Irish Tax Institute

Leaders in Tax

GLOBAL TAX




A GUIDE TO GLOBAL TAX REFORM

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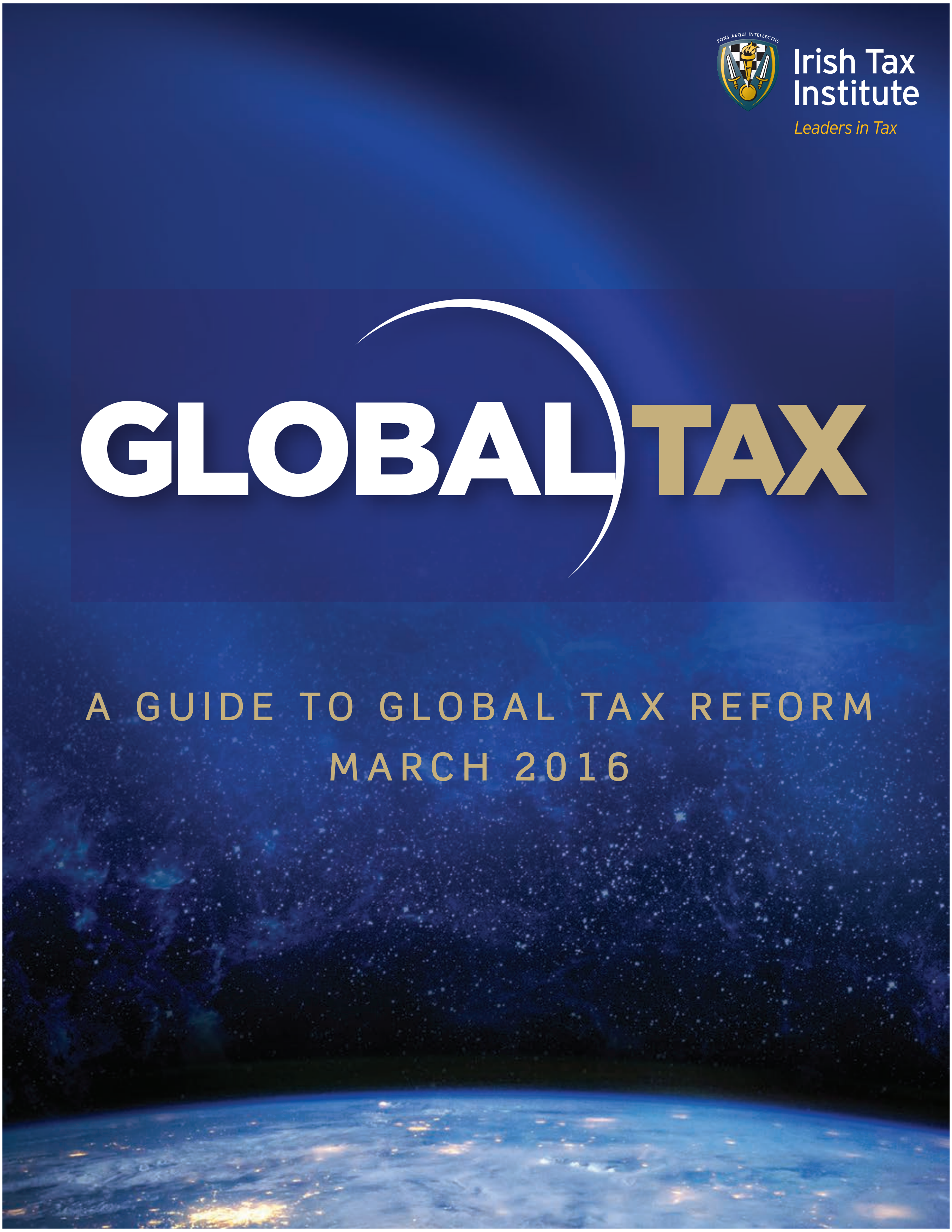

GLOBAL TAX

A GUIDE TO GLOBAL TAX REFORM

MARCH 2016

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THE GLOBAL TAX REFORM AGENDA – THE JOURNEY SO FAR

Political momentum on corporation tax arises out of global crash

- The heightened focus on the tax affairs of multinational companies came amidst the global financial crisis.
- There had long been work on tax reform at OECD and EU level but this was given fresh political impetus with the global financial crash.
- It was recognised that the existing international tax rules were designed 80 years ago and that the international tax framework had not kept pace with global and digitally driven businesses.

DID YOU KNOW?

"Today, some 50,000 multinational enterprises and their 450,000 affiliates employ over 200 million people throughout the world"

INTERNATIONAL LABOUR ORGANIZATION

> "The corporate tax systems in place today were conceived to a large extent in the aftermath of World War I. At that time, multinational enterprises were mostly industrial companies, selling tangible products."

EUROPEAN COMMISSION

THE CHANGING NATURE OF GLOBAL BUSINESS

GLOBAL TRENDS which have impacted the way companies do business	How **BUSINESS MODELS** have changed to keep pace with these trends	**CHALLENGES** in global tax to date
• Global expansion • Mobile capital • Digital era and the rise of internationally traded services • Role of technology • Importance of intellectual property • Increased focus on product innovation • Big Data	• Supply chains that have developed are truly international • Regional headquarters • Inventories and warehouses in local markets • Centralisation of key functions (e.g. procurement, intellectual property, financing) • Mobile workers • Online sales • Shared service centres • Contract services	• Individual countries generally design a tax regime that is focused on their own economic and social objectives • Tax is levied country by country • This can often result in double taxation but also gaps and mismatches between tax systems • In trying to keep up with business changes, tax legislation has become very complex, sometimes resulting in unintended consequences

THE OVERALL OBJECTIVES OF TAX REFORM

The key objectives include:

- **Greater alignment** of taxable profits and the location of economic substance
- **Increasing the transparency** of corporates' tax affairs through Country-by-Country Reporting ("CbCR") and the automatic exchange of information between tax authorities
- **Re-design of transfer pricing principles** which will reform the way in which profits are allocated within corporate groups
- **Re-design of preferential IP regimes** to ensure that there is a 'nexus' between the qualifying income and the location of the underlying R&D activities
- **Addressing tax relief** on financing and interest payments

> "Today's economic environment is characterised by a high degree of economic integration across borders (global value chains), major importance of intellectual property and other intangible assets as value drivers, and by major developments in information and communication technologies"

PASCAL SAINT-AMANS

DIRECTOR, OECD CENTRE FOR TAX POLICY AND ADMINISTRATION

ONES TO WATCH - KEY DATES

Public Country-by-Country Reporting: The European Commission is currently carrying out an impact assessment to determine whether Country-by-Country Reports should be made public. The results of this assessment are expected to be published in **April 2016**.

Brexit: The EU referendum on Brexit takes place on **23 June 2016.** This could impact on UK and possibly EU tax policy.

US presidential election: The US presidential election takes place on **8 November 2016.** The outcome of the election could impact the US tax reform agenda for the future.

Multilateral Instrument: The OECD multilateral instrument is expected to be finalised at the end of 2016.

EU State Aid: A number of EU State Aid decisions involving tax are expected to be announced during 2016.

Transfer Pricing Guidelines: The OECD is currently working on updated transfer pricing guidelines as part of the BEPS project. These are expected to be released in **late 2016/early 2017**.

Anti-Tax Avoidance Package: We can expect to see developments on the Anti-Tax Avoidance Package before the end of the Dutch EU presidency in June. The last ECOFIN meetings of the Dutch presidency will be held on **25 May and 17 June 2016**.

Common Consolidated Corporate Tax Base (CCCTB): The European Commission is expected to publish draft proposals on a revised CCCTB in the second half of 2016.

THE BIG PLAYERS ON THE GLOBAL STAGE

EU

28 MEMBER STATES

The Commission

- **Pierre Moscovici** *(Commissioner, Economic and Financial Affairs, Taxation and Customs)*
- **Margrethe Vestager** *(Commissioner, Competition)*

Directorate-General for Taxation and Customs Union (DG TAXUD)

- **Stephen Quest** *(Director General, DG TAXUD)*
- **Valère Moutarlier** *(Director, Direct Taxation, Tax Coordination, Economic Analysis and Evaluation)*

In addition, there are a number of separate working groups which work with the Commission:

- Platform for Tax Good Governance
- Joint Transfer Pricing Forum
- Expert Groups

The European Parliament

There are a number of separate committees which report into Parliament. Those involved in matters of tax are:

Economic and Monetary Affairs Committee (ECON)

- **Roberto Gualtieri** - Group of the Progressive Alliance of Socialists and Democrats *(Chair)*

Special Committee on Tax Rulings (TAXE2)

- **Alain Lamoussoure** - Group of the European People's Party *(Chair)*

The Council

Economic and Financial Affairs Council (ECOFIN)

(Finance Ministries of Member States)

There are also a number of separate working groups which report into the Council. The main one involved in matters of tax is:

The Code of Conduct Group

OECD

34 MEMBER STATES

Centre for Tax Policy and Administration

- **Pascal Saint-Amans**
  Director, Centre for Tax Policy and Administration

Forum on Tax Administration

- **Edward Troup**
  Chair of FTA, and Second Permanent Secretary and Tax Assurance Commissioner at HMRC. Mr Troup will become Executive Chair HMRC with effect from 5 April 2016.

US

Department of the Treasury

- **Jacob (Jack) Lew**
  Secretary of the Treasury
- **Robert Stack**
  Deputy Assistant Secretary (International Tax Affairs) US Department of the Treasury. He is the US representative in the BEPS negotiations and is a leading player in global tax reform

US Congress

House of Representatives Committee on Ways and Means

Chair, Congressman Kevin Brady,

(Rep – Texas)

US Senate Committee on Finance

Chair, Senator Orrin Hatch

(Rep-Utah)

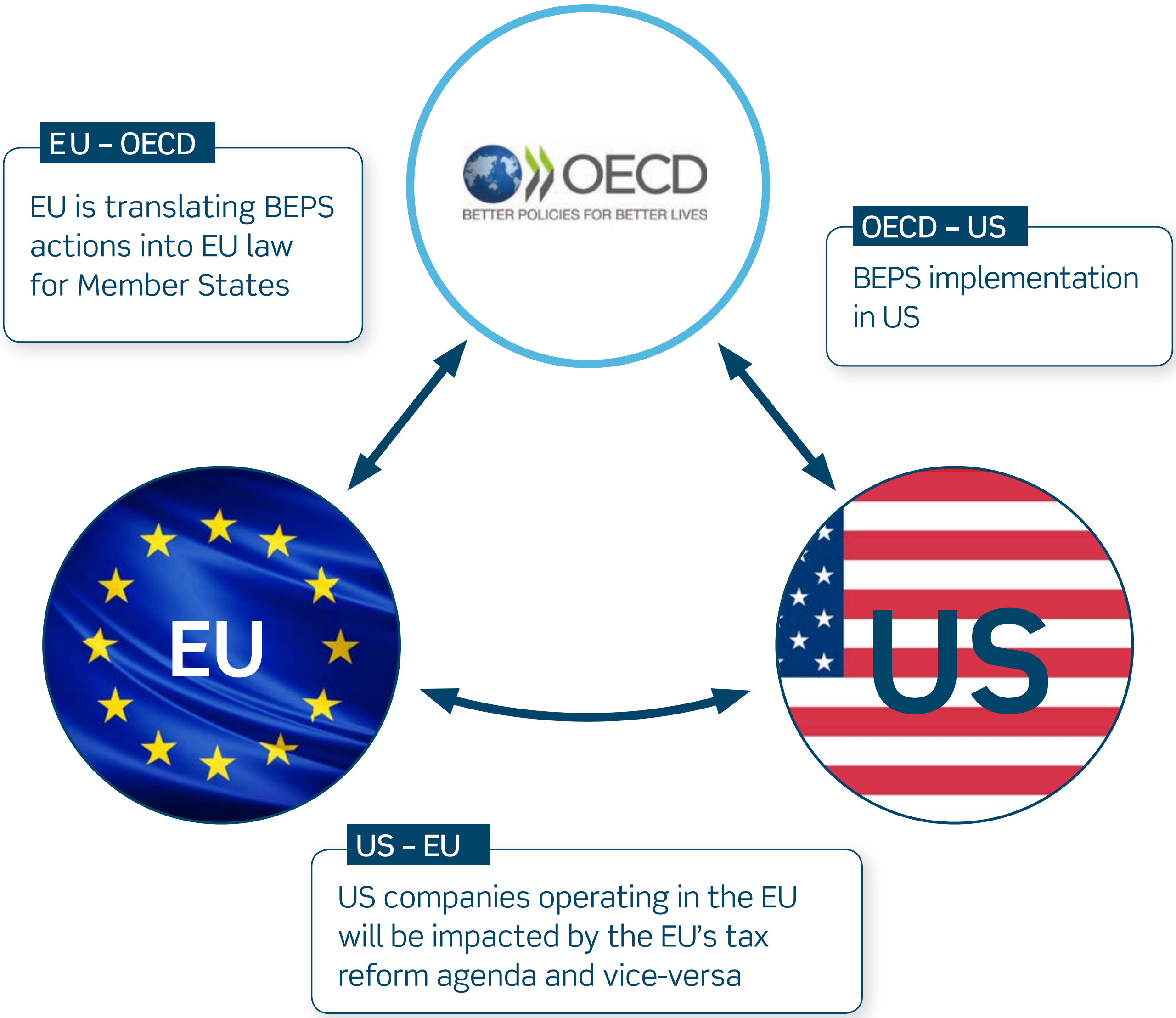
The US is a significant global player in tax for a number of reasons:

- The breadth of US multinationals globally that will be impacted by new EU and OECD tax rules/legislation. US Companies account for 53 out of the world's top 100 companies based on market capitalisation in 2014

Source: PwC Report on Global Top 100 Companies by market capitalisation, March 2015

- The US is an OECD member – its national tax regime will be impacted by the BEPS Plan.
- Any future changes to US tax policy will impact on US multinationals who have invested across the world. The debate on US tax policy is known as the 'US Tax Reform Agenda'.

THE BIG PLAYERS - THE INTERACTION



"Aggregate US investment in Europe totalled €2 trillion in 2014 and directly supports more then 4.3 million jobs in Europe"

- AmChams in Europe, The Case for Investing in Europe 2015

"In 2014, US affiliate income in Europe rose 6% to €238 billion"

- AmChams in Europe, The Case for Investing in Europe 2015

THE MAJOR TAX REFORM ITEMS ON THEIR AGENDA

EU

Action Plan for Fair and Efficient Corporate Taxation

- CCCTB
- Anti-Tax Avoidance Package
  - Anti-Tax Avoidance Directive
  - Amendment to Directive on Administrative Cooperation to implement Country-by-Country Reporting
  - Recommendation on Tax Treaties
  - Communication on External Strategy for Effective Taxation
- Automatic exchange of tax rulings and Advance Pricing Agreements (APAs)

The role of EU State Aid as it applies to taxation

"Corporate taxation in the EU needs radical reform. In the interests of growth, competitiveness and fairness, Member States need to pull together and everyone must pay their fair share"

PIERRE MOSCOVICI

OECD

BEPS

There are 15 BEPS Actions based across three core principles:*

Coherence of international tax systems:

- Hybrid Mismatches
- CFC Rules
- Interest Deductions
- Harmful Tax Practices

Aligning taxing rights with substance:

- Tax Treaty Abuse
- Permanent Establishments
- Transfer Pricing (3 actions)

Improving transparency and certainty:

- Measuring BEPS
- Disclosure Rules
- TP Documentation
- Dispute resolution

Other Actions cutting across all three core principles

- Digital Economy
- Multi-lateral instrument

**Transfer Pricing is made up of 3 separate actions including CbCR*

"The principal objective of the BEPS Project: closing the loopholes in current tax rules that allow companies to shift their profits to low or no-tax jurisdictions, where they have little or no economic activity or value creation, rather than paying tax in the location of the activities generating those profits"

PASCAL SAINT- AMANS

US

The implementation of BEPS measures

For example:

- Country-by-Country Reporting
- Innovation Box
- Range of other BEPS related issues

"The United States has a great deal at stake in the BEPS project and a strong interest in its success. Our active participation is crucial to protecting our own tax base from erosion by multinational companies, much of which occurs as a result of exploiting tax regime differences"

ROBERT STACK
Deputy Assistant Secretary (International Tax Affairs), US Department of the Treasury – testimony to Senate Finance Committee, 1 December 2015

US TAX REFORM AGENDA

Challenges with US corporate tax system.

