Global Financial Services view on BEPS - webcast series

Latest developments of relevance to asset managers

Wednesday 22 June, 9-10am EDT / 3pm CEST

Notice

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates.

Speakers and agenda

Action 13: Country by Country Reporting

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Action 13: Country by Country reporting

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BEPS and the asset management industry

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What is still to come?

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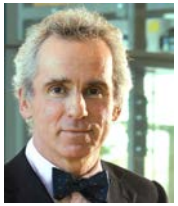
EU BEPS – state of play



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Notes on CPE and polling questions

Continuing Professional Education (CPE) Credits

North America

— We require that participants are registered, logged in and take part in at least 3 of the 5 polling questions and participate in at least 50 of the 60 minutes to qualify for CPE credits for today's webcast.

Outside North America

— We encourage you to participate in the questions, as you may be eligible for continuing education credits in your local jurisdiction.

Polling Questions

— Polling questions will appear as we proceed through the presentation.

— As mentioned, in order to receive the CPE credit, we require that those participants take part in at least 3 of the 5 polling questions and participate in at least 50 of the 60 minutes to qualify for CPE credits for today's webcast.

Attendee questions

— You may submit questions in the 'Ask a question' button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question, someone from KPMG may reply via phone or email.

— For technical issues, please use the Question Mark button in the upper-right hand corner of the media player.

Your feedback

— When the webcast is over, the webcast player will automatically refresh to display an exit survey. Feel free to complete the survey, as your comments are very valuable to us.

Polling question #1

How do the Board and C-level management of your company perceive the significance and potential impact of the BEPS Action Plan?

A

Concerned – They have a high-level understanding and are engaged and interested

B

Aware – They understand it, and there is some dialogue about it, but they are not concerned

C

Passive – They are aware of the debate but are neither concerned nor engaged in regular dialogue about it

D

Not aware – They are not aware of the BEPS Action Plan

E

I do not know

Action 13: Country by Country (CbC) Reporting

Greg Martin

Director, Global Transfer Pricing Services,
KPMG in the UK

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Principal, Global Transfer Pricing Services,
KPMG in the US

Action 13 – Three tiered standardized approach

Final report is consistent with the report issued on 16 September, 2014, focusing on a three-tiered approach for documentation:

Master file	— Objective: Risk Assessment — Approach: Provides an overview of the multinational group and business
Local file	— Objective: Appropriate considerations in setting transfer prices — Approach: Provides additional detail on the operations and transactions relevant to that jurisdiction
CbC report	— Objective: Prioritize Audit Issues — Approach: Provides summary data by jurisdiction including revenue, income, taxes, and indicators of economic activity

Interaction between the three elements of Action 13

Master File (MF)

- The Master File should provide a high-level overview of the multinational entity (MNE) group business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity in order to assist tax administrations in evaluating the presence of significant transfer pricing risk.
- Should contain information for the MNE group as a whole but may be presented by line of business. All information should be available to all applicable tax authorities.
- Content: organisational structure, description of MNE's business, intangibles, intra-group financing activities and financial and tax positions.

Strategic split of information based on local or global audience

Local File (LF)

- Detail information relating to specific intra-group transactions
- Assuring the tax authority that the local entity has complied with the arm's length principle for its material intra-group transactions in that jurisdiction
- Focuses on information relevant to the transfer pricing analysis of a local entity
- Similar to the transfer pricing documentation currently prepared.
- Similar detailed required for each legal entity (subject to local law)

