to customers pursuant to online sale of goods.

E-commerce

Impact

- Storage and delivery function may not qualify as 'preparatory and auxiliary'
- Storage and delivery functions performed through the warehouse which represents an important asset and requires a large number of employees would be considered an essential part of enterprise's sale and distribution business
- May also apply to non-online sales through warehouse

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Action plan 7 - Avoidance of permanent establishment status

Impact analysis

Business model

- Fund managers are responsible for determining the securities/ other investments that ensure the best return on investment for a fund.
- Stock brokers act on the instructions of the clients and enter into stock trades on their behalf.
- Several large investment fund houses engage closely related enterprises as brokers/ fund managers.

Fund managers / stock brokers

Impact

- In case a closely related enterprise acts in the capacity of a fund manager of an investment fund in India, such activities may not qualify as preparatory and auxiliary activities
- If the fund manager acting in the capacity of an agent of the enterprise concludes contracts or habitually plays the principal role in concluding contracts on behalf of the enterprise, an agency PE may be constituted.
- Presently, provisions of Act more beneficial ~ Fund managers do not constitute business connection in India (Section 9A)
- If an FPI has a related party broker/ custodian in India which concludes contracts or habitually plays the principal role in concluding contracts on behalf of the enterprise, a dependent agency PE may be created.

Business model

Back- office support services (In-house for the foreign enterprise) business model

BPOs

Impact

May be regarded as auxiliary activities (E.g.. accounting, tax, HR functions, etc.) provided the anti-fragmentation rule does not apply

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Action plan 7 - Avoidance of permanent establishment status

Global scenario – Steps taken by United Kingdom

A key development in the UK is an anti-avoidance law called as diverted profits tax (DPT) which is levied at 25%.

The DPT applies in two distinct situations:

1) Where a foreign company has artificially avoided having a taxable presence (permanent establishment) in the UK; and/or
2) Where a group has a UK company (or UK PE of an overseas company) and there is a tax advantage as a result of an entity or transactions that lack economic substance.

Whilst DPT has been widely reported as targeting the digital sector it will, in fact, apply to a very wide range of transactions across all industry sectors.

As per HMRC guidance, DPT is not an income tax, capital gains tax or corporation tax and is intended to be a separate, standalone charge on diverted profits. Consequently, HMRC does not intend to cover DPT by double taxation treaties. From an Indian tax perspective, if DPT is not a tax covered by the India-UK tax treaty, it is questionable whether credit for the same would be available in India.

As per recent reports, HMRC has collected £ 281 mn under the DPT so far and intends to collect £ 1.8 bn by 2021

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Action plan 1

Equalization levy

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Action plan 1 - Equalization levy

India – Equalization levy

In order to address the challenges in taxation of such digital transactions, India introduced a new levy called 'Equalization Levy' at the rate of 6% on gross consideration payable for a specified service.

Applicability

- The levy will be applicable on the payments received by a non-resident service provider from an Indian resident or an Indian Permanent Establishment ('PE') of a nonresident, in respect of the specified service. The levy is currently applicable only on B2B transactions, if the aggregate value of consideration in a year exceeds INR 100,000.
- Specified Service includes:

  1) Online advertisement; 2) Any provision for digital advertising space or facilities/ service for the purpose of online advertisement 3) Any other service which may be notified later.

Other considerations

- Commercial aspect such as who will bear the cost of this levy
- Practical challenges in deducting equalization levy while making payments online even if parties agree to deduction of equalization levy
- Recipient of income may not be able to claim credit of such levy in the home country

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Action plan 1 - Equalization levy

Europe

In order to address the challenges in taxation of digital transactions EU member states like France, Germany, Italy, Spain, Austria, Bulgaria, Greece, Portugal, Romania and Slovenia have proposed to adopt 'Equalization Levy'. However, Ireland, Luxembourg and Malta have strongly opposed to such levy.

Tax law changes require unanimous support from all EU member states. With strong opposition from several countries, unanimous support appears unlikely to be achieved.

On 21 September 2017, European Commission released a paper regarding the options for taxing the digital economy.

Long term solutions proposed

- Expansion of PE concept to include a digital presence, plus an arrangement to the PE profit attribution rules
- CCCTB (Common consolidated corporate tax base)

Short term solutions proposed

- Equalization tax on turnover of digitalized companies
- Withholding tax on digital transactions
- Levy on revenues generated from the provision of digital services or advertising activity

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Action plan 8-10

Aligning transfer pricing outcomes with value creation

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Action plan 8-10 - TP aspects of intangibles

India Overview

BEPS Definition

"Something which is not a physical asset or a financial asset, and which is capable of being owned or controlled for use in commercial activities and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances."

