

INTERNATIONAL TAX : WHERE WE ARE AND WHERE WE ARE GOING



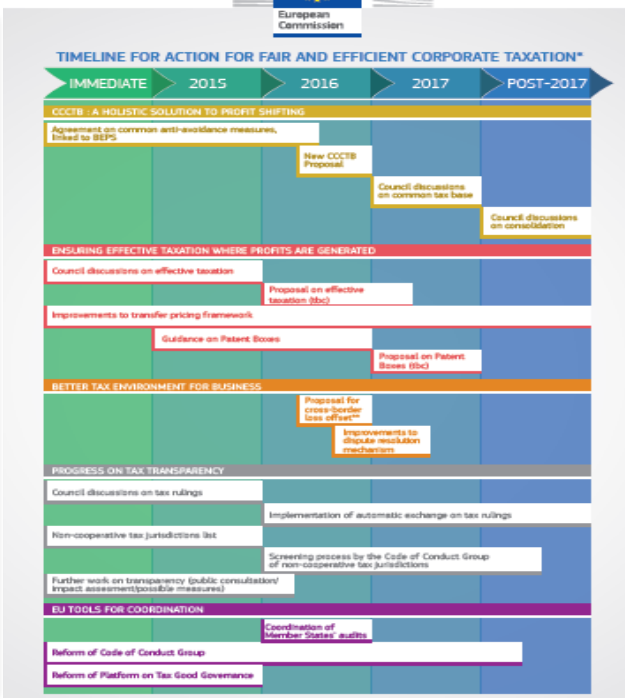
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2015-2016 were the years of international tax initiatives



International tax agenda

Action Plan on Base Erosion and Profit Shifting
 & (automatic) exchange of information



PLATFORM FOR COLLABORATION ON TAX

Development of toolkits

INTERNATIONAL TAX ISSUES AREN'T NEW, BUT OUR APPROACH TO SUPPORTING DEVELOPING COUNTRIES HAS CHANGED

- The global landscape has changed and there is now a strong focus on supporting leaks in domestic resource mobilization due to international tax transactions, including digital transactions.
- We started by tackling transfer mis-pricing but then realized the agenda is much wider
- As the agenda has evolved rapidly since 2011, the World Bank Group and others have responded quickly in building into its tax work 3 main areas:
 - **Supporting identifying what are important areas for reform and implementing measures to identify and stop tax base erosion**
 - **A new look at how tax treaties can be viably improved to make them support tax policy instead of going against it**
 - **A push for greater tax transparency which will help not only domestic resource mobilization but also limit the use of the tax system as a vehicle for illicit flows.**

WHERE WE'VE BEEN:

**ADDRESSING BASE EROSION AND
PROFIT SHIFTING: MAKING THE
BEPS PROJECT WORK FOR
DEVELOPING COUNTRIES**

BASE EROSION AND PROFIT SHIFTING: TRYING TO SOLVE A PROBLEM OF REVENUE LEAKAGE THROUGH INTERNATIONAL TAX

- With globalization come opportunities for MNCs to greatly minimize their tax burden and has led to the popular practice of BEPS
- BEPS relates to the erosion of tax bases and the shifting of profits of MNCs
- BEPS is a result of current rules that allow for the allocation of taxable profits to locations different from those where the actual business activity takes place
- BEPS affects governments, individual taxpayers and businesses by undermining the integrity of the tax system and puts new and small corporations at a competitive disadvantage
- On **July 19, 2013 at the G20 meeting of finance ministers in Moscow, the OECD released an action plan to address global growing concern of BEPS.** The plan includes 15 comprehensive steps on how to address BEPS

AFTER 2 YEARS OF IMPLEMENTATION, WHAT APEC COUNTRIES ARE MOST CONCERNED WITH:

1. Address the tax challenges of the digital economy
2. Neutralize the effects of hybrid mismatch arrangements
3. Strengthen CFC rules
4. Limit base erosion via interest deductions and other financial payments
5. Counter harmful tax practices more effectively, taking into account transparency and substance
6. Prevent treaty abuse
7. Prevent the artificial avoidance of PE states

Assure that transfer pricing outcomes are in line with value creation:

8. Intangibles
9. Risks and capital
10. Other high-risk transactions
11. Establish methodologies to collect and analyze data on BEPS and the actions to address it
12. Require taxpayers to disclose their aggressive tax planning arrangements
13. Re-examine transfer pricing documentation
14. Make tax dispute resolution mechanisms more effective
15. Develop a multilateral instrument (MLI)