MF puts CbCR in global context

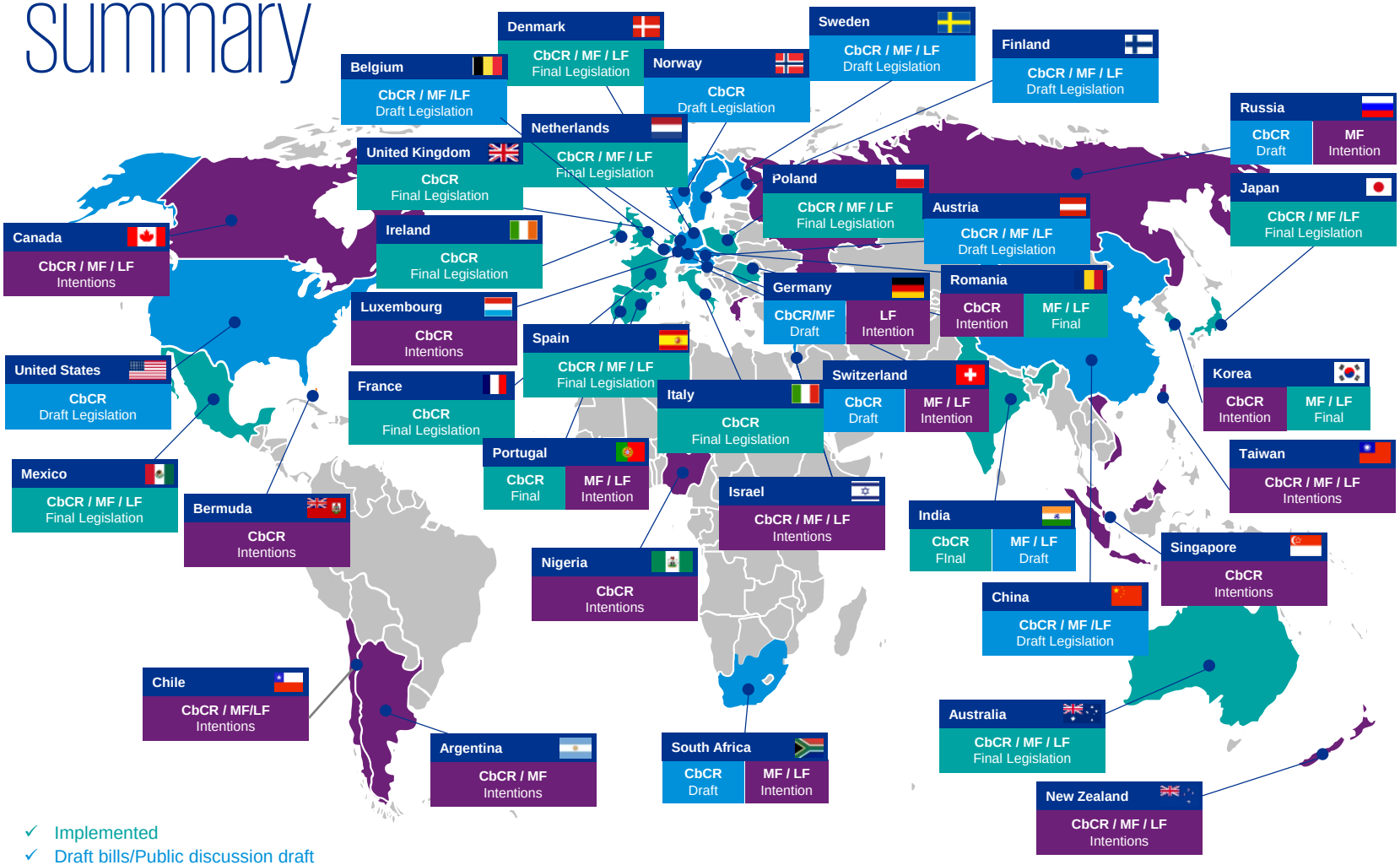
LF puts CbCR in local context

CbC Reporting (CbCR)

- Aggregate tax jurisdiction wide information relating to the global allocation of income, taxes paid, and certain indictors of economic activity among the tax jurisdictions in which the MNE operates
- Country by country breakdown of financial and tax data.
- List of all entities, branches and PEs, with relevant activity from a tick list
- Assumptions and narrative to support and explain the data

Source: KPMG International 2016, for illustrative purposes only

BEPS Action 13: Country implementation summary



- ✓ Implemented
- ✓ Draft bills/Public discussion draft
- ✓ Intention to Implement

Source: KPMG International June 2016, for illustrative purposes only

What are groups doing?

- Setting up a cross-functional steering group for CbC reporting.
- Interpreting and applying the CbC guidelines to their group.
- Performing a scoping and blueprinting exercise, and assessing impact for data collection.
- Designing a data gathering framework to obtain the data – Focus on process, people, technology.
- Performing a dry-run exercise to test the CbC framework ahead of the live reporting, and assess results from consistency, accuracy and risk perspectives.
- Developing the right narrative to explain the raw data and consider potential changes/ improvements to the structure.
- Ensuring coordinated message is given in the documents provided to tax authorities.
- Taking actions to make system/process changes to gather data more efficiently and accurately for the live reporting.

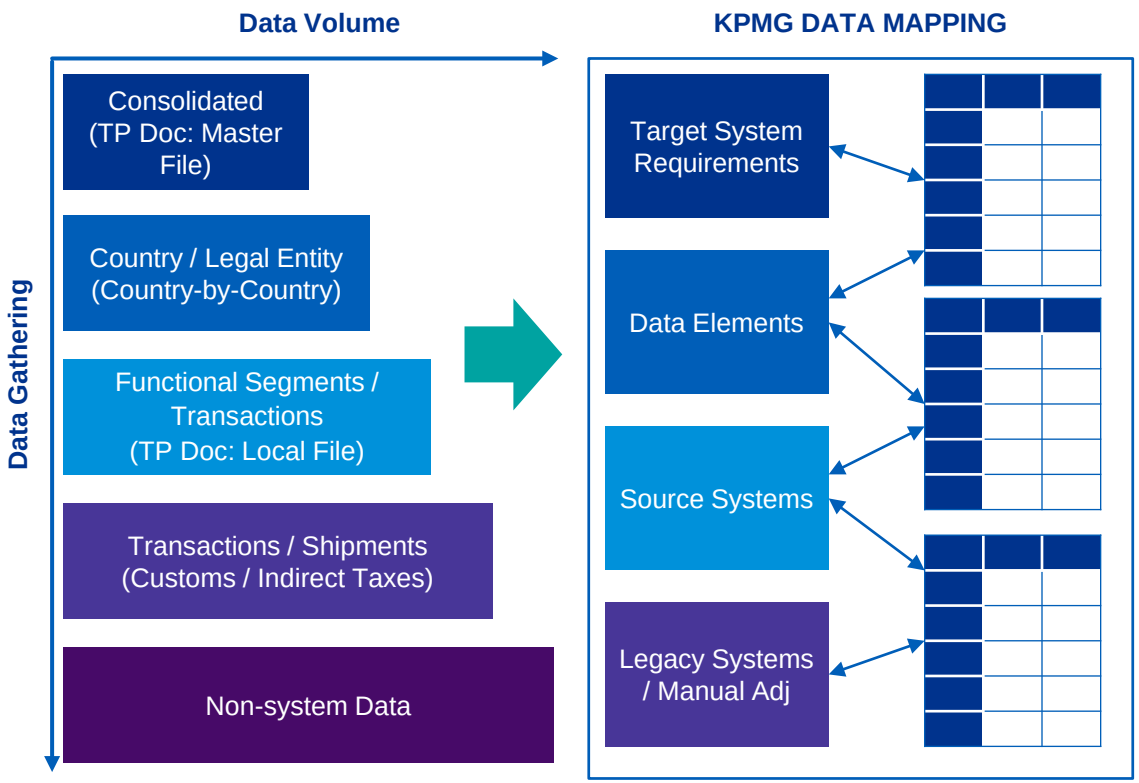
Source: KPMG International 2016, for illustrative purposes only

