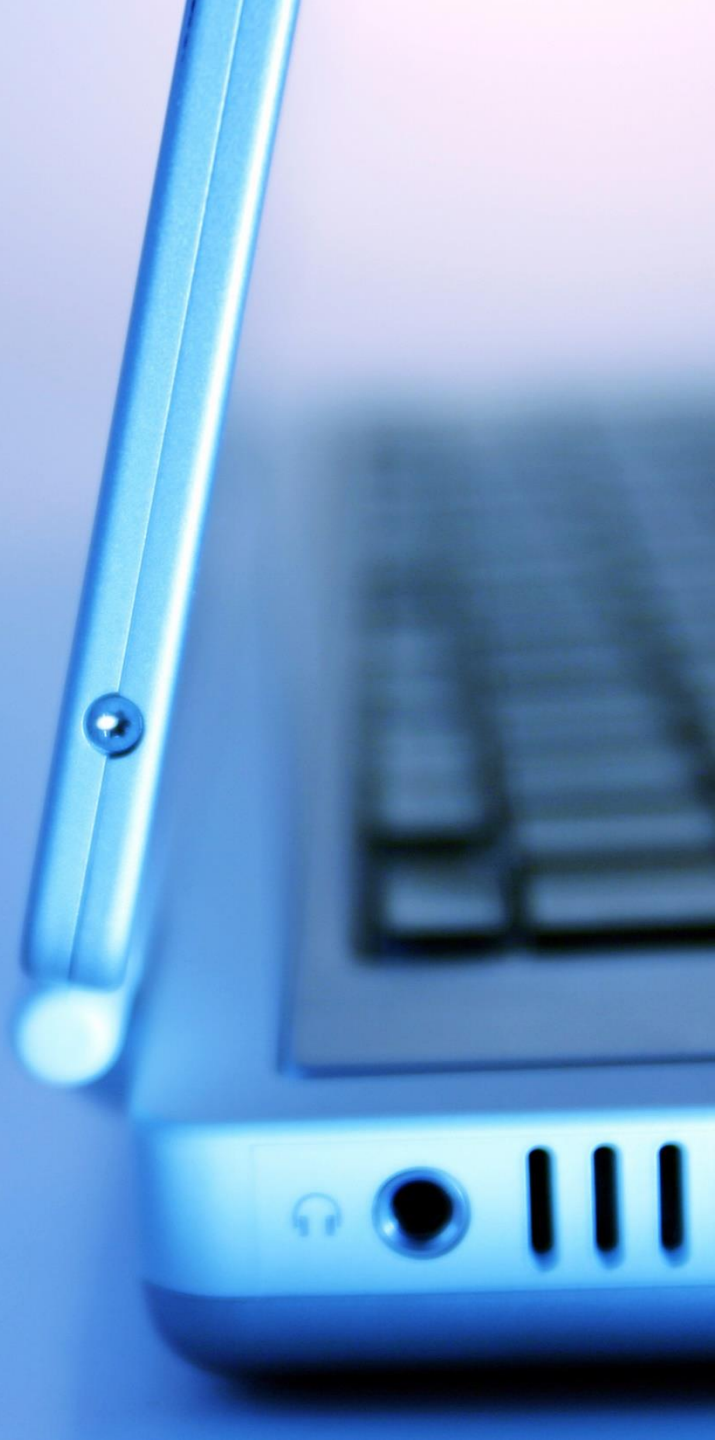
KPMG Global Tax Webcast

Global trends in tax reform and BEPS implementation

Wednesday 22 February 2017, 9:00-10:00am EST



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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.

Speakers

- Manal S. Corwin, Principal and National Leader, International Tax, KPMG LLP (US)
- Alfonso Pallete, Principal, International Tax, KPMG LLP (US)
- Christopher Xing, Asia Pacific Regional Leader, International Tax, KPMG China
- Grant Wardell-Johnson, Head of the Australian Tax Centre, KPMG Australia
- Robin Walduck, Partner, Head of International Tax, KPMG in the UK
- Gabriele Rautenstrauch, Director, International Tax, KPMG in Germany
- Vinod Kalloe, Head of International Tax Policy, KPMG Meijburg

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Agenda

- Introduction
- EU Developments
- EMA Developments with focus on UK and Germany
- ASPAC Developments
- US & LATAM Developments