"We have to fix our entire tax code—top to bottom. But if we don't act soon to keep American businesses here at home, that challenge is going to be much harder. Foreign competitors are taking over U.S. companies at an alarming rate, and international pressures are only going to make the problem worse in the coming months"

PAUL RYAN (REP-WI),
[former] House Ways and Means Committee, Press Statement, 29 July 2015

EUROPEAN UNION INSTITUTIONAL STRUCTURE - A FOCUS ON TAX

EUROPEAN COUNCIL
(EU Heads of State)

European Parliament
- ECON Committee
- Special Committee on Tax Rulings

European Council (ECOFIN)
- Code of Conduct Group (Business Taxation)

European Commission
- Directorate General for Competition
- Directorate General for Taxation and Customs Union
  - Platform for Tax Good Governance
  - Joint Transfer Pricing Forum
  - Tax Expert Groups

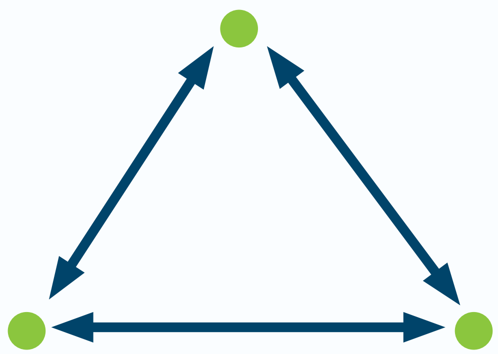
OECD ORGANISATIONAL STRUCTURE - A FOCUS ON TAX

COUNCIL
Oversight and strategic direction

OECD BETTER POLICIES FOR BETTER LIVES

COMMITTEES
Discussion and implementation

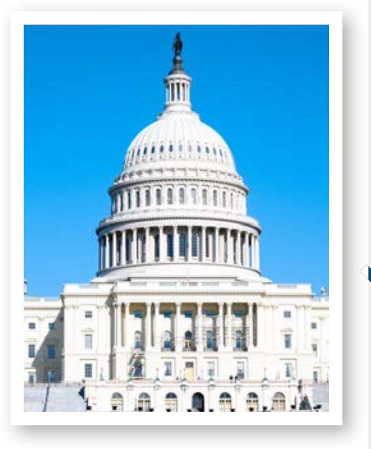
The key committee on tax matters is the Committee on Fiscal Affairs ("CFA"). There are also a number of separate tax working groups which report into the CFA including;
- Forum on Tax Administration
- Global Forum on Transfer Pricing
- Forum on Harmful Tax Practices



SECRETARIAT
Analysis and proposals

Centre for Tax Policy and Administration

US CONGRESS - A FOCUS ON TAX



House of Representatives

House Committee on Ways and Means

US Senate

US Senate Committee on Finance

THE GLOBAL TAX REFORM JOURNEY - EU

European Commission publishes Action Plan to Strengthen the Fight Against Tax Fraud and Tax Evasion
December 2012

European Parliament establishes TAXE Committee
February 2015

European Commission publishes Tax Transparency Package
March 2015

TAXE Committee hold hearings across the EU
May 2015

2012

2012 | 2013 | 2014

OECD publishes BEPS Action Plan which is endorsed by G20
July 2013

1,400 submissions to OECD consultations on BEPS
2014-2015

THE GLOBAL TAX REFORM JOURNEY - OECD

2015

European Commission launches Action Plan for Fair and Efficient Corporate Taxation
June 2015

European Commission launches CCCTB consultation
October 2015

OECD publishes final BEPS Package
October 2015

ECOFIN adopt Directive on automatic exchange of tax rulings
December 2015

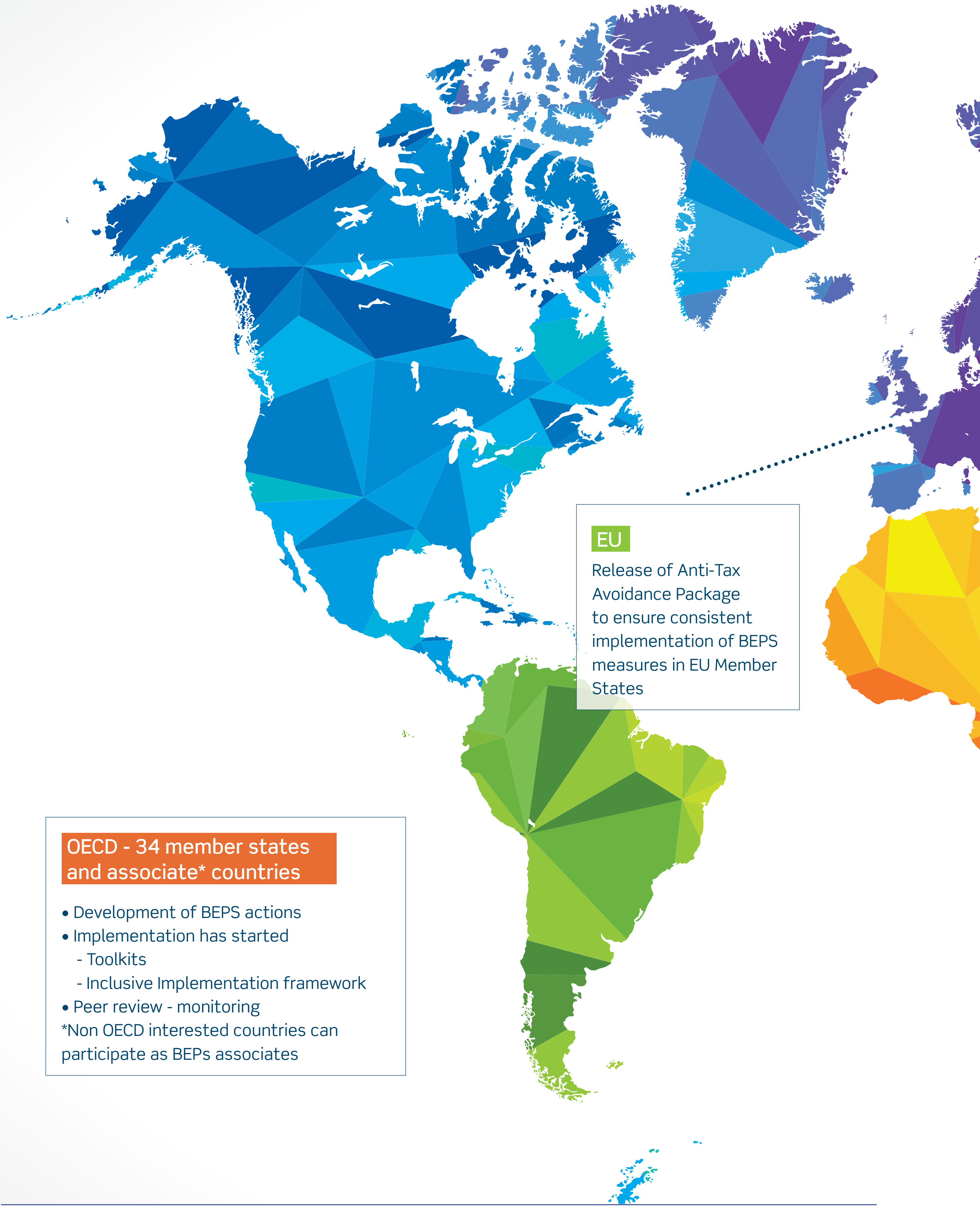
2016

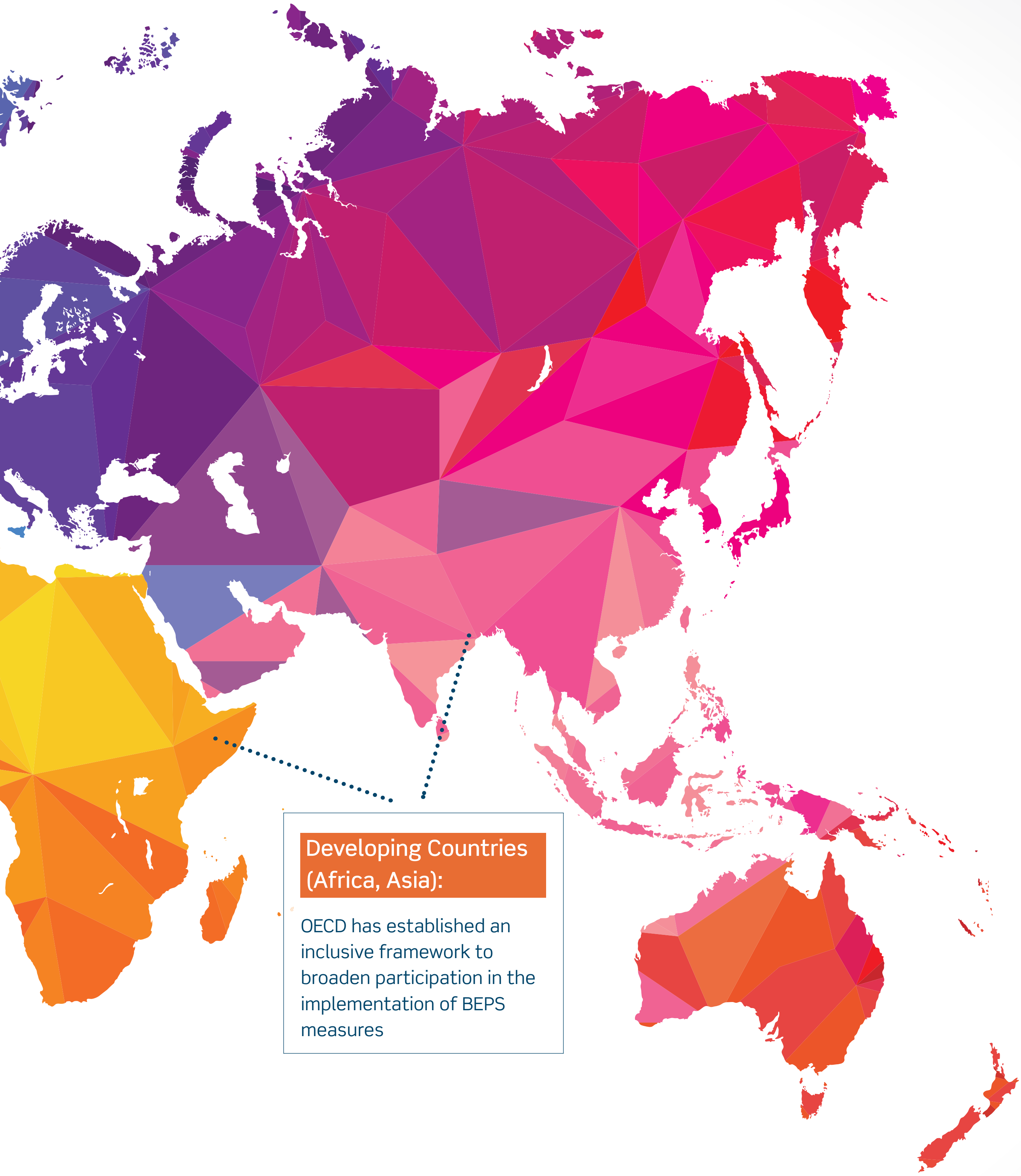
European Commission publishes Anti-Tax Avoidance Package
January 2016

31 countries sign the OECD's Multilateral Competent Authority Agreement for the automatic exchange of Country-by-Country Reports
January 2016

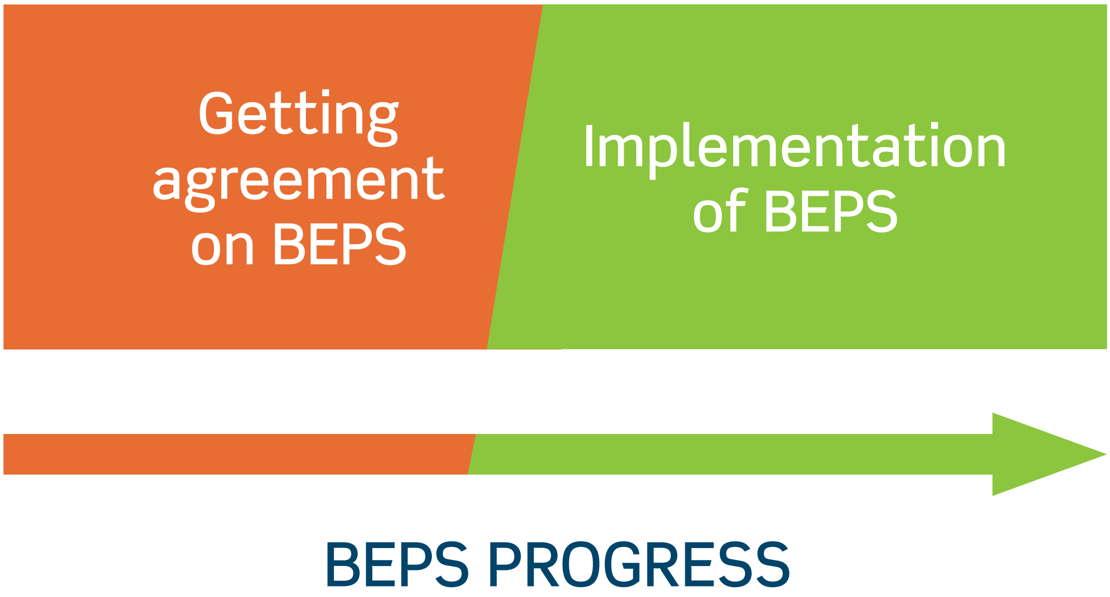
OECD launch inclusive framework for BEPS implementation
February 2016

BEPS IMPLEMENTATION ACROSS THE WORLD




Developing Countries
(Africa, Asia):
OECD has established an inclusive framework to broaden participation in the implementation of BEPS measures

OVERVIEW OF BEPS ACTIVITY ACROSS THE WORLD



Across the world BEPS implementation and monitoring is underway

1. Work at the OECD
2. Work in the EU
3. Work Across National Governments

> “The challenge for multinational companies is staying on top of this global patchwork of change.”

- Focus has now moved towards the implementation of a number of the OECD’s recommendations.
- Key to the success of the BEPS project will be to ensure that there is consistent implementation across all countries. A range of measures are being taken to assist with the implementation process.
- The challenge for multinational companies is staying on top of this global patchwork of change.

1. Work at the OECD

FINISHING OUTSTANDING DETAILS ON THE POLICY WORK

Although the final reports were issued by the OECD in October 2015, there are still some key areas that need to be finalised. For example;

- Work is ongoing on the revised transfer pricing guidelines and it is expected that these will be released by the OECD in the next 12 months.
- The multi-lateral instrument is currently being developed by an OECD working group and it is expected this will be finalised by the end of 2016.
- On interest deductibility, work is ongoing to finalise the details of a group ratio carve-out and special rules for the insurance and banking sectors.
- Other specific details remain to be concluded, particularly on PE's and tax treaties.

OECD TOOLKITS

The OECD has developed a number of practical toolkits to assist all countries (but particularly developing economies) to implement BEPS Actions. These include;

- Report on tax incentives
- Tools on lack of comparables for transfer pricing purposes
- Report on indirect transfers of assets
- Toolkit on Transfer Pricing Documentation requirements
- Toolkit on Tax Treaty Negotiation
- Toolkit on Base Eroding Payments
- Toolkit on Supply Chain Restructuring and
- Toolkit on assessment of BEPS risks.