Our approach to technology

Guiding Principle:

Before the technology solution is defined, it is imperative to develop an approach to data gathering and management that aligns with the overall program objectives. The data strategy will depend on findings related to the following attributes which will enable process automation and sustainability.

- Tax technical
  - Interpretation of rules
  - BEPS risk assessment
- Data considerations
  - Data volume
  - Data granularity
  - Data sources
  - Frequency of source to target data transfers
- Source data access and quality
  - Validation/reconciliation
  - Scalable and sustainable
- Technology enablers
  - Compliance reporting
  - Analytics
  - Modeling



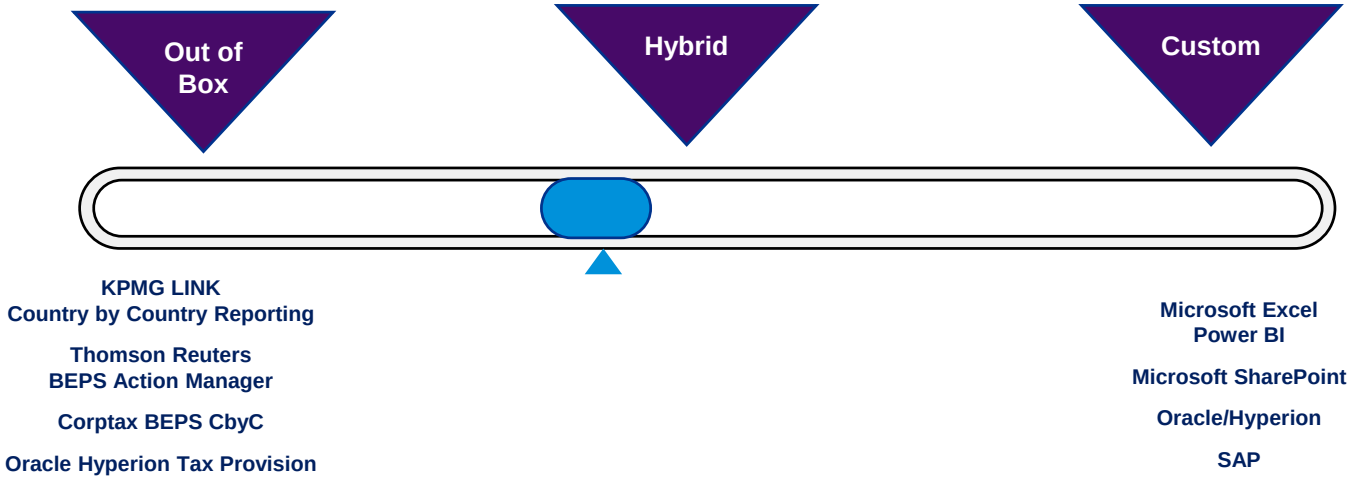
Source: KPMG International 2016, for illustrative purposes only

Our approach to technology

Guiding Questions:

- What technology features and capabilities are important based on the data analysis performed?
- What areas can be easily addressed and what areas can be more challenging?
- What do I want my future BEPS Action 13 reporting strategy and process to look like?
- How can I leverage existing systems software for country-by-country (CbyC) data acquisition and reporting?
- What are my technology options and gating issues based on my assessment?

Technology option – Sliding scale



Source: KPMG International 2016, for illustrative purposes only

Polling question #2

Are you confident that you will be able to meet Action 13 requirements to the extent that they are contemporaneous?

A	B	C
Yes	No	Somewhat

BEPS Action Points – the asset management industry

Andreas Patzner

Partner – Chairman,
European Investment Management Tax Practice,
KPMG in Germany

Action Point 2 - Hybrid Instruments

Summary

- The final report recommends the introduction of hybrid mismatch rules and certain other domestic provisions to counter hybrid arrangements.
- Many anti-hybrid measures already implemented in local tax law (e.g. Luxembourg and the Netherlands changing their participation exemption rules on dividends).
- Branch structures not included but EU Code of Conduct Group to target EU branch exemptions where branch not taxed in branch country.
- Swiss Corporate Tax Reform likely to phase out many Swiss branch structures. Also US draft model treaty measures target US branch planning using treaty partners.

