OECD
BEPs
Action
Plan

Moving from talk to action in the European region

September 2016

KPMG International
kpmg.com/beps
Introduction

A whirlwind of international tax change has swept the globe in the past year, and for tax executives in Europe, there is no end in sight. From broader requirements for tax transparency through more stringent transfer pricing policies to greater scrutiny of business substance, every country and every multinational company is feeling the impact.

With the release of all final recommendations on base erosion and profit shifting (BEPS) and their endorsement by the G20 and European Union (EU) in 2015, the Organisation for Economic Co-operation and Development (OECD) delivered a groundbreaking starting point for truly global tax coordination.

European governments have all committed to end BEPS and have eagerly implemented large parts of the OECD BEPS proposals in the past year — with the public release of the so-called ‘Panama Papers’ adding further momentum.

And the European Commission recently grabbed the headlines with the State aid decision against Ireland for providing a favourable tax ruling to a US multinational company with an unprecedented EUR13 billion potential recovery.

At the same time, countries remain committed to enhancing their own tax competitiveness — for example, by reducing corporate tax rates. This issue is expected to seize even more of the spotlight in the years to come as the United Kingdom negotiates its exit from the EU following the June 2016 referendum.

This report is the third in our series of ‘pulse checks’ on how actions on BEPS policy are progressing in Europe. In these pages, international tax leaders from KPMG’s member firms in Europe offer insights on:

— the impact of the BEPS debate on tax policy in Europe and selected European countries
— recent and pending changes to tax codes ahead of or in step with the OECD recommendations
— the changing attitudes of tax authorities as international tax reforms take hold
— how international companies are reacting to and managing these reforms.

Most importantly, we sought to answer whether BEPS activities will ultimately improve the taxation of cross-border transactions in Europe — or if companies will continue to weather inconsistency and uncertainty for years to come.

Our findings are set out in the following pages, starting with an overview of BEPS-related trends in the region as a whole, followed by an in-depth look at how events are unfolding in selected European countries. We conclude with strategic advice that tax directors of all international companies should consider now to guard against adverse change and thrive in Europe’s new tax reality.

Vinod Kalloe
Head of International Tax Policy
KPMG Meijburg & Co,
in the Netherlands
Contents


Countries in focus: implementation moves ahead

Austria .................. 10
Belgium .................. 12
France .................. 16
Germany .................. 20
Ireland .................. 22
Italy .................. 24
Luxembourg .............. 26
Netherlands .............. 28
Portugal .................. 30
Spain .................. 32
Switzerland .......... 34
United Kingdom ....... 36

Bracing for BEPS: are you ready?

Appendix: unilateral BEPS legislative actions in the European region
OECD BEPS Action Plan:
moving from talk to action in the European region — 2016

Overview

The OECD Action Plan on BEPS, introduced in 2013, set out 15 specific action points to ensure international tax rules are fit for an increasingly globalized, digitized business world and to prevent international companies from paying little or no tax. After 2 years of outstanding effort, on 5 October 2015, the OECD published guidance on domestic legislative and administrative changes to address all 15 of the Plan’s action points and achieve the G20’s approval by the end of 2015.

Most OECD and G20 countries engaged in the OECD’s work, and many other countries, are either fully engaged or watching developments closely. Each government is now determining how the guidance will affect existing rules and undertaking the lengthy process of proposing, debating and enacting domestic tax changes. In some countries, years may pass before reforms become law.

EU moves forward on BEPS

Over the past few years, the European Commission (EC) has undertaken consultations and proposed new legislation and guidance in a number of areas that overlap with the OECD’s Action Plan items. As detailed in the table at the end of this section, steps taken by the EU already include:

- applying EU State aid provisions from the Treaty on the Functioning of the European Union (TFEU) to combat certain tax ruling practices in the EU
- introducing a new Anti-Tax Avoidance (ATA) Directive, including rules on limiting interest deductibility, hybrid mismatches, controlled foreign company (CFC) and exit taxation, together with a general anti-abuse rule (GAAR)
- expanding the automatic exchange of information on cross-border tax rulings
- expanding the automatic exchange of information to cover all forms of financial income and account balances
- requiring greater corporate transparency by introducing country-by-country (CbC) reporting for extractive and logging companies and revising the Capital Requirements Directive (CRD IV) for banks and investment funds
- proposing more tax transparency by requiring public CbC reporting for all multinational groups with a total consolidated revenue of 750 million euros (EUR)
- establishing a platform on good tax governance to deal with issues such as aggressive tax planning and tax havens
- developing an EU process for assessing and listing third-country non-cooperative tax jurisdictions, effectively potentially blacklisting certain third countries
- recommending EU member states implement the BEPS Action 6 (Treaty Abuse) and 7 (Artificial Avoidance of PE Status) proposals in their tax treaties.

The EC’s State aid investigations into the ruling practices of EU member states are outside the bounds of the OECD’s work in principle, but clearly, the OECD’s emphasis on BEPS has brought these practices into focus. The EC has shown serious concerns as to whether the rulings under review — which typically involve transfer pricing issues — are in breach of EU state aid rules.

Starting with investigations of specific tax rulings in Belgium, Luxembourg, the Netherlands and Ireland, the project was expanded in early 2015 to cover tax rulings throughout the EU. The decisions published so far indicate that the tax benefits granted by certain rulings are state aid and that affected taxpayers could be forced to repay up to 10 years of back taxes. These decisions are being challenged before the European courts.

The EC’s latest actions

Most recently, on 5 July 2016, the EC unveiled its latest proposals to block terrorism financing and money laundering, and the next steps in its agenda for tackling tax avoidance. The new package includes two legislative proposals to amend the Anti-Money Laundering Directive and the Directive on Administrative Cooperation (DAC 3) in the field of direct taxation, as well as a communication on further measures to enhance transparency and combat tax evasion and avoidance. The proposals aim to address tax abuse, ensure sustainable revenues and foster a better business environment in the internal market. Release of the Panama Papers is strengthening political and public support for a strong legislative response.

Plan for coordinated implementation?

The 28 EU member states have committed to take a coordinated approach on all the items listed above. At the same time, some EU and non-EU countries have started implementing elements of the OECD BEPS recommendations unilaterally. Businesses have raised concerns over the uncertainty and complexity that is bound to result from this fragmented implementation of new rules among different countries.

In other regions, the divergence among countries’ commitment to the project and uniformity and completeness of implementation is even wider. Countries in the Americas...
and Asia Pacific region fall on a spectrum that runs from full participation and commitment to non-engagement:

— At one extreme, countries that are both G20 and OECD members — Australia, Canada, Japan, Mexico and the United States — are highly engaged and making their views known as the BEPS proposals take shape.

— New OECD members, like Chile (joined in 2010) and Colombia (which is in the OECD accession process), are similarly on board. Countries that aspire to OECD membership, like Costa Rica and Peru, will probably follow the OECD guidelines as part of their efforts to develop their tax and financial systems.

— Along the middle of the spectrum are G20 countries, such as Brazil, India and Indonesia, which are engaging in the OECD discussions but could pick and choose to adopt only those aspects of the BEPS proposals that suit their domestic purposes.

— Many of the Caribbean countries that are perceived as low-tax jurisdictions, such as Barbados and the Cayman Islands, are watching the project unfold quietly on the sidelines to determine how changing international tax principles could affect their tax regimes. They are also pursuing bilateral exchange of tax information agreements in efforts to avoid being blacklisted as harmful tax regimes.

— Many developing countries in the Americas and Asia Pacific have shown little interest to date in the OECD’s project. With scant foreign direct investment, low international activity and generally less developed taxation systems, these countries do not see BEPS as a priority.

In its July 2016 report to the G20, the OECD reported that its inclusive framework has brought the number of members in the BEPS project to 85 countries. Within this framework, the OECD will focus on putting in place a peer review process to determine whether countries have implemented (part of) the BEPS recommendations in the course of 2017. The framework’s effectiveness has been questioned, however, as fragmented implementation by some individual countries began as early as 2014 and continues to this day.