INCLUSIVE IMPLEMENTATION FRAMEWORK

In February 2016, the OECD announced plans to establish an inclusive framework that would broaden participation in the OECD/G20 BEPS Project. The new forum will allow for all interested countries to participate as 'BEPS Associates' in an extension of the OECD's Committee on Fiscal Affairs.

The framework's mandate will focus on reviewing implementation of the four BEPS minimum standards, in the areas of;

1. Harmful tax practices
2. Tax treaty abuse
3. Country-by-Country Reporting
4. Improvements in cross-border tax dispute resolution

MONITORING BY PEER REVIEW

The OECD and member countries have agreed to monitor the implementation of the BEPS measures. This will involve some form of peer review which will be adapted to the different BEPS Actions. For example, a peer-based review mechanism has been identified in respect of Action 14 to monitor how countries deal with dispute resolutions and feedback will be provided regularly to the OECD's Committee on Fiscal Affairs.

ONGOING REVIEW

The OECD and G20 countries have agreed to continue to work together on BEPS until 2020. In the interim, the implementation of the BEPS actions will be monitored by all stakeholders with some actions being subject to specific review by 2020. For example;

- A supplementary report reflecting the outcome of continued work on the overall taxation of the digital economy will be prepared and published.
- The three-tier transfer pricing documentation approach will be reassessed.

2. Work in the EU on BEPS

While the BEPS actions can be implemented unilaterally by countries, the EU has taken active steps to ensure that there is a coordinated approach to implementation in EU Member States.

In January 2016, it published its Anti-Tax Avoidance Package (ATAP) which provides draft legislative proposals for the introduction of key BEPS measures:

- Deductibility of interest
- Controlled foreign company (CFC) rules
- Hybrid mismatches
- Country-by-Country Reporting
- Treaty abuse
- Permanent Establishments

The measures in the ATAP, together with a range of other initiatives that the EU has taken across the BEPS actions and beyond, constitute a comprehensive tax reform programme for businesses operating in the EU. Page 22 provides a detailed summary of how each of the OECD BEPS Actions has been implemented by the EU.

3. BEPS Work Across National Governments

Governments globally are also in the process of consultation with local stakeholders on how best to implement BEPS and EU measures into their own national law.

EXAMPLES

UK's HM Treasury has held a number of public consultations on the OECD proposals including those on interest deductibility, hybrid mismatches and their IP box.

Ireland has introduced CbCR legislation and an OECD compliant innovation box regime, following a lengthy period of consultation.

The Australian Tax Office has recently launched a consultation on the implementation of new transfer pricing rules. Australia is also introducing it's own multi-national anti avoidance law (MAAL).

In the US, the Department of the Treasury is currently holding a consultation on draft Country-by-Country Reporting regulations.

In Mexico, legislation has been enacted to prevent treaty abuse. Mexico has also followed the OECD's three-tier approach to transfer pricing documentation.

Australia and Germany have signed one of the first post-BEPs bilateral tax treaties which contains BEPS measures.

EU Member States that implement BEPS reforms ahead of agreement on EU law (including the ATAP), will be required to review their legislation subsequently and ensure it is in compliance with the EU position.

How the EU is implementing BEPS

ATAP

PROPOSED ANTI-TAX AVOIDANCE DIRECTIVE

Action 2: Hybrid Mismatch Arrangements

Action 3: Controlled Foreign Companies (CFCs)

Action 4: Interest Limitation

PROPOSED DIRECTIVE ON COUNTRY-BY-COUNTRY REPORTING

Action 13: Country-by-Country Reporting

It proposed to extend DAC to facilitate the automatic exchange of Country-by-Country Reports between Member States

CODE OF CONDUCT GROUP (BUSINESS TAXATION)

Action 5: Harmful Tax Practices

Patent Boxes: The Code of Conduct Group will be monitoring Member States to ensure existing boxes are changed to meet modified nexus approach

Rulings/APAs: DAC 3 has been adopted into EU law. Once enacted by Member States it will provide for the automatic exchange of rulings (rather than spontaneous) and APAs. The Code of Conduct Group is developing guidelines on the conditions for the issue of tax rulings by Member States.

Action 12: Disclosure of Aggressive Tax Planning

JOINT TRANSFER PRICING FORUM ("JTPF")

Action 8-10: Transfer Pricing

JTPF working on EU approach to implementing the BEPS transfer pricing actions

Action 13: Transfer Pricing Documentation

JTPF will monitor the EU Transfer Pricing Documentation ("EU-TPD") to take into account the conclusions of BEPS Project

RECOMMENDATION ON TAX TREATIES

Actions 6 + 7: Treaty Abuse/PE

Include a Principal Purpose Test (rather than a Limitation of Benefits clause)

Amend the definition of Permanent Establishment.

EU STUDY

Action 11: Measuring and monitoring BEPS

Separate EU study underway about impact of aggressive tax planning on EU Member States

EU IMPACT ASSESSMENT

Impact assessment on public CbCR due in April 2016.

EU CONSULTATION

Action 14: Dispute Resolution

Proposals for improved EU dispute resolution due in 2016 – public consultation underway.

EU AND OECD ACTIONS

European Commission's **Anti-Tax Avoidance Package** consisting of

7

documents

15

final BEPS reports issued by the OECD consisting of over **1,600 pages**

23

discussion drafts and working documents prepared by the OECD on BEPS actions which were subject to almost 1,400 contributions from stakeholders

170+

responses to the European Commission's **CCCTB consultation**

31

countries have signed the OECD's Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of Country-by-Country Reports

3,000+

double taxation treaties could be impacted by **1 multi-lateral instrument**

10,000+

newspaper articles on the global tax debate

THE **REACTION** OF **COMPANIES**

94%

of the largest companies having an opinion on the matter think that **global disclosure and transparency requirements will continue to grow** in the next two years.

(EY survey 2014: tax risk and controversy)

85%

of US-headquartered companies report that they are experiencing **more risk or uncertainty around tax legislation** or regulation than they were two years ago.

(EY survey 2014: tax risk and controversy)

82%

of respondents said that they have **made substantial or moderate changes** to their tax strategy in response to reputational concerns

(Allen & Overy survey 2015: Negotiating the minefield: challenges facing the corporate, tax function)

GLOBAL EXPANSION OF MULTINATIONALS

- Today, some **50,000** multinational enterprises and their **450,000** affiliates employ over **200 million** people throughout the world [1]
- US Companies account for **53** out of the world's top **100** companies [2]
- Aggregate US investment in Europe totalled **€2 trillion** in 2014 and directly supports more than **4.3 million** jobs in Europe [3]
- In 2014, U.S. affiliate income in Europe rose **6%**, to **$238 billion** [4]

BACKGROUND TO BEPS

WHERE IT ALL BEGAN

When the OECD embarked on the BEPS project, it identified three key challenges to be addressed – coherence, substance and transparency & certainty.

Within this guiding framework of three key pillars, the OECD went on to develop fifteen specific actions (Action Plan July 2013).

Pascal Saint-Amans
Director, Centre for Tax Policy & Administration, OECD

1. Coherence of international tax systems: A number of the actions seek to prevent BEPS activities that can arise due to mismatches across international tax systems. Where this happens, a tax deduction for expenses could be available in two countries or certain income is not taxed anywhere. This is referred to as 'double non-taxation'.

2. Re-aligning taxing rights with economic substance: Five BEPS actions seek to overhaul the existing tax principles to ensure that there is a greater alignment of taxable profits and the economic activity that generates those profits (e.g. location of office space, tangible assets and employees). In aligning profits with substance, there is a particular emphasis on aligning people functions with the allocation of profits.

3. Improving transparency and certainty: Four BEPS actions increase the information disclosure requirements by companies and exchange by tax authorities in an effort to prevent BEPS activities.

BEPS

15 actions around 3 main pillars

Coherence

- Hybrid Mismatch Arrangements (2)
- CFC Rules (3)
- Interest Deductions (4)
- Harmful Tax Practices (5)

Substance

- Preventing Tax Treaty Abuse (6)
- Avoidance of PE Status (7)
- TP Aspects of Intangibles (8)
- TP/Risk and Capital (9)
- TP/ High Risk Transactions (10)

Transparency and Certainty

- Measuring BEPS (11)
- Disclosure Rules (12)
- TP Documentation and CbCR (13)
- Dispute Resolution (14)

Digital Economy (1)

Multilateral Instrument (15)

Action 1- The Digital Economy

Action 1 considers BEPS in the context of the Digital Economy. It was felt that the other actions would address the BEPS risks in the digital economy, so the OECD ultimately decided against introducing specific ring-fenced solutions.

Action 15 - Multilateral Instrument

- Action 15 of the BEPS Action Plan involves the development of a multilateral instrument.
- A number of the BEPS actions require changes to bi-lateral tax treaties in place between countries; Action 6, which seeks to prevent treaty abuse and Action 7 - the work to prevent the artificial avoidance of Permanent Establishments.
- As there are currently over 3,000 treaties in force worldwide, it would be an extremely lengthy process to change each of these treaties individually.
- The multi-lateral instrument will allow the existing tax treaties to be modified without the need to agree the changes on a treaty-by-treaty basis.
- The multi-lateral instrument is currently being developed within an OECD working group and it is expected that this will be completed later this year.

“Since the opportunities for avoidance arise at the boundaries between tax systems, a multi-lateral approach makes sense”

- Institute for Fiscal Studies, UK.

Implementing BEPS

MINIMUM STANDARDS	COMMON APPROACHES	GUIDANCE BASED ON BEST PRACTICE
Countries have committed to adopting these minimum standards	Countries are expected over time to move towards these approaches recommended by the OECD	If countries choose to implement these measures, they should be implemented as set out by the OECD
ACTION 5: Counter harmful tax practices more effectively, taking into account transparency and substance	**ACTION 2:** Neutralise the effects of hybrid mismatch arrangements	**ACTION 3:** Strengthen controlled foreign company (CFC) rules
ACTION 6: Prevent treaty abuse	**ACTION 4:** Limit base erosion via interest deductions and other financial payments	**ACTION 12:** Require taxpayers to disclose their aggressive tax planning arrangements
ACTION 13: Re-examine Transfer Pricing documentation, including CbCR		
ACTION 14: Make dispute resolution mechanisms more effective		

The 15 BEPS Actions have been broken down into five distinct categories in terms of implementation.

REINFORCED INTERNATIONAL STANDARDS

Reinforcing the existing OECD Model Tax Convention and OECD Transfer Pricing Guidelines

ACTION 7:

Preventing the artificial avoidance of permanent establishment (PE) status. This Action will reinforce the existing OECD Model Tax Convention.

ACTIONS 8, 9 & 10:

Assuring that Transfer Pricing outcomes are in line with value creation. These Actions will be reflected in revised and reinforced OECD Transfer Pricing Guidelines.

ANALYTICAL REPORTS

Additional work on technical matters and implementation monitoring

ACTION 1:

Conclusions on the tax challenges of the digital economy

ACTION 11:

Data and Analysis with respect to BEPS

ACTION 15:

The multilateral instrument implementing treaty based recommendations

IMPACT OF THE 15 ACTIONS

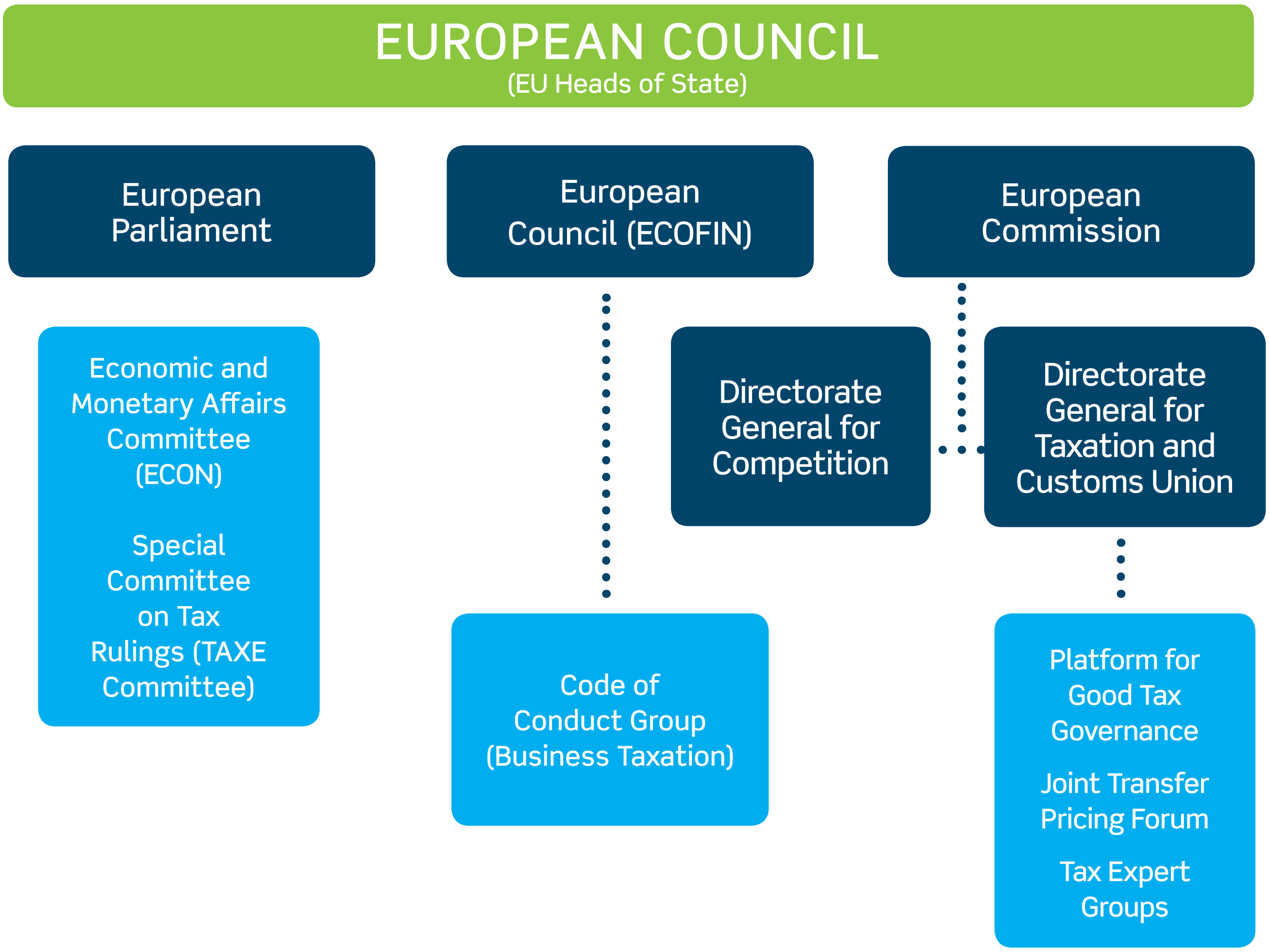
Number	Action	OECD Recommendation	Implementation of the measures (with examples)
1	**Digital Economy**	The OECD decided that no ring fenced solutions should be introduced for the digital economy and that the other BEPS actions would address risks arising in the digital economy.	A future review and report on the impact of the BEPS actions on the digital economy will be published by 2020.
2	**Hybrid Mismatch Arrangements**	Alignment of the tax treatment of hybrid instruments and entities between jurisdictions to ensure symmetry.	Countries have already started moving to adopt this OECD recommendation. The UK has released draft legislation on hybrids. The Australian Tax Office has signaled its intention to introduce rules.
3	**Controlled Foreign Companies (CFCs)**	Introduction of CFC rules which seek to attribute certain income earned by CFCs to the controlling company.	This is best practice guidance and countries globally are deciding on their approach to implementation.
4	**Debt Financing**	Introduction of a fixed ratio rule which will limit interest relief to between 10% - 30% of a company's EBITDA.	A number of details need to be finalised on this Action in 2016. Some countries have already moved towards implementation. For example, in the UK HM Treasury held a public consultation on the new proposals. France has already introduced new legislation on interest deductibility.
5	**Preferential Regimes (such as IP regimes) which constitute harmful tax practices**	These "harmful" tax practices are normally based on activity that is geographically mobile. In future, preferential IP regimes must be based on a 'modified nexus' approach, which seeks to align the tax benefits of the regime with the location of R&D expenditure. R&D expenditure acts as a proxy for substantial activity.	The modified nexus approach has already been adopted in some countries. For example, Ireland introduced one of the first OECD compliant boxes (the Knowledge Development Box) in 2015. HM Treasury has launched a consultation into the re-design of the existing UK patent box.

