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UK Indirect Tax Conference 2015

TMT: Challenges of a changing regulatory and legislative environment

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BEPS and TMT

An ever changing
environment

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BEPS: Digital economy and fixed establishment

- BEPS Action 1 addresses VAT / GST issues of the digital economy.
- OECD VAT / GST Guideline concluded that the collection of VAT / GST in a B2C context is a pressing issue that needs to be addressed urgently to protect tax revenue and ensure parity of treatment between foreign and domestic suppliers.
- OECD International VAT Guidelines are increasingly used by governments of both OECD and non-OECD countries as a basis for changes to their VAT systems, including the taxation of electronically supplied services (ESS).
- A business could have a significant digital presence in a country without currently being liable to taxation there. Potential issues associated with this include:
 - Attribution of sales
 - Characterisation of income

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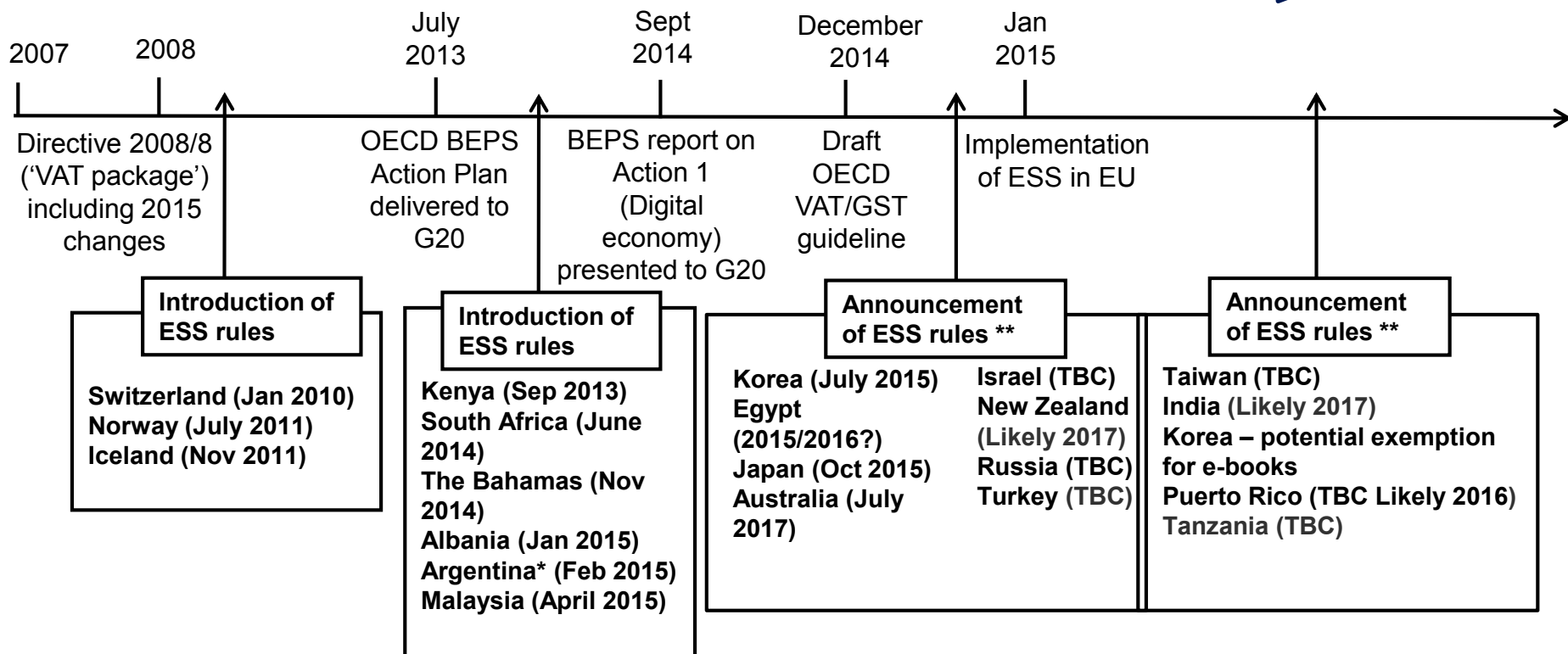
BEPS: Digital economy and fixed establishment

- Specific focus on the 5 October 2015 BEPS announcements
 - When and in which countries will these be implemented?
 - What are the VAT implications?
- Wide ranging PE changes
 - Focuses on the role of intermediaries
 - Distinction between Permanent and Fixed Establishments
- OECD next steps - November 2015: planned adoption of the Guidelines at the Global Forum on VAT.
- Global challenges – numerous changes have been implemented already and regular announcements from countries regarding new rules with varying lead in times e.g. Australia, New Zealand, Taiwan, etc.
 - Where is the next change coming from and is this in a market you're already operating in?