Issues for consideration

- Alternative Fund structures financed by hybrid instruments/arrangements need to revisit their tax and financing structures and understand likely changes to domestic laws in their relevant jurisdictions.
- No grandfathering for existing deals. Rather, the implementation date should be set far enough in advance to give taxpayers sufficient time to determine the likely impact of the rules and to restructure as necessary.
- Funds invested into hybrid instruments (e.g. profit participating certificates) need understand likely change to taxation (of the funds or the fund unit holders)

Action Point 4 - Interest Deductions

Summary

- In its final report, the OECD recommends a combination approach where a fixed ratio rule is the default rule and a group ratio rule applying at a country's election.
- Recommended best practice to be an EBITDA based cap on net tax deductible interest expense.
- Ratio range within which countries can set their ratio (corridor of 10% - 30%).
- Under the group ratio rule, interest expenses are deductible up to the level of the net third party interest/EBITDA ratio of the group.
- Possible to introduce de minimis thresholds.
- Carry forward of unutilized interest recommended.
- Recommended exclusions for certain infrastructure projects (public/private partnership).

Issues for consideration

- Lack of uniformity due to "best practice" approach and differences in ratios.
- Many countries currently have similar rules and may decide that no further change is necessary.
- Others will implement changes unilaterally (e.g. UK consultation process expected shortly).
- De minimis limits may be useful where assets are naturally held in special purpose vehicles. Anti-fragmentation rules will apply.
- Disadvantage for funds with no external leverage (sovereign wealth funds etc.).
- Infrastructure funds need to assess the potential impact of domestic rule changes and likelihood of same.

Action Point 6 - Treaty Abuse

Summary

- The final report includes draft provisions for both a US-style LOB and for a "simplified" LOB. The simplified LOB is expected to be paired with the PPT. Further work has been done on both the detailed and simplified LOB and Commentary during the first part of 2016, in light of changes to the U.S. model LOB.
- Treatment of Collective Investment Vehicles to be bilaterally agreed, may be viewed as automatically "qualifying persons" for purposes of the LOB Test.
- Contracting states who go with the LOB option are to bilaterally agree how "CIV" should be defined.
- Also to agree whether they will make it easy or difficult for CIVs to fall within the definition of "qualified persons" in their specific tax treaty. Will all CIVs be "qualifying persons" or only those that meet certain ownership tests?
- If CIV qualification is to be conditional then implementation of the TRACE project is important.
- No immediate conclusions on non-CIVs. Further work to be done.
- Pension funds to be provided with "resident" status

Issues for consideration

- Lack of uniformity with regard to the treatment of CIVs, the definition of CIVs and their entitlement to treaty benefits. Will create complexity and uncertainty.
- Bilateral negotiation required to finalize CIV treatment on a treaty by treaty basis where LOB approach adopted.
- EU countries most likely to adopt PPT in preference to LOB test.
- Will States take different approaches to the timing of implementing the TRACE project?
- Uncertainty for non-CIVs due to deferred decision on treatment.

Action Point 7 - Definition of PE

Summary

- The OECD recommends an expanded scope of what is proposed to constitute a PE, focusing on the negotiation and final conclusion of contracts.
- An agent acting in a country on behalf of an enterprise will create a permanent establishment where:
  - the agent "habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise"; unless
- The exception for independent agents will no longer apply for companies belonging to the same group, if that person acts exclusively or almost exclusively on behalf of one or more related enterprises.
- These proposed changes to the PE definition will be implemented as part of the multilateral instrument adopted under the work on Action 15.

Issues for consideration

- Asset acquisitions – who leads your negotiations and where are the negotiations conducted?
- Will it impact on your distribution channels especially via (independent agents)?
- How do you measure attributable profits?

Action Point 12 - Disclosure of tax planning

Summary

- The final report of 5 October 2015 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.
- No minimum standard, countries are free to choose whether or not to introduces mandatory disclosure regimes.
- Specific recommendations for rules targeting international tax schemes, information exchange and co-operation between countries.
- It seems that countries do already implement first disclosure mechanism.
  - e.g. Germany has launched a legislative draft to oblige tax advisors of foreign and German funds to disclose potentially aggressive tax schemes which influence the taxation of German fund unit holders (German Investment Tax Reform Act which has passed parliament on 9 June 2016) .

Issues for consideration

- Who has to report? Investment Manager, Funds, (Tax) Advisors.
- What has to be reported? Reportable Schemes and Arrangements. (Countries to decide)
- When is information to be reported?
- What are the consequences of non-compliance?
- What are the consequences of disclosure?
- Funds involved in the dividend-trades (cum-cum or cum-ex)

Polling question #3

Do you think the BEPS initiative will ultimately increase your organization's Effective Tax Rate?

A	B	C
Yes	No	Not sure

What is still to come?

Michael Plowgian

Principal,
Washington National Tax,
KPMG in the US

Further work at OECD and country Level

Action Item 15

Multilateral Instrument

- Will include provisions from Actions 6 and 7, some from Action 2 regarding fiscally transparent entities, and revised dispute resolution provisions
- Discussion draft released in May; public consultation in July
- Several technical issues still to resolve

Action Item 6

Treaty Benefits

- Further work on treaty access for non-CIV funds expected during September

Action Item 8-10

Transfer Pricing

- Work on profit attribution to permanent establishments ongoing -- agreement before multilateral instrument is concluded?

Action Item 14

Dispute resolution

- Possibility for business input?

