
BEPS
Base Erosion and Profit Shiftin

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Abbreviations and acronyms

Abbreviations	***Full Name***
OECD	Organisation for Economic Co-operation and Development
G20	Group of twenty
BEPS	Base erosion and profit shifting
VAT	Value Added Tax
GST	Goods and Service Tax
PE	Permanent establishment
CFC	Controlled Foreign Company
EBITDA	Earnings Before Interest, Taxes, Depreciation and Amortization
R&D	Research and development
LOB	Limitation-On-Benefits
PPT	Principal Purpose Test
MNE	Multinational enterprise
FDI	Foreign Direct Investment
TIEA	Tax Information Exchange Agreement
MAP	Mutual agreement procedure
XML	Extensible markup language
JITSIC	Joint International Tax Shelter Information and Collaboration Network
CbC	Country-by-Country

Foreword

International tax issues have never been as high on the political agenda as they are today. The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report Addressing Base Erosion and Profit Shifting in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address

BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: *introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.*

Since then, all G20 and OECD countries have worked on an equal footing and the European Commission also provided its views throughout the BEPS project. Developing countries have been engaged extensively via a number of different mechanisms, including direct participation in the Committee on Fiscal Affairs. Stakeholders have been consulted at length: in total, the BEPS project received more than 1 400 submissions from industry, advisers, NGOs and academics. Fourteen public consultations were held, streamed live on line, as were webcasts where the OECD Secretariat periodically updated the public and answered questions.

After two years of work, the 15 actions have now been completed. All the different outputs, including those delivered in an interim form in 2014, have been consolidated into a comprehensive package. Countries participating in the BEPS project are committed to this comprehensive package and to its consistent implementation. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. These measures range from new minimum standards to revision of existing standards, common approaches which will facilitate the convergence of national practices and guidance drawing on best practices.

The expectation is that once implemented, the measures will restore taxation in a number of instances where income would otherwise go untaxed. Once the new measures become applicable, profits are expected to be reported where the economic activities that generate them are carried out and where value is created. Depending on the planning structure used, one or more of the measures developed will have an impact and ensure that income is taxed at least one time and not more than once. Rather than closing individual schemes, the recommended measures go to their roots. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will henceforth be rendered ineffective.

Implementation becomes key at this stage. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions, with negotiations for a multilateral instrument under way and expected to be finalised in 2016. Recognising the need to level the playing field, all OECD and G20 countries have committed to consistent implementation in the areas of preventing treaty shopping, Country-by-Country Reporting, fighting harmful tax practices and improving dispute resolution. In other areas, such as recommendations on hybrid mismatch arrangements and best practices on interest deductibility, countries have agreed to a general tax policy direction. In these areas, they are expected to converge over time through the implementation of the agreed common approaches, thus enabling further consideration of whether such measures should become minimum standards in the future. Guidance based on best practices will also support countries intending to act in the areas of mandatory disclosure initiatives or CFC legislation.

OECD and G20 countries have also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries. To further this objective, in 2016 OECD and G20 countries will conceive an inclusive framework for monitoring, with all interested countries participating on an equal footing.

There is apprehension that the BEPS measures increase the risk of double taxation. The aim of the measures is to realign taxation with economic substance and value creation, while preventing double taxation. The BEPS package represents the first substantial renovation of the international tax rules in almost a century. This renovation is necessary not only to tackle BEPS, but also to ensure the sustainability of a consensus based system aimed at eliminating double taxation. As new rules always raise interpretation issues, Action 14 on improving dispute resolution is a key part of the BEPS Project.

As regards the question 'will MNEs have to restructure their business in light of the BEPS outputs', this should not be the case for groups whose legal and tax structures reflect the underlying economic reality. SMEs will not be much impacted by the BEPS measures. A number of measures have been crafted in a way that minimises the impact on SMEs with negligible BEPS risks, e.g. the measures on interest deductibility can exclude companies with interest below a certain *de minimis* threshold, and the new Country-by-Country Reporting template does not apply to groups with annual consolidated revenue in the immediately preceding fiscal year of less than EUR 750 million.

There be other BEPS outputs in the future. G20 and OECD countries will keep working on an equal footing to carry out followup work in 2016. This includes work on the transfer pricing aspects of financial transactions, finalising the guidance on the practical application of transactional profit split methods and the approach on hard to value intangibles, clarifying the rules for the attribution of profits to permanent establishments in light of the changes to the definition, exploring solutions to the broader question of treaty entitlement of non CIV funds (Collective Investment Funds), and finalising the details of a group ratio carve out and special rules for insurance and banking sectors in the recommended approach for interest deductibility. Finally, the multilateral instrument to implement treaty changes is expected to be open for signature in 2016.

Action 1

Addressing the Tax Challenges of the Digital Economy

The spread of the digital economy poses unique challenges for international taxation. The digital economy is characterized by an unparalleled reliance on intangibles, the massive use of data (notably personal data), the widespread adoption of multi-sided business models capturing value from externalities generated by free products, and the difficulty of determining the jurisdiction in which value creation occurs. This raises fundamental questions as to how enterprises in the digital economy add value and make their profits, and how the digital economy relates to the concepts of source and residence or the characterization of income for tax purposes. It is important to examine to what extent it may be necessary to adapt the current rules in order to take into account the specific features of that industry and to prevent Base Erosion and Profit Shifting (**“BEPS”**).

So BEPS Action 1 was taken up to identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues examined include the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location relevant data through the use of digital products and services, the characterization of income derived from new business models, the application of related source rules, and how to ensure the effective collection of Value added Tax/Goods and Service Tax (**“VAT/GST”**) with respect to the cross-border supply of digital goods and services.

Many of the key features of the digital economy, particularly those related to mobility, generate BEPS concerns in relation to both direct and indirect taxes. For example, the importance of intangibles in the context of the digital economy, combined with the mobility of intangibles for tax purposes under existing tax rules, generates substantial BEPS opportunities in the area of direct taxes. The mobility of users creates substantial challenges and risks in the context of the imposition of VAT. The ability to centralize infrastructure at a distance from a market jurisdiction and conduct substantial sales into that market from a remote location, combined with increasing ability to conduct substantial activity with minimal use of personnel, generates potential opportunities to achieve BEPS by fragmenting physical operations to avoid taxation.

2.1 Modification the list of exceptions to the definition of Permanent Establishment ("**PE**") to ensure that each of the exceptions included therein is restricted to activities that are otherwise of a "preparatory or auxiliary" character, and to introduce a new ***anti-fragmentation rule*** to ensure that it is not possible to benefit from these exceptions through the fragmentation of business activities among closely related enterprises.

2.2 Modification to the definition of PE to address circumstances in which artificial arrangements relating to the sales of goods or services of one company in a multinational group effectively result in the conclusion of contracts, such that the sales should be treated as if they had been made by that company.

