



# LIVE WEBCAST

## BEPS ACTION PLAN: UPDATE ON 2014 DELIVERABLES

23 January 2014  
3:00pm – 4:00pm (CET)



# BACKGROUND



# Why BEPS? Why now?

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- Focus has historically been on the development of common standards to eliminate double taxation for cross border investments
  - Model Tax Convention, which serves as the basis for over 3,000 bilateral tax treaties
  - Transfer Pricing Guidelines, which provide common standards for allocating income among members of a multinational group
- Prevention of double taxation remains core work but there is now recognition that the issue of double non-taxation due BEPS should also be tackled
- Unprecedented public attention on corporate tax affairs



## But what is BEPS?

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- Stated simply, BEPS arises because under the existing rules MNEs are often able to artificially separate the allocation of their taxable profits from the jurisdictions in which these profits arise
- This can result in income going untaxed anywhere, and significantly reduces the corporate income tax paid by MNEs in the jurisdictions where they operate, thus affecting competition, distorting investment decisions and reducing overall trust in the tax system



# How can BEPS be addressed?

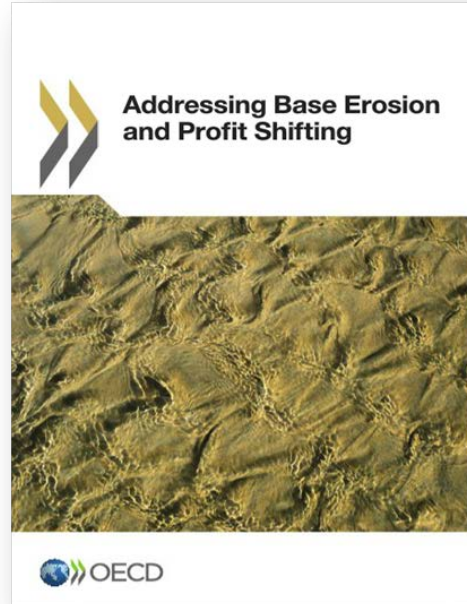
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- Most BEPS planning is legal – if governments are unhappy with results, the rules should be changed
- But no single country acting unilaterally can effectively address the issue – need for a multilaterally agreed solution.
- Strong G20 support to address the issue collectively and in a comprehensive manner
- At their November 2012 meeting, G20 Finance Ministers asked for a *diagnosis*



# The Report: Addressing BEPS

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# The BEPS Action Plan



## BEPS Action Plan published in July 2013

15 Actions organised around *three* main pillars:

- The ***coherence*** of corporate tax at the international level
- A realignment of taxation and ***substance***
- ***Transparency***, coupled with certainty and predictability



# An ambitious timeline

## September 2014

- Digital Economy Report
- Hybrids
- Review of HTP Regimes
- Preventing Treaty Abuse
- Addressing TP aspects of Intangibles (Phase 1)
- Addressing TP documentation
- Multilateral Instrument Report

## September 2015

- CFC Rules
- Interest Deductibility
- Strategy on expansion of FHTP
- Addressing avoidance of PE status
- Addressing TP aspects of Intangibles (Phase 2)
- Addressing TP aspects of risks and capital
- Addressing TP aspects of other high risk transactions
- Report on Data and Economic Analyses
- Mandatory Disclosure Rules
- Dispute Resolution

## December 2015

- Addressing TP Interest Deductions
- Revision of HTP Criteria
- Multilateral Instrument





# ORGANISATION OF WORK



## Organisation of work

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- Work being carried out by the Committee on Fiscal Affairs (CFA) via its subsidiary bodies
- OECD and non-OECD G20 Countries are Associates in the Project on an equal footing
- Colombia and Latvia have also joined on an equal footing as OECD Accession countries



# Engaging with developing countries

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- Developing countries' input obtained through several mechanisms:
  - Task Force on Tax and Development
  - OECD Global Relations Programme
  - Global Fora on Tax Treaties, on Transfer Pricing and on VAT
  - The UN



# Stakeholders' input

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- Mechanisms:
  - BIAC and TUAC Consultations
  - Public requests for input
  - Discussion Drafts
  - Public consultations
  
- Key dates:
  - Feb/March 2014 Publication of Discussion Drafts
  - April/May 2014 Public Consultations



# UPDATE ON 2014 DELIVERABLES



# THE DIGITAL ECONOMY



# The Digital Economy

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- First meeting of the Task Force in October 2013
  - Analysis of business models and identification of special features of digital economy players (such as mobility, reliance on data, network effects, multi-sides business models)
  - Effects of these features on BEPS strategies
  - Actions to tackle BEPS in the digital economy
  - Broader, systemic issues raised by the digital economy and options to address them
- Second meeting in February 2014
- Discussion Draft out for comments in March 2014
- Public Consultation in April 2014
- Report to be finalised by September 2014