Action	Action	OECD Recommendation	Implementation of the measures (with examples)
6	Tax Treaty Benefits	Tax treaties are a key component in the global tax framework. They ensure that items of income are not subject to tax in more than one jurisdiction. Treaties are entered into by two jurisdictions and there are currently over 3,000 of them in force globally. The OECD seeks to introduce a number of anti-abuse provisions into tax treaties which will deny the use of treaty benefits in cases where the treaties are being misused.	The anti-abuse provisions will be introduced to bi-lateral tax treaties by way of the multi-lateral instrument (see Action 15 below).

Action	Action	OECD Recommendation	Implementation of the measures (with examples)
7	Permanent Establishment	A lot of work has been carried out by the OECD under Action 7 to broaden the definition of Permanent Establishment and "prevent the artificial avoidance of PE status".	Any change to the definition of Permanent Establishment is likely to be introduced to bi-lateral tax treaties by way of a multi-lateral instrument (still under discussion).
8,9,10	Transfer Pricing	Another one of the major issues is Transfer Pricing. The OECD is seeking to re-design the global transfer pricing framework with a focus on economic substance, Intangibles , Risk & Capital, and High Risk Transactions.	Work is still ongoing on the Transfer Pricing Actions. It is expected that revised guidelines will be released by the OECD in the next 12 months. Some countries have already moved to adopt the new guidelines. For example, the Australian Tax Office has recently launched a consultation on the implementation of these rules.
11	Measuring and monitoring BEPS	The OECD will publish statistics on the scope and tax revenue impact of BEPS activities.	Once the other BEPS actions are implemented, the OECD and governments will work together to assess the impact.
12	Disclosure of aggressive tax planning	The introduction of rules requiring the mandatory disclosure of aggressive tax planning arrangements. Increased sharing of information on disclosures between tax authorities.	This is with countries to decide how to implement the Action. Some countries already have disclosure regimes. The issue is also being considered by the European Commission's Code of Conduct Group (Business Taxation).
13	Transfer Pricing Documentation and Country-by-Country Reporting (CbCR)	Under CbCR multinationals that meet certain criteria will be required to provide tax authorities with details of their global footprint on a country-by-country basis, including profits, tax paid, employee headcount etc.	This is the BEPS action that has seen the most work to date on implementation by countries. A number of countries have also committed to the implementation of CbCR. For example, Ireland and Mexico have already introduced domestic legislation. US Treasury has published draft regulations which are subject to a public consultation.

Action	Action	OECD Recommendation	Implementation of the measures (with examples)
14	**Dispute Resolution**	Introduction of measures to reduce uncertainty for businesses on double tax issues and improve the dispute resolution process.	The European Commission has recently launched a consultation on improving double tax disputes.
15	**Multi-lateral Instrument**	A number of the BEPS actions require changes to tax treaties. To avoid the re-negotiation of over 3,000 bi-lateral treaties, it is proposed that the treaties will be changed by way of a multi-lateral instrument.	The multi-lateral instrument is currently being developed within an OECD working group and it is expected that this will be completed later this year.

EUROPEAN UNION INSTITUTIONAL STRUCTURE - A FOCUS ON TAX



Pierre Moscovici, *Commissioner, Economic and Financial Affairs, Taxation and Customs*

Margrethe Vestager, *Commissioner, Competition*

The EU Institutions

The European Commission

The European Commission represents the interests of the EU as a whole. The Commission has the right of initiative to propose laws for adoption by the European Parliament and the Council of the EU (national ministers). The Commission is composed of 28 Commissioners, one from each EU Member State. The two Commissioners dealing with tax matters are; Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs and Margrethe Vestager, Commission for Competition.

Within the Commission, there are a number of executive branches (Directorate-Generals, or more commonly known as DGs). They deal with specific areas of policy. For tax, the two most relevant are:

1. Directorate-General for Taxation and Customs Union (DG TAXUD)
2. Directorate-General for Competition (DG COMP)

1. Directorate-General for Taxation and Customs Union (DG TAXUD):

Its role is to develop and implement tax policy across the EU for the benefit of citizens, businesses and the Member States.

Stephen Quest,
Director General,
DG TAXUD

Valère Moutarlier,
Director, Direct Taxation,
Tax Coordination,
Economic Analysis and
Evaluation, DG TAXUD

DG TAXUD has also put together a number of sub-groups to assist with policy matters in certain areas. The key sub-groups dealing with corporate tax matters are:

The Platform for Tax Good Governance :

The Platform for Tax Good Governance assists the Commission in developing initiatives to promote good governance in tax matters in third countries, to tackle aggressive tax planning and to identify and address double taxation.

To date, members of the Platform have been tax authorities from all Member States and 15 organisations representing business, civil society and tax practitioners. It enables a structured dialogue and exchange of expertise which can feed into a more coordinated and effective EU approach against tax evasion and avoidance. The Platform meets several times a year.

It is chaired by the Director General, DG TAXUD, Stephen Quest.

The EU Joint Transfer Pricing Forum :

The EU Joint Transfer Pricing Forum (JTPF) was formally established in 2006 to assist and advise the European Commission on transfer pricing tax matters. The JTPF works within the framework of the OECD Transfer Pricing Guidelines and operates on the basis of consensus to propose to the Commission pragmatic, non-legislative solutions to practical problems posed by transfer pricing practices in the EU.

- The JTPF comprises one representative from each Member State's tax administration and 18 non-government organisation members.

- It has an independent Chair, which is currently CMS Bureau, a French law firm.

2. Directorate-General for Competition (DG COMP)

Directorate-General for Competition (DG COMP) is responsible for carrying out the state aid examinations into tax rulings.

The Commissioner responsible for Competition is Margrethe Vestager.

The European Council

The European Council defines the EU's overall political direction and priorities. It does not negotiate or adopt EU laws but instead it sets the EU's policy agenda and identifies issues of concern and actions to take.
The members of the European Council are the heads of state or government of the 28 EU Member States, the European Council President and the President of the European Commission.

The Council

The Council is the institution representing the Member States' governments. Also known informally as the EU Council, it is where national ministers from each EU country meet to adopt laws and coordinate policies.

The Council meets in 10 different 'configurations', depending on the matter being discussed. Council meetings are attended by representatives from each member state at a ministerial level. Representatives have the right to commit the government of their country and cast a government vote.

Economic and Financial Affairs Council (ECOFIN) Tax policy matters are typically discussed at the Economic and Financial Affairs Council (ECOFIN) configuration, which is made up of the Ministers for Finance of Member States.

The Code of Conduct Group (Business Taxation) was set up by ECOFIN in 1998. The group is primarily responsible for implementing the tax measures which fall within the scope of the code of conduct for business taxation (which was adopted in December 1997). The code of conduct for business taxation is not a legally binding instrument but its adoption requires the commitment of Member States to:

- abolish existing tax measures that constitute harmful tax competition
- refrain from introducing new ones in the future

The Code of Conduct Group (Business Taxation) primarily works on anti-abuse rules, transparency and exchange of information in the area of transfer pricing and the promotion of the principles of the code of conduct in non-EU countries.

European Parliament

The European Parliament is made up of Members of the European Parliament (MEPs) who are directly elected by voters in all Member States.

The Economic and Monetary Affairs Committee of the European Parliament ("ECON" Committee) deals with matters relating to taxation. The Parliament has no binding power on tax matters and instead it prepares reports and proposals, which the Commission must respond to.

In February 2015, the Parliament established a 'Special Committee on Tax Rulings' (TAXE Committee) chaired by French MEP, Alain Lamassoure.

Alain Lamassoure, Chair Special Committee on Tax Ruling, European Parliament

The committee's original mandate was to:

- Review EU Member States' tax rulings as far back as 1 January 1991
- Review how the European Commission treats their existing state aid arrangements, and
- Review how transparent Member States are about their tax rulings.

In December 2015, the Parliament extended the term of the TAXE Committee to June 2016.

Policy Formulation in the EU - How it works

Given the number of stakeholders involved within the EU, the formulation and implementation of tax policy can be a lengthy process. This is primarily due to the fact that any tax measures must be agreed unanimously by the 28 Member States in order to become law - this is known as the 'principle of unanimity'. Where unanimity cannot be reached, it may be possible for a number of Member States to introduce proposals by way of 'enhanced cooperation'.

Enhanced cooperation is a procedure whereby a minimum of currently 9 EU countries are allowed to establish advanced integration or cooperation in an area within the EU structures but without the other EU countries being involved. The Financial Transactions Tax is an example of a tax proposal that is currently being progressed under Enhanced Co-operation

The Commission is responsible for policy formulation; however its proposals are not binding on Member States.

Once a Commission proposal has been received by the Council, the proposal passes through three levels at the Council

1. **Working party:** Made up of the appropriate representative from the Permanent Representation of each member state (i.e. Government officials representing their country in the EU)

↓

2. **Permanent Representatives Committee (Coreper):** Made up of the European Union Ambassadors of each Member State

↓

3. **Council configuration:** Made up of a ministerial level representative from each member state (i.e. Ministers for Finance attend ECOFIN)

Key principles governing EU Policy

Enhanced Cooperation:

Enhanced cooperation is a procedure whereby a minimum of currently 9 EU countries are allowed to establish advanced integration or cooperation in an area within the EU structures but without the other EU countries being involved. The Financial Transactions Tax is an example of a tax proposal that is currently being progressed under Enhanced Co-operation.

Proportionality:

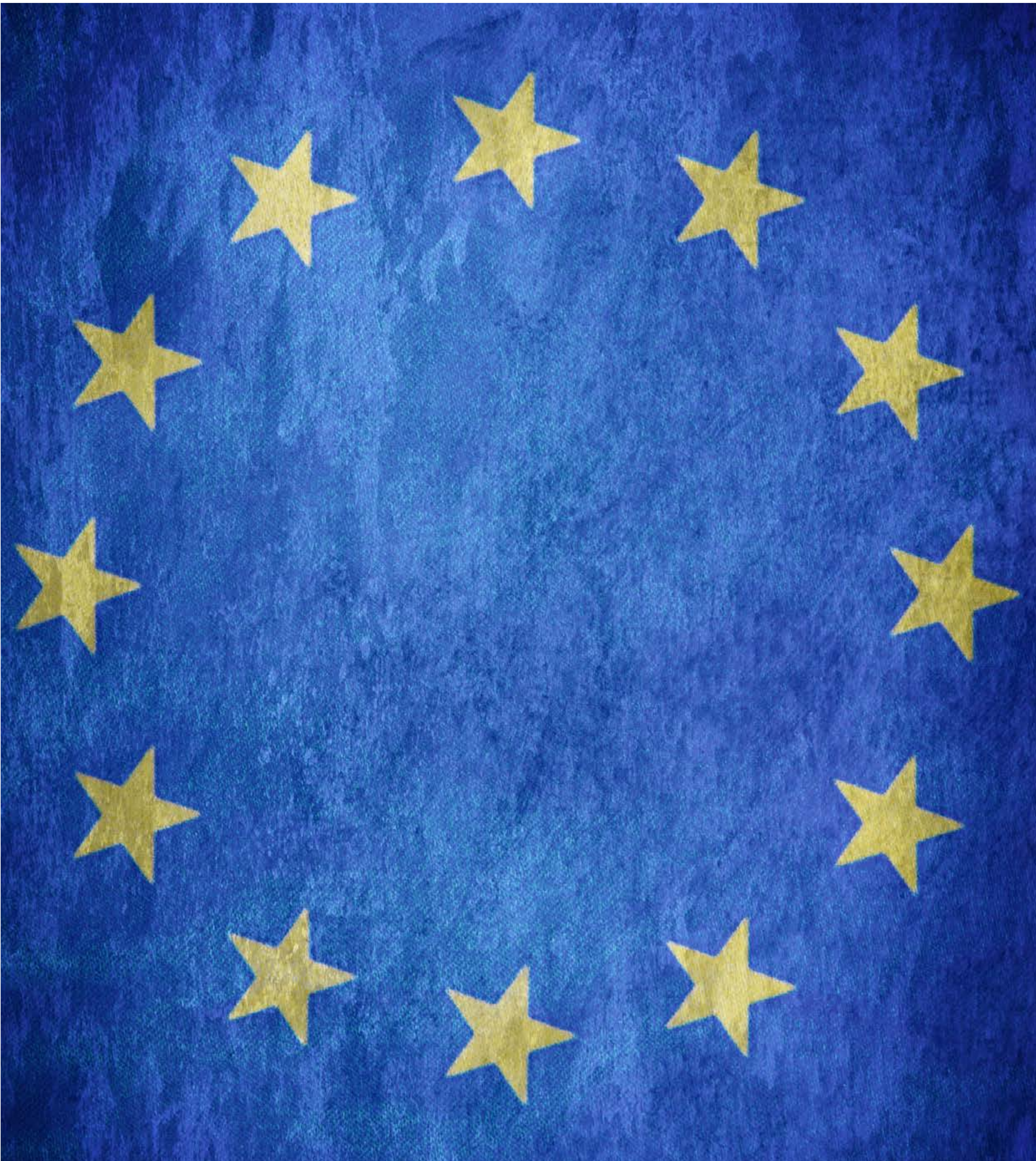
Under the principle of proportionality, the action of the EU must be limited to what is necessary to achieve the objectives of the Treaties. In other words, the content and form of the action must be in keeping with the aim pursued.

Subsidiarity:

This is the principle whereby the EU does not take action (except in the areas that fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level.

Unanimity:

The term 'unanimity' relates to the requirement for all EU countries when meeting within the Council to be in agreement before a proposal can be adopted.



EUROPEAN COMMISSION'S TAX REFORM PROPOSALS

European Commission's Tax Reform Plan

The Journey

For a number of years, the EU and its Member States have been working together to address corporate tax reform:

- Since the formation of the Code of Conduct Group (Business Taxation) in 1998, a number of measures have been introduced to counter "harmful tax practices".

↓

- In March 2012, the European Council called on the Council and the Commission "to rapidly develop concrete ways to improve the fight against tax fraud and tax evasion".

↓

- This lead to the release of the Commission's 'Action Plan to strengthen the fight against tax fraud and tax evasion' in December 2012, which was made up of over 30 measures to combat tax fraud and evasion.

↓

- In June 2015, the Commisssion launched an 'Action Plan For a Fair and Efficient Corporate Tax System in the EU'.

↓

- As part of this Action Plan, the Commission went on to launch an Anti-Tax Avoidance Package in January 2016.

"Today we are taking a major step towards creating a level-playing field for all our businesses, for fair and effective taxation for all Europeans."

Pierre Moscovici, Commissioner, Economic and Financial Affairs, Taxation and Customs

Any EU tax proposals must be agreed unanimously by the 28 Member States in order to become law. !