2.3 *Clears that legal ownership alone does not necessarily generate a right to all (or indeed any) of the return that is generated by the exploitation of the intangible, but that the group companies performing the important functions, contributing the important assets and controlling economically significant risks, as determined through the accurate delineation of the actual transaction, will be entitled to an appropriate return.*

2.4 Design of effective Controlled Foreign Company ("**CFC**") include definitions of CFC income that would subject income that is typically earned in the digital economy to taxation in the jurisdiction of the ultimate parent company

2.5 Other measures developed in the BEPS Project *(e.g. minimum standard to address treaty shopping arrangements, best practices in the design of domestic rules on interest and other deductible financial payments, application to IP regimes of a substantial activity requirement with a "nexus approach"),* will substantially address the BEPS issues exacerbated by the digital economy at the level of both the market jurisdiction and the jurisdiction of the ultimate parent company, with the aim of putting an end to the phenomenon of so-called stateless income

Action 2

Neutralising the Effects of the Hybrid Mismatch Arrangements

Hybrid mismatch arrangements exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions to achieve double non-taxation, including long-term deferral. These types of arrangements are widespread and result in a substantial erosion of the taxable bases of the countries concerned. With a view to increasing the coherence of corporate income taxation at the international level, the BEPS Action 2 makes recommendations regarding the design of domestic rules and the development of model treaty provisions that would neutralize the tax effects of hybrid mismatch arrangements. Once translated into domestic and treaty law, these recommendations will neutralize hybrid mismatches, by putting an end to multiple deductions for a single expense, deductions without corresponding taxation or the generation of multiple foreign tax credits for one amount of foreign tax paid.

The recommendations specifically target payments under a hybrid mismatch arrangement that give rise to one of the three following outcomes:

(a) Payments that give rise to a deduction / no inclusion outcome (D/NI outcome),i.e. payments that are deductible under the rules of the payer jurisdiction and are not included in the ordinary income of the payee.

(b) Payments that give rise to a double deduction outcome (DD outcome),i.e. payments that give rise to two deductions in respect of the same payment.

(c) Payments that give rise to an indirect D/NI outcome, i.e. payments that are deductible under the rules of the payer jurisdiction and that are set-off by the payee against a deduction under a hybrid mismatch arrangement.

The recommendation consists of 2 parts:

Part I – Recommendations for changes to Domestic Law

2.1 Sets out recommendations for rules to address mismatches in tax outcomes where they arise in respect of payments made under a hybrid financial instrument or payments made to or by a hybrid entity. It also recommends rules to address indirect mismatches that arise when the effects of a hybrid mismatch arrangement are imported into a third jurisdiction.

The recommendations take the form of linking rules that align the tax treatment of an instrument or entity with the tax treatment in the counterparty jurisdiction but otherwise do not disturb the commercial outcomes. The rules apply automatically and there is a rule order in the form of a primary rule and a secondary or defensive rule. This prevents more than one country applying the rule to the same arrangement and also avoids double taxation.

2.2 The recommended primary rule is that countries deny the taxpayer's deduction for a payment to the extent that it is not included in the taxable income of the recipient in the counterparty jurisdiction or it is also deductible in the counterparty jurisdiction. If the primary rule is not applied, then the counterparty jurisdiction can generally apply a defensive rule, requiring the deductible payment to be included in income or denying the duplicate deduction depending on the nature of the mismatch.

2.3 Recognises the importance of co-ordination in the implementation and application of the hybrid mismatch rules to ensure that the rules are effective and to minimise compliance and administration costs for taxpayers and tax administrations. To this end, it sets out a common set of design principles and defined terms intended to ensure consistency in the application of the rules.

Part II – Recommendations for changes to OECD Model Tax Convention

2.4 Addresses the part of Action 2 aimed at ensuring that hybrid instruments and entities, as well as dual resident entities, are not used to obtain unduly the benefits of tax treaties and that tax treaties do not prevent the application of the changes to domestic law recommended in Part I.

2.5 First examines the issue of dual resident entities, i.e. entities that are residents of two States for tax purposes. It notes that the work on Action 6 will address some of the BEPS concerns related to the issue of dual resident entities by providing that cases of dual residence under a tax treaty would be solved on a case-by-case basis rather than on the basis of the current rule based on the place of effective management of entities.

2.6 Also deals with the application of tax treaties to hybrid entities, i.e. entities that are not treated as taxpayers by either or both States that have entered into a tax treaty (such as partnerships in many countries).

2.7 Proposes to include in the *OECD Model Tax Convention* (OECD, 2010) a new provision and detailed Commentary that will ensure that benefits of tax treaties are granted in appropriate cases to the income of these entities but also that these benefits are not granted where neither State treats, under its domestic law, the income of such an entity as the income of one of its residents.

2.8 Finally, Part II addresses potential treaty issues that could arise from the recommendations in Part I. It first examines treaty issues related to rules that would result in the denial of a deduction or would require the inclusion of a payment in ordinary income and concludes that tax treaties would generally not prevent the application of these rules. It then examines the impact of the recommendations of Part I with respect to tax treaty rules related to the elimination of double taxation and notes that problems could arise in the case of bilateral tax treaties that provide for the application of the exemption method with respect to dividends received from foreign companies. The report describes possible treaty changes that would address these problems.

Table 2.1 General Overview of the Recommendations

Mismatch	Arrangement	Specific recommendations on improvements to domestic law	Recommended hybrid mismatch rule		
			Response	Defensive rule	Scope
D/NI	Hybrid financial instrument	No dividend exemption for deductible payments Proportionate limitation of withholding tax credits	Deny payer deduction	Include as ordinary income	Related parties and structured arrangements
	Disregarded payment made by a hybrid		Deny payer deduction	Include as ordinary income	Control group and structured arrangements
	Payment made to a reverse hybrid	Improvements to offshore investment regime Restricting tax transparency of intermediate entities where non-resident investors treat the entity as opaque	Deny payer deduction	-	Control group and structured arrangements
DD	Deductible payment made by a hybrid		Deny parent deduction	Deny payer deduction	No limitation on response, defensive rule applies to control group and structured arrangements
	Deductible payment made by dual resident		Deny resident deduction	-	No limitation on response
Indirect D/NI	Imported mismatch arrangements		Deny payer deduction	-	Members of control group and structured arrangements

Action 3

Designing Effective Controlled Foreign Company Rules

MNCs can create low-taxed non-resident affiliates to which they shift income. Taxpayers with a controlling interest in a foreign low-taxed subsidiary can shift income into it and avoid taxation. Controlled foreign company ("**CFC**") rules combat this by enabling jurisdictions to tax income earned by foreign subsidiaries without waiting for an actual distribution of the income, which may be postponed indefinitely. The existing CFC rules (in several countries) do not always capture all the types of income that gives rise to BEPS concerns. So, there is need to provide guidance for design of effective CFC rules.

Sets out recommendations in the form of building blocks. These recommendations are not minimum standards, but they are designed to ensure that jurisdictions that choose to implement them will have rules that effectively prevent taxpayers from shifting income into foreign subsidiaries.

Recommendations in the form of following six building blocks for the design of effective CFC rules:

2.1 **Definition of a CFC** – CFC rules generally apply to foreign companies that are controlled by shareholders in the parent jurisdiction. The report sets out recommendations on how to determine when shareholders have sufficient influence over a foreign company for that company to be a CFC. It also provides recommendations on how non-corporate entities and their income should be brought within CFC rules.

2.2 **CFC exemptions and threshold requirements** – Existing CFC rules often only apply after the application of provisions such as tax rate exemptions, anti-avoidance requirements, and de minimis thresholds. The report recommends that CFC rules only apply to controlled foreign companies that are subject to effective tax rates that are meaningfully lower than those applied in the parent jurisdiction.