EU Developments

Vinod Kalloe, Head of International Tax Policy, KPMG Meijburg

EU taxation update

EU Commission	EU Council	EU Parliament	EU Member States	EU Courts
Initiatives	Negotiation	Advisory	Implementation	Jurisprudence
1. State Aid: tax rulings 2. External Strategy tax haven blacklist	3. Anti Tax Avoidance Directive II: — hybrid mismatches — third countries 4. Accounting Directive: Public CbyC reporting	5. Committees — ECON — TAXE — Panama — Greens	6. Anti Tax Avoidance Directive I: — hybrids — CFC — GAAR — exit taxes — interest deduction 7. Directive Administrative Cooperation : — CbyC reporting — Exchange rulings	Appeals State aid: — Netherlands — Belgium — Luxembourg — Ireland Ruling State Aid — Spain

EMA Developments

Robin Walduck, Partner, Head of International Tax, KPMG in the UK

Gabriele Rautenstrauch, Director, International Tax, KPMG in Germany

Corporate Interest Restriction (UK)

Corporate Interest Restriction (CIR): the UK's implementation of BEPS Action 4

Headline features

— Fixed Ratio Rule ('FRR') limits amount of deductible interest to 30 percent of UK Tax EBITDA

— Introduction of a Modified Debt Cap Rule ('MDCR') — to replace existing Worldwide Debt Cap rule.

Reliefs and exclusions

— £2 million de minimis threshold

— Carry forward of disallowed interest expense (indefinitely) and/or unused interest capacity (5 years)

— Group Ratio Rule ('GRR') — Optional, and based on Accounting EBITDA

— Public Benefit Exemption for financing of certain public infrastructure assets

— No carve out or special regime for FS sector.

Commencement

— 1 April 2017

— No general grandfathering.

MLI – proposed UK position

The UK is proposing to adopt:

— relating to Hybrid Mismatches (BEPS 2): the transparent and dual resident entities provisions (articles 3 and 4)

— relating to Treaty Abuse (BEPS 6): stronger anti-abuse wording to the preamble (article 5); the anti-abuse Principal Purpose Test (article 7)

— relating to Permanent Establishments (BEPS 7): the anti-fragmentation rule relating to PEs (article 13)

— relating to Dispute Resolution (BEPS 14): the revised Mutual Agreement Procedure (MAP) (article 16); the insertion of Article 9(2) to enable corresponding adjustments in transfer pricing cases (article 17); and 'baseball style' arbitration (article 18).

Note: the UK has **no** plans to bring in the changes to either the preparatory and auxiliary rules or the dependent agent test (relating to PEs, BEPS 7)

Broadly, the UK is only proposing the minimal amount of mandatory change required to adhere to the minimum standards and is proposing to bring in a limited number of the other possible changes.

Draft Anti IP-Box Bill (Germany)

Restriction of tax deductibility of royalty expenses that are low taxed at the recipient level due to a preferential (harmful) regime (e.g. IP-boxes).

Covered expenses

— expenditures for the licensing of **use** or the **right** to **use rights** (e.g., copyrights, industrial property rights, commercial/technical experiences, knowledge etc.)

— limited to payments between related persons (e.g., shareholding of at least 25 percent).

Low taxation (< 25 percent) at the **creditor's level** due to harmful preferential tax regime

— exemption: No harmful preferential tax regime given if the regime follows the 'Nexus approach' (i.e., substantial activity in the creditor's state; cf. Action 5)

— no exemption applicable for the licensing of **trademark rights.**

Non-deductible part: $\frac{25\% - income\ tax\ burden\ in\ \%}{25\%}$, e.g., $\frac{25\% - 5\%}{25\%} = 80\%$

Application to expenses accruing after **31 December 2017**.

MLI – 'Anti-BEPS-I'-Bill – ATAD I (Germany)

Multilateral Instrument (MLI)

Germany will sign the MLI, however, no official statements by the Finance Ministry yet with regard to specific clauses such as:

— treaty abuse: LOB or PPT (Action 6)

— permanent establishment (Action 7).

'Anti-BEPS-I'-Bill (Germany)

— transfer pricing: implementation of documentation rules (master file, local file, CbC reporting)

— tax rulings: automatic information exchange

— specific anti-hybrid rule with regard to inbound structures via German partnerships and double deduction of interest payments.

Anti Tax Avoidance Directive (ATAD I)

— draft bill on general anti-hybrids rules and amendments to CFC rules expected for end of 2017 (after parliament elections).