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Non-EU changes: Direction of Travel

Significant rise in the taxation of cross border e-services



* By way of withholding tax on e-service

** Includes amendment to the existing laws

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Non-EU changes: Key regime changes

Malaysia – 7 months on

- GST implemented in Malaysia effective 1 April 2015. Standard rate of 6% but extensive list of zero-rated, exempt and relief items
- Broad framework similar to other GST and VAT jurisdictions
- Application and understanding of legislation continues to evolve with amendments and new guidance being issued
- Although rules similar to other jurisdictions, there are local nuances so it shouldn't be assumed that this mirrors other regimes
- Late payment penalties to be introduced from 1 January 2016 which are likely to accompany more extensive audit activity

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Non-EU changes: Key regime changes cont'd.

India – GST to replace VAT

- Introduction of GST to replace the VAT/consumption tax system
- Delayed/pushed back following opposition – not expected to be introduced before October 2016. More likely April 2017
- Information now available in respect of registration and returns process / payments and refunds process
- Expected to be 61 returns per annum (5 different monthly returns / 1 annual return)

- Service tax rate to increase from 14% to 14.5% from 15 November 2015

Egypt – new VAT regime

- Approval for new VAT regime anticipated by the end of the year
- Implementation date still unknown
- VAT rate expected to be set at between 13-16%.

EU Digital Single Market

2015 Changes

10 months on

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2015 changes: 10 months on

What challenges have you faced?

Our experience:

- Practical issues
 - Invoicing
 - Location of customers
 - Bundled supplies
- Online marketplaces
 - Differing interpretations being applied
 - Some uncertainty regarding the capacity that agents act in
- Audits
 - None to our knowledge to date, but information requests being made
 - Expectation that audit activity will pick up in the coming months

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Focus on Europe: EU Digital Single Market

EU keen to assess impact of the 2015 changes

The Commission has undertaken and continues to undertake several studies through external providers seeking feedback on the 2015 changes

Ongoing consultation to address implementation issues, concerns, etc.

Broader Strategy

- Elimination of EU VAT registration thresholds
- Removal of Low Value Consignment Relief
- Extension of MOSS to goods
- Review of the VAT classification of online publications and e-books

Industry Issues / Opportunities

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Use & Enjoyment on Telecoms Services

- Taxpayers historically agreed use & enjoyment methods with HMRC based upon cost
- Most of these methods expired towards the end of 2014
- HMRC required taxpayers to put forward new methods – real focus on cost based methods as opposed to any other alternatives
- HMRC looking for consistency across the sector,
- To date (as far as we're aware) no methods have been agreed, so where next?
- Taxpayers currently adopting differing approaches:
 - Continuing with old method (some with HMRC's permission)
 - Not making any adjustment (four year cap for adjustment)
- At least one Judicial Review case listed to be heard on the matter
- HMRC unlikely to accept cost methods (direct or indirect)
- Expectation that taxpayers will agree methods based upon usage
- Danger of reaching an impasse?