2.3 **Definition of income** – Although some countries' existing CFC rules treat all the income of a CFC as "CFC income" that is attributed to shareholders in the parent jurisdiction, many CFC rules only apply to certain types of income. The report recommends that CFC rules include a definition of CFC income, and it sets out a non-exhaustive list of approaches or combination of approaches that CFC rules could use for such a definition.

2.4 **Computation of income** –CFC rules use the rules of the parent jurisdiction to compute the CFC income to be attributed to shareholders. It also recommends that CFC losses should only be offset against the profits of the same CFC or other CFCs in the same jurisdiction.

2.5 **Attribution of income** – When possible, the attribution threshold should be tied to the control threshold and that the amount of income to be attributed should be calculated by reference to the proportionate ownership or influence.

2.6 **Prevention and elimination of double taxation** – One of the fundamental policy issues to consider when designing effective CFC rules is how to ensure that these rules do not lead to double taxation. Emphasises the importance of both preventing and eliminating double taxation, and it recommends, for example, that jurisdictions with CFC rules allow a credit for foreign taxes actually paid, including any tax assessed on intermediate parent companies under a CFC regime. It also recommends that countries consider relief from double taxation on dividends on, and gains arising from the disposal of, CFC shares where the income of the CFC has previously been subject to taxation under a CFC regime.

Because each country prioritises policy objectives differently, the recommendations provide flexibility to implement CFC rules that combat BEPS in a manner consistent with the policy objectives of the overall tax system and the international legal obligations of the country concerned.

Action 4

Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

The use of third party and related party interest is one of the most simple of the profit shifting techniques available in international tax planning. Added to this most countries tax debt and equity differently so that there is a tax induced bias towards debt financing. Groups can easily multiply the level of debt in group companies via intragroup financing, as a result groups can generate intragroup interest deductions that are greatly in excess of the group's actual third party interest expense. They can also use this debt to fund the generation of tax exempt income.

BEPS risks in this area may arise in three basic scenarios:

- Groups placing higher levels of third party debt in high tax countries.
- Groups using intragroup loans to generate interest deductions in excess of the group's actual third party interest expense.
- Groups using third party or intragroup financing to fund the generation of tax exempt income.

To directly address the risks outlined above, this report analyses several best practices and recommends effective CFC rules designed to prevent base erosion through the use of interest expense.

2.1 Analyses several best practices and recommends an approach which directly addresses the risks outlined above. *The recommended approach is based on* ***a fixed ratio rule*** *which limits an entity's net deductions for interest and payments economically equivalent to interest to a percentage of its earnings before interest, taxes, depreciation and amortization (EBITDA). As a minimum this should apply to entities in multinational groups. To ensure that countries apply a fixed ratio that is low enough to tackle BEPS, while recognizing that not all countries are in the same position, the recommended approach includes a corridor of possible ratios of between 10% and 30%.*

2.2 Recognizing that some groups are highly leveraged with third party debt for non-tax reasons, *also proposes a* ***group ratio rule alongside the fixed ratio rule***. This would allow an entity with net interest expense above a country's fixed ratio to deduct interest up to the level of the net interest/EBITDA ratio of its worldwide group. Countries may also apply an uplift of up to 10% to the group's net third party interest expense to prevent double taxation. *The earnings-based worldwide group ratio rule can also be replaced by different group ratio rules, such as the "equity escape" rule (which compares an entity's level of equity and assets to those held by its group) currently in place in some countries*. A country may also choose not to introduce any group ratio rule. If a country does not introduce a group ratio rule, it should apply the fixed ratio rule to entities in multinational and domestic groups without improper discrimination.

2.3 The recommended approach also allows countries to supplement the fixed ratio rule and group ratio rule with other provisions that reduce the impact of the rules on entities or situations which pose less BEPS risk, such as:

- A ***de minimis* threshold** which carves-out entities which have a low level of net interest expense. Where a group has more than one entity in a country, it is recommended that the threshold be applied to the total net interest expense of the local group.
- An **exclusion for interest paid to third party lenders on loans** used to fund public-benefit projects, subject to conditions. In these circumstances, an entity may be highly leveraged but, due to the nature of the projects and the close link to the public sector, the BEPS risk is reduced.
- The **carry forward of disallowed interest expense and/or unused interest capacity** (where an entity's actual net interest deductions are below the maximum permitted) for use in future years. This will reduce the impact of earnings volatility on the ability of an entity to deduct interest expense. The carry forward of disallowed interest expense will also help entities which incur interest expenses on long-term investments that are expected to generate taxable income only in later years, and will allow entities with losses to claim interest deductions when they return to profit.

2.4 Further technical work will be conducted on specific areas of the recommended approach, including the detailed operation of the worldwide group ratio rule and the specific rules to address risks posed by banking and insurance groups. This work is expected to be completed in 2016.

2.5 The amount of intragroup interest and payments economically equivalent to interest is also affected by transfer pricing rules.

2.6 Actions 8-10 of the BEPS Action Plan (OECD, 2013), contained in the OECD Report *Aligning Transfer Pricing Outcomes with Value Creation* (OECD, 2015), limit the amount of interest payable to group companies lacking appropriate substance to no more than a risk-free return on the funding provided and require group synergies to be taken into account when evaluating intragroup financial payments. Further work on the transfer pricing aspects of financial transactions will be undertaken during 2016 and 2017.

Action 5

Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

There are concerns about preferential tax regimes (of certain countries) that risk being used for artificial profit shifting. There are also concerns about a lack of transparency in connection with certain tax rulings (issued by some counties). BEPS Action 5 attempts to tackle these concerns. The objective of this action plan can be summed up as below -

- Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime.
- To counter harmful tax practices with respect to geographically mobile activities, such as financial and other service activities, including the provision of intangibles. The nature of those types of activities makes it very easy to shift them from one country to another.

The work on harmful tax practices is about reducing the distortionary influence of taxation on the location of mobile financial and service activities, thereby encouraging an environment in which free and fair tax competition can take place. Countries have long recognised that a "race to the bottom" would ultimately drive applicable tax rates on certain sources of income to zero for all countries, whether or not this is the tax policy a country wishes to pursue, and combating harmful tax practices is an interest common to OECD and non-OECD countries alike. There are obvious limitations to the effectiveness of unilateral actions against such practices. By agreeing a set of common criteria and promoting a co-operative framework, the work not only supports the effective fiscal sovereignty of countries over the design of their tax systems but it also enhances the ability of countries to react against the harmful tax practices of others.

Requiring substantial activity for preferential regimes

2.1 *The substantial activity requirement used to assess preferential regimes should be strengthened in order to realign taxation of profits with the substantial activities that generate them.* Several approaches were considered and consensus was reached on the **"nexus approach".** This approach was developed in the context of IP regimes, and it allows a taxpayer to benefit from an IP regime only to the extent that the taxpayer itself incurred qualifying research and development ("**R&D**") expenditures that gave rise to the IP income. *The nexus approach uses expenditure as a proxy for activity and builds on the principle that, because IP regimes are designed to encourage R&D activities and to foster growth and employment, a substantial activity requirement should ensure that taxpayers benefiting from these regimes did in fact engage in such activities and did incur actual expenditures on such activities*. This same principle can also be applied to other preferential regimes so that such regimes would be found to require substantial activities where they grant benefits to a taxpayer to the extent that the taxpayer undertook the core income-generating activities required to produce the type of income covered by the preferential regime.