More tax complexity ahead

Just as domestic rules will be enacted at different paces in different places, it’s also apparent that the interpretation and implementation of the OECD recommendations will vary considerably. The EC says that its initiatives are “very much aligned” with the OECD’s BEPS reforms but are “shaped to meet the EU’s own particular challenges and needs”4. And while most European countries have committed to follow the OECD’s recommendations in principle, unilateral action taken to date suggests more ‘shaping’ of the proposals will occur among individual countries. For example:

— The United Kingdom introduced its Diverted Profits Tax (DPT) to counter perceived contrived arrangements to divert profits from the UK. The UK referendum outcome to leave the EU will likely raise more questions on EU alignment.

— Hungary and Spain introduced anti-hybrid legislation that took effect in 2015.

— Italy’s legislation to introduce a tax on online transactions and a ‘virtual permanent establishment’ (PE) concept is currently before the country’s Parliament, and France may adopt a similar approach.

Globally, these departures from the letter of the OECD recommendations are expected to multiply. For example, the United States seem hesitant to embrace the OECD’s recommendations due to concerns that the tax practices of US-based multinational companies are being unfairly targeted. In the area of transfer pricing, China, India and other Asian countries appear to be going their own way in interpreting how market characteristics, activities and intangible assets contribute value for purposes of allocating profit.

So, even though the OECD Action Plan sought to instill more uniformity and certainty in the international tax system, it appears increasingly likely its implementation will be fragmented among regions and individual countries.

Raising the bar for international tax policy

While the ideal of a coordinated, consistent and fair international tax system appears to remain out of reach, the OECD’s work to date has spurred some important progress:

— Advanced understanding of tax: The OECD’s working groups generated an enormous amount of well-considered, in-depth research and analysis on international tax principles, a technically excellent body of work that will influence international tax policy decisions for many years to come.

— Fewer loopholes: The OECD’s work has led policy makers to close some of the more egregious tax loopholes that have allowed some international companies to escape tax inappropriately.

— Bringing emerging markets to the table: Developing countries outside the OECD and G20 have been brought into the debate. While they may not share the same views, countries like Indonesia, Malaysia, the Philippines and Thailand have learned a great deal about the impact of international tax principles on their own tax revenues and

© 2016 KPMG International Cooperative (“KPMG International”). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.
tax competitiveness. They are upgrading their tax rules and administrative resources accordingly.

— Engaging business: Over the past 2 years, the attitude of many international businesses toward the debate has moved from disinterest to keen engagement. Internally, company directors and management are taking more interest in their tax affairs, the implications of their tax strategies, and their tax governance.

In short, the OECD’s project has raised the bar for international tax policy across the globe. While the work may fall short of delivering an ideal tax world, it will still bring us many steps closer, especially where tax fairness and transparency are concerned.

More uncertainty to come

For international companies in Europe, it looks like the current situation will lead to more uncertainty and tax controversy in the coming years than ever before. The past few years have seen tax authorities in Europe grow bolder in their audit practices as a result of changing attitudes to tax morality and BEPS. Some governments are seeking to maximize tax revenues, while others are acting in response to public outrage at the possibility of corporations paying less than their ‘fair share’ of tax.

Whatever their motives, tax authorities in Europe and around the world are intensifying audits, especially when issues such as mismatching, transfer pricing or substance are at play. Companies can expect audits to become more rigorous in general as all parties adjust to the new reforms. As countries put in place new international tax concepts, many existing corporate structures may need to be revised — or unwound and replaced entirely.

Companies expanding into new business ventures or jurisdictions need to look ahead to ensure new international arrangements would be BEPS-compliant. Both current and new arrangements may necessitate, for example, new intragroup finance arrangements, the development of new transfer pricing policies and documentation processes, or migration of holding company structures for intellectual property (IP) holdings.

Some areas of special interest to companies in Europe are as follows:

— Public CbyC reporting: Even companies that already take a cautious approach are performing impact evaluations to determine the skills and resources they will need to comply with CbyC reporting. CbyC reporting will require that results from several different jurisdictions be translated into a single standard, and the administrative burden may be high, especially for smaller companies. If the EU decides to make public CbyC reporting mandatory, companies need to prepare for public scrutiny and consider the narrative on the data to include in their reporting.

— Substance requirements: Current tax treaties, put in place to prevent double taxation, are proving ineffective in preventing double non-taxation. Most countries are expected to eliminate structures that permit companies to claim their profits in jurisdictions where they have no substance in terms of office space, tangible assets or employees.

— Hybrid mismatches: There is widespread acceptance in Europe that tax planning based on hybrid mismatches will be curtailed. Switzerland, the United Kingdom, Germany and other countries have already moved to prevent companies from using hybrid structures for the sole purpose of gaining tax advantages.

— Transfer pricing: Many countries in Europe have already indicated their intention to tighten transfer pricing rules in accordance with changes to the OECD guidelines.

In the short term, the swelling wave of international tax changes to come during the BEPS implementation phase means companies need to analyze how specific new provisions and prohibitions would affect their current arrangements and restructure them as needed. Over the longer term, companies need to institute governance procedures to monitor evolving operating models and determine the most efficient, BEPS-compliant way of operating in the future.

With contribution from:

Vinod Kalloe
Head of International Tax Policy
KPMG Meijburg & Co,
in the Netherlands

Manal Corwin
Head of US International Tax and
Head of Global BEPS Network
KPMG in the US
<table>
<thead>
<tr>
<th>OECD Action Plan on BEPS — action items</th>
<th>Corresponding EU initiatives</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Action 1</strong> — Address tax challenges of the digital economy</td>
<td>EC Digital Economy Expert Group</td>
</tr>
<tr>
<td><strong>Action 3</strong> — Strengthen controlled foreign company (CFC) rules</td>
<td>EU ATA Directive and EU Code of Conduct — inbound profit transfers</td>
</tr>
<tr>
<td><strong>Action 4</strong> — Limit base erosion via interest deductions and other financial payments</td>
<td>EU ATA Directive</td>
</tr>
<tr>
<td><strong>Action 5</strong> — Counter harmful tax practices more effectively, taking into account transparency and substance</td>
<td>EU Code of Conduct — review of third-country regimes&lt;br&gt;EC State aid investigations — ruling practices&lt;br&gt;EU Mutual Assistance Directive — automatic exchange of information on cross-border rulings&lt;br&gt;EC external strategy initiative to blacklist third countries based on good tax governance principles</td>
</tr>
<tr>
<td><strong>Action 7</strong> — Prevent artificial avoidance of permanent establishment status</td>
<td>EC recommendation on artificial avoidance of permanent establishment status</td>
</tr>
<tr>
<td><strong>Actions 8, 9 and 10</strong> — Ensure transfer pricing outcomes are in line with value creation&lt;br&gt;<strong>Action 8</strong> — Intangibles&lt;br&gt;<strong>Action 9</strong> — Risks and capital&lt;br&gt;<strong>Action 10</strong> — Other high-risk transactions</td>
<td>EU Joint Transfer Pricing Forum and EU Code of Conduct — transparency on transfer pricing ruling practices and exchange of advance pricing arrangements (APA) between EU member states</td>
</tr>
<tr>
<td><strong>Action 11</strong> — Establish methodologies to collect and analyze data on BEPS and the actions to address it</td>
<td></td>
</tr>
<tr>
<td><strong>Action 12</strong> — Require taxpayers to disclose their aggressive tax planning arrangements</td>
<td>EU public consultation in 2016 — includes consultation on mandatory disclosure of aggressive tax planning</td>
</tr>
<tr>
<td><strong>Action 13</strong> — Re-examine transfer pricing documentation</td>
<td>EU Accounting Directive — public disclosure of CbyC reports by companies in the extractive industry&lt;br&gt;EU Capital Requirement Directive — public disclosure of CbyC reports by banks; EC consultation&lt;br&gt;EU Mutual Assistance Directive — includes CbyC report template and exchange&lt;br&gt;EU Accounting Directive — proposal for public disclosure of CbyC reports by all international companies</td>
</tr>
<tr>
<td><strong>Action 14</strong> — Make dispute resolution mechanisms more effective</td>
<td>EC to launch initiative to broaden Arbitration Convention beyond transfer pricing</td>
</tr>
<tr>
<td><strong>Action 15</strong> — Develop a multilateral instrument</td>
<td>EU-wide block implementation through ATA Directive and coordination via EU Code of Conduct Group</td>
</tr>
</tbody>
</table>

Countries in focus: implementation moves ahead
Austria has been notably affected by the tax morality debate, and public and political pressure to address the issue has been intense. Tax authorities are scrutinizing companies with multinational operations more closely, and in response, many companies are taking a cautious approach to tax planning, wary of unwanted and unwarranted media attention.