Action Item 2

Hybrids

- Discussion draft on branch mismatch arrangements expected July 15

Action Item 4

Interest Deductions

- Discussion draft on group ratio rule expected to be released July 6, and draft on interest in the banking and insurance sector expected July 18
- UK consultation
- US proposed section 385 regulations

EU BEPS – state of play

Barry Larking

Director,
EU Tax Centre,

KPMG in the Netherlands

Overview

Anti-Tax Avoidance Package

28 January 2016

What is in the package

Anti-tax avoidance directive	Recommendations on tax treaties	Revised administrative cooperation directive	Communication on external strategy
Legally binding anti avoidance measures	Advice on how to revise national tax treaties against abuse	Country-by-Country reporting between tax authorities	Measures to promote tax good governance internationally

Source: EU Commission

Polling question #4

Are you concerned with the EU's proposal to publically disclose EU Country by Country Reporting?

A	B	C
Yes	No	Not sure

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Panel Q&A

Please contact us with any questions

Action 13: Country by Country Reporting

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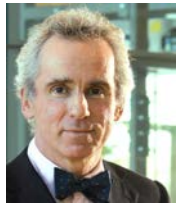
EU BEPS – state of play



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Polling question #5

Would you like to be contacted by a KPMG professional to discuss the impacts of BEPS on your organization?

A	B
Yes	No

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You can view the slides and playbacks of this webcast, along with all of our past KPMG Global Tax webcasts:

Global FS view on BEPS – latest developments of relevance to banking institutions

Global FS view on BEPS – latest developments of relevance to insurers

Global FS view on BEPS – latest developments of relevance to asset managers

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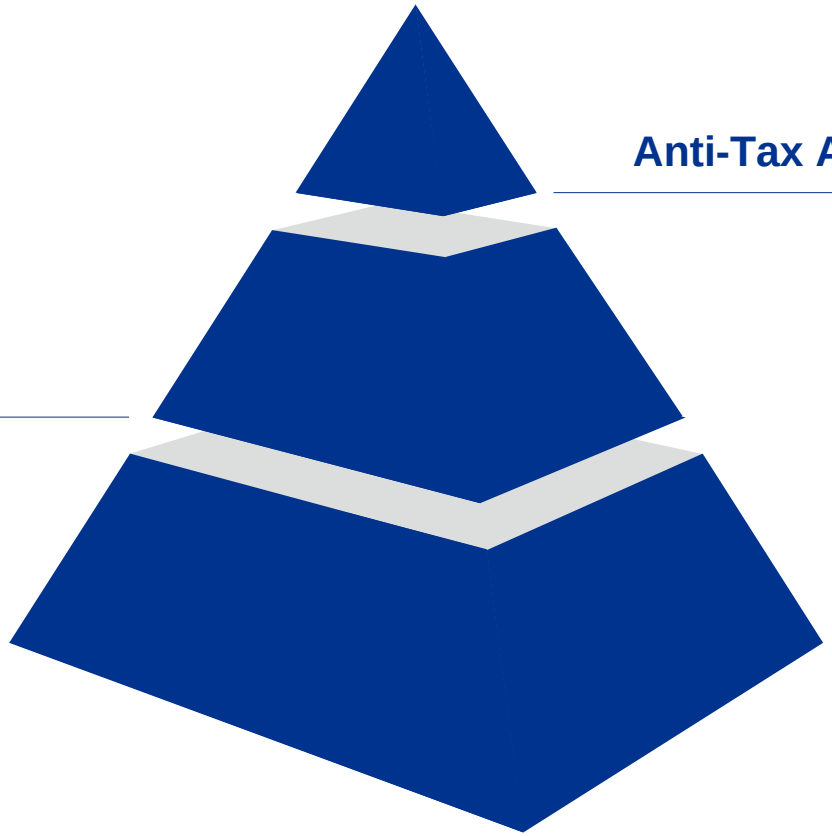
Appendices

Overview: from CCCTB to CCTB to Anti-Tax Avoidance Directive

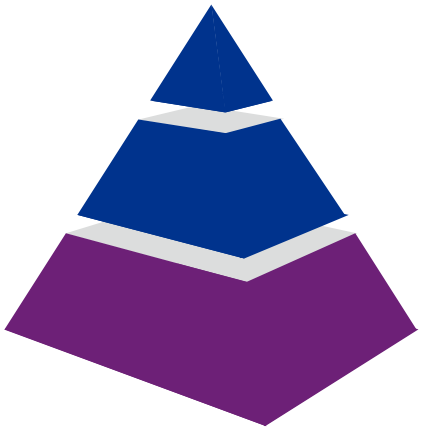
Anti-tax avoidance directive

Legally binding anti avoidance measures



Source: KPMG International 2016, for illustrative purposes only

Common Consolidated Corporate Tax Base (CCCTB)



Common Consolidated Corporate Tax Base

- 2004-2008: CCCTB Working Group
- 2011: Commission Proposal, including 'international aspects'
- 2015: Relaunch of the C(C)CTB: step-by-step approach

Common Consolidated Corporate Tax Base – 2011 Proposal
(single set of rules – formulary apportionment – one stop shop – optional)

- Reduction in compliance costs
- One stop shop for administrative and procedural aspects
- More transparency – competition only through different tax rates
- Holistic approach to tackle tax avoidance
- No mismatches and loopholes between tax systems

Source: KPMG International 2016, for illustrative purposes only

Common Corporate Tax Base (CCTB)