Improving transparency

2.2 In the area of transparency, a framework covering all rulings that could give rise to BEPS concerns in the absence of compulsory spontaneous exchange has been agreed. The framework covers six categories of rulings:

i. rulings related to preferential regimes;
ii. cross border unilateral advance pricing arrangements (APAs) or other unilateral transfer pricing rulings;
iii. rulings giving a downward adjustment to profits;
iv. permanent establishment (PE) rulings;
v. conduit rulings; and
vi. any other type of ruling where the FHTP agrees in the future that the absence of exchange would give rise to BEPS concerns.

This does not mean that such rulings are *per se* preferential or that they will in themselves give rise to BEPS, but it does acknowledge that a lack of transparency in the operation of a regime or administrative process can give rise to mismatches in tax treatment and instances of double non-taxation. For countries which have the necessary legal basis, exchange of information under this framework will take place from 1 April 2016 for future rulings and the exchange of certain past rulings will need to be completed by 31 December 2016. The Report also sets out best practices for cross-border rulings.

2.3 The elements of a strategy to engage with countries other than OECD Members and BEPS Associates in order to achieve a level playing field and avoid the risk that the work on harmful tax practices could displace regimes to third countries is outlined in the Report

Action 6

Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

Treaty abuse, and in particular treaty shopping, is one of the most important sources of BEPS concerns. Taxpayers engaged in treaty shopping and other treaty abuse strategies undermine tax sovereignty by claiming treaty benefits in situations where these benefits were not intended to be granted, thereby depriving countries of tax revenues. To tackle this BEPS issue the Action 6 report had the objective of -

- Developing model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances
- Clarifying that tax treaties are not intended to be used to generate double non-taxation
- Identifying the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country

To meet these objectives, Countries have agreed to include anti-abuse provisions in their tax treaties, including a minimum standard to counter treaty shopping. This report includes new treaty anti-abuse rules that provide safeguards against the abuse of treaty provisions.

2.1 Includes **new treaty anti-abuse rules** that provide safeguards against the abuse of treaty provisions and offer a certain degree of flexibility regarding how to do so.

2.2 These *new treaty anti-abuse rules first address treaty shopping, which involves strategies through which a person who is not a resident of a State attempts to obtain benefits that a tax treaty concluded by that State grants to residents of that State, for example by establishing a letterbox company in that State*. The following approach is recommended to deal with these strategies:

- First, a clear statement that the States that enter into a tax treaty intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements will be included in tax treaties (this recommendation is included in Section B of the report).

- Second, a specific anti-abuse rule, the limitation-on-benefits ("**LOB**") rule, that limits the availability of treaty benefits to entities that meet certain conditions will be included in the OECD Model Tax Convention. These conditions, which are based on the legal nature, ownership in, and general activities of the entity, seek to ensure that there is a sufficient link between the entity and its State of residence. Such limitation-on-benefits provisions are currently found in treaties concluded by a few countries and have proven to be effective in preventing many forms of treaty shopping strategies.

- Third, in order to address other forms of treaty abuse, including treaty shopping situations that would not be covered by the LOB rule described above, a more general anti-abuse rule based on the principal purposes of transactions or arrangements (the principal purposes test or "**PPT**" rule) will be included in the OECD Model Tax Convention. Under that rule, if one of the principal purposes of transactions or arrangements is to obtain treaty benefits, these benefits would be denied unless it is established that granting these benefits would be in accordance with the object and purpose of the provisions of the treaty.

Action 7

Preventing the Artificial Avoidance of Permanent Establishment Status

Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a State only to the extent that the enterprise has in that State a permanent establishment (PE) to which the profits are attributable. The definition of PE included in tax treaties is therefore crucial in determining whether a non-resident enterprise must pay income tax in another State.

This Action Plan called for a review of that definition to prevent the use of certain common tax avoidance strategies that are currently used to circumvent the existing PE definition, such as arrangements through which taxpayers replace subsidiaries that traditionally acted as distributors by commissionnaire arrangements, with a resulting shift of profits out of the country where the sales took place without a substantive change in the functions performed in that country. Changes to the PE definition are also necessary to prevent the exploitation of specific exceptions to the PE definition currently provided for by Art. 5(4) – preparatory and auxiliary activities - of the OECD Model Tax Convention (2014), an issue which is particularly relevant in the digital economy.This report includes the changes that will be made to the definition of PE in Article 5 of the OECD Model Tax Convention.

Artificial avoidance of PE status through commissionnaire arrangements and similar strategies

A commissionnaire arrangement may be loosely defined as an arrangement through which a person sells products in a State in its own name but on behalf of a foreign enterprise that is the owner of these products. Through such an arrangement, a foreign enterprise is able to sell its products in a State without technically having a permanent establishment to which such sales may be attributed for tax purposes and without, therefore, being taxable in that State on the profits derived from such sales. Since the person that concludes the sales does not own the products that it sells, that person cannot be taxed on the profits derived from such sales and may only be taxed on the remuneration that it receives for its services (usually a commission).

A foreign enterprise that uses a commissionnaire arrangement does not have a permanent establishment because it is able to avoid the application of Art. 5(5) of the OECD Model Tax Convention, to the extent that the contracts concluded by the person acting as a commissionnaire are not binding on the foreign enterprise. Since Art. 5(5) relies on the formal conclusion of contracts in the name of the foreign enterprise, it is possible to avoid the application of that rule by changing the terms of contracts without material changes in the functions performed in a State.

Similar strategies that seek to avoid the application of Art. 5(5) involve situations where contracts which are substantially negotiated in a State are not formally concluded in that State because they are finalised or authorised abroad, or where the person that habitually exercises an authority to conclude contracts constitutes an “independent agent” to which the exception of Art. 5(6) applies even though it is closely related to the foreign enterprise on behalf of which it is acting.

Artificial avoidance of PE status through the specific exceptions in Art. 5(4)

When the exceptions to the definition of permanent establishment that are found in Art. 5(4) of the OECD Model Tax Convention were first introduced, the activities covered by these exceptions were generally considered to be of a preparatory or auxiliary nature. Since the introduction of these exceptions, however, there have been dramatic changes in the way that business is conducted. Depending on the circumstances, activities previously considered to be merely preparatory or auxiliary in nature may nowadays correspond to core business activities. In order to ensure that profits derived from core activities performed in a country can be taxed in that country, Article 5(4) needs to be modified.

BEPS concerns related to Art. 5(4) also arise from what is typically referred to as the “fragmentation of activities”. Given the ease with which multinational enterprises (MNEs) may alter their structures to obtain tax advantages, it is important to clarify that it is not possible to avoid PE status by fragmenting a cohesive operating business into several small operations in order to argue that each part is merely engaged in preparatoryor auxiliary activities that benefit from the exceptions of Art. 5(4). The anti-fragmentation rule proposed in the report will address these BEPS concerns.

Other strategies for the artificial avoidance of PE status

The exception in Art. 5(3), which applies to construction sites, has given rise to abuses through the practice of splitting-up contracts between closely related enterprises.