The major pieces of work on Anti-Tax Avoidance at the European Commission

ACTION PLAN FOR A FAIR AND EFFICENT CORPORATE TAX SYSTEM IN THE EU

1 CCCTB

- Anti-Tax-Avoidance Package (Incorporating BEPS in the EU) — LAUNCHES JANUARY 28 2016
- CCCTB — COMING SECOND HALF OF 2016
  - 1. Common tax base
  - 2. Consolidation

2 ENSURING EFFECTIVE TAXATION WHERE PROFITS ARE GENERATED

- Improvements to transfer pricing framework
- Patent Boxes
- Effective taxation

3 BETTER TAX ENVIROMENT FOR BUSINESS

- Cross-border loss offset
- Improvements to dispute resolution mechanism

4 PROGRESS ON TAX TRANSPARENCY

- Automatic exchange on tax rulings - implementation
- Non-cooperative tax jurisdictions list - screening
- Further work on transparency

5 EU TOOLS FOR COORDINATION

- Coordination of Member States' audits
- Reform of Code of Conduct Group
- Reform of Platform on Tax Good Governance

Anti-Tax Avoidance Package (ATAP)

- **Anti-Tax Avoidance Directive**
- **Directive on Country-by-Country Reporting**
- **Recommendation on Tax Treaties**
- **Communication on External Strategy**

The Directive contains 6 key proposals:

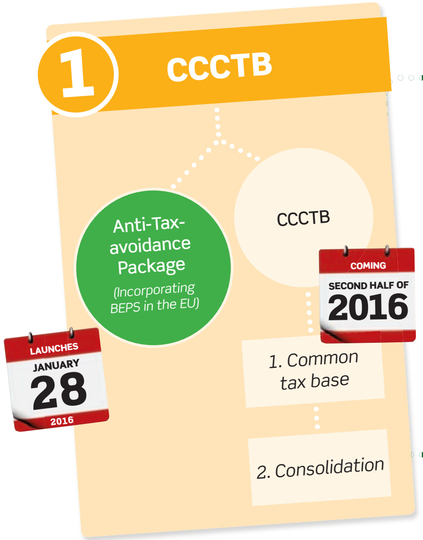
3 from the OECD BEPS work

- Deductibility of interest
- Controlled foreign company (CFC) rules
- Hybrid mismatches

+

3 from work carried out by the Commission on CCCTB

- General anti-abuse rule
- Exit taxation
- Switch-over clause



Anti-Tax Avoidance Package

The aim of the Anti-Tax Avoidance Package is to ensure that there is consistent application of the BEPS principles across the 28 Member States in the EU. The package is made up of four main initiatives.

Anti-Tax Avoidance Package (ATAP)

- **Anti-Tax Avoidance Directive**
- **Directive on Country-by-Country Reporting**
- **Recommendation on Tax Treaties**
- **Communication on External Strategy**

An Anti-Tax Avoidance Directive

This is a proposed Directive, which will be binding on the Member States of the EU once it is unanimously agreed and adopted. This contrasts with the OECD BEPS outputs, which are soft law. They are not legally binding but there is an expection that they will be implemented by countries that are part of the BEPS consensus. Compliance will be monitored through an OECD Peer Review process. The Anti-Tax Avoidance Directive has six key proposals. It is taking three elements of the original CCCTB proposal that address tax avoidance issues and it also contains three proposals that emanate directly from the OECD BEPS actions.

The proposal is that the measures in the Directive would be adopted as a 'minimum level of protection', although individual Member States can adopt a 'higher level of protection' if they wish. This means that Member States can choose to go further in their national law when implementing the standards of the Directive, but cannot introduce a lower standard.

These proposals are currently being considered by the Member States and will require unanimous agreement.

The Directive contains 6 key proposals:

3 from the OECD BEPS work

Deductibility of interest

Controlled foreign company (CFC) rules

Hybrid mismatches

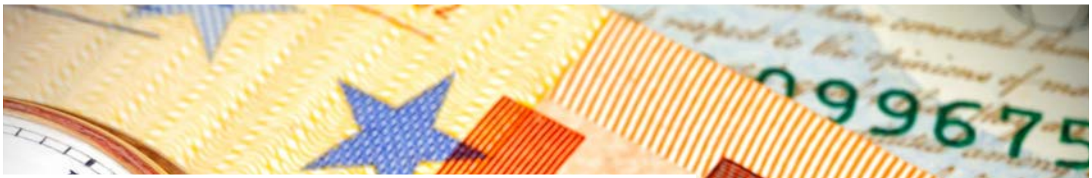
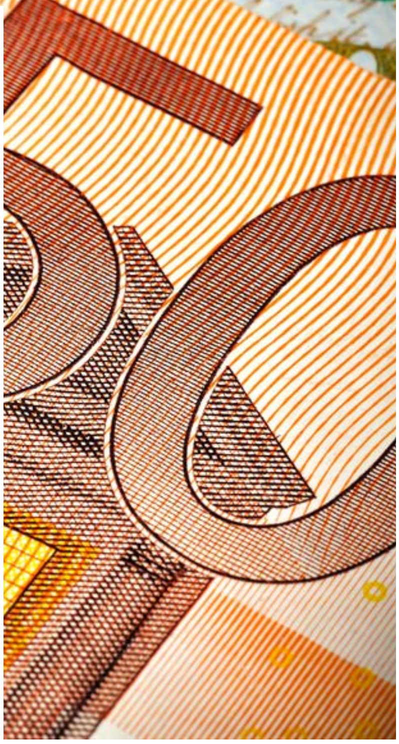
+

3 from earlier work carried out by the Commission on CCCTB

General anti-abuse rule

Exit taxation

Switch-over clause

A Directive on Country-by-Country Reporting

The ATAP package also contains a draft Directive which proposes the introduction of Country-by-Country Reporting ("CbCR") into EU law. The Directive is based on the OECD's CbCR proposals, which are explored further in our Transparency Chapter.

The Commission is proposing to further extend its Directive on Administrative Cooperation (DAC) to facilitate the exchange of CbCR Reports.

Recommendation on Tax Treaties

This element of the package is a Commission Recommendation, which encourages Member States to revise their tax treaties to:

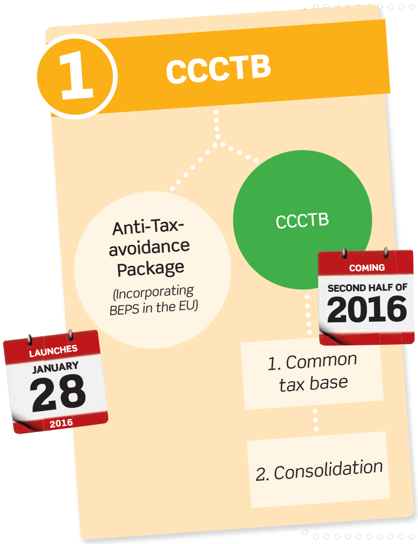
- Include a Principal Purpose Test. The OECD proposes that either a Principal Purpose Test ("PPT") or a Limitation on Benefits rule ("LOB") be included in tax treaties. However, the Commission decided against recommending the LOB rule, as it "considers LOB clauses to be detrimental to the Single Market and, in particular, Capital Markets Union".
- Amend the definition of Permanent Establishment.

The Principal Purpose Test ("PPT") is an anti-abuse provision which would remove treaty benefits where the principal purpose of arrangements is to obtain treaty benefits.

The Limitation on Benefits rule ("LOB") limits treaty benefits to companies with sufficient presence in the relevant country, based on their ownership and activities. A number of countries, such as the US and Japan already have an LOB clause in their tax treaties.

Communication on External Strategy

The fourth element of the Anti Tax Avoidance Package is a communication which proposes a framework for a new EU external strategy for effective taxation. It identifies ways to promote tax good governance and assist developing countries to meet these governance standards. It also sets out a strategy for assessing and listing third countries (these are countries which are not members of the EU or European Economic Area ("EEA")).



Common Consolidated Corporate Tax Base

Together with the Anti-Tax Avoidance Package, the re-launched Common Consolidated Corporate Tax Base (CCCTB) is at the heart of the Commission's Action Plan for a Fair and Efficient Corporate Tax System.

A CCCTB proposal was originally put forward by the Commission in 2011, as a tax simplification measure to assist business with the complexity of dealing with multiple tax regimes in the EU. The original proposal was optional for business, whereas, the Commission intends this proposal to be a mandatory measure aimed at preventing aggressive tax planning.

The CCCTB is based on two key elements:

1. A Common base, where a single set of tax rules would be used to calculate the taxable profits of companies across all Member States.
2. Consolidation, where the total taxable profits arising to a corporate in the EU would be consolidated and then divided amongst group entities using formulary apportionment, based on certain factors. In the first CCCTB proposal of 2011, these factors were sales, assets and employees.

The Commission held a public consultation on CCCTB, which closed in January 2016. It is expected that further proposals will emerge from the Commission in the second-half of 2016.

DG COMP
EU State Aid Examinations
Since 2013, the Commission has been reviewing the tax ruling practices of Member States. It extended this inquiry to all Member States in December 2014. At the time of writing, the Commission has found that tax rulings granted by two Member States to specific companies were in breach of State Aid rules. The Commission has also concluded that a tax regime operated by one Member State was illegal under EU State Aid rules. The Commission is currently carrying out three separate inquiries into tax rulings granted by Member States.

ACTION PLAN FOR A FAIR AND EFFICENT CORPORATE TAX SYSTEM IN THE EU

2 ENSURING EFFECTIVE TAXATION WHERE PROFITS ARE GENERATED

Key Objective:	How the Commission is doing its work
Review of the EU transfer pricing framework to bring transfer pricing outcomes in line with value creation.	The Joint Transfer Pricing Forum is currently working on an EU approach to implementing BEPS transfer pricing measures.
Aligning the income qualifying for preferential patent box regimes with the location of R&D activity.	The Code of Conduct Group (Business Taxation) has endorsed the 'modified nexus' approach and will be monitoring Member States to ensure existing boxes are changed to meet this approach.
Limiting access to the benefits of existing EU Directives if there is not "effective taxation" elsewhere in the EU.	The Commission is currently considering potential changes to the Interest and Royalties Directive and the Parent-Subsidiary Directive.

3 BETTER TAX ENVIROMENT FOR BUSINESS

Key Objective:	How the Commission is doing its work
Enabling cross border loss offset.	A temporary cross-border loss relief mechanism is being considered by the Commission as part of its CCCTB proposals.
Improving double taxation dispute resolution mechanisms.	The Commission will propose improvements to the current dispute resolution mechanisms by summer 2016. The Commission is currently holding a public consultation on this.

4 PROGRESS ON TAX TRANSPARENCY

Key Objective:	How the Commission is doing its work
Automatic exchange of information on cross border tax rulings.	EU Member States have adopted Directive (DAC 3) which provides for the automatic exchange of rulings and Advance Pricing Agreements ("APAs"). The Code of Conduct Group (Business Taxation) is also developing guidelines on the conditions for the issue of tax rulings by Member States.
Ensuring a more common approach to third country non-cooperative tax jurisdictions.	The External Strategy for Effective Taxation, released as part of the Commission's Anti-Tax Avoidance Package, sets out an approach to assessing third countries.
Country-by-Country Reporting (exchange of information on companies between tax authorities).	The Commission published a draft Directive as part of the Anti-Tax Avoidance Package which sets out the EU framework for CbCR between EU Member States. The Commission is currently carrying out an impact assessment on public CbCR. The results of this assessment are expected in April 2016.

5 EU TOOLS FOR COORDINATION

Key Objective:	How the Commission is doing its work
Improving Member States' coordination on tax audits.	The Platform on Tax Good Governance will be considering how to improve cross-border audits.
Reforming the Code of Conduct Group (Business Taxation) and the Platform on Tax Good Governance.	The Commission has recently prolonged the mandate of the Platform on Tax Good Governance and will be making proposals on the Code of Conduct Group.

THE US & THE GLOBAL TAX AGENDA

Global tax reform is an issue of significance in the US for a number of reasons:

1. Breadth and Scale of US Multinationals Globally

The breadth and scale of US multinationals with operations across the world who will be impacted by new EU and OECD global tax rules/legislation and any unilateral action being taken by individual countries.

- US Companies account for 53 out of the world's top 100 companies based on market capitalisation in 2014
  PwC Report on Global Top 100 Companies by market capitalisation, March 2015

- US majority-owned affiliates employed roughly 14.5 million workers in 2013. 35% of these were in Europe
  The Case for Investing in Europe 2015, AmChams in Europe

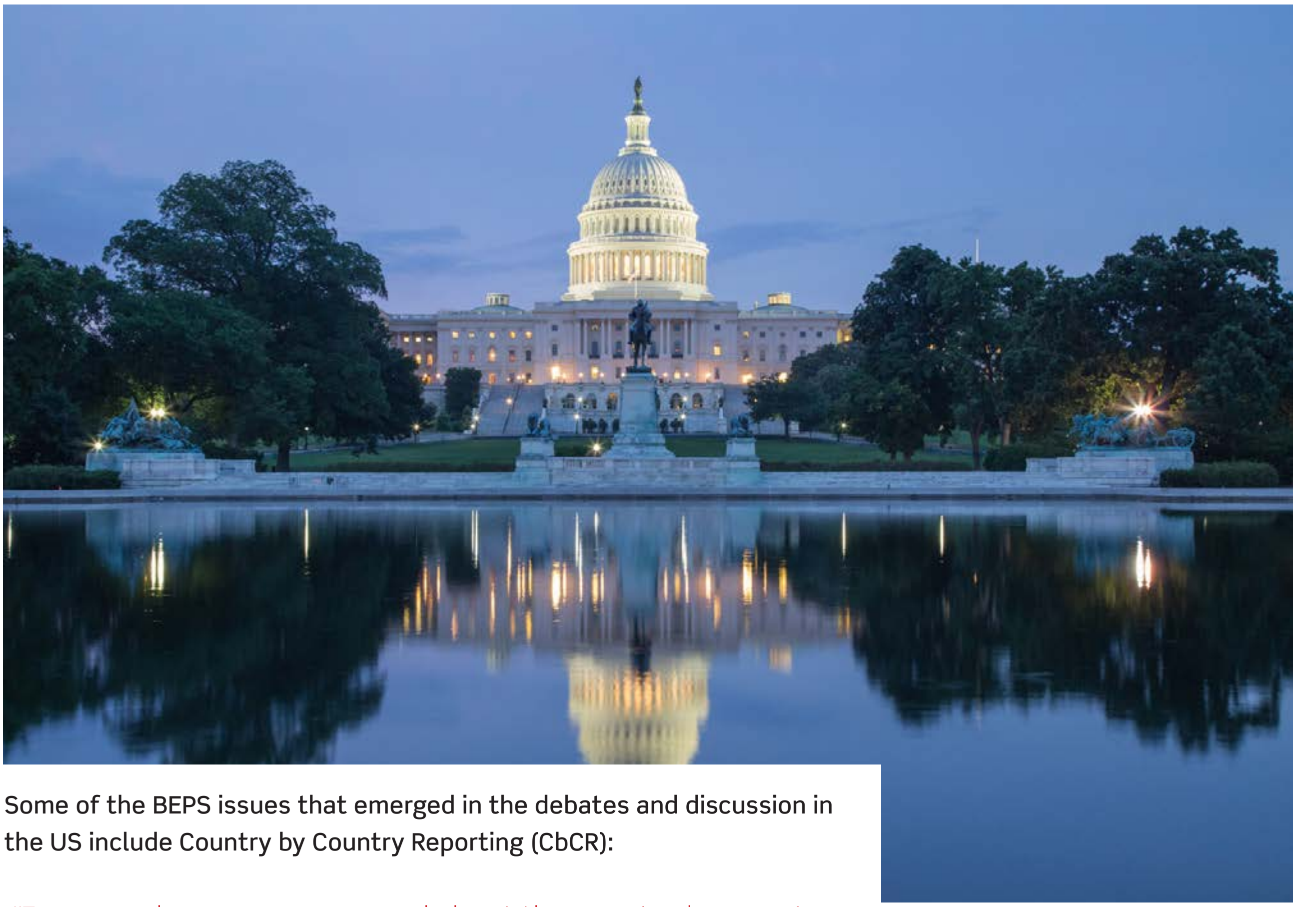
2. The US is a member of the OECD

The US is one of the 34 members of the OECD whose national tax legislation and rules will be impacted by certain, if not all, aspects of the BEPS Plan. Its tax administration system will also be impacted by changes arising from BEPS and the EU's implementation of BEPS.