Issues impacting India

- Research, development, and process improvement arrangements
- Development and enhancement of marketing intangibles
- Location specific advantages, local market features, workforce, etc. considered as intangibles by Indian tax authorities

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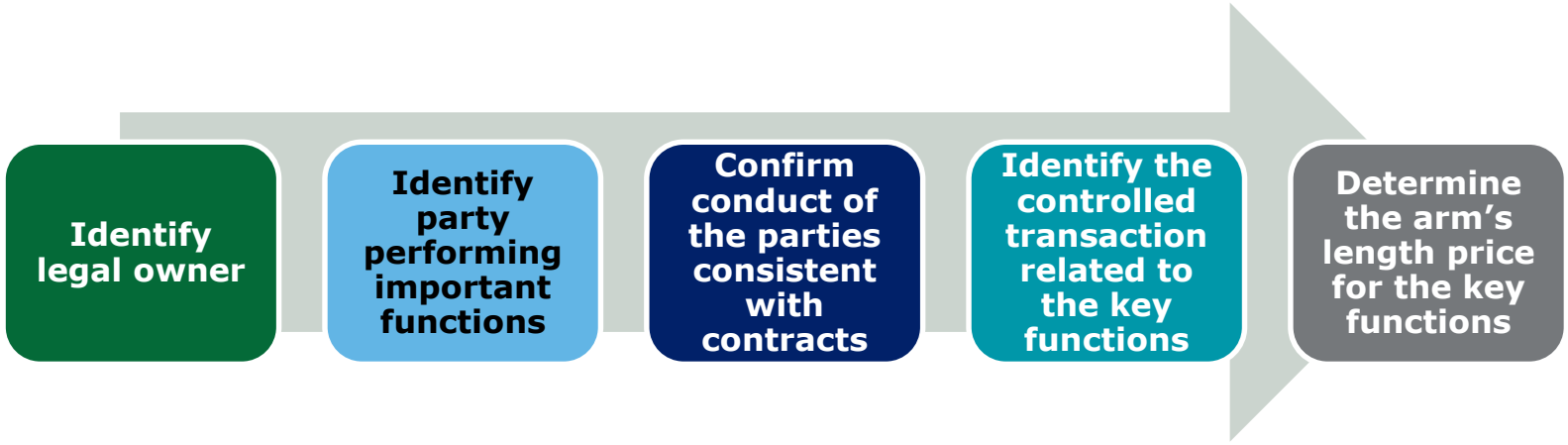
Action plan 8-10 - TP aspects of intangibles

Rights to returns for the DEMPE functions

For intangibles, legal ownership alone does not necessarily generate a right to all (or indeed any) of the return generated by the intangibles' exploitation

- Steps in determining intangible returns



- Functions
- (DEMPE)

Design and control of research and marketing programs	Enhancement and management/ control of budgets	Control over strategic decisions over intangible development	Important decisions regarding defense and protection	Adoption and exploitation of the intangibles

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Action plan 8-10 - TP aspects of intangibles

BEPS recommendations aligned to existing Indian guidance

Several aspects of the BEPS guidance are in line with view of the Indian tax authorities

BEPS	India- CBDT Circular No. 6/ 2013 ('Circular')
• Contracts are the starting point of the analysis, however, conduct of the parties are the ultimate determinants • Focus on functions, risks and costs • Fact specific analysis to be done while examining the DEMPE functions • The alignment of functional contributions and financial investment with legal rights • Direct exercise of **all important functions** and control over service providers performing outsourced activities	• Circular Classifies R&D centres of overseas MNEs into three broad categories based on functions, assets and risk assumed by the centre established in India • Guidelines laid down to identify the R&D centres as a contract R&D service provider assuming insignificant risk • Emphasis on the functions/conduct of parties rather than the contractual arrangement • Emphasis on nature and quantum of risk borne by R&D centres • Alignment of functional contributions and financial investment with legal rights recommended by circular as well.