2.1 The activities that an intermediary exercises in a country are intended to result in the regular conclusion of contracts to be performed by a foreign enterprise, that enterprise should be considered to have a taxable presence in that country unless the intermediary is performing these activities in the course of an independent business. The changes to Art. 5(5) and 5(6) and the detailed Commentary thereon that are included in section A of the report address *commissionnaire* arrangements and similar strategies by ensuring that the wording of these provisions better reflect this underlying policy.

2.2 Depending on the circumstances, activities previously considered to be merely preparatory or auxiliary in nature may nowadays correspond to core business activities. In order to ensure that profits derived from core activities performed in a country can be taxed in that country, Article 5(4) is modified to ensure that each of the exceptions included therein is restricted to activities that are otherwise of a "preparatory or auxiliary" character.

2.3 BEPS concerns related to Art. 5(4) also arise from what is typically referred to as the "fragmentation of activities". Given the ease with which multinational enterprises ("**MNEs**") may alter their structures to obtain tax advantages, it is important to clarify that it is not possible to avoid PE status by fragmenting a cohesive operating business into several small operations in order to argue that each part is merely engaged in preparatory or auxiliary activities that benefit from the exceptions of Art. 5(4). Specifically, these concerns will be addressed by a proposed rule [in Article 5(4)] which will take account not only of the activities carried on by the same enterprise at different places but also of the activities carried on by closely related enterprises at different places or at the same place.

2.4 The exception in Art. 5(3), which applies to construction sites, has given rise to abuses through the practice of splitting-up contracts between closely related enterprises. The Principal Purposes Test rule that will be added to the OECD Model Tax Convention as a result of the adoption of the Report on Action 6 (*Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*) will address the BEPS concerns related to such abuses.

2.5 The changes to the definition of PE that are included in this report will be among the changes proposed for inclusion in the multilateral instrument that will implement the results of the work on treaty issues mandated by the BEPS Action Plan.

Actions 8-10

Aligning Transfer Pricing Outcomes with Value Creation

The arm's length principle has proven useful as a practical and balanced standard for tax administrations and taxpayers to evaluate transfer prices between associated enterprises, and to prevent double taxation. However, with its perceived emphasis on contractual allocations of functions, assets and risks, the existing guidance on the application of the principle has also proven vulnerable to manipulation. Thus, the existing international standards for transfer pricing rules can be misapplied so that they result in outcomes in which the allocation of profits is not aligned with the economic activity that produced the profits. The work under Actions 8-10 of the BEPS Action Plan has targeted this issue, to ensure that transfer pricing outcomes are aligned with value creation.

This work on transfer pricing under the BEPS Action Plan has focused on three key areas. Work under Action 8 looked at transfer pricing issues relating to transactions involving intangibles, since misallocation of the profits generated by valuable intangibles has contributed to base erosion and profit shifting. Work under Action 9 considered the contractual allocation of risks, and the resulting allocation of profits to those risks, which may not correspond with the activities actually carried out. Work under Action 9 also addressed the level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company. Work under Action 10 focused on other high-risk areas, including the scope for addressing profit allocations resulting from transactions which are not commercially rational for the individual enterprises concerned (re-characterization), the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and neutralizing the use of certain types of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with value creation.

This Report contains revised guidance which responds to these issues and ensures that the transfer pricing rules secure outcomes that see operational profits allocated to the economic activities which generate them.

2.1 Requires careful delineation of the actual transaction between the associated enterprises by analysing the contractual relations between the parties in combination with the conduct of the parties. The conduct will supplement or replace the contractual arrangements if the contracts are incomplete or are not supported by the conduct. In combination with the proper application of pricing methods in a way that prevents the allocation of profits to locations where no contributions are made to these profits, this will lead to the allocation of profits to the enterprises that conduct the corresponding business activities. In circumstances where the transaction between associated enterprises lacks commercial rationality, the guidance continues to authorise the disregarding of the arrangement for transfer pricing purposes.

2.2 Includes two important clarifications relating to risks and intangibles.

2.3 *Risks are defined as the effect of uncertainty on the objectives of the business*. In all of a company's operations, every step taken to exploit opportunities, every time a company spends money or generates income, uncertainty exists, and risk is assumed. No profit-seeking business takes on risk associated with commercial opportunities without expecting a positive return. This economic notion that higher risks warrant higher anticipated returns made MNE groups pursue tax planning strategies based on contractual re-allocations of risks, sometimes without any change in the business operations. In order to address this, the Report determines that risks contractually assumed by a party that cannot in fact exercise meaningful and specifically defined control over the risks, or does not have the financial capacity to assume the risks, will be allocated to the party that does exercise such control and does have the financial capacity to assume the risks.

2.4 For intangibles, the guidance clarifies that legal ownership alone does not necessarily generate a right to all (or indeed any) of the return that is generated by the exploitation of the intangible. The group companies performing important functions, controlling economically significant risks and contributing assets, as determined through the accurate delineation of the actual transaction, will be entitled to an appropriate return reflecting the value of their contributions. Specific guidance will ensure that the analysis is not weakened by information asymmetries between the tax administration and the taxpayer in relation to hard-to-value intangibles, or by using special contractual relationships, such as a cost contribution arrangement.

2.5 Also addresses the situation where a capital-rich member of the group provides funding but performs few activities. If this associated enterprise does not in fact control the financial risks associated with its funding (for example because it just provides the money when it is asked to do so, without any assessment of whether the party receiving the money is creditworthy), then it will not be allocated the profits associated with the financial risks *and will be entitled to no more than a risk-free return, or less if, for example, the transaction is not commercially rational and therefore the guidance on non-recognition applies.*

2.6 Finally, the guidance ensures that pricing methods will allocate profits to the most important economic activities. It will no longer be possible to allocate the synergistic benefits of operating as a group to members other than the ones contributing to such synergistic benefits. For example, discounts that are generated because of the volume of goods ordered by a combination of group companies will need to be allocated to these group companies. As part of the Report, a mandate is included for follow-up work to be done on the transactional profit split method, which will be carried out during 2016 and finalized in the first half of 2017. This work should lead to detailed guidance on the ways in which this method can usefully and appropriately be applied to align transfer pricing outcomes with value creation, including in the circumstances of integrated global value chains.

2.7 Also contains guidance on transactions involving commodities as well as on low value-adding intra-group services

Action 11

Measuring and Monitoring BEPS

The adverse fiscal and economic impacts of (BEPS) have been the focus of the OECD/G20 BEPS Project since its inception. Anecdotal evidence has shown that tax planning activities of some MNEs take advantage of the mismatches and gaps in the international tax rules, by separating taxable profits from the underlying value-creating activity. But the scale of the negative global impacts on economic activity and government revenues has been uncertain.

Although measuring the scale of BEPS proves challenging given the complexity of BEPS and the serious data limitations, it is well known that the fiscal effects of BEPS are significant. Various indicators of BEPS activity highlight BEPS behaviours using different sources of data, employing different metrics, and examining different BEPS channels. When combined and presented as a dashboard of indicators, they confirm the existence of BEPS, and its continued increase in scale in recent years. However, these indicators and all analyses of BEPS are severely constrained by the limitations of the currently available data.