Robert Stack, Deputy Assistant Secretary (International Tax Affairs) US Department of the Treasury, is the US representative in the BEPS negotiations and is a leading player in global tax reform.

"The United States has a great deal at stake in the BEPS project and a strong interest in its success…. Our active participation is crucial to protecting our own tax base from erosion by multinational companies, much of which occurs as a result of exploiting tax regime difference"
Testimony of Robert Stack to the Senate Committee on Finance Hearing on OECD BEPS Reports, 1 December 2015.

"… as the home to some of the world's most successful and vibrant multinational firms, we have a stake in ensuring that companies and countries face tax rules that are clear and administratable and that companies can avoid unrelieved double taxation, as well as expensive tax disputes. Both the United States and our companies have a strong interest in access to dispute resolution mechanisms around the world"
Testimony of Robert Stack to the Senate Committee on Finance Hearing on OECD BEPS Reports, 1 December 2015.



Some of the BEPS issues that emerged in the debates and discussion in the US include Country by Country Reporting (CbCR):

"For example, we are concerned about the country-by-country (CbC) reporting standards that will contain sensitive information related to a U.S. multinational's group operations.......
"Letter from Congress to the Honorable Jacob Lew, Secretary of the Treasury, 9 June 2015.

"Companies have also been concerned about various reporting requirements that could impose significant compliance costs on American businesses and force them to share highly sensitive proprietary information with foreign governments"
Senator Orrin Hatch, Senate Committee on Finance Hearing on OECD BEPS Reports, 1 December 2015.

Another issue in the US, which is being impacted by the OECD BEPS Plan, is Innovation Boxes. In July, members of the US Congress, House of Representatives Committee on Ways and Means (Charles Boustany and Richard Neal) released proposals for an "innovation box".

THE OECD Modified Nexus approach will impact the US proposal:
"Their plan would allow American businesses to better compete with foreign companies and keep their research and development facilities here in the US. This is just one piece of international tax reform, but it's an important one"
Paul Ryan, [former] Chairman of the US Congress, House of Representatives Committee on Ways and Means, Press Release, 29 July 2015.

"The growing bipartisan consensus in Washington on how to achieve business tax reform creates the opportunity to take this key step sooner rather than later"

Jacob Lew, Secretary US Department of the Treasury

3. The US Tax Reform Agenda

There is an ongoing debate in the US about the need to reform its own tax system. Many figures have stated that the US tax system is broken and needs to be fixed. There have been calls on Congress to address this issue.

Speaking on US Tax Reform, Secretary of the US Department of the Treasury, Jacob Lew had this to say:

"The Budget again calls for a fiscally-responsible business tax reform, and makes a number of concrete tax reform proposals, including a complete reform of our international tax system"

Jacob Lew, Secretary, US Department of the Treasury, Senate Committee on Finance Hearing on The President's Fiscal Year 2017 Budget, 10 February 2016.

"Our first effort must be to address our broken international tax rules and the growing threat to American worldwide companies"

Kevin Brady, Chair, US Congress, House of Representatives Committee on Ways and Means, Committee hearing on the President's FY 2017 Budget, 11 February 2016.

High corporate tax rates in the US are also a subject of much debate when it comes to US tax reform with the top US corporate tax rate of 35% comparatively higher than competitor jurisdictions.

"High statutory rates encourage multinational firms to find ways to shift profits, especially on intangible income, to other jurisdictions. So lowering our statutory rate while broadening the base could help reduce erosion of the US base"

Robert Stack, Deputy Assistant Secretary (International Tax Affairs) US Department of the Treasury, Senate Committee on Finance Hearing on OECD BEPS Reports, 1 December 2015.

Global & US Tax Reform Agenda – The Main Stakeholders

US Congress, House of Representatives Committee on Ways and Means

This is the chief tax-writing committee in the House of Representatives. Under the US Constitution, all Bills for raising revenue must originate in the House of Representatives. US Congressman Kevin Brady (R-Texas) is the Chair of the Committee.

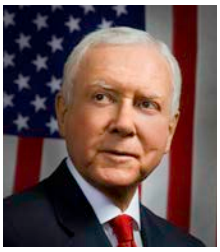
Kevin Brady, Chair, US Congress, House of Representatives Committee on Ways and Means

"In the nearly 30 years since enactment of the Tax Reform Act of 1986, the world has changed and countries around the globe have adapted their tax systems to maximize their competitiveness in today's global economy while the United States has fallen behind"

Kevin Brady, Keynote Address at the Tax Council Policy Institute Symposium, 12 February 2016.

US Senate Committee on Finance

This is a standing committee of the United States Senate which deals with tax matters and other revenue measures.
The Committee is Chaired by Senator Orrin Hatch (R – Utah)



Senator Orrin Hatch, Chair, Senate Finance Committee

Joint Committee on Taxation

The Joint Committee is a committee of the US Congress and is made up of experienced professional staff. The Chair is Senator Orrin Hatch. It assists Congressional tax-writing committees and Members of Congress with the development and analysis of legislative proposals.

Jacob Lew
Secretary US Department of the Treasury

Robert Stack
Deputy Assistant Secretary (International Tax Affairs) US Department of the Treasury

Department of the Treasury

The Department of the Treasury is responsible for ensuring the financial security of the United States.

Secretary, US Department of the Treasury, Jacob Lew.

Deputy Assistant Secretary (International Tax Affairs) US Department of the Treasury, Robert Stack.

Mr Stack is the US representative in the BEPS negotiations and is a leading player in global tax reform.

The basic functions of the Department of the Treasury include;

- Collecting taxes, duties and monies paid to and due to the US, and paying all bills of the US
- Enforcing Federal finance and tax laws;
- Investigating and prosecuting tax evaders, counterfeiters and forgers

The Department of the Treasury is actively involved in the tax reform discussion and it has listed tax reform as one of the pillars in the administration's Fiscal Year '17 Budget proposals.

US Presidential Election 2016

In the run up to the US presidential election later this year, corporate tax reform is fast emerging as a key campaign issue for all candidates.

TAX DATA & TRANSPARENCY – AT THE HEART OF GLOBAL TAX REFORM

Transparency is at the heart of the global tax reform agenda and the objective is to ensure that multinationals provide more and better information about their business to tax authorities worldwide.
The transparency measures being put forward by the OECD and the EU are focused on three core elements:

1. Country-by-Country Reporting ("CbCR")

- The OECD position on CbCR is outlined in Action 13.
- The European Commission has published a draft Directive on CbCR as part of its Anti-Tax Avoidance Package.

2. Transfer Pricing documentation – master file and local file

- The OECD position on transfer pricing documentation is covered by Action 13 in the BEPS plan.
- In the EU, the Joint Transfer Pricing Forum is working on the EU approach to implementing this BEPS action.

3. Exchange of tax rulings

- In the OECD, this is dealt with by BEPS Action 5 – it calls for the compulsory spontaneous exchange of certain tax rulings.
- In the EU, DAC 3 requires the compulsory automatic exchange of tax rulings and APAs (Advance Pricing Agreements).

- Spontaneous exchange of tax rulings means that a country provides its treaty partner with rulings about a taxpayer if it considers that it is relevant for the other country.
- The automatic exchange of cross-border tax rulings and advance pricing arrangements means the automatic provision of information by one Member State to all Member States and the Commission.

TAX TRANSPARENCY - THE THREE PILLARS

Country-by-Country Reporting	Transfer Pricing Documentation	Exchange of Rulings
OECD BEPS ACTION 13: Introduction of Country-by-Country Reporting as a minimum standard CbCR will not be made public	OECD BEPS ACTION 13: Broadening of the information to be provided in the master file and local file	OECD BEPS ACTION 5: Compulsory spontaneous exchange of certain rulings that could give rise to BEPS
EU: Draft Directive for the implementation of Country-by-Country Reporting Impact assessment to determine the feasibility of public CbCR	EU: EU-TPD to be reviewed to align the current requirements of the master file and local file with the OECD recommendations	EU: Extension of DAC to allow for the mandatory automatic exchange of tax rulings and APAs

EU TPD

The Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) was developed by the EU Joint Transfer Pricing Forum (JTPF) and was officially adopted on 27 June 2006. According to it, “Member States will accept standardised and partially centralised transfer pricing documentation for associated enterprises in the EU and to consider it as a basic set of information for the assessment of a multinational enterprise group’s transfer price”.

1. Country-by-Country Reporting ("CbCR")

Background

The newly proposed CbCR is simple (at least in concept).

- Multinational companies with a global turnover of €750m or more must prepare a CbC report, providing information on their global footprint.
- This report must be filed with the tax authority in the country where the parent is tax resident, and
- That tax authority shares the CbC report with all tax authorities where the MNC operates*.

Although the basic concept is simple, the implementation of CbCR will give rise to a range of complexities.

- OECD Action 13 provides overview guidance on CbCR, but there will be variations in different countries on interpretation, as implementation begins to roll out. This could mean some differences in the rules country by country and even if these differences are small, they must be understood and monitored by businesses.
- The pace of implementation by countries will also vary. Some countries, such as Ireland, Spain and Mexico, have already implemented the necessary legislation and over the coming months we will see many more countries adopting the regime.

**Where a qualifying Competent Authority agreement is in place that provides for the exchange of country-by-country reports.*

Is it always the parent who files the CbCR report?

The intention is that the MNC parent will file the CbCR in their country of tax residence. However;

- In certain circumstances, the parent can choose to nominate another group company (known as the 'surrogate') to file the CbCR on behalf of the group. When this happens, the report is filed in the surrogate's country of tax residence.

- Where the parent company does not file a CbCR (either due to a failure to file or due to the fact that CbCR legislation is not in place in the parent's country), a tax authority may request a local subsidiary to file the CbCR. This is known as the secondary mechanism.

Table 1:

ANNEX III TO CHAPTER V. A MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT – **35**

Annex III to Chapter V

A model template for the Country-by-Country Report

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group:
Fiscal year concerned:

Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

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Table 2:

36 – ANNEX III TO CHAPTER V. A MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group:
Fiscal year concerned:

Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)												
			Research and Development	Holding or Managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other[2]
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

[2] Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

GUIDANCE ON TRANSFER PRICING DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING © OECD 2014

Table 3:

ANNEX III TO CHAPTER V. A MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT – **37**

Table 3. Additional Information

Name of the MNE group: Fiscal year concerned:
Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.

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What information is included in the CbCR?

The model CbCR template developed by the OECD consists of three tables:

Table 1:

This is mainly quantitative data which must be completed by the MNC on a country-by-country basis. For each country, the MNC must provide detail on revenue, profit (or loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets.

Table 2:

This table consists of more qualitative information, which must be provided on an entity-by-entity basis in the group, including the country of tax residence and the nature of the entity's business activities.

Table 3

This table consists of additional information that is relevant to the MNC e.g. exchange rates, specific tax reliefs claimed, details of transparent entities.

In completing each of the tables, MNCs will need to consider many details on the information provided. For example, when disclosing the number of employees, MNCs will have to decide what approach to take to part-time employees, contractors, leavers etc. The OECD has provided some guidance on completing the tables.
The aim for MNCs is to produce a full and accurate CbC report, trying to anticipate questions that might arise from tax authorities and dealing with them up front to avoid disputes futher down the line.

Completing a CbC Report – making sure the business is ready

CbCR is a new initiative for MNCs and it is likely to have significant implications for both the tax function of an MNC and other business units. There are three key steps in the CbCR process:

1. Gathering the data and other information necessary to complete Tables 1-3 in the CbC Report.
2. Assessing this information once it has been collected to ensure that it accurately reflects the global business footprint.
3. Ensuring the MNC is ready to deal with the issues that will arise after the information has been provided.

Step 1: Gathering the data for the CbCR

Significant planning is required to source the quantitative and qualitative data and ensure that IT and other business systems will be able to generate the data needed, in the correct format.

- There is a certain amount of flexibility about the source of the financial information – management accounts, financial statements, etc.
- The source of information chosen must provide a proper reflection of the global business.
- Some information is easier to source than others – e.g. it is unlikely that there will be readily available data on full time equivalent employees in each country.
- The information can be gathered from the 'top down' (using the MNCs consolidated accounts, as a starting point) or from the 'bottom up' (using the accounts of the constituent group companies).

All decisions made regarding the data gathering process and the data disclosed should be properly documented for future reference as year-on-year consistency in approach is crucial.

Some added CbCR complexities

- Some MNC have large and complex structures, which can include branches, partnerships, joint ventures, etc.
- The MNC needs to understand what data/ entities are to be included in the CbCR.
- Information may not be readily available to complete the template.

The CbCR process is likely to cross many functions in the business - tax, finance, IT, legal, HR, etc.

Step 2: Assessing the information collected

After gathering the information, the MNC will need to assess how it reflects the footprint of the business to an outside party.

- Particular issues or particular countries may be identified where there is a higher likelihood of challenge from tax authorities.
- Economic substance and activities in each jurisdiction must match profits arising there. If this is not the case in any jurisdiction, then adjustments to the business model may be necessary to ensure compliance with BEPS principles.
- The information generated from the CbCR process should be in line with the business' transfer pricing position.

Step 3: Dealing with issues that may arise from CbCR

CbCR is a risk assessment tool to be used by tax authorities. MNCs should therefore expect additional questions and even challenges once it has been filed and shared with tax authorities internationally.

The Board will want to ensure that:

- There is a proper explanation and narrative for the figures prepared and that the figures support this narrative.
- The tax risk has been quantified and the MNC is prepared to deal with any controversy that might arise.
- The corporate tax governance policies of the MNC are up to date, to reflect the changing global tax agenda.
- A robust tax control framework is in place to maintain tax compliance and manage tax risk.

EU position on CbCR

In 2016, the European Commission released proposals as part of their Anti-Tax Avoidance Package, to extend their Directive on Administrative Cooperation to facilitate the exchange of country-by-country reports.

EU impact assessment on Public CbCR

- On release of their CbCR proposals, the OECD explicitly stated that they were not pursuing public CbCR on grounds of confidentiality concerns.
- However, there are continued calls by NGOs for CbC Reports to be made public
- The European Commission is currently carrying out an impact assessment to determine whether the CbC Reports should be made public and the results of this assessment are expected to be revealed in April 2016.
- There are likely to be continued calls from the public for CbC Reports to be published

2. Transfer Pricing documentation

In addition to the new CbCR regime, the OECD has also broadened the scope of existing transfer pricing documentation by increasing the level of information included in both the Master File and Local File.
In particular, the Master File will provide authorities with an overview of the MNC's global operations. It is different than the CbC Reports in terms of its content and purpose.

Comparison of CbCR Transfer Pricing Master File		
	CbCR	**Master File**
Scope	Quantitative analysis of global footprint and financial results of the MNC	High level overview of the MNC's business
Purpose	To be used for high level risk assessment by tax authorities	To support the MNC's transfer pricing policy
Who must prepare and file?	Groups with turnover of €750m or above	No de-minimus of €750m
Delivery method	Provided by the MNC parent to the tax authority in their country of residence and then exchanged; tax authority to tax authority	Provided directly by MNC group entities to their local tax authority

Master file

The maintenance of a Master File has been a transfer pricing documentation requirement for many years. However, the format and scope of the information required to be included in the Master File has now been widened by the OECD.
The Master File must now give a full picture of the MNC group, providing information such as:

- The end to end supply chain
- The corporate legal structure
- Any strategy on intangibles
- The group's financing activity
- The tax policy
- Information about agreements with tax authorities

The Master File is available to all tax authorities where the MNC has operations and is filed locally by each entity.

Local file
The local file contains information about how the intra-group transactions of an individual entity conform to the arm's length standard. The local file is submitted to the (entity's) local tax authority.

The EU Joint Transfer Pricing Forum (JTPF)
The EU Joint Transfer Pricing Forum (JTPF) has lead the development of EU Transfer Pricing Documentation requirements.

The JTPF is now in the process of reviewing these requirements to take account of the conclusions of the BEPS work.