Also driving this wait-and-see attitude is uncertainty about what specific tax law changes will result from the OECD BEPS project. The Austrian government has fully supported the BEPS initiative, and the indications are that it will implement the recommended reforms.

While the details are pending, companies are reviewing their current structures with an eye to curbing practices that may be viewed as aggressive. Structures that are purely tax-driven, for example, could be subject to alteration.

**Interest deductibility**

Due to a recent Corporate Income Tax (CIT) Act amendment, interest payments to low-taxed group companies are no longer deductible for tax purposes as of 1 March 2014. The restriction applies where:

— the recipient is a group-affiliated corporation or a corporation under the controlling influence of the same shareholder as the group, and

— the interest payments are either tax-exempt or subject either to a nominal tax rate of less than 10 percent or to an effective tax rate of less than 10 percent due to a beneficial regime in the receiving state.

The explanatory notes to the law indicate that harmful low effective taxation will be assumed if the receiving entity is subject to a (partial) tax exemption or benefits from fictitious interest deductions. Harmful low taxation will not be assumed if the receiving company pays little or no tax because of its own losses or losses from a group taxation arrangement.

Further, if the direct recipient of the interest payments is not considered to be the beneficial owner of the interest income, taxation at the level of the beneficial owner of the interest payments will apply.

The Austrian legislator is not expected to introduce general interest limitation rules in the next few years.

**Transfer pricing**

Austria implemented new rules governing transfer pricing documentation in line with Action 13, taking effect for business years starting 1 January 2016. Master and local-files are required for Austrian companies that are part of a multinational group with sales exceeding EUR50 million in the two preceding financial years. CbyC reporting is required for multinational groups with sales reported in the consolidated financial statements of EUR750 million or more. These requirements are adding more layers of effort and transparency for companies in Austria.

**Horizontal monitoring**

While not strictly related to BEPS, horizontal monitoring is an innovative and increasingly popular means of tax reporting in Austria. The taxpayer signs a declaration obliging their company to disclose records to the authorities. The two sides meet on an ongoing basis to discuss which tax practices are allowable and which are not, and after some years, audits are no longer conducted.

Although the start-up phase requires effort, the system provides a win-win in the long term: Both sides get security and certainty, and animosity and its associated costs are avoided.
On the horizon
While we expect changes to other tax measures, such as taxation of IP, CFC rules, PE regulations and general interest limitations, the exact nature of these changes has yet to be determined. Given the current appetite for reform in Europe, we probably would not have to wait long to find out.

Barbara Polster
Partner, International Tax
KPMG in Austria

Hans Zöchling
Head of International Tax
KPMG in Austria
Until recently, Belgian tax policy has been geared to meeting budgetary challenges, especially in the wake of the economic crisis. As public anger in Belgium rose over the tax practices of some multinationals, Belgium’s previous government realized that the fight against aggressive tax planning could help smooth the passage of certain measures through Parliament.

The tax focus of Belgium’s current government, elected in May 2014, continues to be on job creation and economic growth. With salary costs in Belgium becoming prohibitively high relative to its neighbors, Belgium is seeking to reduce its reliance on tax revenue from labor and to increase revenue from other sources (e.g. energy and natural resource companies, consumption taxes). In a tax mix shift implemented at the end of 2015, the government reduced social security contributions and individual income taxes for employees and the self-employed to stimulate employment, and introduced additional incentives for investment and innovation. Indirect taxes and taxes on financial income for individuals were increased.

The fight against tax fraud — a key responsibility of Belgium’s Minister of Finance — remains a high priority. New on the political agenda is a possible corporate income tax reform aimed mainly at reducing the corporate income tax rate from 33.99 to 25 percent or as low as 20 percent by 2020.
As a founding member of the OECD, Belgium has fully supported the BEPS initiative but has not been an early adopter. So far, Belgium has implemented some specific anti-BEPS measures in direct response to the OECD project. Certain anti-abuse rules to safeguard the tax base of individuals and corporations against aggressive planning have existed for quite some time. Recently, the government has taken more steps that are in line with the spirit of the OECD BEPS project.

**Stepped-up enforcement of anti-BEPS rules**

Specific anti-abuse rules backed by a GAAR have been in place for decades. Interest, royalties and service fees paid to tax havens are not deductible unless the taxpayer can prove that the expenses are connected to transactions actually carried out and do not exceed normal limits. Under the GAAR, a transaction as a whole cannot be invoked against the tax authorities if the authorities demonstrate by presumptions or any other evidence that fiscal abuse is one of the transaction’s main drivers.

Recent years have seen significantly stepped-up audits aimed at detecting international tax fraud. About 100 specialized auditors have been allocated to this area, and this centralized team is steering the audits of large multinationals across Belgium.

Current BEPS trends in Belgian tax rules and practice are as follows:

- **Tackling offshore regimes:** The previous government introduced a rule requiring individuals to report in their tax returns whether they are the founder or beneficiary of legal constructions such as trusts, foundations and foreign low-taxed entities. The rule applies as of assessment year 2014. The current government has gone a step further with its so-called ‘Cayman tax’. Under this transparency tax, income received by the legal construction is taxable to the resident individual/legal entity that is the founder of the legal construction, as if the founder had received the income directly. The tax does not apply if the founder or beneficiary can demonstrate that the low-taxed entity’s income is effectively taxed at a rate of at least 15 percent or, under certain conditions related to the possible exchange of information, that the legal construction has genuine activity and economic substance. The latter exemption is not applied automatically but should be requested each year in the tax return.

- **Tax haven transparency:** In an effort to tackle the improper use of tax havens, Belgian tax law requires companies to report payments exceeding EUR100,000 to recipients based in a tax haven. A ‘tax haven’ is defined as any country outside the European Economic Area (EEA) with a nominal level of corporate taxation below 10 percent (recently extended to any country where companies are not subject to corporate tax on domestic or foreign income or with an effective corporate tax rate on foreign income below 15 percent), or any jurisdiction on the OECD blacklist. Payments made to such jurisdictions already indicate potential aggressive or abusive transactions and thus facilitate tax audits.

  - **Thin capitalization:** Designed to address interest deductibility, Belgium’s recently amended thin capitalization rule imposes a 5.1 debt-to-equity ratio limit. Finance charges are deductible provided they are at arm’s length and the loan does not exceed five times the sum of the taxed reserves and paid-up capital. The rule applies to finance charges paid to tax havens and between group companies.

  - **Fair share of tax:** Targeting large Belgian companies and Belgian establishments of large foreign companies, the so-called ‘fairness tax’ introduced in 2013 is due if a company distributes dividends but pays little or no tax on them because of overuse of ‘bad’ deductions (losses carried forward, notional interest deductions). ‘Good’ deductions (participation exemptions, patent income deductions, investment deductions) do not trigger the fairness tax. The fairness tax rate is 5.15 percent, and the tax is payable on top of the standard corporate income tax.

  - **Transfer pricing audits:** Belgium’s tax administration established a small team of auditors specialized in transfer pricing to examine transfer pricing issues, with focus on intangibles, risk and capital. This team has been expanded, and training is being conducted in local tax offices with the goal of increasing local transfer pricing expertise and establishing satellite transfer pricing audit centers.

  - **Country-by-country reporting:** Belgium recently introduced CbC reporting requirements that comply with the OECD and EU provisions. Qualifying groups (with a consolidated gross turnover exceeding EUR750 million) will have to file CbC reports with the Belgian tax authorities within 12 months after the closing of the group’s consolidated financial statements.