Common Corporate Tax Base – Step-by-step approach

- 1st step: CCTB – No Consolidation, but cross border loss offset element
- 2nd step: Consolidation – postponed without time limit

Common Corporate Tax Base – Proposal expected in November 2016
(single set of rules – no consolidation – cross border loss relief – mandatory)

- Member States could not agree on Apportionment Formula:
  - Labor Factor
  - Asset Factor
  - Sales Factor
- In order to make progress, the Commission decided to put the consolidation aspect on hold until the common base has been agreed and implemented

Source: KPMG International 2016, for illustrative purposes only

Anti-Tax Avoidance Directive

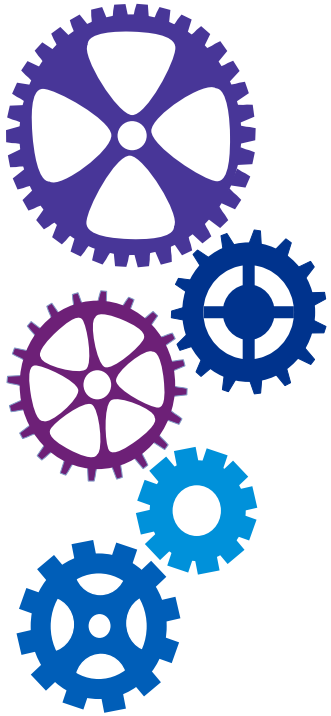
Anti-Tax Avoidance Directive – 28 January 2016

Anti-Tax Avoidance Directive – 28 January 2016
(Part of the Tax-Avoidance Package - common minimum level of protection)

- Based on the 'international aspects' of the CCCTB proposal and the outcomes of the OECD/G20 BEPS project
- Anti-Tax Avoidance rules in **6 specific fields**:
  - Interest limitation rule
  - Exit taxation
  - Switch over clause
  - General Anti-Avoidance Rule (GAAR)
  - Controlled Foreign Company (CFC)
  - Hybrid mismatches
- Possible split between OECD and non-OECD compliant proposals
- No political agreement at ECOFIN on 25 May: deferred to 17 June
- Proposed application date: 1 January 2019

Source: KPMG International 2016, for illustrative purposes only

Anti-Tax Avoidance Directive - Points of disagreement



Some Member States expressed concerns or disagreements on the following provisions:

- Scope of the hybrid mismatch rules,
- Existence of a switch-over provision,
- CFC rules, especially as regards:
  - whether they should apply both inside and outside the EU,
  - the substance requirement,
  - where the burden of proof for substance should be placed.
- Do the effective taxation requirements infringe the Member States' tax autonomy?

Source: KPMG International 2016, for illustrative purposes only

Recommendation on Tax Treaty issues

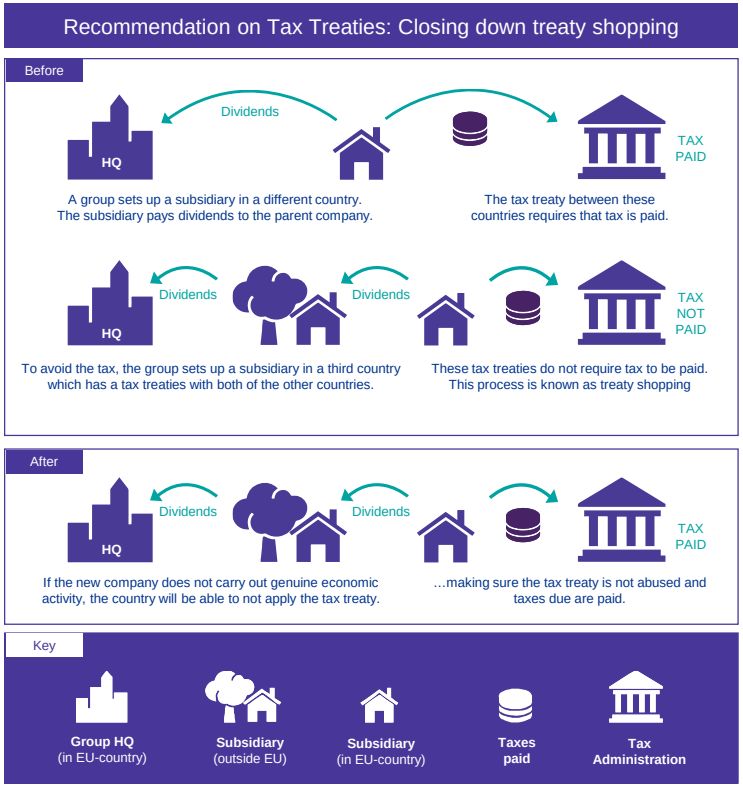
Recommendations on tax treaties

Advice on how to revise national tax treaties against abuse

Adoption of Council Conclusions in ECOFIN on 25 May, 2016

Recommendation on Tax Treaty issues

- OECD BEPS Action 6 proposes 2 options:
  - General anti-avoidance rules based on the principal purpose test (PPT), or
  - Limitation on Benefits (LOB) clauses possibly not compliant with the Single Market
- Align OECD recommendations with CJEU case law (genuine economic activities)
- MS should follow the new definition of Permanent Establishment (PE) in Article 5 OECD Model Convention