The available data is not comprehensive across countries or companies, and often does not include actual taxes paid. In addition to this, the analyses of profit shifting to date have found it difficult to separate the effects of BEPS from real economic factors and the effects of deliberate government tax policy choices. Improving the tools and data available to measure BEPS will be critical for measuring and monitoring BEPS in the future, as well as evaluating the impact of the countermeasures developed under the BEPS Action Plan.

2.1 Six indicators of BEPS activity highlight BEPS behaviours using different sources of data, employing different metrics, and examining different BEPS channels. When combined and presented as a dashboard of indicators, they confirm the existence of BEPS, and its continued increase in scale in recent years.

2.2 ***The profit rates of MNE affiliates located in lower-tax countries are higher than their group's average worldwide profit rate.*** For example, the profit rates reported by MNE affiliates located in lower-tax countries are twice as high as their group's worldwide profit rate on average.

2.3 ***The effective tax rates paid by large MNE entities are estimated to be 4 to 8½ percentage points lower than similar enterprises with domestic-only operations***, tilting the playing-field against local businesses and non-tax aggressive MNEs, although some of this may be due to MNEs' greater utilization of available country tax preferences.

2.4 ***Foreign direct investment (FDI) is increasingly concentrated***. FDI in countries with net FDI to GDP ratios of more than 200% increased from 38 times higher than all other countries in 2005 to 99 times higher in 2012.

2.5 ***The separation of taxable profits from the location of the value creating activity is particularly clear with respect to intangible assets, and the phenomenon has grown rapidly***. For example, the ratio of the value of royalties received to spending on research and development in a group of low-tax countries was six times higher than the average ratio for all other countries, and has increased three-fold between 2009 and 2012. Royalties received by entities located in these low-tax countries accounted for 3% of total royalties, providing evidence of the existence of BEPS, though not a direct measurement of the scale of BEPS.

2.6 ***Debt from both related and third-parties is more concentrated in MNE affiliates in higher statutory tax-rate countries.*** The interest-to-income ratio for affiliates of the largest global MNEs in higher-tax rate countries is almost three times higher than their MNE's worldwide third-party interest-to-income ratio.

2.7 Along with new empirical analysis of the fiscal and economic effects of BEPS and hundreds of existing empirical studies that find the existence of profit shifting through transfer mispricing, strategic location of intangibles and debt, as well as treaty abuse, these BEPS indicators confirm that profit shifting is occurring, is significant in scale and likely to be increasing, and creates adverse economic distortions. Furthermore, empirical analysis indicates that BEPS adversely affects competition between businesses, levels and location of debt, the location of intangible investments, and causes fiscal spillovers between countries and wasteful and inefficient expenditure of resources on tax engineering. The empirical analysis in this report, along with several academic studies, confirms that strong anti-avoidance rules reduce profit shifting in countries that have implemented them.

2.8 However, these indicators and all analyses of BEPS are severely constrained by the limitations of the currently available data. The available data is not comprehensive across countries or companies, and often does not include actual taxes paid. In addition to this, the analyses of profit shifting to date have found it difficult to separate the effects of BEPS from real economic factors and the effects of deliberate government tax policy choices. Improving the tools and data available to measure BEPS will be critical for measuring and monitoring BEPS in the future, as well as evaluating the impact of the countermeasures developed under the BEPS Action Plan.

2.9 While recognizing the need to maintain appropriate safeguards to protect the confidentiality of taxpayer information, this report makes a number of recommendations that will improve the analysis of available data. Some of the information needed to improve the measurement and monitoring of BEPS is already collected by tax administrations, but not analysed or made available for analysis. The focus of the report's recommendations in this area is on improved access to and enhanced analysis of existing data, and new data proposed to be collected under Actions 5, 13 and, where implemented, Action 12 of the BEPS Project.

2.10 The report recommends that the OECD work with governments to report and analyse more corporate tax statistics and to present them in an internationally consistent way. For example, statistical analyses based upon Country-by-Country Reporting data have the potential to significantly enhance the economic analysis of BEPS. These improvements in the availability of data will ensure that governments and researchers will, in the future, be better able to measure and monitor BEPS and the actions taken to address BEPS.

Action 12

Mandatory Disclosure Rules

The lack of timely, comprehensive and relevant information on aggressive tax planning strategies is one of the main challenges faced by tax authorities worldwide. Early access to such information provides the opportunity to quickly respond to tax risks through informed risk assessment, audits, or changes to legislation or regulations.

BEPS Action 12 has recognised the benefits of tools designed to increase the information flow on tax risks to tax administrations and tax policy makers. It therefore called for recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules.

This Report provides a modular framework that enables countries without mandatory disclosure rules to design a regime that fits their need to obtain early information on potentially aggressive or abusive tax planning schemes and their users. The recommendations in this Report do not represent a minimum standard and countries are free to choose whether or not to introduce mandatory disclosure regimes. Where a country wishes to adopt mandatory disclosure rules, the recommendations provide the necessary flexibility to balance a country's need for better and timely information with the compliance burdens for taxpayers. The Report also sets out specific recommendations for rules targeting international tax schemes, as well as for the development and implementation of more effective information exchange and co-operation between tax administrations.

The Report recognizes that the main objective of mandatory disclosure regimes is to increase transparency by providing the tax administration with early information regarding potentially aggressive or abusive tax planning schemes and to identify the promoters and users of those schemes. Another objective of mandatory disclosure regimes is deterrence: taxpayers may think twice about entering into a scheme if it has to be disclosed. Pressure is also placed on the tax avoidance market as promoters and users only have a limited opportunity to implement schemes before they are closed down.

Key design features of a mandatory disclosure regime

2.1 In order to successfully design an effective mandatory disclosure regime, the following features need to be considered: who reports, what information to report, when the information has to be reported, and the consequences of non-reporting. In relation to the above design features, the Report recommends that countries introducing mandatory disclosure regimes:

- impose a disclosure obligation on both the promoter and the taxpayer, or impose the primary obligation to disclose on either the promoter or the taxpayer;
- include a mixture of specific and generic hallmarks, the existence of each of them triggering a requirement for disclosure. Generic hallmarks target features that are common to promoted schemes, such as the requirement for confidentiality or the payment of a premium fee. Specific hallmarks target particular areas of concern such as losses;
- establish a mechanism to track disclosures and link disclosures made by promoters and clients as identifying scheme users is also an essential part of any mandatory disclosure regime. Existing regimes identify these through the use of scheme reference numbers and/or by obliging the promoter to provide a list of clients. Where a country places the primary reporting obligation on a promoter, it is recommended that they also introduce scheme reference numbers and require, where domestic law allows, the production of client lists;
- link the timeframe for disclosure to the scheme being made available to taxpayers when the obligation to disclose is imposed on the promoter; link it to the implementation of the scheme when the obligation to disclose is imposed on the taxpayer;
- introduce penalties (including non-monetary penalties) to ensure compliance with mandatory disclosure regimes that are consistent with their general domestic law.