ASPAC Developments

Christopher Xing, Asia Pacific Regional Leader, International Tax, KPMG China

Grant Wardell-Johnson, Head of the Australian Tax Centre, KPMG Australia

ASPAC – BEPS and transparency initiatives

Digital Economy

- B2C digital supplies GST/VAT registration
- incl. Australia, India, Japan, Korea, NZ
- for B2C physical supplies, China leverages online shopping platforms/couriers to collect VAT/consumption tax/customs.

CFC

- Japan 2017 modernizes CFC rules
- awaiting China's CFC update.

Interest deductions

- India Finance Act 2017 EBITDA rule
- other ASPAC retain and tighten (e.g. AU) or introduce (e.g. Indonesia, Malaysia) traditional debt-equity based rules.

Harmful tax practices

- rulings/APA exchange (with Peer Review)
- Australia, China, HK, India, Indonesia, Japan, Korea (+ other incl. framework)
- ASPAC adopt patent boxes (e.g. India).

Treaty abuse

- rough ASPAC approach to treaty shopping
- incl. framework ASPAC countries to adopt Action 6 min. standard — PPT preferred
- ultimate impact on enforcement practice?

PE

- measures (e.g. Australia DPT, Indonesia digital PE) and increased enforcement
- MLI Action 7 changes likely for some ASPAC countries — widespread use of deemed PE profit methods makes more problematic.

ASPAC – BEPS and transparency initiatives

TP

- differing speed/degree of adoption of BEPS-updated OECD TP Guidelines, e.g.
  - Australia — July 2016
  - China — Circular 2 localization ongoing.

TP documentation/CBC reporting

- CBCR (with Peer Review) adopted in Inclusive Framework ASPAC jurisdictions
- CBC MCAA ASPAC countries incl. Australia, China, India, Indonesia, Japan, Korea, Malaysia, Mauritius, NZ.

MLI

- MLI working group included Inclusive Framework ASPAC countries + others (e.g. Philippines, Thailand, Vietnam) .

CRS

- of 101 countries globally committed to CRS, 84 currently plan to use CRS MCAA
- incl. Australia, China, India, Indonesia, Japan, Korea, Malaysia, Mauritius, NZ
- other ASPAC countries facilitate CRS through bilateral agreements (e.g. HK, Singapore).

Australia – Diverted Profits Tax (DPT)

- new DPT at 40 percent from 1 July 2017
- legislation 9 Feb 2017 following 2016 Budget
- 1,600 taxpayers impacted, 8 percent at high risk
- applies:
  - to groups with global turnover of AUD$1 billion or more
  - where one of the principal purposes of an arrangement is
  - to divert income or profits to a country where the tax rate is less than 80 percent of the Australian rate (i.e. less than 24 percent)
  - and the arrangement has insufficient economic substance.
- tax is payable upfront, but not 'self-assessed'
- restricted evidence rule applies
- MITs, CIVs, SWFs, pension funds outside DPT.

Key factors:

- on-going disputes
- marketing/ procurement hubs
- limited risk distributor restructures
- migrated IP
- offshore leasing
- financing from cash boxes
- insurance.

US and LATAM Developments

Manal S. Corwin, Principal and National Leader, International Tax, KPMG LLP (US)

Alfonso Pallete, Principal, International Tax, KPMG LLP (US)

US Tax Reform - House blueprint

- lower corporate tax rate to 20 percent
- repeal corporate AMT
- territorial system (other than FPHCI)
- border adjusted rate (tax imports/exempt exports)
- one time repatriation tax (8.75/3.5 rate over 8 years).

House blueprint - cont'd

- no deduction for net interest expense (interest in excess of interest income)
- eliminate most other special credits and deductions (e.g. 199); retain versions of LIFO and R&D credit
- full expensing
- indefinite NOL carry forward with interest adjustment, no carryback
- restructure IRS.