3. Exchange of Tax Rulings

OECD
OECD Action 5 sets out the OECD framework for exchange of tax rulings:

1. Compulsory spontaneous information exchange between governments in respect of taxpayer-specific rulings
2. The framework details the six types of rulings that will be subject to compulsory spontaneous exchange
3. For most rulings, the information will be automatically exchanged with the countries of residence of all related parties with which a company enters into a transaction for which a ruling is granted

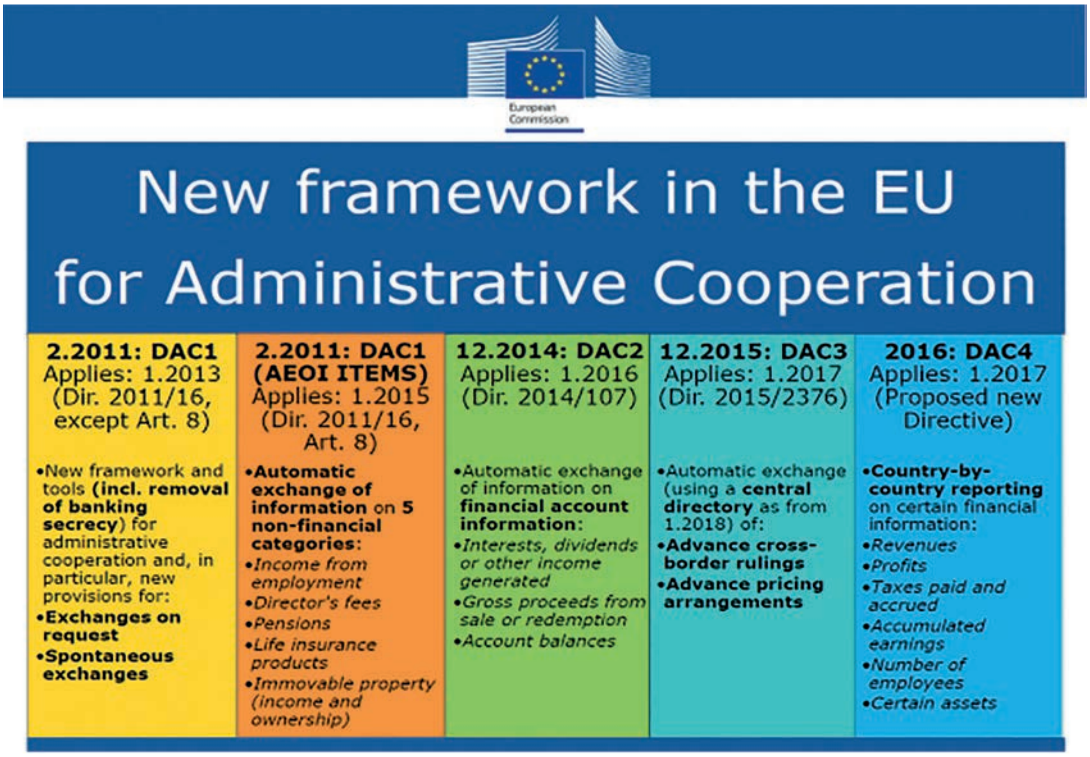
EU
In December 2015, the EU Council's ECOFIN agreed to extend the provisions of the EU Directive on Administrative Cooperation (DAC 3), to cover the automatic exchange of tax rulings and Advance Pricing Agreements between Member States.

The DAC - The EU Directive at the centre of the EU's work on Tax Transparency

The EU has been working on the tax transparency agenda for many years. The Directive on Administrative Cooperation (otherwise known as "DAC") is at the core of tax transparency within the EU and it has been broadened in a number of ways since it was first adopted in 2011. Directives relating to tax always require unanimity.
While the original DAC has evolved into what is now likely to become DAC4, there was much work undertaken along the way.

The DAC Journey:

- The Commission's work began with 'DAC 1' which was largely aimed at countering banking secrecy.
- The DAC was extended in 2014 to facilitate the exchange of financial account information (DAC 2).
- March 2015 - the Commission presented the Tax Transparency Package which set out a number of measures to boost tax transparency. At the core of this package was a proposal to introduce the automatic exchange of information between Member States on their tax rulings.
- December 2015 - the ECOFIN council agreed to extend the provisions of the DAC (DAC 3) to cover the automatic exchange of tax rulings and Advance Pricing Agreements between Member States.
- In 2016, the Commission released proposals as part of the Anti-Tax Avoidance Package to extend the DAC to facilitate the exchange of CbC reports.



SO WHO IS IMPACTED BY GLOBAL TAX REFORM PROPOSALS?

MULTINATIONAL COMPANIES

WHY?	HOW?
Closer alignment of substance and profit	The objective of the BEPS Action Plan is to ensure that profits are taxed in the jurisdiction where the economic activities generating such profits are performed and where value is created. Companies will need to review their operating model to ensure that they have an even stronger alignment between profits earned globally and the substance or activities creating those profits.
Transparency	Country-by-Country Reporting (CbCR) and the sharing of information is one of the biggest engines of tax transparency - it is set to have one of the biggest impacts on companies. For the first time, large corporates will be required to disclose key business information on a country-by-country basis which will be shared between tax authorities across the world. Compliance with CbCR rules, together with broader Transfer Pricing documentation requirements, is likely to have a significant impact on in-house tax functions in terms of resources, staff-mix and systems implementation. **Country by Country Reporting & Increased Interventions** CbC Reports will give tax authorities greater visibility of a corporation's global tax position, which will inevitably lead to an increase in the level of audit interventions. In preparation for engagement with tax authorities, companies will need to consider where their profits are generated and whether the local economic substance correctly reflects that level of profit. **Practical Collation of Data** The collation of data for the CbC Reports, together with the increased interaction with tax authorities will have an impact on the resources of in-house tax functions, and the wider business (e.g. IT, Human Resources, Finance, Data Teams etc.)

82%

of respondents said that they have made substantial or moderate changes to their tax strategy in response to reputational concerns

- ALLEN & OVERY SURVEY 2015: NEGOTIATING THE MINEFIELD: CHALLENGES FACING THE CORPORATE, TAX FUNCTION

85%
of US-headquartered companies report that they are experiencing more risk or uncertainty around tax legislation or regulation than they were two years ago.

- EY SURVEY 2014: TAX RISK AND CONTROVERSY

WHY?	HOW?
Transparency	**Transfer Pricing Documentation (including tax rulings)** The scope of transfer pricing documentation has been broadened meaning that companies will have to provide a greater degree of information to tax authorities through the master file and local file. Both the EU and OECD have put forward proposals to enable the automatic exchange of information of tax rulings and APAs between tax authorities.
Transfer Pricing	The re-design of the transfer pricing principles will require a closer alignment of profits with the location of economic value creation. In particular, businesses that derive value from intangibles will have to consider the location of the key 'DEMPE' functions in relation to those intangibles (Development, Enhancement, Maintenance, Protection and Exploitation). This requires an in-depth assessment of the business processes and the organisational model. It also requires an understanding of the people in the organisation who manage the risks and whether the companies in the group which control the risks actually have the financial capacity to bear them. The new transfer pricing rules are more focused on people functions and less on contractual terms and capital. Key questions for businesses to consider are; • What key employees do and where, • Whether the profits being realised in these global locations are aligned with the functions and substance located there, • Where key decisions are taken and where management control is actually affected? As mentioned above, more detailed end-to-end transfer pricing documentation will be required, together with a new CbCR report which provides quantitative information and analysis about the company's global business and footprint. The revised transfer pricing guidelines are still being developed by an OECD working group and it is expected that these will be released in the next 12 months.

WHY?	HOW?
Intangibles	**Definition of Intangibles** The definition of intangibles has been expanded and there have been significant changes to the rules governing which group company is entitled to the income from intangibles. Returns on intangibles will be determined based on where the DEMPE functions are carried out. **New Modified Nexus Approach (substance aligned with profit)** The introduction of a new Modified Nexus Approach for patent / innovation boxes means that companies wishing to avail of these preferential IP regimes need to review the way in which a company's R&D is performed, who performs and manages it and where the resulting IP is held and managed.
Global employee mobility	Some realignment of employee locations may be needed to ensure that substance is better aligned with profit. Companies must have employees with the requisite skills, experience and decision making ability operating in the correct location. In a post BEPS world, employees will have to become more globally mobile. As employees move cross-border, companies will need to keep under review their PE risk and also ensure that they are complying with their employment tax obligations.

WHY?	HOW?
Permanent establishment changes	PE risk has increased i.e. the risk of a company creating a taxable presence in a foreign country. Lower thresholds will now apply to PEs and it is more likely that some activities carried on in a country will create a tax presence in that country. This can lead to a corporate tax charge in that foreign country plus increased compliance costs - tax registrations, keeping books and records, filing tax returns, etc. PE risks that require particularly careful monitoring include the holding of inventory overseas, warehousing and sales functions.
Debt Financing	The proposed changes to interest deductibility will have a significant impact on companies' commercial financing arrangements and the cost of capital. They could impact capital expenditure and investment decisions, acquisitions, the location of working capital and even the valuation of the group. The fixed ratio rule could restrict a company's tax relief on interest payments to a range of between 10% - 30% of EBITDA. Certain capital intensive industries and the financial services sector could be particularly affected by the proposals. In addition, this may be a particular challenge for companies that have a low EBITDA because their interest deduction will be restricted to a maximum 30% of a low base line amount. Countries may have the option to introduce a group wide ratio in any new legislation on interest deductibility and this could reduce the impact of the issue in certain cases. Rather than each company in the group bearing a 10% - 30% restriction of their individual EBITDA, it is the group as a whole that is subject to the restriction.
Increased interaction with tax authorities	The new rules and the heightened transparency levels brought about by automatic exchange of tax rulings, CbCR and new transfer pricing documentation, will result in more interaction with global tax authorities. Companies need to be able to foresee the queries which may arise from analysis by tax authorities of key company data provided to them.

"Other functions in the business will also have a role to play such as public affairs, communications and operations."

WHY?	HOW?
Increased public interest in tax affairs and tax strategy of companies	Given the increased public and media scrutiny of corporates' tax affairs, boards will want a greater oversight of the tax function to ensure that the reputational and financial risks are managed. Corporate governance is key to ensuring that these new rules are adhered to, and given the increased media attention on corporate tax strategies, this will mean that boards will now be required to play a greater role in the implementation and monitoring of corporate tax policies. Other functions in the business will also have a role to play such as public affairs, communications and operations.

SO WHO IS IMPACTED BY GLOBAL TAX REFORM PROPOSALS?

GOVERNMENTS ACROSS THE WORLD

WHY?	HOW?
Implementing tax reform by national governments - three main strands	National governments are now responsible for implementing tax reform. This involves: **1.** Finalising the remaining work on the **OECD** BEPS actions and implementing the actions **2.** For **EU Member States**, ensuring that BEPS is implemented in line with EU law together with other unanimously agreed EU tax reforms. **3.** Some governments may also take **unilateral** action that goes beyond OECD and EU measures. The extent and pace of implementation globally is going to have a significant impact on business certainty and cost.
Finalising the remaining work on some OECD BEPS actions and implementing the actions	A number of key issues in the OECD BEPS project remain to be finalised; • Work is ongoing on the revised transfer pricing guidelines and it is expected that these will be released by the OECD in the next 12 months. • The multi-lateral instrument is currently being developed by an OECD working group and it is expected this will be finalised by the end of 2016. • On interest deductibility, work is ongoing to finalise the details of a group ratio carve-out and special rules for insurance and banking sectors. Countries are currently working with the OECD to complete this remaining work. In parallel with finalisation of this policy work, countries are also beginning to implement the main OECD actions based on the reports published in October 2015.

WHY?	HOW?

For EU Member States: Negotiating and Unanimously Agreeing New EU Laws on Tax

The European Commission published an Anti-Tax Avoidance Package in January 2016 as part of its Action Plan for a Fair and Efficient Corporate Tax System. The proposals in this package need to be considered by all EU Member States and agreed by unanimity. The package has four elements:

- Anti-Tax Avoidance Directive to strengthen anti-tax avoidance measures
- Amendment to the Directive on Administrative Cooperation (DAC) to implement Country-by-Country Reporting
- Recommendation on Tax Treaties
- Communication on External Strategy for Effective Taxation

This package is a proposal from the Commission so there is a lot of work, and negotiation to be carried out before we see final agreement across the EU. The proposals will be discussed in Council working groups (consisting of officials from all Member States) and it is likely that a number of modifications will be put forward during this process.

Separately, Member States will also need to consider the CCCTB proposals which we expect to be released in Summer/Autumn 2016.

Unilateral actions by governments

Some governments may also take unilateral action that goes beyond OECD and EU measures. For example, Diverted Profits Tax has been introduced in the UK, while Australia has enacted a Multinational Anti-Avoidance Law. Legislation in Mexico and France has also included several BEPS-related changes, including new restrictions on the deduction of financing costs.

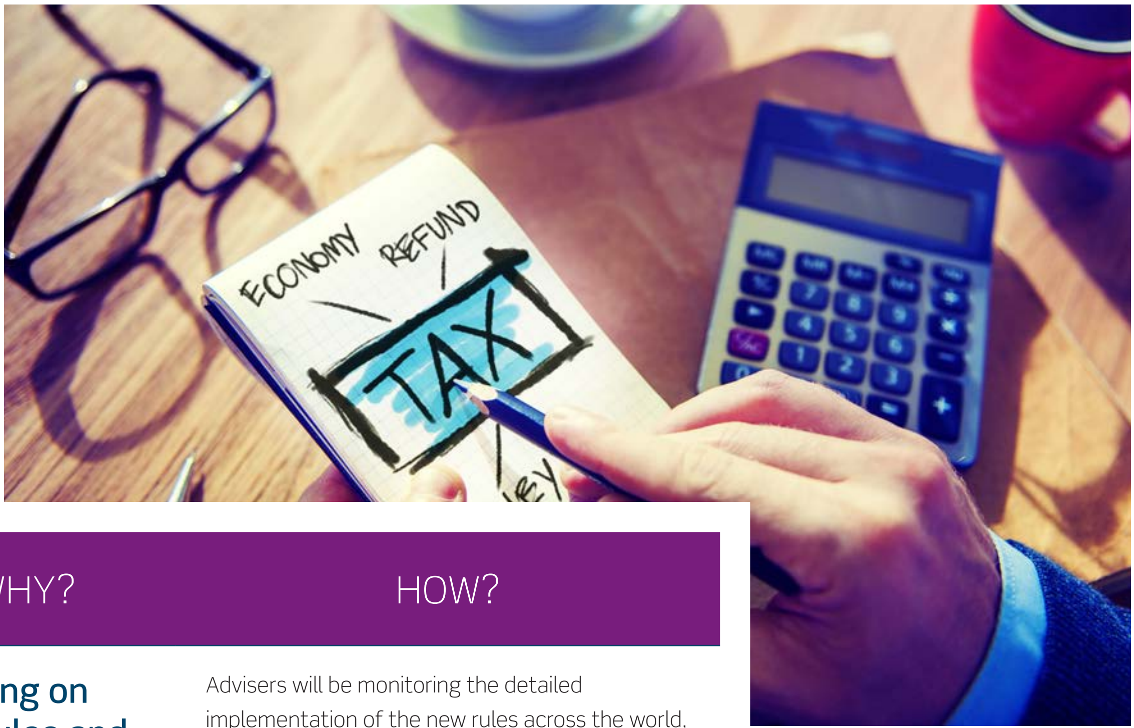
SO WHO IS IMPACTED BY GLOBAL TAX REFORM PROPOSALS?