BEYOND REPORTS: GLOBAL IMPLEMENTATION OF MINIMUM STANDARDS AND JOINING THE INCLUSIVE FRAMEWORK AND WHAT IT MEANS FOR COUNTRIES

1. **Model provisions to prevent treaty abuse**, including through treaty shopping (BEPS action 6)
2. **Revitalized peer review process to address harmful tax practices**, including patent boxes where they include harmful features, as well as a commitment to transparency through the mandatory spontaneous exchange of relevant information on taxpayer-specific rulings (BEPS Action 5)
3. **Standardized Country-by-Country Reporting that will give tax administrations a global picture of where MNE profits**, tax and economic activities are reported, and the ability to use this information to assess transfer pricing and other BEPS risk (BEPS Action 13)
4. Agreement to secure progress on **dispute resolution**, with the strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure (MAP) (BEPS Action 14).

SECOND OUTCOME OF BEPS: MULTILATERAL INSTRUMENT (MLI) TO FACILITATE CHANGES IN TAX TREATIES

- Tax treaties have 3 components:
 - Assignment of taxing rights
 - Dispute resolution and anti abuse measures
 - Exchange of information
- Many developing countries concluded treaties from a position of weakness (vis-à-vis developed countries in taxing rights and anti-abuse measures).
- In response, the Multilateral Instrument (MLI) addresses all except taxing rights. Signatories automatically change these aspects of their tax treaties in one round.

ADVANTAGES AND DISADVANTAGES OF THE MLI

Advantages

- **Strengthen your tax treaty networks**
 - Put an end to treaty abuse through adoption of LOB and/or PPT
 - Improve dispute resolution
- **Flexible instrument**
 - Optionality to reflect countries' different policy preference
- **Significant time savings**
 - No need for time-consuming bilateral negotiations
 - Fastest way to implement the tax treaty related standards of the BEPS Project / Inclusive Framework on BEPS

Disadvantages

But there are disadvantages too such as:

- MLI doesn't touch taxing rights
- Revisiting may be difficult both in terms of partners not being willing and the political economy of ratifying changes
- Countries may only get one shot and do they want to use the MLI as the single shot

LOOKING INTO THE FUTURE: WHERE ARE WE HEADED?



NEW FRONTIERS EMERGING FROM BEPS:

1. TAXING THE INCOME GENERATED FROM DIGITAL TRANSACTIONS

- Digital transactions—especially services—such as movie downloads, generate a lot of income globally (30-50 percent of all transactions are estimated to involve digital platforms)
- Though consumption is fairly easily identified and taxed (via indirect tax—VAT or sales tax), income generated by these transactions remain elusive for tax authorities especially the source country where the service is performed
- Using international tax tools, since the resident company is rarely in the country which is the source of taxation, it may be possible to responsibly tax income generated through digital transactions—especially in developing countries
- Tools being considered are defining “digital permanent establishments” (defining a taxable event), using withholding taxes, or formulary apportionment (assuming a percent of profit is generated in country X).

2. THE ARRIVAL OF BIG DATA!

Big flows of data are coming as a result of AEOI and CbCR.

What will countries do with it? (assuming they can capture it)



3. FOLLOWING THE MONEY: CAN WE REALLY ASSESS TAX STRUCTURES?

- Do we have the tools to both follow the money to the beneficial owner and
- Do we have the tools to assess whether and distinguish between a tax structure is harmful, aggressive, or illegal?



4. TAKING TREATIES A STEP FURTHER THAN THE MLI: A HOLISTIC APPROACH

Most countries are interested in moving beyond the BEPS actions on treaties and are using the opportunity to rethink the role and results of treaties, asking:

- Are our treaties helping us reach our tax and investment objectives? If not why and what provisions?
- If we are going to change MLI provisions, should we reopen the whole treaty
- Looking at treaties as part of our tax policy, do treaties constrain us to make other policy choices (Digital Economy)

4. WHAT TO DO ABOUT TREATIES?

Source countries have long lost out on the taxing rights issue and in some cases believe that it's the cost of getting investment.

Where the future lies could be:

- Doing analysis of the impact of treaties on the domestic economy. New methodologies are being developed and tested (see Balabushko, Beer, Loerick and Vallada (2017) work on Ukraine)
- Doing analysis of treaty networks to see 1) where the most problematic treaties are and what provisions)
- Formulating a treaty policy that is consistent with tax and investment policy
- Ensuring anti-abuse measures are included (LOB, PPT)
- And, eventually reworking model treaty provisions if needed.

5. ATTACKING CONTROVERSY

- Starting point: Minimum Standard – BEPS Action 14
- BEPS itself causes controversy
- Is this relevant for developing countries?