The Trump Plan

Barebones outline and fluid concepts

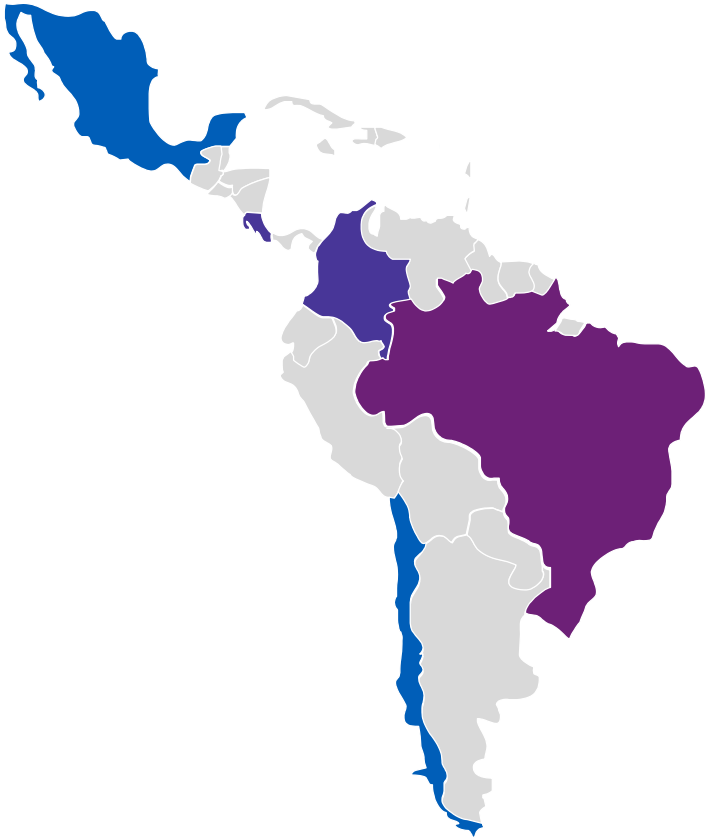
- lower rate – 15 percent
- election to expense or can retain interest deduction
- international business taxation:
  - early support for a worldwide tax system
    - 15 percent rate
    - FTCs allowed
  - then focused on taxes/tariffs on ‘roundtripped’ imports
  - <u>ambiguous reaction to the Blueprint’s border adjustability feature</u>
  - consistent support for a transition tax – 10 percent rate.
- potential revenue shortfall?

LATAM Region – OECD membership

Member

Accession

Strategic partner



LATAM Region – Major reforms/BEPS impact

Argentina

- engaged in examination and termination of certain treaties with the perceived potential for abuse
- created a ‘white list’ of cooperative countries regarding information exchange and transparency purposes (more stringent rules for countries not on the ‘white list’)
- documentation requirements for related-party transactions
- signed MCAA for automatic exchange of CbyC reports.

Brazil

- has been involved in developing the BEPS framework as a G20 member but generally does not follow OECD tax principles
- however, has enacted legislation regarding:
  - transfer pricing (but does not follow arm’s length principle)
  - a list of tax-havens and privileged tax regimes that are subject to harsher WHT regimes
  - Country-by-Country reporting of profits similar to CbyC reporting
  - dispute resolution mechanisms for treaty disputes
  - a CFC regime.

LATAM Region – Major reforms/ BEPS impact

Chile

- has adopted reforms regarding:
  - digital commerce, gambling, and services
  - enhanced thin-cap rules
  - GAAR regarding structures and transactions involving hybrid mismatches; substance-over-form principles; preferential tax regimes
  - defined scope 'beneficial owner' for treaty purposes and new tax treaties include LOB provisions
  - broad PE definition with narrow preparatory and auxiliary activities exception
  - requirement of an annual information return regarding the 'global tax characterization' of large corporate taxpayer's operations
  - bigger focus on transfer pricing and has signed MCAA for CbyC reporting, expected to be implemented in the near future.

Colombia

- recent reform included changes relating to:
  - increasing exchange of information, including the obligation to report information regarding the ultimate beneficial owner
  - reinforcing anti-tax haven and anti-preferential regime legislation
  - the introduction of a CFC regime.
- Colombia also has pre-reform legislation regarding transfer pricing and has adopted CbyC reporting (including master and local files).

LATAM Region – Major reforms/ BEPS impact

Mexico

- limitations on deductibility for payments between related parties when there is a hybrid mismatch arrangement (instrument or entity)
- limitations on deductions for interest, royalty, and technical assistance payments if they are not subject to tax in recipient country
- quarterly reporting requirements for certain transactions, including financial transactions, transfer pricing operations, transactions involving equity participation and tax residence, reorganizations and restructurings, and the transfer of intangibles
- master file, local file, and CbyC reports.

LATAM Region – Adoption of CbyC Reporting

- Argentina (signed MCAA but CbyC measures still under study)
- Brazil
- Chile (adoption anticipated of local file)
- Colombia (including master and local file)
- Costa Rica (adoption anticipated for CbyC)
- Curacao (adoption anticipated for CbyC and local file)
- Mexico (including master and local file)
- Panama (adoption anticipated for CbyC)
- Peru (including master and local file)
- Uruguay (adoption anticipated for CbyC and master file).

Today's Presenters

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