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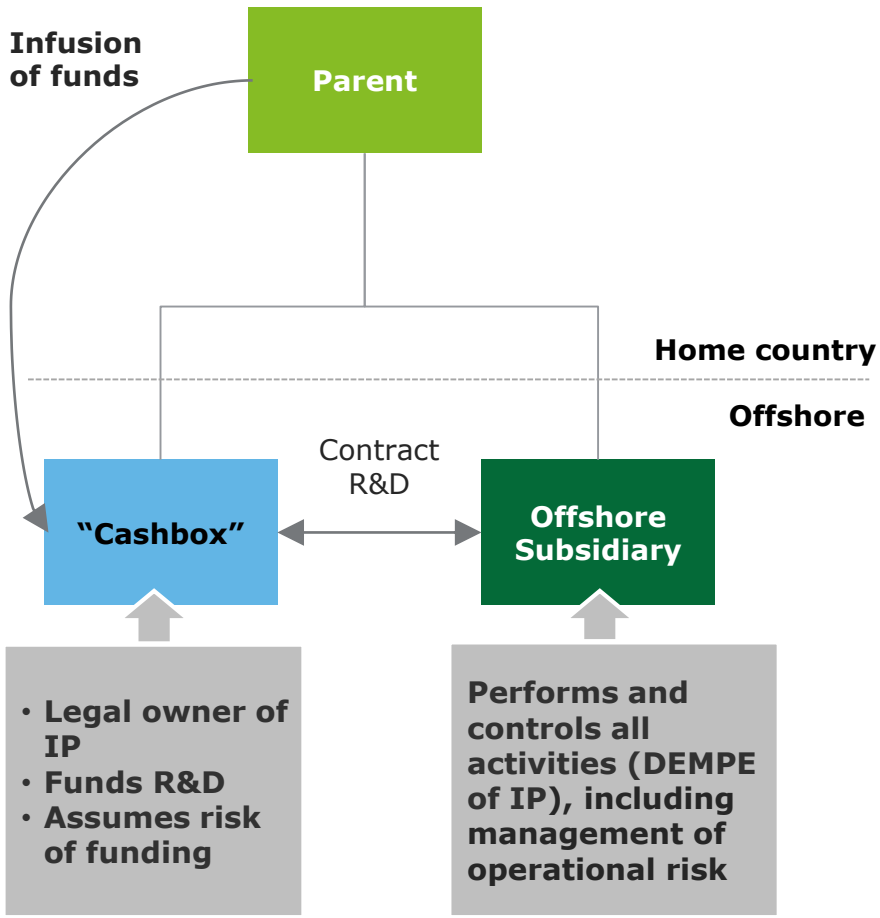
Action plan 8-10 - TP aspects of intangibles

Funding and intangibles - Cashbox- India impact



BEPS

- Affirmation that capital-rich entities without relevant economic activities ("cash boxes") will not be entitled to any excess profits
- Three scenarios possible:
  - No management of funding risk: entitlement to no more than risk-free return
  - Management of funding risk: entitlement to risk adjusted return
  - Management of funding risk and operational risk: not a cash box!

India Impact

- Investment in India through "cash boxes" may trigger non cost- plus outcomes
- Indian offshore subsidiary performs and controls all DEMPE functions including risk management
- From the routine return currently received by Indian subsidiary, they would now be entitled to a significant allocation of profits
- Guidance akin to Circular No. 6/ 2013

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Action plan 8-10 - Low value adding services

- BEPS definition of low value-adding services quite broad

What are "low value-adding"	What are not "low value-adding"
Accounting and auditing, accounts receivable / payable, human resources, legal, tax	R&D, manufacturing, sales, marketing, distribution, corporate senior management

- BEPS definition of low value-adding services may cover within its scope, most of services provided by Indian subsidiaries or shared service centres
- New OECD guidance prescribes mark-up of 5% for such services
  - Not in line with comparable reality
- Indian Authorities had communicated that they would not be adopting the simplified approach for low value-add services in its current form
- Recently revised Indian safe harbour rules specify a **mark-up of 5%** for the transaction of **receipt of low value-adding** services by the Indian entity – broadly aligned with the OECD guidance
- In light of the new development, still to be seen whether the Indian Authorities continue their position of non-adoption of the simplified approach for **provision of low value-adding services** by the Indian entity

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Action plan 8-10 - Location savings

OECD guidance

- Comparables provide the best evidence of location saving

India's historical perspective

- Mere comparability may not consider the benefit of location savings. Need to take into account the cost difference in the low cost country and in the high cost country from where the business activity was relocated

India's evolving perspective

- The revised India chapter of the proposed UN TP Manual states that compensation for location savings is in-built in the arm's length price determined based on availability of good local comparables

OECD guidance on workforce in place

- Not an intangible since work force cannot be owned or controlled by a single enterprise