  - **Transfer pricing documentation:** Belgium also introduced master file and local file transfer pricing requirements as of assessment year 2017 (i.e. financial years ending on 31 December 2016 or later) for each Belgian company or PE (of a multinational group) that satisfies one of the following
thresholds (assessed on the basis of the non-consolidated financial statements of the Belgian company or PE for the preceding financial year):

— combined operational and financial income of EUR50 million
— balance sheet total of EUR1 billion
— annual average of 100 full-time employees.

— **Patent income deduction:** The Belgian Parliament has approved a law modifying the Belgian patent income deduction regime. The law abolishes the current regime as of 30 June 2016, with a grandfathering period until 30 June 2021.

— **Deduction for innovation income:** The government is working on a new patent box regime in line with the OECD’s modified nexus approach: the ‘deduction for innovation income’. The draft law is not yet finalized, but the new regime is expected to apply as follows:

— The scope will be broader than the current deduction, which is limited to patents in the narrow sense. For example, software and utility models are expected to qualify for the new deduction.

— Only the net amount is expected to qualify. The current patent income deduction is calculated on the gross amount, with deduction for depreciation of acquired patents only.

— A ‘tracking system’ is expected to be introduced.

— Qualifying expenses are expected to increase to 30 percent.

— Where the new deduction for innovation income applies, grandfathering for the income of the particular patent is not available.

Even though the draft law has not been finalized, the new regime is scheduled to take effect as of 1 July 2016.

---

**Eric Warson**

Head of International Tax

KPMG in Belgium
The French government has responded to anti-avoidance sentiment by proactively redefining its strategies for preventing what it considers to be aggressive tax planning. Among other recommendations, authorities would be granted access to cost accounting, and calculations related to costs, in order to determine transfer pricing. The need to show substance will be a major driver of reforms.

French tax auditors are increasingly intolerant of practices deemed to aid tax avoidance, such as restructurings that transfer a manufacturing activity outside France, breach distributor agreements, change distributor, agent or other functions, or close down sites. Such actions raise the issue of the indemnification of the French company or of a possible transfer of goodwill. A whopping 40 percent penalty may be imposed on companies for business restructuring reassessments undertaken on the grounds that the French company was unable to ignore that the restructuring was not made in its interest.

Finally, authorities have introduced requirements to provide cost accounting and consolidated accounts in the scope of a tax audit.

While the public and the media support reform, tax professionals are less enthusiastic, expressing concern that the changes are politically driven, poorly defined and responsible for introducing uncertainty into the regime. Indeed, some measures that gained parliamentary approval were later struck down by the constitutional court.

As part of this trend, French companies are dealing with more stringent compliance regulations. More and more, taxpayers are being saddled with the burden of proof of compliance and obliged to spend time and energy demonstrating their compliance in complex areas such as transfer pricing and international transactions.

**Unilateral BEPS actions to date**

France has implemented several measures to address BEPS issues — sometimes before the publication of BEPS final reports. These measures deal with hybrid instruments, CFCs, interest deductibility, thin capitalization rules, treaty abuse, PEs and transfer pricing documentation, among others.

---

**Hybrid instruments:** A new limitation on the deductibility of interest on intra-group financing was introduced for financial years (FY) ending on or after 25 September 2013. The deduction of interest is allowed only if the lender is subject to ‘sufficient taxation’ equal to at least 25 percent of French CIT during the same FY (i.e. 8.33, 8.6 or 9.5 percent, depending on the CIT surcharges). This restriction applies between related entities when the payer is established in France, regardless of where the payee is located.

If the lender is a foreign tax resident, the level of sufficient taxation is determined by comparing the effective tax rate applied to the interest received by the foreign lender, and the reference French CIT rate that would have applied if the lender were a French tax resident.

In addition, profit distributions received by a parent company that were deductible from the subsidiary’s taxable income are excluded from the benefit of the participation exemption regime.

---

**Controlled foreign company rules:** Profits made by CFCs that are established in low-tax countries (where the corporate tax charge is more than 50 percent lower than the French corporate tax) and whose parent company is subject to French CIT are subject to CIT at the French parent company’s level. This rule applies to foreign subsidiaries when the French parent company owns directly or indirectly more than 50 percent of its share capital (this threshold is reduced to 5 percent if more than
50 percent of the CFC is held by companies located in France or by companies that control or are controlled by companies located in France. The corporate tax paid by the CFC in its jurisdiction can be offset against the French corporate tax due by the parent company (if the corporate tax is similar to the French corporate tax).

- **Interest deductibility:** In addition to the new anti-hybrid rule mentioned above, thin capitalization rules already exist under French tax law, as well as a general limitation of the tax deductibility of net financing expenses and other specific rules limiting the deduction of interest (i.e. the Carrez and Charasse amendments).

- **Tax treaties:** All new tax treaties entered into by France include substance and anti-treaty shopping provisions.

- **Permanent establishment:** The new tax treaty between France and Colombia includes a new definition of PE that aggregates the period of presence of related companies to determine whether the PE threshold is reached. This treaty also introduces the notion of PE for services. Similar modifications are expected to be made to existing tax treaties.

- **Transfer pricing:** Since 2010, the preparation of transfer pricing documentation (master file and local file) has been mandatory for all companies with revenues or balance sheet assets exceeding EUR400 million or that belong to a group in which one of the companies exceeds these thresholds. In the event of a tax audit, this documentation must be made available to a tax inspector within 30 days of a request to provide it.

Since 2013, abridged transfer pricing documentation has been required to be filed each year with the tax authorities within 6 months of the filing of the annual CIT return.

The CbyC reporting requirement has been introduced under French tax law as of 1 January 2016 for companies whose consolidated turnover exceeds EUR750 million. The French authorities are considering reducing this threshold, which would considerably spread the scope of this obligation. There is also consideration about making CbyC reports public.

France signed the multilateral instrument for the exchange of information regarding CbyC reporting on 27 January 2016.

**Anti-avoidance rules**

In keeping with the spirit of the BEPS project, the French Finance Bill for 2016 implemented a new anti-avoidance rule (transposing the GAAR included in EU Directive no. 2015/121 of 27 January 2015) taking effect 1 January 2016. Under this rule, the parent-subsidiary regime is not applicable to a ‘non-genuine’ scheme that was set up only or mainly for tax purposes and produces advantages contrary to the regime’s purpose.

**Abuse-of-law procedure**

The French tax authorities may use pre-existing abuse-of-law procedures under French tax law to counteract sham transactions and situations where a transaction is solely tax-motivated and the parties have obtained the tax benefit through a literal application of the rules while disregarding their spirit. This procedure may be used to tackle hybrid mismatch arrangements.

**Learning from neighbors**

To supplement ongoing BEPS discussions at the OECD, French tax officials are also looking to other jurisdictions for ideas on how best to deal with the issue. Investigators from the General Inspectorate of Finances compared tax regimes in Canada, Germany, the United States, the Netherlands and the United Kingdom to those of France and found that France was the only country in the group not to have included the arm’s length principle in its substantive law. Moreover, its enforcement tools were considered less adequate than those of its counterparts.

The authors of the report proposed adjustments to the tax code that would require entities of the same group to engage in business relations equivalent to those that independent enterprises would have engaged in. This would allow the tax administration to take better advantage of its enhanced right of access to information, to establish internal rules and guidelines for the application of transfer pricing methods, and to constantly evaluate its own practices and guidelines.
The trend toward constraint

Constraint will characterize the overall impact of these measures in the short term. Companies will be forced to spend more time and resources to meet reporting obligations. The task of ensuring consistency among all parts of one company in all its countries of operation will be monumental.

While tax managers are aware that change is coming, they can only do so much to prepare. They recognize that substance will be a key point in any reform. Room to use hybrid or stratified structures has shrunk as authorities demand that transactions demonstrate a link to the underlying business. Companies are taking a more cautious approach as they seek to realize greater tax efficiencies.

