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# LT In Focus
# OECD Tax Alert

On 5 October 2015, the OECD Secretariat published 13 final reports and an explanatory statement outlining consensus actions under the base erosion and profit shifting (BEPS) project.

Sixty-two countries have collaborated in the G20/OECD-led BEPS project, and they have agreed to continue working together until at least 2020. Many more countries participated in shaping the outcomes through regional structured dialogues.

There are two significant questions on the BEPS actions: when will they be implemented, and which countries will implement the actions.

All OECD and G20 countries commit to consistent implementation in the areas of preventing treaty shopping, country-by-country reporting, fighting harmful tax practices and improving dispute resolution. In other areas, such as recommendations on hybrid mismatch arrangements and best practices on interest deductibility, countries have agreed a general tax policy direction. Moreover, it is expected that countries beyond the OECD and G20 will join them to protect their own tax bases and level the playing field.

In this issue, we provide detailed comments on the key actions.

## Initial actions to take effect

The first actions to take effect will relate to the new transfer pricing approach. The new approach will require that multinationals start afresh with their functional analysis. The aim is to ensure that "transfer pricing rules secure outcomes that see operational profits allocated to the economic activities which generate them." The next action to take effect will be country-by-country reporting to tax authorities, set out in action 13. There is a fixed template with very clear guidance on its use. All the main parent company countries have committed to this, so other countries will receive the benefit of additional information for risk assessment.

The final Action to take early effect covers those countries with patent box or other intellectual property regimes. In the future, patent box incentives may only be granted where the related R&D is conducted in the same country.

## Actions likely to take effect from 2017 or later

Two important actions — hybrid mismatches and interest restrictions — will require national legislation. The OECD working party has provided guidance to help countries legislate to counter hybrids. The approach to hybrids will mean that they will no longer be effective even if only one country enacts the anti-hybrid rules.

The recommendations for interest restrictions provide that countries should limit interest deductions to a fixed percentage of earnings before interest, tax, depreciation and amortisation (EBITDA). Other options and certain exclusions have also been put forward.

## Actions requiring amendments to double tax treaties

A multilateral instrument for the effective amendment of many treaties is planned for completion by the end of 2016. Over 90 countries have stated their intent to participate in the negotiations, which will take place on 5 November 2015.

The areas to be covered by tax treaty changes include, among others, treaty abuse. The treaty abuse action springs from the concern that double tax treaties could be used to make treaty benefits in circumstances not intended by the treaty signatories. The approaches put forward are limitation benefits and principal purpose tests.

The dispute resolution action is most important. It is aimed at strengthening the effectiveness and efficiency of the mutual agreement procedure (MAP) where cases are settled between countries.

## Further work

The G20/OECD will undertake more work in 2016 on several actions:

- Harmful tax practices: revision of criteria, expanding participation of non-OECD countries
- Treaty abuse: treaty entitlement of certain funds
- PEs: profit attribution rules
- Transfer pricing: financial transactions, use of the profit split method

## BEPS in Russia

Russia is not an OECD member, but as a member of the G20, it fully supports the BEPS initiatives. The BEPS Action Plan is referred to in Russia's tax policy plans for 2016-2018. Proposed measures to counter harmful tax practices and treaty abuse include:

- Ensuring the automatic exchange of information on financial transactions with foreign jurisdictions for tax purposes
- Amending the taxation of corporate borrowings
- Developing the CFC rules
- Reinforcing the transfer pricing rules

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