India perspective on workforce in place

- Trained and organized work force is an intangible. Also included in the definition of intangible

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Action plan 13

Three tier transfer pricing documentation

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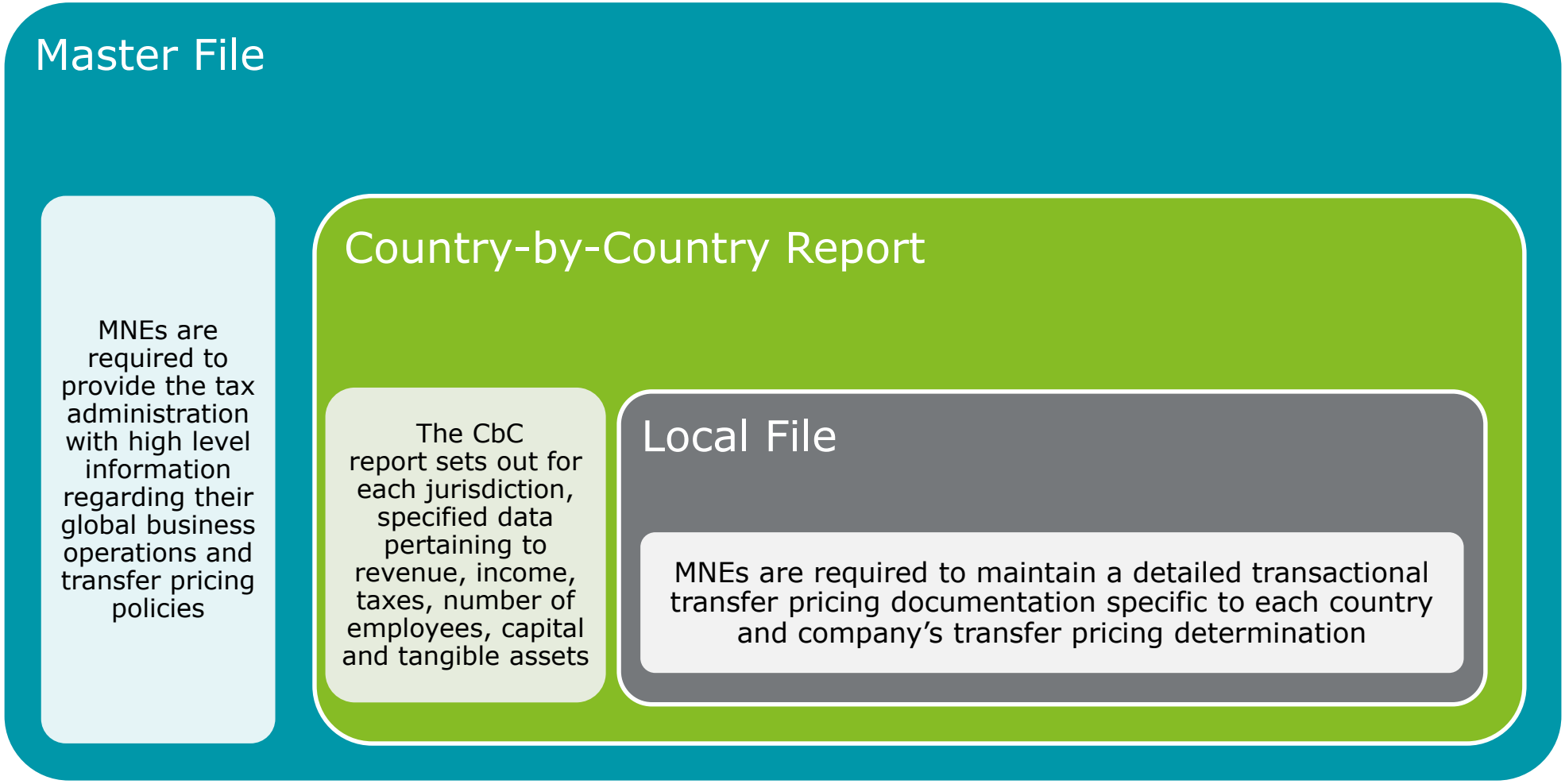
Action plan 13 – Three tier transfer pricing documentation

Enhancing transparency and disclosure – mandating alignment with all Action Plans



These three together will warrant taxpayers to articulate consistent policies and positions and will provide tax administrations with useful information to assess BEPS risks

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Action plan 13 – Three tier transfer pricing documentation