Companies are also concerned about confidentiality, as CbyC reporting requiring broader sharing of information was introduced in France as of 1 January 2016. The requirements raise the risk of competitors gaining access to vital information and compromising a company’s ability to operate.
Spurred by greater-than-expected public attention, Germany’s coalition government has shown strong interest in the OECD BEPS project. A verbal commitment to the 15-point OECD BEPS Action Plan was made, and the first draft law to implement part of the BEPS project has been tabled. The Ministry of Finance has specified as central objectives the adequate taxation of multinational companies, the prevention of non-taxation or low taxation, and the involvement of emerging and developing countries in the OECD process. Because Germany already has extensive anti-avoidance laws, reform is not expected to be disruptive.

In light of the high volume of activity of German multinationals in the BRICs (Brazil, Russia, India and China) and other emerging countries, there are fears that CbyC reports could cause the tax authorities in these markets to pursue a greater share of tax. Nevertheless, Germany has already put on the table a first legislative draft to introduce CbyC reporting into domestic law. However, the German tax authorities do not support the EC’s proposal to make CbyC reports public.

**Country-by-country reporting**

CbyC reporting is one area in which German enthusiasm for the BEPS project has waned during the BEPS discussions. In light of the high volume of activity of German multinationals in the BRICs (Brazil, Russia, India and China) and other emerging countries, there are fears that CbyC reports could cause the tax authorities in these markets to pursue a greater share of tax. Nevertheless, Germany has already put on the table a first legislative draft to introduce CbyC reporting into domestic law. However, the German tax authorities do not support the EC’s proposal to make CbyC reports public.

**Hybrid structures**

Corporations in Germany have become much more aware of the risks associated with strategies involving, for example, hybrid structures. Where these structures are already in effect and being employed in accordance with current regulations, some companies are monitoring them closely but keeping them in place as they await the details of possible refinements to domestic law.

**Anti-avoidance rules**

Germany already has anti-treaty shopping rules, CFC legislation and an anti-hybrid rule with a correspondence principle for dividends.

In July 2016, the EU adopted an anti–tax avoidance directive. Although the adopted rules are already in force in Germany for the most part, the German legislator will need to introduce some new rules by 2019.

**Substance requirements**

International tax practitioners know that substance requirements are likely to be part of any reform package. In anticipation, they are examining structures to ensure that transactions are completed for sound business reasons.
Public perception
As companies rethink their international tax strategies, public perception and reputational concerns have entered into consideration. Recent history shows that a great deal of damage can be done to a brand when the public reaction to certain practices is not accounted for.

Impact on businesses
Because of the political nature of these reforms and the OECD’s accelerated timetable, it is expected that rules will continue to be refined, challenged and changed. Companies must consider that a strategy that works for them today might not work in the future. A carefully planned exit strategy is essential.
For Ireland, the implementation phase of the OECD BEPS project would end ideally with the country’s tax regime seen as meeting the standards for substance and transparency while maintaining the country’s reputation as a low-tax jurisdiction that encourages foreign direct investment (FDI). The first part of this goal should not challenge Irish tax policy makers as the country’s tax policy is already largely in step with anti-BEPS proposals. But when it comes to attracting and retaining mobile FDI, Ireland faces ever more international competition.

Ireland’s October 2015 tax policy statement, issued after the final OECD BEPS reports were released, declares that “the 12.5 percent rate remains the cornerstone of Ireland’s corporate tax strategy.”

This strong statement signals Ireland’s desire to remain competitive internationally while maintaining its low-tax status. At the same time, the Department of Finance is keen to ensure that Ireland is not viewed as a tax haven. Substance and transparency are vital to the country’s corporate tax policy. The policy explicitly aims to preserve an open, transparent regime so Ireland can maintain its relationships with key trading partners while providing more certainty to taxpayers in Ireland.

While the Irish public is keenly interested in media coverage of some high-profile tax avoidance cases, they are also aware of the importance of FDI to a small economy such as Ireland’s. As a result, Irish politicians have been able to take a measured approach to tax reform, knowing that such a stance will not cost them at the polls.

**Tax competitiveness**

The Irish government is sensitive to the potential for unintended exploitation of its tax system. Ireland’s corporate tax regime is generally structured in line with the anti-BEPS efforts of the OECD and the EU.

Ireland’s 12.5 percent corporate tax rate applies only to active trading income whereas passive non-trading income is taxed at a rate of 25 percent. Ireland has had both a mandatory reporting regime for tax planning transactions with certain hallmarks and a GAAR for a number of years.

**Unilateral BEPS actions to date**

Ireland has committed to and was an early adopter of minimum standard recommendations from the OECD BEPS project. For example:

— CbC reporting legislation was enacted in Ireland’s Finance Act 2015, supported by regulations issued in December 2015. These measures apply to accounting periods beginning on or after 1 January 2016.

— In a policy statement issued in October 2015, Ireland reaffirmed its commitment to the minimum standard on dispute resolution and other processes under mutual agreement procedures (MAP). Ireland is one of more than 20 countries participating in the OECD working group to develop a mandatory binding arbitration mechanism in order to improve dispute resolution mechanisms available under tax treaties.

— Ireland is participating in the work to develop a multilateral instrument for adopting tax treaty–based measures into bilateral tax treaty networks. Given the importance of international trade flows to its economy, Ireland is seeking to balance the introduction of more anti-abuse measures in its tax treaties against the preservation of certainty of access to tax treaty benefits for Irish tax residents.

— Ireland was one of the first jurisdictions to sign an intergovernmental agreement with the United States under the US Foreign Account Tax Compliance Act (FATCA). Ireland generally supports measures for the automatic cross-border sharing of tax information, introducing guidelines implementing the OECD guidelines on

---

automatic information exchange taking effect 1 April 2016 and the EU directive on automatic sharing of tax rulings taking effect 1 January 2017.

Patent box
Following public consultations in 2015, Ireland introduced in Finance Act 2015 a new patent box that aligns with the modified nexus approach endorsed by the OECD and the EU. Ireland’s Knowledge Development Box offers a 6.25 percent rate of corporation tax on qualifying income. This should work together with Ireland’s attractive 25 percent research and development (R&D) tax credit regime to encourage R&D and innovation activity in Ireland.

Anti-haven rules
Ireland does not have specific anti-haven provisions, but various relief measures in Irish tax law (e.g. relief from source country withholding taxes) are only available to tax residents of the EU and Ireland’s tax treaty partners.

Digital economy
Like other EU member states, Ireland has introduced new place-of-supply rules for value-added tax (VAT) purposes for digital supplies. The rules took effect 1 January 2015 and apply VAT to supplies at the rate in force in the country of the consumer.

EU Anti–Tax Avoidance Directive
In its negotiations on the EU ATA Directive, Ireland’s Minister for Finance “sought to ensure that Ireland’s sovereignty and tax rates were fully protected and that anti-avoidance measures would not impact on genuine investment in Ireland.”

Ireland is expected to transpose the following requirements of the ATA Directive:

— Controlled foreign company regime: Ireland does not currently have a CFC regime.

— Anti–hybrid mismatch measures: Irish domestic law already limits opportunities for specific hybrid structures. Legislative provisions broadly require that the income from such arrangements be taxable to the lender in order to ensure that certain interest payments remain tax deductible as interest, rather than being characterized as non-deductible dividends or distributions for Irish tax purposes.

— GAAR: Ireland must consider whether its long-standing current GAAR meets the ATA Directive’s minimum standard.

— Exit tax: Ireland’s current exit tax regime potentially applies where an Irish resident company ceases to be resident in Ireland and assets cease to be subject to Irish tax. However, the regime does not apply where an existing Irish resident company ceases to be resident but is ultimately at least 90 percent controlled by persons resident in jurisdictions having tax treaties with Ireland. A new exit tax is expected to be introduced in 2020.

Ireland’s Minister for Finance commented that the interest limitation rules in the ATA Directive “are deferred until 2024 for countries, like Ireland, that already have strong targeted rules.” This suggests that, pending a detailed review of its interest deduction regime, Ireland probably will defer introduction of the ATA Directive interest limitation rule, which is aligned with the best practice recommendations in Action 4 of the OECD BEPS project.

Impact on businesses
Changes to tax law are most assuredly coming. While the details of those changes remain uncertain, the level of complexity is bound to rise not only in Ireland but also in other jurisdictions. One certainty is that Ireland’s 12.5 percent corporation tax regime promises to remain a constant.