Coverage of international tax schemes

2.2 There are a number of differences between domestic and cross-border schemes that make the latter more difficult to target with mandatory disclosure regimes. International schemes are more likely to be specifically designed for a particular taxpayer or transaction and may involve multiple parties and tax benefits in different jurisdictions, which can make these schemes more difficult to target with domestic hallmarks. In order to overcome these difficulties, the Report recommends that:

- *Countries develop hallmarks that focus on the type of cross-border BEPS outcomes that cause them concern*. An arrangement or scheme that incorporates such a cross-border outcome would only be required to be disclosed, however, if that arrangement includes a transaction with a domestic taxpayer that has material tax consequences in the reporting country and the domestic taxpayer was aware or ought to have been aware of the cross-border outcome.

- Taxpayers that enter into intra-group transactions with material tax consequences are obliged to make reasonable enquiries as to whether the transaction forms part of an arrangement that includes a cross-border outcome that is specifically identified as reportable under their home jurisdictions' mandatory disclosure regime.

Enhancing information sharing

2.3 Transparency is one of the three pillars of the OECD/G20 BEPS Project and a number of measures developed in the course of the Project will give rise to additional information being shared with, or between, tax administrations. The expanded Joint International Tax Shelter Information and Collaboration Network (**"JITSIC"** Network) of the OECD Forum on Tax Administration provides an international platform for an enhanced co-operation and collaboration between tax administrations, based on existing legal instruments, which could include co-operation on information obtained by participating countries under mandatory disclosure regimes.

Action 13

Transfer Pricing Documentation and Country-by-Country Reporting

Action 13 of the BEPS Plan recommends rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules developed include a requirement that MNCs provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.

This report contains revised standards for transfer pricing documentation and a template for Country-by-Country Reporting of income, taxes paid and certain measures of economic activity. Further, a three-tiered standardised approach to transfer pricing documentation has been developed.

2.1 A **three-tiered standardised approach** to transfer pricing documentation has been developed:

- **First**, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a **"master file"** that is to be available to all relevant tax administrations.

- **Second**, it requires that detailed transactional transfer pricing documentation be provided in a **"local file"** specific to each country, identifying material related party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regard to those transactions.

- **Third**, large MNEs are required to file a **Country-by-Country Report** that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.

2.2 Taken together, these three documents (master file, local file and Country-by-Country Report) will require taxpayers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries. This information should make it easier for tax administrations to identify whether companies have engaged in transfer pricing and other practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged environments.

2.3 The specific content of the various documents reflects an effort to balance tax administration information needs, concerns about inappropriate use of the information, and the compliance costs and burdens imposed on business. Some countries would strike that balance in a different way by requiring reporting in the Country-by-Country Report of additional transactional data (beyond that available in the master file and local file for transactions of entities operating in their jurisdictions) regarding related party interest payments, royalty payments and especially related party service fees. Countries expressing this view are primarily those from emerging markets (Argentina, Brazil, People's Republic of China, Colombia, India, Mexico, South Africa, and Turkey) who state they need such information to perform risk assessment and who find it challenging to obtain information on the global operations of an MNE group headquartered elsewhere.

2.4 Consistent and effective implementation of the transfer pricing documentation standards and in particular of the Country-by-Country Report is essential. Therefore, countries participating in the OECD/G20 BEPS Project agreed on the core elements of the implementation of transfer pricing documentation and Country-by-Country Reporting. This agreement calls for the master file and the local file to be delivered by MNEs directly to local tax administrations. Country-by-Country Reports should be filed in the jurisdiction of tax residence of the ultimate parent entity and shared between jurisdictions through automatic exchange of information, pursuant to government-to-government mechanisms such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties or tax information exchange agreements (TIEAs).

2.5 ***These new Country-by-Country Reporting requirements are to be implemented for fiscal years beginning on or after 1 January 2016 and apply, subject to the 2020 review, to MNEs with annual consolidated group revenue equal to or exceeding EUR 750 million(approx INR 5350 crores)***.

2.6 In order to facilitate the implementation of the new reporting standards, an implementation package has been developed consisting of model legislation which could be used by countries to require MNE groups to file the Country-by-Country Report and competent authority agreements that are to be used to facilitate implementation of the exchange of those reports among tax administrations. As a next step, it is intended that an XML Schema and a related User Guide will be developed with a view to accommodating the electronic exchange of Country-by-Country Reports.

A. Model template for the Country-by-Country Report

Table 13.1. **Overview of allocation of income, taxes and business activities by tax jurisdiction**

Name of the MNE group: Fiscal year concerned: Currency used:											
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							

Table 13.2. **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:															
			Main Business Activity(ies)												
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	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[1]
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

Table 13.3. **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.

Action 14

Making Dispute Resolution Mechanisms More Effective

Eliminating opportunities for cross-border tax avoidance and evasion and the effective and efficient prevention of double taxation are critical to building an international tax system that supports economic growth and a resilient global economy. Countries agree that the introduction of the measures developed to address base erosion and profit shifting pursuant to the BEPS Action Plan should not lead to unnecessary uncertainty for compliant taxpayers and to unintended double taxation. Improving dispute resolution mechanisms is therefore an integral component of the work on BEPS issues.

Article 25 of the OECD Model Tax Convention provides a mechanism, independent from the ordinary legal remedies available under domestic law, through which the competent authorities of the Contracting States may resolve differences or difficulties regarding the interpretation or application of the Convention on a mutually-agreed basis. This mechanism – the mutual agreement procedure ("**MAP**") – is of fundamental importance to the proper application and interpretation of tax treaties, notably to ensure that taxpayers entitled to the benefits of the treaty are not subject to taxation by either of the Contracting States which is not in accordance with the terms of the treaty.

The measures developed under Action 14 of the BEPS Action Plan aim to strengthen the effectiveness and efficiency of the MAP process. They aim to minimise the risks of uncertainty and unintended double taxation by ensuring the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the mutual agreement procedure.

2.1 Through the adoption of this Report, countries have agreed to important changes in their approach to dispute resolution, in particular by having developed a minimum standard with respect to the resolution of treaty-related disputes, committed to its rapid implementation and agreed to ensure its effective implementation through the establishment of a robust peer-based monitoring mechanism that will report regularly through the Committee on Fiscal Affairs to the G20.

2.2 The minimum standard will:

- Ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner;
- Ensure the implementation of administrative processes that promote the prevention and timely resolution of treaty-related disputes; and
- Ensure that taxpayers can access the MAP when eligible.

2.3 *The minimum standard is complemented by a set of best practices*. The monitoring of the implementation of the minimum standard will be carried out pursuant to detailed terms of reference and an assessment methodology to be developed in the context of the OECD/G20 BEPS Project in 2016.

2.4 In addition to the commitment to implement the minimum standard by all countries adhering to the outcomes of the BEPS Project, ***20 countries have declared their commitment to provide for mandatory binding MAP arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe.***

Action 15

Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

Tax treaties are based on a set of common principles designed to eliminate double taxation that may occur in the case of cross-border trade and investments. The current network of bilateral tax treaties dates back to the 1920s.