Source: *EU Commission*

EU Directive on Administrative Cooperation – non public CbC reporting

Revised administrative cooperation directive

Country-by-Country reporting between tax authorities

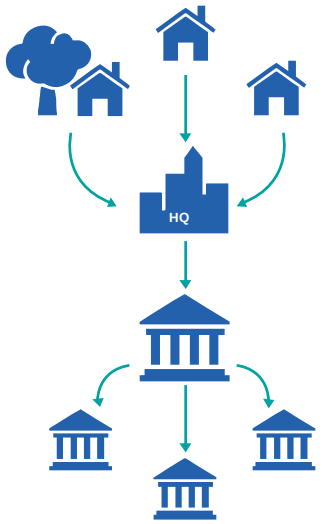
Adoption in ECOFIN on 25 May, 2016

Proposal on Country-by-Country Reporting

- OECD recommendations in BEPS Action 13
  ⇨ **non public** CbC Reporting
- Amendment to EU Directive on Administrative Cooperation (DAC 4)
- Applicable to multinationals with a minimum consolidated group turnover of EUR 750 million
- For each tax jurisdiction where they operate
- Reportable information includes:
  - Turnover
  - Pre-tax profit
  - Income Tax paid
  - Income Tax accrued
  - Number of employees
  - Capital
  - Tangible assets
  - Business activities

Revised administrative cooperation directive

1. The parent company of multinational group receives tax-related information for all its subsidiaries broken down per country.
2. The parent company sends the report to the tax authority in the Member state where it is resident.
3. The report is shared with all Member States where the group is liable for tax, giving all authorities the complete picture.



Key

Group HQ (in EU-country) | Subsidiary (outside EU) | Subsidiary (in EU-country) | Taxes paid | Tax Administration

Source: *EU Commission*

Communication on External Strategy for Effective Taxation

Communication on external strategy

Measures to promote tax good governance internationally

Adoption of Council Conclusions in ECOFIN on 25 May, 2016

Communication on External Strategy for Effective Taxation

- Updating EU tax good governance criteria
- Including tax good governance clauses and State aid provisions in bilateral and regional agreements
- Assisting developing countries in meeting tax good governance standards
- Developing an EU process for evaluating and listing 3rd country non-cooperative tax jurisdictions
- Revising the EU Financial Regulation to prevent EU funds from being channeled through low/no tax jurisdictions
- **OECD:** No BEPS Equivalent but Global Forum on Transparency and Exchange of Information for Tax Purposes

Communication on external strategy

How will the new listings process work?

Step 1

Commission identifies a set of third countries that may need to be screened using a neutral scoreboard of indicators.

Step 2

Member states decide which of those third countries should be screened.

Constructive dialogue takes place with those countries selected for screening.