Sharon Burke
Partner, International Tax
KPMG in Ireland

Adrian Crawford
Head of International Tax
KPMG in Ireland

The Italian tax authorities view the completion of the final OECD BEPS reports as a goal achieved with their active participation. This has contributed to perceptions that the BEPS proposals will not greatly affect Italian tax laws, regulations and the tax environment in general since many BEPS recommendations were already expected. In reality, the OECD BEPS project is spurring a certain degree of change. It could also give reason for the Italian tax authorities to conform their approach more closely with the BEPS recommendations, to the benefit of the Italian tax system and Italian taxpayers alike.

**Country-by-country reporting**

The most immediate proof that the Italian tax environment is undergoing change is the implementation of CbyC reporting, which is based entirely on the OECD recommendations on BEPS Action 13. As implemented in Italy by Budget Law 2016, which was approved in December 2015, CbyC reports should disclose the international company’s revenues, gross profit, and paid and accrued taxes by country, together with additional indicators of economic activities performed.

In line with the OECD recommendations, the first CbyC filings will be in respect of FY 2016 and due in 2017, probably by 30 September, when companies’ 2016 income tax returns are due.

Italy’s CbyC reporting obligation applies to:

- Italian tax residents that:
  - are the ultimate parent companies of a multinational group (based on control)
  - are required by law to file group consolidated financial statements
  - had consolidated turnover in the preceding FY of at least EUR750 million, and
  - are not controlled by other than individual persons.

- Italian resident companies controlled by foreign international companies that are required by law to file group consolidated financial statements in a state that:
  - has not implemented CbyC reporting
  - has no qualifying competent authority agreement to exchange CbyC reports with Italy, or
  - fails to meet its obligation to exchange CbyC reports.

Sanctions ranging from EUR10,000 to EUR 50,000 may apply where CbyC reports are not filed or are incomplete or untrue.

**Digital economy**

The OECD BEPS project should not immediately affect Italian tax laws in the area of digital economy but not for lack of trying on the Italian government’s part. Prompted by pressure from the media and the public, the Italian government has repeatedly introduced proposals that aim to ensure digital companies pay their ‘fair share’, but these proposals have disregarded the OECD’s BEPS work.

In 2013, measures were proposed to attract more revenues in Italy from marketing services promoting web advertising spaces sold to local customers (so-called ‘Google tax’). Eventually, a new PE concept and a conflicting VAT regime were dropped: Only new transfer pricing rules survived, providing that remuneration of such marketing services not be done at cost-plus but according to alternative transfer pricing methodologies.

A more comprehensive proposal to tax online transactions, introduced in early 2015, would have added a definition of ‘virtual PE’, triggered when a non-resident runs online activities continuously for 6 months or more and generates Italian outbound payments of more than EUR5 million in a year.

A 25 percent withholding tax was also proposed on payments made during the period between the set-up and taxation of an Italian PE. The Italian government promised to pass the law in 2017 on several occasions, but its silence on the matter over the last year or so gives reason to suspect the plan may be at least delayed.

The government’s change in direction may stem from the Italian tax authorities’ success in winning a EUR318 million tax settlement from a major global technology company. PE issues reportedly drove the assessment, and Italy’s criminal law
provisions, which apply when omitted tax filings represent more than EUR50,000 in unpaid tax, were also a factor. The Italian tax authorities are rumored to be taking this approach with other global technology companies doing business in Italy.

There seems to be little reason to introduce specific digital tax measures if the old agency PE concept, reinforced by criminal law, remains so effective. It is hoped that such unilateral initiatives will be dropped definitively in favor of initiatives coordinated with the EU or OECD.

**Permanent establishments**

The Italian tax authorities were challenging commissionaire structures and artificially fragmented activities (Action 7) well before the OECD’s BEPS project began, so Italian tax law should not need to be amended for this purpose.

Considering the success of the Italian tax authorities in using agency PE assessments and the OECD BEPS project’s emphasis on expanding the factors that create PEs, the Italian tax authorities (and courts) may be less inclined to embrace extreme interpretations. Among others, these extreme interpretations include the concept that merely attending a negotiation meeting is deemed equivalent to the authority to conclude contracts in a dependent agency environment, and stretching of the concept of ‘at disposal of’ with respect to fixed PEs.

While legislative change may not be strictly needed, an approach to PEs that is more consistent with the OECD and EU proposals could benefit the Italian tax system and help revitalize inbound investment.

**EU Anti–Tax Avoidance Directive**

The EU Council’s proposed ATA Directive compels EU member states to implement certain minimum standards in compliance with certain BEPS recommendations. Again, the Italian government claims the country’s tax system largely complies with most of these standards already, as follows:

- **Interest deductibility:** Deductions for interest expense are already limited to 30 percent of a company’s earnings before income taxes, depreciation and amortization (EBITDA). The ATA Directive provides more relaxed rules by which the borrower can prove that its own equity-to-total-assets ratio is equal to or greater than that of its corporate group, that allow full deduction up to EUR1 million and that put no limits on third-party borrowings.

- **Exit taxation:** The Italian tax system has incorporated the principles set out in the *National Grid Indus* case for years. The ATA Directive extends the deferred exit tax payment to transfers of assets to and from a PE/headquarter company and shortens the deferral period to 5 years, compared to the 10 years provided in current Italian tax law.

- **Switchover clause:** Italy already denies a participation exemption on dividend income and capital gains from disposal of shares, and foreign branch exemption is denied if the level of taxation in the source jurisdiction is substantially lower (less than 50 percent) than the level of taxation in Italy. In some cases, the ATA Directive’s indirect tax credit mechanism may be more generous than the current Italian one.

- **GAAR:** Italy’s GAAR is already implemented, in effect since 1 October 2015.

- **Controlled foreign companies:** Italian tax law related to controlled foreign companies is aligned with the ATA Directive — and tighter in certain cases (i.e. within the EEA).

- **Hybrids:** Italy has implemented anti-hybrid rules in line with the ATA Directive, albeit partially and only for hybrid instruments (not entities).

In short, the implementation of the OECD BEPS Action Plan and EU ATA Directive is not likely to bring many brand new concepts to the Italian tax system. Nevertheless, these implementations give Italian tax authorities the opportunity to initiate a ‘new normal’ — by abandoning previous aggressive positions that may impede the Italian economy’s competitiveness.
Luxembourg has actively participated in the OECD BEPS project since its beginning and has made the political commitment to apply the new rules that result from this work. The government continues to stress the need to promote the coordinated implementation of the BEPS Actions at the international level to ensure a level playing field worldwide.

The two latest amendments to the EU Parent-Subsidiary Directive made in 2014 — the GAAR and the anti-hybrid rule — were transposed into Luxembourg domestic law, taking effect as of 2016.

Luxembourg has supported the ATA Directive, which the EU Council approved on 12 July 2016. Like all EU countries, Luxembourg must transpose this directive into its domestic law before the end of 2018. As this directive provides only minimal protection for the internal market and lacks detailed guidance, its implementation in Luxembourg will have to be monitored.

**Patent box regime**

Following discussions at the EU and OECD levels that led to the BEPS Action 5 report, Luxembourg repealed its existing IP regime as of 1 July 2016. A grandfathering rule was introduced for taxpayers already benefiting from the regime under certain conditions. The government confirmed its willingness to offer a new IP regime that would follow the OECD’s modified nexus approach. Details of the new regime are expected to be announced in the coming months.

**Transfer pricing**

Luxembourg enhanced its transfer pricing regulations in 2015 by clarifying the relevant legislation in line with OECD guidelines. Specific documentation requirements were introduced for taxpayers performing transactions between related parties, which highlights the intensifying focus on transfer pricing documentation.

In May 2016, the EU Council adopted a new directive that introduces CbyC reporting requirements at the EU level, in line with the OECD BEPS Action 13 report. The government
lodged on 2 August 2016 a draft law transposing this directive into Luxembourg law before the Parliament.

The draft law is a lean transposition of the directive, and clear references are made to the BEPS Action 13 report.