Contents of Country by Country report - Table 1, Table 2 and Table 3

Table 1: Information included in CbC

- Revenues (related, unrelated, total)
- Profit/loss before income tax
- Income tax paid (cash)
- Income tax accrued
- Stated capital
- Accumulated earnings
- Number of employees
- Tangible assets other than cash and cash equivalents

Table 2: Information included in CbC – for each tax jurisdiction

- Tax Jurisdiction of organization or incorporation if different
- Main business activity of each of the entity

Main business activity(ies)

- Research and development
- Holding or managing intellectual property
- Purchasing or procurement, Manufacturing or production
- Sales, marketing or distribution
- Provision of services to unrelated parties
- Internal financial services
- Holding shares or equity instruments, Dormant, Others

Table 3:
To include any further brief information or explanation that taxpayer may consider necessary or that would facilitate the understanding of the compulsory information provided in the CbC Report.

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Master File - Contents

Organizational Chart

- Legal and ownership structure and geographical location of operating entities.

Description of Company's Business

- Drivers of business profit
- Supply chain chart for the five largest products and service offerings plus other products or services amounting to more than 5% of MNE Group's sales
- Information regarding important service agreements
- FAR Analysis, describing principal contributing to value creation
- Business restructuring, acquisitions

Company's Intangible

- List of important of intangibles and agreements with AEs
- MNE Group's strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- Transfer Pricing policy description of important transfers of interest in intangibles

Inter-Company Financial Instruments

- Details of financial arrangements of MNE group
- Information pertaining to central financing function undertaken for the group and the place of effective management of such entities

Financial & Tax Positions

- MNE Group's annual consolidated financial statement
- Information on unilateral APAs and other tax rulings relating to allocation of income among countries

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Action plan 13 – Three tier transfer pricing documentation

Documentation requirements introduced in India

Master file

- Finance Act 2017 has introduced the concept to maintain Master File
- Rules for maintaining and furnishing Master File are expected soon
- Penalty for non-furnishing of prescribed information and document is ₹ 500,000
- No threshold prescribed as yet, Master File requirements in India may be independent of CbC reporting requirement

CbC Reporting

Requirements	Threshold	Timeline	Penalty
• Filing CbC report in India or notification of parent entity • Effective from Financial Year 2016-17	• MNE group having consolidated revenue exceeding € 750 million (in line with BEPS) • Threshold in Indian currency – to be computed based on exchange rate as on the last day of previous year. E.g. threshold for FY 2016-17 - ₹5,562 crores	• CbC report to be filed in prescribed format on or before due date of filing return of income i.e. 30 November following the end of the Financial Year	Graded penalty structure from ₹ 5,000 to ₹ 50,000 per day for: • Non-furnishing of CbC report • Non- submission of required information Penalty of ₹ 500,000 for: • Furnishing of inaccurate particulars • Non-furnishing of master file data

Local file

- Existing local transfer pricing documentation requirements retained
- Possibility of further alignment with BEPS Action 13 resulting in additional disclosures

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CbC reporting requirements in India

Indian parent of an international group:

- Report to be filed on or before the due date of filing return of income

Indian entity of a foreign MNE group:

- File the CbC report in India, if the parent is resident in a:
  - country with which India will not have an arrangement for exchange of CbC report; or
  - country which fails to automatically exchange such information and such failure is intimated to the Indian entity
- File CbC notification providing the details of the country of residence of its parent or alternate reporting entity – *manner, form, date to be prescribed*

Indian entity appointed as the alternate reporting entity of the Group:

- File the CbC report on or before due date of filing return of income

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Action plan 13 – Transfer pricing documentation

CbC reporting obligation for Indian constituent entities of a foreign parent

Indian CbCR regulations

- Section 286(4) requires the Indian constituent entity, having a foreign parent, to furnish the CbC report in India, if there is no exchange of information agreement with the parent jurisdiction
- The term 'agreement' referred to in Section 286(4) is defined as an agreement referred to in section 90 (1) or section 90A(1) or any agreement as may be notified by the Central Government i.e. DTAA

Key issue under consideration

- Whether the Indian constituent entity of a foreign parent company/foreign alternate reporting entity would be required to file the CbCR in India even though there is an exchange of information clause in their respective DTAA with India

Key consideration factors

- Technical interpretation of the definition of 'agreement' v. the intent automatic exchange of CbC information
- Indian entity required to file the CbC report in India in the absence of an agreement for exchange of CbC information between India and the other jurisdiction?

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Questions

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Thank you

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