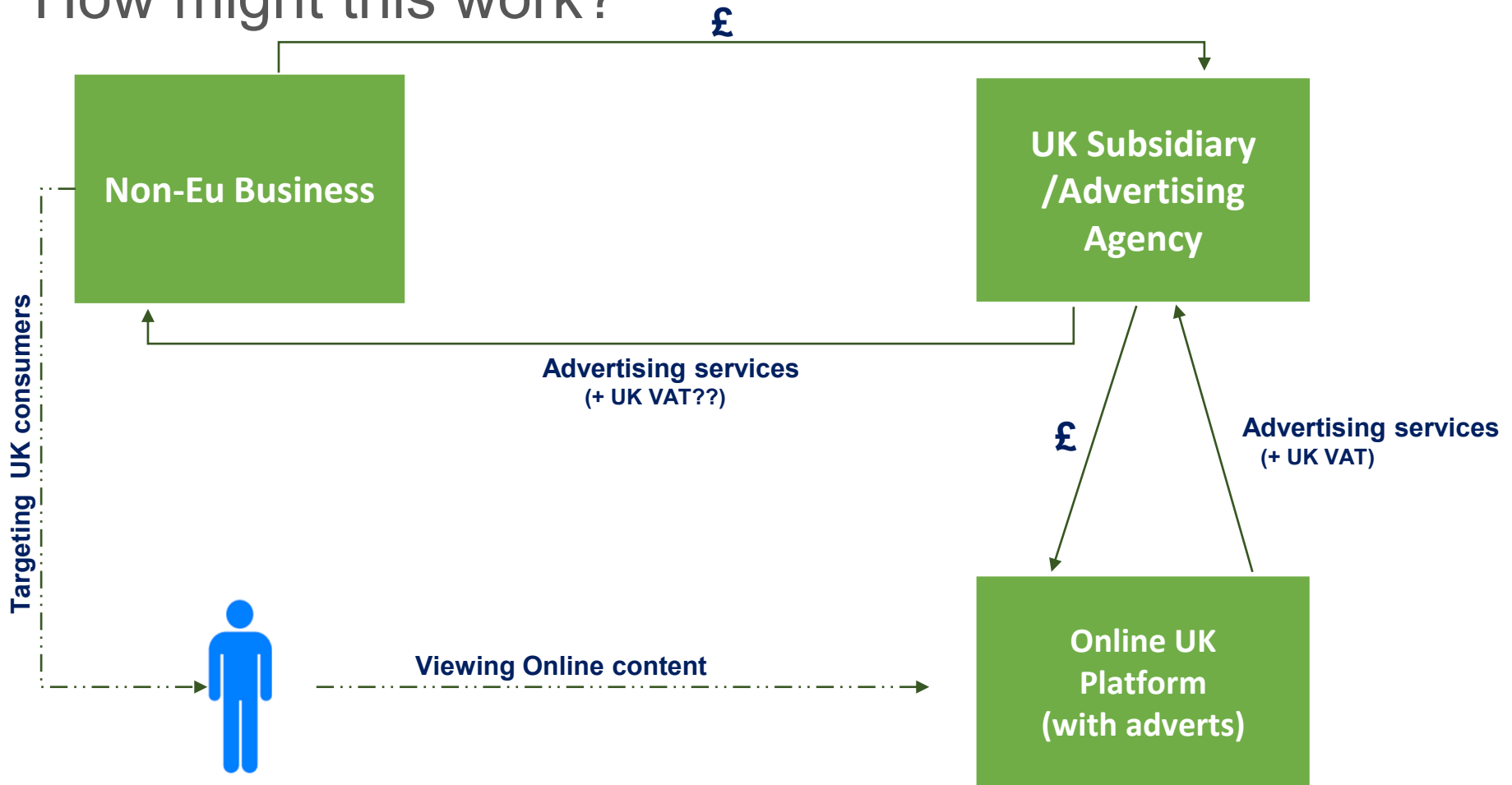
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Use & Enjoyment on Advertising Services: Potential Impact on the Sector

- Announcement in Summer Budget that HMRC are considering introducing Use & Enjoyment provisions in respect of advertising services
- Targeting non-EU companies advertising through online platforms, and potentially broader than this
- Will impact suppliers, but more likely to be a cost for those placing advertisements
- Similar legislation already in place in Spain where Spanish tax authorities currently taking a relatively relaxed approach
- Potential to bring a number of supplies within the scope of UK VAT
- *Ocean Finance* decision earlier this year considered who the recipient of advertising services was and whether the arrangements were abusive

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Use & Enjoyment on Advertising Services: How might this work?



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e-publishing update

- CJEU found against taxpayer in *K Oy*
- Luxembourg and France removed reduced rating on e-books
- Italy introduced reduced rate on e-books from 1 January 2015 and is considering extending this to electronic newspapers, periodicals from 1 January 2016. No infraction proceedings to date
- CJEU due to hear reference from Poland regarding the validity of Article 98 of the Principal VAT Directive
- Norway introducing zero-rating for digital news services from 1 January 2016
- Switzerland is rumoured to be following suit

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Self-Billing

- HMRC continuing to focus upon the need for taxpayers to get self-billing correct
- Matter regularly being picked up during VAT audits
- A number of issues being identified:
 - Invalid agreements
 - Incorrect or invalid supplier VAT registration numbers
 - Application of self-billing to only some (rather than all) activities with suppliers
- HMRC seeking to impose assessments and penalties for non-compliance
- Taxpayers having to look to rely on alternative evidence

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Associated Newspapers Limited case (“ANL”)

- First Tier Tribunal cases heard in 2014 and 2015 on its potential requirement to account for output tax on the giving away of vouchers as part of business promotion and on the points of input tax recovery by ANL
- Both cases found in ANL’s favour
- In output tax decision, Judge Kevin Poole noted the absurdity that *“a taxpayer is treated as making a supply of services received by him if he “uses them, or makes them available to any person for use, for purposes other than a purpose of the business“ [which] leads to the suggestion that if any such services are made available to customers for their personal use, then by definition the taxpayer will have made those services available to the customer for use for non-business purposes (the non-business purposes of the customers).”*
- Upper Tribunal hearing in October 2015, decision expected in early 2016
- HMRC arguing that this is not a business activity and that vouchers are for private use
- Both a risk and opportunity for taxpayers, depending upon the decision

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Face Value Vouchers

- Still no agreement at an EU level to voucher proposals
- Disagreement remains in respect of issues such as breakage and input tax recovery by intermediaries
- Germany suggesting that consistency across the EU isn't required
- HM Treasury seeking views from taxpayers in this respect



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