Master file and local file documentation will need to be prepared in addition to the CbyC report. Master and local file guidelines are expected to be released in the coming months.

Exchange of tax rulings

Like most EU countries, Luxembourg has a well-established practice of tax rulings. Since 2015, the existing ruling process has been formalized and modernized. A central ruling commission now grants binding rulings in response to written requests from corporate taxpayers, provided certain conditions are met and subject to a fee ranging from EUR3,000 to EUR10,000, depending on the request’s complexity.

Luxembourg has committed to exchange information on tax rulings within the framework of the BEPS Action 5 report. In July 2016, the Luxembourg Parliament approved a bill transposing the provisions of DAC 3 on mandatory automatic exchange of information on tax rulings. Automatic exchange of information on advance cross-border rulings and APAs will commence on 1 January 2017.

Tax treaties

Luxembourg has committed to amend its tax treaties to implement some of the OECD recommendations on BEPS Action 6. In a first concrete application of this commitment, Luxembourg recently negotiated a new treaty with Senegal that adopts some of the minimum standards recommended under BEPS Action 6 (e.g. GAAR, including a principal purpose test).

Luxembourg is also part of the ad hoc group developing the multilateral instrument at the OECD level.

Tax competitiveness

Facing the challenge of maintaining its tax competitiveness, Luxembourg has recently reaffirmed that it will closely follow developments internationally and the transposition of the BEPS measures at the European level in particular. Luxembourg aims to adapt its tax framework to these changes in order to ensure that it remains attractive while respecting the new international and European standards. Among the measures announced to reinforce the country’s attractiveness, the government is expected to progressively reduce the corporate income tax rate from 21 percent to 18 percent, leading to a corporate tax rate (combined with other business taxes) of about 26 percent in 2018.
Within the Netherlands, the OECD BEPS project generally and the EU’s follow-up initiatives specifically continue to capture public, media and parliamentary attention. With the spotlight on the taxation of multinationals, companies are increasingly weighing risks versus opportunities, which includes weighing the potential reputational damage related to international tax planning.
The Dutch government has approached the European negotiations on international tax reform proactively. During the Dutch Presidency of the EU Council, the government succeeded in having the EU member states adopt the ATA Directive.

The new ATA Directive, presented in January 2016, includes several elements of the OECD BEPS recommendations, including new limitations on interest deductions and a GAAR, along with new rules on exit taxation, CFCs and hybrid mismatches involving EU countries. EU member states have until 31 December 2018 to implement the provisions of the ATA Directive in their national legislation. The new national rules will apply as of 1 January 2019.

The Dutch EU Presidency and EU Council also asked the EC to put forward a (legislative) proposal on hybrid mismatches involving third countries by October 2016. This formal request is integral to the achieved political agreement and aims to satisfy those member states that had called for the inclusion of measures against third-country mismatches in the ATA Directive itself.

Finally, the Dutch EU Presidency, EU Council and the EC agreed to closely monitor and engage with the OECD on implementing the BEPS recommendations and maintaining a level playing field internationally.

Treaties with developing countries

Debates in the Dutch Parliament and the press are focused largely on tax treaty policy relating to developing countries and on supporting capacity building within their tax administrations. As a result of this debate, the Netherlands approached 23 of its developing country treaty partners to explore amendments to existing treaties in order to include enhanced anti-abuse provisions. Negotiations with six of these countries have been concluded to date.

Tax transparency

The Dutch government is actively participating in tax transparency discussions in both the EU and the OECD and is keen to retain the country’s reputation for business friendliness while ensuring all countries have equal opportunities to compete. In July 2015, the Netherlands signed an agreement with Germany for the spontaneous exchange of information on advance tax rulings and unilateral APAs. This agreement was followed by the EU’s adoption of a proposal on the automatic exchange of rulings between EU member states in October 2015. Dutch legislation implementing this amendment to the EU DAC 3 is expected in the course of 2016, taking effect 1 January 2017.

Country-by-country reporting

The Dutch government favors multilateral rules that apply equally to all countries and supports the OECD BEPS recommendations on CbyC reporting to tax authorities. As of 1 January 2016, a new chapter was added to the Dutch Corporate Income Tax Act 1969, entitled ‘Additional Transfer Pricing Documentation Requirements’, which covers CbyC reporting and transfer pricing documentation. The obligation to file a CbyC report applies to internationally operating enterprises with activities in the Netherlands and consolidated group turnover of at least EUR750 million.

Patent box

The Dutch government is committed to implementing the modified nexus approach set out in the OECD BEPS Action 5 recommendation relating to patent regimes designed to encourage research and development. In 2015, the EU also endorsed this approach. Following a public consultation, draft legislation will be submitted to Dutch Parliament in September 2016.
Combatting tax evasion domestically and globally has been high on the Portuguese government’s agenda. Portugal is on board with the OECD’s Action Plan and is expected to adopt most of the OECD’s recommendations in its domestic law. In January 2015, the government approved a 3-year plan that includes over 40 measures to tackle tax evasion and address the country’s grey economy.

The State Budget Law for 2016, approved in March 2016, continues to reflect the Portuguese government’s commitment toward implementing the OECD BEPS Action Plan and associated recommendations. In line with other European countries, the Portuguese government’s commitment to fighting tax evasion puts special focus on international cooperation, the tax treatment of hybrids and levels of substance in holding structures.

**Tax competitiveness**

In addition to its focus on tackling tax evasion and increasing tax revenues, the Portuguese government is taking steps to increase the country’s tax competitiveness, by adopting a worldwide participation exemption regime and by reducing the statutory corporate income tax rate from 25 percent in 2013 to the 21 percent rate currently in force.

The State Budget Law for 2016 introduced the following changes:

— The participation exemption regime for dividends and capital gains was amended to increase the minimum participation to 10 percent (from 5 percent) and to reduce the minimum holding period to 1 year (from 24 months).

— The carry-forward period for tax losses assessed on or after 2017 was reduced to 5 years (from 12 years).

**Transfer pricing**

The State Budget Law for 2016 introduced a mandatory CbyC report in line with BEPS Action 13 for multinational groups that comply with specific requirements.

CbyC reporting applies for resident companies that:

— are subject to the requirement of preparing consolidated financial statements

— hold or control, directly or indirectly, one or more entities whose tax residence or PE is located in another jurisdiction

— have recorded in the consolidated financial statements of the last annual accounting period an amount of combined income of at least EUR750 million (where income includes sales, provision of services, government subsidies and other income), and

— are not held by one or more resident entities that are required to submit this financial and tax information return or by one or more non-resident entities of a country with which is in force an agreement for the automatic exchange of fiscal information, that should submit, directly or through a designated entity, the same or a similar return.

— Portugal’s CbyC reporting requirements may be extended to foreign companies, namely, resident entities participated in by non-resident entities that are not obliged to submit a similar form in their country and would be subject to a similar obligation if resident in Portugal. CbyC reporting is also required where the non-resident participating entity is resident in a jurisdiction that has not entered into an agreement for the automatic exchange of fiscal information with Portugal.

The information to be reported includes, among others, the allocation of income between related and unrelated
entities, taxes due and paid, as well as specific economic indicators and a list of the main activities carried out by companies of the multinational group. Penalties apply for failure to prepare the CbyC report.

The local rules do not set any requirements or recommendations that cover, for example, the sources of information to be used to fulfill CbyC reporting or the approach that might be followed to reconcile differences in accounting policies.

As part of its continuing efforts to boost transparency by international companies, Portugal has signed the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CbyC reports. The MCAA enables the consistent and swift implementation of new transfer pricing reporting standards developed under OECD BEPS Action 13, and it ensures that tax administrations can understand how multinational enterprises structure their operations while safeguarding the information’s confidentiality.

Unilateral BEPS action to date
When the final BEPS Actions were released in October 2015, Portugal had already enacted several unilateral anti-BEPS measures, namely:

— earnings-stripping rules to limit interest deductibility based on EBITDA levels
— denial of the participation exemption regime where the dividends received give rise to a deduction for the subsidiary
— an obligation to disclose aggressive tax planning schemes.

This work has continued, and some additional concerns were addressed in the State Budget Law for 2016.