TAX ADMINISTRATIONS /REVENUE AUTHORITIES

WHY?	HOW?
Exchange of information	Exchange of information obligations will arise from various proposals being put forward by the OECD, EU and the US. Dealing with the practical implementation of increased automatic exchange of information is going to have significant resource implications for tax authorities globally. • Collating the data to be exchanged with global counterparts; • Analysing the data received and risk assessing taxpayers; • Carrying out audits and checks on taxpayers; • Dealing with the likely increased demand from companies for Advance Pricing Agreements; and • Dealing with an inevitable increase in tax disputes and Mutual Agreement Procedures (MAPs) between tax administrations. The role of the competent authority will therefore take on even greater importance, particularly as countries commit to mandatory binding arbitration. Tax authorities will need to ensure that they are adequately equipped to deal with this remit in terms of wider skill-sets and more robust systems.
Dealing with taxpayer confidentiality	There are increasing calls for rules on the confidentiality of taxpayer affairs to be changed as part of the transparency agenda. Tax authorities may have to deal with increasing scrutiny of taxpayer affairs (including rulings, settlements etc.) by NGOs, the media, the public, national parliaments, EU committees and so forth.

SO WHO IS IMPACTED BY GLOBAL TAX REFORM PROPOSALS?

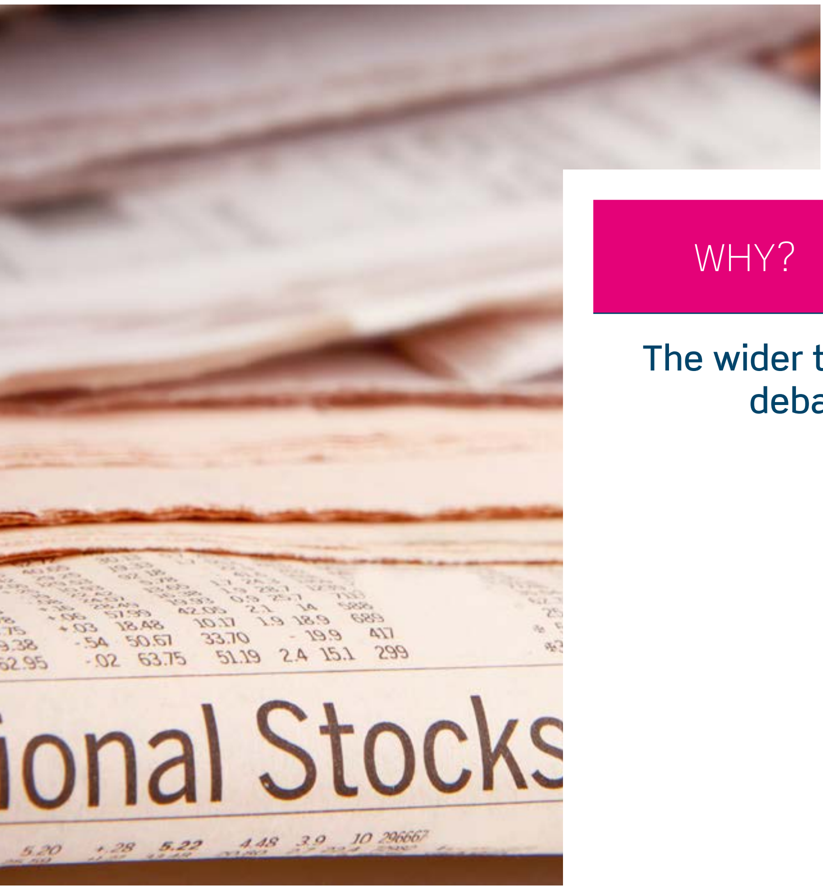
TAX ADVISERS GLOBALLY



WHY?	HOW?
Advising on new rules and monitoring global implementation of BEPS on behalf of clients	Advisers will be monitoring the detailed implementation of the new rules across the world, to assess the impact of the changes on clients in different sectors. They will be working closely with their clients to identify the risk areas and advise on the appropriate actions to be taken to ensure that clients are compliant with the new rules. The new rules will have an impact on clients' global operations and this will lead to increased interaction between advisor teams across multiple jurisdictions.
Working as important stakeholders with global and national policymakers	Advisers across the world will be engaging constructively with the OECD, EU and national governments; the common aim is to ensure that the new tax rules are implemented effectively and in a way that reduces business uncertainty and compliance cost.
Dispute resolution	Given the expected increase in tax controversy and audits, advisers will have a key role to play in the dispute resolution process. This will mean increased interaction with both local and global tax administrations.

SO WHO IS IMPACTED BY GLOBAL TAX REFORM PROPOSALS?

POLITICAL STAKEHOLDERS AND MEDIA



WHY?	HOW?
The wider tax debate	The tax reform agenda has now reached political levels and we have seen various countries establish specialist committees to further investigate the matter. Some examples are as follows: • The Irish government established the Joint Oireachtas Committee on Global Taxation in 2013. • The Public Accounts Committee in the UK has held various hearings on multinationals' corporate tax strategies at which corporates, advisers and HMRC have all appeared. • The US has held hearings across a number of forums including the Committee on Ways and Means and the Senate Finance Committee. • In February 2015, the European Parliament established a 'Special Committee on Tax Rulings' (TAXE Committee) to investigate tax rulings provided by Member States. In December 2015, it was announced that the mandate of the Committee would be extended for another 6 months (following the extension, the Committee are often referred to as TAXE2). There has been increased media reporting and commentary on the tax affairs of corporates and tax is increasingly becoming a front page story. The increased transparency requirements for multinationals are likely to result in further scrutiny from political and media stakeholders.

"There has been increased media reporting and commentary on the tax affairs of corporates."

http://www.oecd.org/ctp/newchairoftheoecdscommitteeonfiscalaffairselected.htm
http://www.oecd.org/about/whodoeswhat/


Finance

SOME KEY TERMS

OECD

OECD stands for Organisation for Economic Co-operation and Development. The OECD consists of 34 member countries and these are listed in the OECD chapter.

Base Erosion and Profit Shifting (BEPS):

"Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid"

Other key OECD BEPS terms

Country-by-Country reporting (CbCR) CbCR is a proposal put forward by the OECD and the EU which requires multinational companies with a turnover of €750m or more to provide the relevant tax authority with information for each jurisdiction in which the multinational operates. The information to be provided in the CbCR consists of the amount of revenue, profit (or loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets. The CbC Reports are subject to exchange between tax authorities (subject to the necessary CbCR/exchange of information provisions being in place). The European Commission is currently carrying out an impact assessment to determine whether the CbC Reports should be made public and the results of this assessment are expected to be revealed in April.

CFC (Controlled Foreign Corporation) rules CFC rules are anti-avoidance rules. Their aim is to attribute income earned by CFCs to the controlling company in the home jurisdiction.

Hybrid mismatches Hybrid mismatches are arrangements involving certain types of instruments or entities which are treated differently for tax purposes across jurisdictions.

Patent Box A patent box (also referred to as an innovation / IP box) is a tax regime which provides a preferential rate of corporation tax for income generated from the commercialisation of patents or other intangibles.

Modified Nexus The modified nexus approach was developed by the OECD to link income qualifying for preferential low tax in IP "boxes", with the underlying R&D activities that generate that IP. Under the modified nexus approach, R&D activities act as a proxy for substance.

Multilateral Competent Authority Agreement ("MCAA") This is a multilateral agreement developed by the OECD which enables tax authorities to automatically exchange certain based information. Recently a MCAA has been signed by 31 states to enable the exchange of Country-by-Country Reports.

OECD Committee on Fiscal Affairs The Committee is the leading global body for setting international standards for tax and oversees the creation and maintenance of publications such as the OECD Model Tax Convention, which forms the basis for more than 3 000 bilateral tax treaties, the Transfer Pricing Guidelines and regular publications such as Revenue Statistics and Taxing Wages, which assist governments in reforming their taxes .

Key EU terms

Anti-Tax Avoidance Package ("ATAP") The ATAP was released by the European Commission in January as part of their overall approach to the corporate tax avoidance agenda. The package is made up of 4 primary initiatives;

- Anti-Tax Avoidance Directive to strengthen anti-tax avoidance measures
- Amendment to the Directive on Administrative Cooperation to implement Country-by-Country Reporting
- Recommendation on Tax Treaties
- Communication on External Strategy for Effective Taxation

State Aid State aid is defined by the European Commission as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. From a tax perspective, state aid can arise where preferential tax rulings / reliefs are granted to certain companies by tax authorities.

The DACs - Directive on Administrative Cooperation The DAC is an EU Directive adopted by Member States which lays down the rules and procedures under which the Member States shall cooperate with each other with a view to exchanging information. In December 2015, the DAC was extended to provide for the automatic exchange of tax rulings and APAs between tax authorities (this is known as DAC 3). The DAC also provides for the exchange of certain financial and non-financial information on non-residents.

In December 2015, the **DAC** was extended to provide for the automatic exchange of tax rulings and APAs between tax authorities

Transfer pricing is a set of tax rules governing the way companies in a group set prices for the goods and services transacted between them, in the absence of a 3rd party price.

Key Transfer pricing terms

Transfer Pricing: Transfer pricing is a set of tax rules governing the way companies in a group set prices for the goods and services transacted between them, in the absence of a 3rd party price. Transfer Pricing rules ensure that the prices set for such related-party transactions are 'arm's length'.

Advance Pricing Agreement ("APA"): An APA is an agreement between a tax authority and a multinational company governing the transfer pricing of transactions between related parties.

Mutual Agreement Procedure ("MAP"): A MAP is a process by which competent authorities from two or more countries seek to resolve issues of double taxation which may arise for a taxpayer.

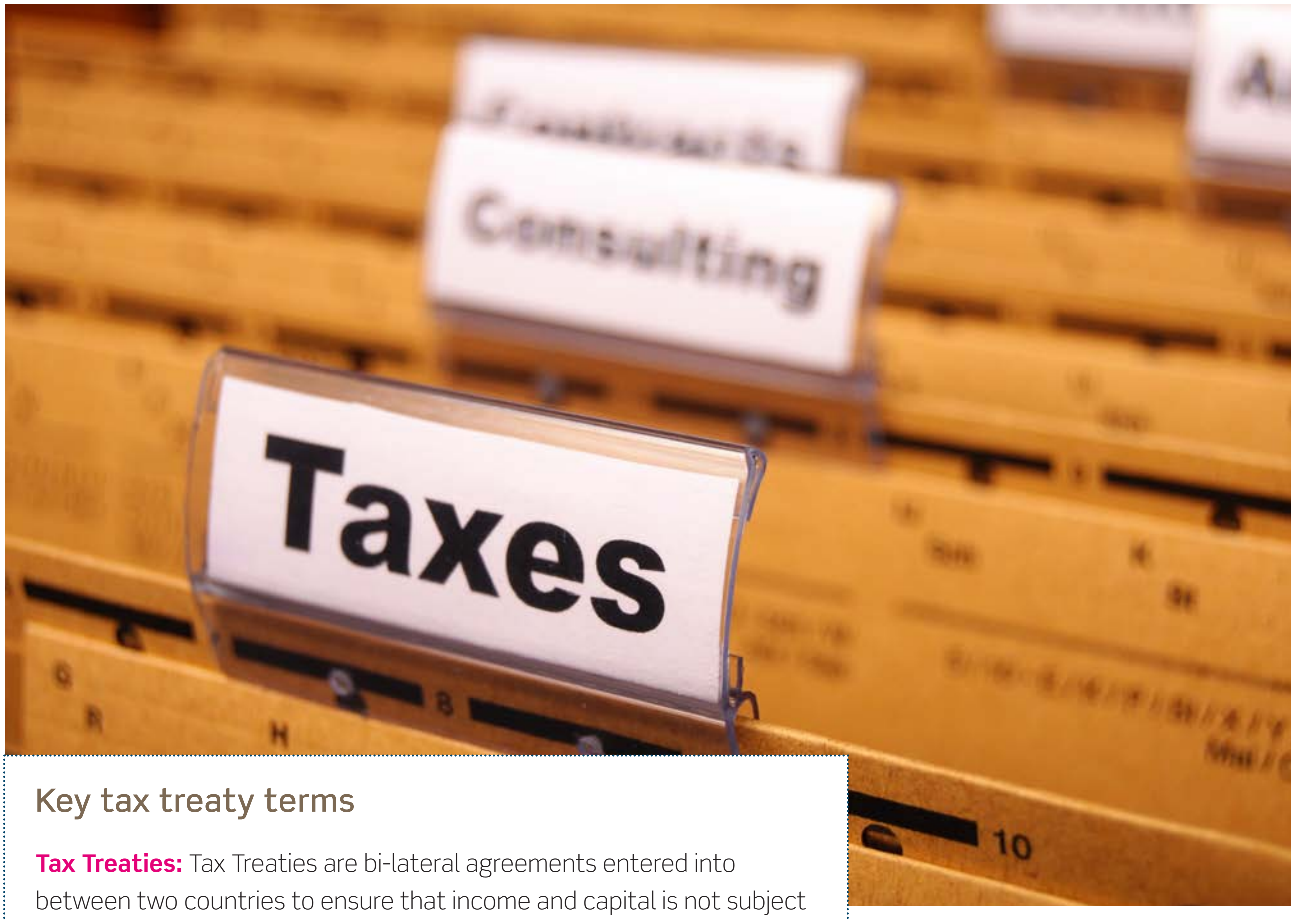
Arm's length principle: Under the Arm's length principle, the price of a transaction between related parties must be at arm's length i.e. it must be consistent with the price that would have been set between independent parties under the same circumstances.

Competent Authority: The Competent Authority is the representative in each jurisdiction responsible for implementing the provisions of tax treaties and resolving disputes through Mutual Agreement Procedures (below). In most jurisdictions, the competent authority will be the tax authority.

Local File: This is one element of the three-tiered approach to transfer pricing documentation as put forward by the OECD. The local file contains information about how the intra-group transactions of an individual entity conform to the arm's length standard. It is proposed that the local file would be submitted to the entities local tax authority.

Master File: This is another element of the three-tiered approach to transfer pricing documentation as put forward by the OECD. The master file contains information about how the entire multinational operates and its key intra-group transactions. There is only one master file per group and it is proposed that this would be submitted by each group entity to their local tax authority.

"Tax Treaties are bi-lateral agreements entered into between two countries to ensure that income and capital is not subject to tax in both countries, leading to double taxation. Currently, there are over 3,000 treaties in place worldwide."



Key tax treaty terms

Tax Treaties: Tax Treaties are bi-lateral agreements entered into between two countries to ensure that income and capital is not subject to tax in both countries, leading to double taxation. Currently, there are over 3,000 treaties in place worldwide.

Double Taxation: Double taxation arises when the same item of income or capital is taxed on the same taxpayer in two or more jurisdictions.

Permanent Establishment: A permanent establishment ("PE") refers to a situation in which a company's business activities in another country give rise to a taxable presence in that country. Typically, the operation of a fixed place of business or the conclusion of contracts in a territory would create a PE there.

Multi-lateral Instrument: The multi-lateral Instrument is an instrument being developed by the OECD that countries can use to implement treaty-based BEPS Actions across their treaty network. The multi-lateral Instrument will avoid the need for countries to individually re-negotiate the 3,000+ tax treaties currently in existence.

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The Irish Tax Institute is the leading representative and educational body for AITI Chartered Tax Advisers (CTAs) in Ireland. It is the only professional body exclusively dedicated to tax. Our 5,000 CTA members are part of the 28,000 CTA network globally and they provide tax expertise to thousands of businesses, multinationals and individuals in Ireland and internationally. In addition, many hold senior roles within global companies, Government, Revenue and state bodies.

The Institute is the leading provider of tax qualifications in Ireland, educating the finest minds in tax and business. Our AITI Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice.

A respected body on tax policy and administration, the Institute engages at the most senior levels across Government, business and state organisations. Representing the views and expertise of its members, it plays an important role in the fiscal and tax administrative discussions and decisions in Ireland, the EU and internationally

1. International Labour Organisation

2. PwC report on global top 100 companies by market capitalisation, March 2015

3. AmCham Europe, The Case for Invest in Europe 2015

4. AmCham Europe, The Case for Invest in Europe 2015