Globalization has exacerbated the impact of gaps and frictions among different countries' tax systems. As a result, some features of the current bilateral tax treaty system facilitate base erosion and profit shifting (BEPS) and need to be addressed. Beyond the challenges faced by the current tax treaty system on substance, the sheer number of bilateral treaties makes updating the current tax treaty network highly burdensome. Even where a change to the OECD Model Tax Convention is consensual, it takes a substantial amount of time and resources to introduce it into most bilateral tax treaties. As a result, the current network is not well-synchronized with the model tax conventions, and issues that arise over time cannot be addressed swiftly. Without a mechanism to swiftly implement them, changes to models only make the gap between the content of the models and the content of actual tax treaties wider. This clearly contradicts the political objective to strengthen the current system by putting an end to BEPS, in part by modifying the bilateral treaty network. Doing so is necessary not only to tackle BEPS, but also to ensure the sustainability of the consensual framework to eliminate double taxation. For this reason, governments have agreed to explore the feasibility of a multilateral instrument that would have the same effects as a simultaneous renegotiation of thousands of bilateral tax treaties.

2.1 Provides for an analysis of the tax and public international law issues related to the development of a multilateral instrument to enable countries that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, *interested countries will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this evolution*.

2.2 The goal of Action 15 is to streamline the implementation of the tax treaty-related BEPS measures. This is an innovative approach with no exact precedent in the tax world, but precedents for modifying bilateral treaties with a multilateral instrument exist in various other areas of public international law. Drawing on the expertise of public international law and tax experts, the 2014 Report, which is reproduced hereafter, explored the technical feasibility of a multilateral hard law approach and its consequences on the current tax treaty system. It identified the issues arising from the development of such an instrument and provided an analysis of the international tax, public international law, and political issues that arise from such an approach.

2.3 The 2014 Report also concluded that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly. Based on this analysis, a mandate for the formation of an ad hoc Group (**"the Group"**) to develop a multilateral instrument on tax treaty measures to tackle BEPS, which is reproduced hereafter, was approved by the OECD Committee on Fiscal Affairs and endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015. The Group is open to participation from all interested countries on an equal footing and is served by the OECD Secretariat. The Group begun its work in May 2015 with the aim to conclude its work and open the multilateral instrument for signature by 31 December 2016. Participation in the development of the multilateral instrument is voluntary and does not entail any commitments to sign such instrument once it has been finalized.

Post-BEPS Environment

With the adoption of the BEPS package, OECD and G20 countries, will lay the foundations of a modern international tax framework under which profits are taxed where economic activity and value creation occurs. It is now time to focus on the upcoming challenges, which include supporting the implementation of the recommended changes in a consistent and coherent manner, monitoring the impact on double non-taxation and on double taxation, and designing a more inclusive framework to support implementation and carry out monitoring.

Some of the revisions may be immediately applicable such as the revisions to the Transfer Pricing Guidelines, while others require changes that can be implemented via tax treaties, including through the multilateral instrument. Some require domestic law changes, such as the outputs of the work on hybrid mismatches, CFC rules, interest deductibility, Country-by-Country Reporting, and mandatory disclosure rules, as well as to align, where necessary, domestic rules on preferential IP regimes with the harmful tax practices criteria. Countries are sovereign. It is therefore up to them to implement these changes, and measures may be implemented in different manners, as long as they do not conflict with their international legal commitments. However, BEPS by its nature requires coordinated responses, particularly in the area of domestic law measures; it is therefore expected that they will implement their commitments, and that they will seek consistency and convergence when deciding upon the implementation of the measures.

Challenges have arisen in the course of the development of the measures: some countries have enacted unilateral measures, some tax administrations have been more aggressive, and increasing uncertainty has been denounced by some practitioners as a result of both the changes in the world economy and the heightened awareness of BEPS. As noted in the BEPS Action Plan:

… the emergence of competing sets of international standards, and the replacement of the current consensus based framework by unilateral measures, could lead to global tax chaos marked by the massive re-emergence of double taxation.

Governments recognize these challenges and that **consistent implementation and application are key**: options developed to be adaptable to different tax systems should not result in conflicts between domestic systems; interpretation of the new standards should not result in increased disputes. Instead, to support an effective and consistent **implementation, OECD and G20 countries agree to continue to work together in the BEPS Project framework. Initiatives to further ensure consistent and coordinated implementation are already underway amongst OECD and G20 countries, and beyond.** For example, the European Commission has recently published a Communication on a Fair and Efficient Corporate Tax System in the European Union which aims to set out how the BEPS measures can be implemented within the EU. The participation of about 90 countries in the negotiation of the multilateral instrument is also a strong signal that countries are committed to swift and consistent implementation in a multilateral context.

OECD and G20 countries will also keep working on an equal footing to complete the areas which require further work in 2016 and 2017. These include finalising transfer pricing guidance on the application of transactional profit split methods and on financial transactions, discussing the rules for the attribution of profits to permanent establishments in light of the changes to the permanent establishment definition, and finalising the model provisions and detailed Commentary on the Limitation on Benefit (LOB) rule with a continued examination of the issues relating to the broader question of treaty entitlement of investment funds (other than collective investment funds i.e. non-CIV funds). It will also mean finalising the details of a group ratio carve-out and special rules for insurance and banking sectors in the area of interest deductibility and developing a strategy to expand participation of non-OECD, non-G20 countries to the work on harmful tax practices, including the possible revision of the relevant criteria.

Beyond the finalisation of these actions, OECD and G20 countries will seek to improve clarity and certainty in the application of the rules and will also consider work in related areas which have emerged in the course of the work on BEPS.

Recognising all the progress made, including in establishing a new OECD-G20 framework for more inclusive deliberations, it appears necessary to further deepen cooperation and **focus on monitoring the implementation and effectiveness of the measures adopted in the context of the BEPS Project as well as the impact on both compliance by taxpayers and proper implementation by tax administrations**.

OECD and G20 countries agree to keep working on an equal footing to monitor the implementation of the BEPS measures. The monitoring will consist of an assessment of compliance in particular with the minimum standards in the form of reports on what countries have done to implement the BEPS recommendations. It will involve some form of peer review which will have to be defined and adapted to the different Actions, with a view to establishing a level playing field by ensuring all countries and jurisdictions implement their commitments so that no country or jurisdiction would gain unfair competitive advantages. In addition, a **better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments**. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business, with an important role to play for the Forum on Tax Administration. Finally, proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

Globalization requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries. The strong interest expressed by developing countries through their participation in the BEPS Project should be **sustained by the establishment of an even more inclusive framework,** which will continue to include other international organizations and regional tax organizations. Drawing on the successful experience of the Global Forum on Transparency and Exchange of Information for Tax Purposes, in early 2016 **OECD and G20 countries will work together to design and propose a more inclusive framework to support and monitor the implementation of the BEPS package, with countries and jurisdictions participating on an equal footing**. Such work will include consideration of the manner in which non-OECD non-G20 countries and jurisdictions can commit to the agreed standards and their implementation. It will draw on the mandate from the G20 Finance Ministers and Central Bank Governors as included in their Communiqué issued in Ankara on 5 September 2015:

"*… The effectiveness of the project will be determined by its widespread and consistent implementation. We will continue to work on an equal footing as we monitor the implementation of the BEPS project outcomes at the global level, in particular, the exchange of information on cross-border tax rulings. We call on the OECD to prepare a framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions, particularly developing economies, on an equal footing…*"

The OECD and G20 countries will extend their cooperation on BEPS until 2020 to complete pending work and ensure an efficient targeted monitoring of the agreed measures. They will, in early 2016, conceive a framework for monitoring with a view to better involve other interested countries and jurisdictions.

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