# TREATY ABUSE





# Treaty Abuse

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- **Aim:**
  - Restore full effects and benefits of international standards
- **Tools:**
  - Anti treaty abuse provisions in treaty and domestic law
  - Clarify tax treaties not intended to generate double non-taxation
  - Clarify policy considerations before entering into a bilateral tax treaty
- **Process:**
  - Scoping by Working Party 1 in September 2013
  - Full discussions by Working Party 1 in February/March 2014
  - Discussion draft will be released in March 2014
  - Public consultation meeting will take place in April or May 2014



# HYBRID MISMATCH ARRANGEMENTS



# Hybrid Mismatch Arrangements

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- Action item requires development of model treaty provisions and recommendations for domestic rules by September 2014.
- First meeting held in October 2013, followed by a meeting in December.
- Consideration of hybrid mismatch arrangements that give rise to either: -
  - a double deduction
  - or a deduction with no matching income inclusion.
- This includes scenarios involving
  - a hybrid financial instrument
  - a hybrid transfer and
  - a hybrid entity (whether it receives or makes payments )
- A discussion draft will be issued for comments in early April with a public consultation in May.



# TRANSFER PRICING ASPECTS OF INTANGIBLES



# Addressing TP aspects of Intangibles

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- Major **media attention** on transfer pricing (especially intangibles)
- **Conclusion BEPS Action Plan:** the current transfer pricing system leads to **serious BEPS concerns, but replacing the arm's length principle is not the solution.** Special measures may be necessary. 4 Action Points on TP.
- **Aim:** assure that transfer pricing outcomes are in line with value creation
- **Process intangibles:**
  - Project started in 2010 and scoping included various consultations
  - First discussion draft was published in June 2012. A public consultation was held in November 2012
  - A revised discussion draft was published in July 2013. A public consultation was held in November 2013
  - Finalisation will take place during the Working Party 6 meetings in March and May 2014



# HARMFUL TAX PRACTICES



# Harmful Tax Practices

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- First meeting following the publication of the BEPS action plan held in December. Follow up meetings in February and May 2014.
- By September 2014 need to review member regimes, with a priority on transparency, including compulsory exchange of information on rulings, and on requiring substantial activity for preferential regimes.
- Review of G20, non OECD members regimes also to be started before September 2014.
- A report on the outcome of the Forum's review to be published by September 2014.



# TRANSFER PRICING DOCUMENTATION





# Transfer Pricing Documentation

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- Tax administrations need for **'big picture' information** on the global value chain **versus compliance burden** MNEs
- Action Point includes: **Country-by-Country reporting** of income, economic activity and taxes to **governments**
- **Process:**
  - TP documentation: one of five work streams targeted at TP simplification
  - White paper on TP documentation published in July 2013
  - Questionnaire on Country-by-Country reporting published in October 2013
  - Public consultation held in November 2013
  - February 2014: release of a discussion draft of Chapter V of the Transfer Pricing Guidelines, including a Country-by-Country reporting template
  - March 2014: public consultation
  - May 2014: finalisation by WP6



# THE MULTILATERAL INSTRUMENT



# The Multilateral Instrument Report

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- First phase of the work being carried out by the Secretariat with input from eminent public international and tax law experts and in consultation with Working Party 1 of the CFA
- Focus is on feasibility of use of a multilateral instruments to implement BEPS measures and amend bilateral tax treaties
- Several difficult issues but none appears unsurmountable
- Report to be finalised by September 2014



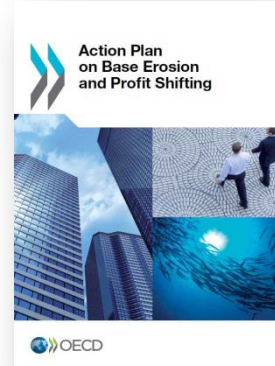
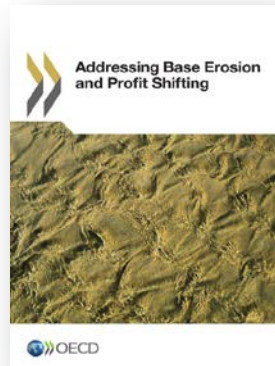
# QUESTION TIME



# Further Information

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**Stay tuned!**



<http://www.oecd.org/tax/beps.htm>

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