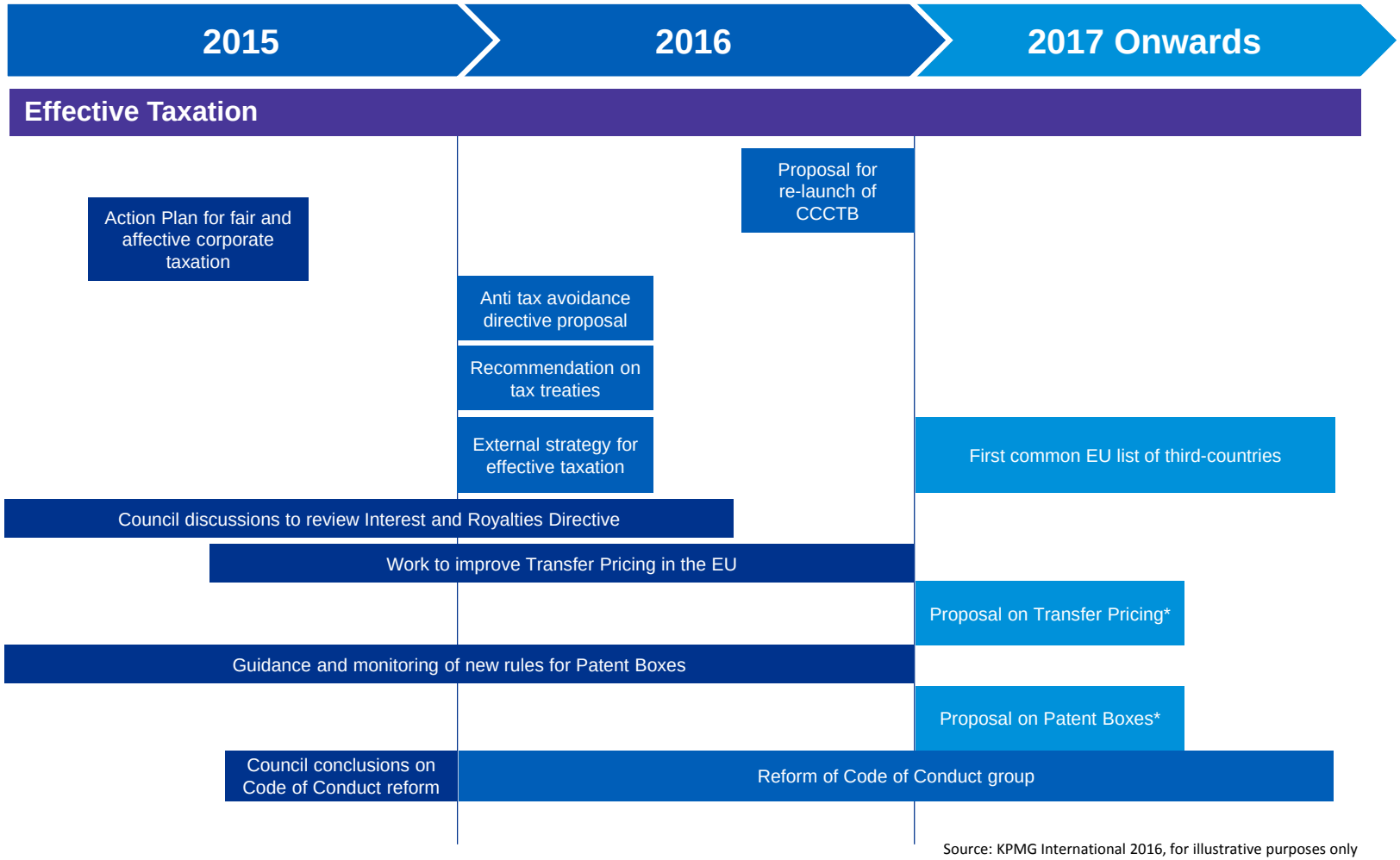
Step 3

Commission recommends which countries should be listed. Member States take the final decision.

As soon as the third country meets jointly agreed standards, it is de-listed.

Source: *EU Commission*

Timeline



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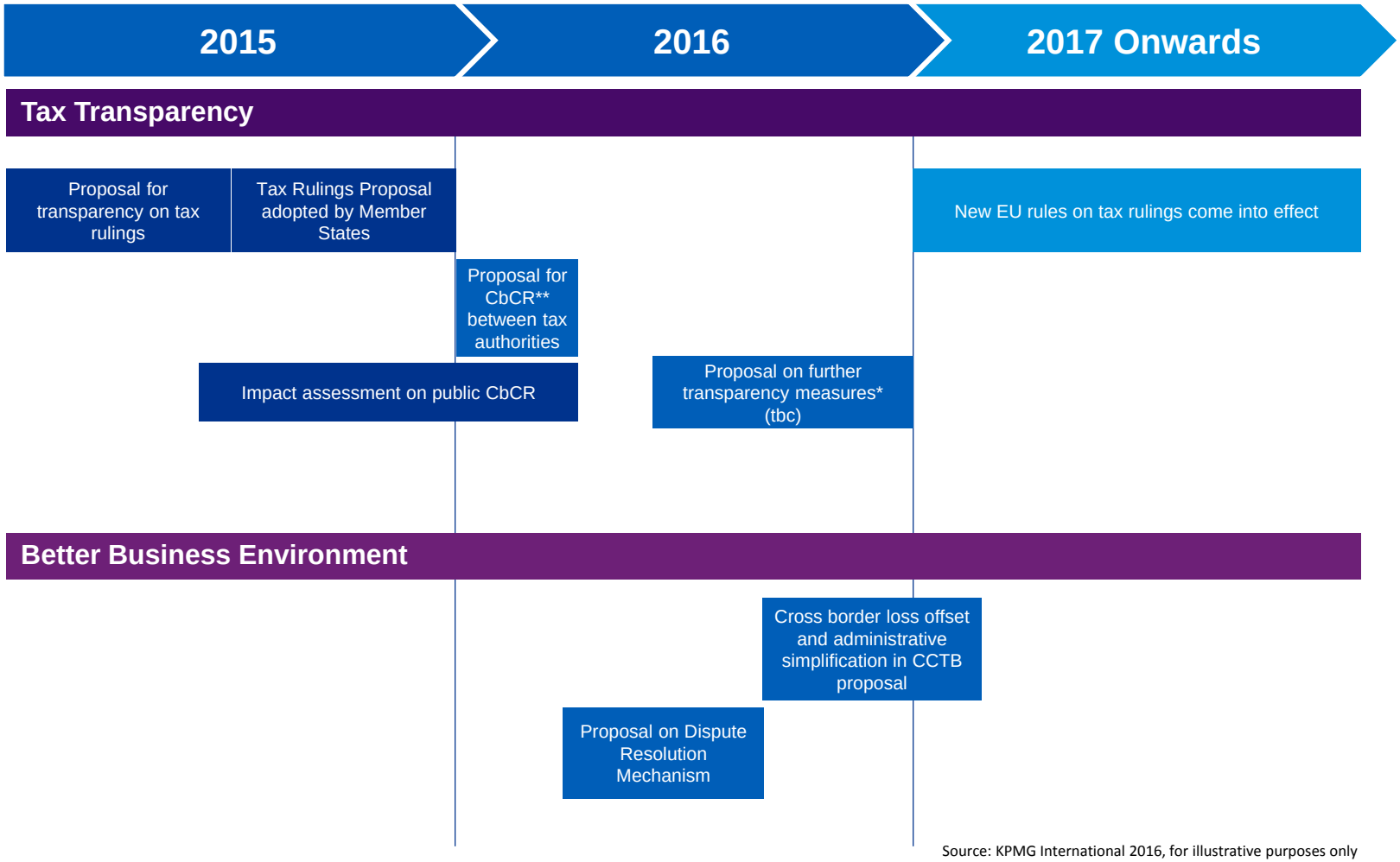
Timeline



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