For example:

— authorization for the Portuguese government to change its current patent box regime (introduced in 2014) in line with the modified nexus approach recommended under BEPS Action 5
— authorization to transpose into Portuguese law the EU Directive 2014/107/UE regarding automatic exchange of tax information and to establish a regime to exchange information under the Common Reporting Standard (CRS).

Exchange of tax rulings
Some international companies in Portugal are concerned about the implications of the EU proposal to introduce the automatic exchange of information between member states on their tax rulings. Currently, Portuguese tax rulings and APAs are confidential and binding. Rulings are only made public on an anonymized basis if the same issue is ruled on more than three times.

Companies that have received unilateral rulings in Portugal could face the exposure of sensitive tax information if the EU proposal proceeds. This development, combined with changes in the transfer pricing rules, highlights the importance of reviewing existing documentation to determine and address any potential exposure to tax risk.

These concerns have significantly increased since the OECD released its report on BEPS Action 5, considering the transparency measures and the prospect of global automatic exchange of information of tax rulings and APAs.

Luís Magalhães
Head of Tax
KPMG in Portugal
As an OECD member, Spain played an active role in all of the debates on BEPS Action Plan items. The Spanish government aims to implement most of the BEPS recommendations in domestic law, and representatives of the Spanish tax authorities have taken opportunities to explain the potential impact of the BEPS Action Plan on domestic legislation at many public events in Spain.

Modifications to Spanish tax law have already been enacted, either as part of Spain’s new Corporate Income Tax Law, which took effect on 1 January 2015, or through measures introduced earlier. Some of these new rules may be amended in line with the OECD’s final package of recommendations.

The Spanish tax authorities have been quick to bring anti-BEPS concepts into their increasingly aggressive audit practices. In fact, it is not uncommon for Spanish tax inspectors to raise tax abuse and anti-avoidance rules quite early in the audit process. Cross-border financial expenses of every kind have been particular audit targets in the past few years.

More recently, this aggressive scrutiny has spread to other, more complex payments and transactions. The Spanish tax authorities’ published audit focus includes transactions involving transfer pricing issues, treaty interpretation and cross-border transactions in general. In 2013, Spain strengthened its transfer pricing capacity by creating a new office within the tax administration that is exclusively dedicated to issues involving transfer pricing and intangibles.

Tax planning disclosures

Spain has not issued any rules requiring mandatory disclosure of tax planning, although the general anti-avoidance rule in the Spanish General Tax Law could be used to that effect. Nevertheless, the current hostility toward aggressive tax planning among the media and the public is causing some companies in Spain to share the details of their tax payments voluntarily to pre-empt any negative publicity. For the same reason, some Spanish companies have taken steps to wind down some tax planning structures or exit low-tax jurisdictions, even where a supportable business rationale and real substance exist.

Country-by-country reporting

Spain was one of the first countries to modify its domestic law to introduce mandatory CbyC reporting for transfer pricing documentation, and Spanish companies need to issue their first CbyC reports in 2016. The Spanish law meets all of the requirements imposed by OECD in terms of deadlines, implementation and sanctions for noncompliance.

‘Blacklist’ of harmful tax regimes

A number of Spanish anti-avoidance rules target dealings with companies resident in harmful tax regimes, and many of these rules apply specifically to 48 countries included on Spain’s blacklist. Spain has been working to broaden its network of tax treaties and tax information exchange agreements, and countries having such an agreement with Spain are automatically excluded from the blacklist.

As a result of new tax agreements with 13 countries, Spain removed these countries from the list. Pending agreements with another six countries are expected to reduce the list further.
Tax treaties

Spain’s current tax treaty policy is to negotiate the inclusion of limitation on benefits clauses.

Under Spain’s treaty policy, anti-hybrid provisions are also sought. Spain has unilaterally introduced measures to adjust the tax treatment of hybrid entities and instruments.

Spain is expected to sign the OECD’s multilateral instrument being developed under Action 15 that will allow countries to update all their bilateral tax treaties in line with the OECD proposals. Once the instrument takes effect, companies that are relying on Spain’s treaty network will need to determine by country which treaties are affected and the impact of the new treaty provisions. Since Spain currently has more than 80 bilateral tax treaty partners, this will be an extremely complex exercise, especially if individual countries sign the multilateral instrument on different dates.

Stronger controlled foreign company rules

As of 1 January 2015, Spain’s CFC rules are much more restrictive than previously, requiring (among other things) additional substance in the CFC. The impact of this new legislation is still uncertain.

Interest deductibility

Spain imposed strict rules for interest deductibility before the OECD’s BEPS discussions commenced. Anti-abuse rules have been in place for many years to limit the deductibility of not only interest but also other payments. The new Corporate Income Tax Law introduces rules further restricting the tax deductibility of interest payments under a profit participating loan.

In light of the OECD BEPS discussions, the government is considering more restrictive rules regarding tax deductibility of interest expenses.

Permanent establishments

Spain has not moved to legislatively amend its concept of PE to date. However, the country’s tax authorities are taking a more economic approach to the PE definition in both theory and practice and adopting stricter positions on the related tax treatment.

In its domestic law, it appears that any modifications introduced by Spain in the future would follow any PE concept that the OECD ultimately proposes (e.g. in article 5 of the OECD Model Tax Convention or the related commentaries).

Dispute resolution

Increasing audit activity and changing, complex rules are increasing the volume of tax disputes, and international companies in Spain are advised to make full use of the Spanish tax authorities’ dispute resolution procedures. These include advance tax rulings, pre-audit consultation meetings and APAs that provide certainty over the acceptability of a company’s transfer prices. The Spanish tax authorities have added more resources to improve the APA program, and taxpayers are achieving better outcomes more quickly as a result.

As of January 2016, Spain shifted responsibility for its MAP regarding transfer pricing issues from the Ministry of Finance to the Spanish Tax Agency. Currently, taxpayers are seeing their tax disputes resolved more efficiently through the MAP than through Spain’s court procedures. Hopefully, the change in administration will not affect the relative flexibility and efficiency of the current MAP.

Patent box

The Spanish State General Budget Law for 2016 introduced significant amendments to the Spanish patent box regime, which entered into force as of 1 July 2016. These amendments have adapted the domestic regulation in line with the modified nexus approach as defined by the BEPS Action 5 proposals. New transitional rules also entered into force as of 1 July 2016, in accordance with several legal amendments to the Spanish patent box regime in recent years.
Switzerland is embracing tax reform. Independently of the OECD BEPS project, the Swiss government has undertaken substantial tax reforms. On 14 June 2016, the National Council adopted a bill that is now subject to a likely referendum. The deadline for seeking a referendum is October 2016, and the actual vote should take place February 2017. The Federal Council announced that the bill should enter into force in January 2019.

The Swiss Parliament has been driven to act in part by the same public outcry that is being heard in other jurisdictions. EU opposition to certain Swiss tax structures is also playing a role in the proposed reforms. In January 2014, the EU and government of Switzerland initialed a mutual understanding on business taxation, ending a nearly decade-long dispute. The new measures will align with the BEPS project proposals, and the Swiss tax authority has been actively monitoring the OECD discussions to ensure that new legislation conforms to the new standard. The most important elements of the legislation would abolish:

- the special holding company regime
- the mixed and domiciliary regime
- the finance branch regime
- the Swiss principal regime.

Regimes established to replace the previous ones will comply not only with EU law but also with the requirements set out by the OECD. As substitutes for the abolished tax regimes, the following main measures would be introduced:

- patent box regime
- notional interest deduction
- R&D super deduction
- a substantial reduction of cantonal income tax rates that would result in an overall effective income tax rate ranging from 12.3 percent to 18 percent (depending on the canton).

**Stricter audits**

Perhaps in anticipation of the coming reforms, Swiss tax authorities have become stricter with audits. When their rulings are challenged or there is room for interpretation, the authorities have been leaning toward the recommendations of the BEPS project. Switzerland enjoys a solid financial position compared to other European countries, so its support of the BEPS project should not be seen as a directive from a cash-strapped government. Rather, its actions reflect the Swiss government’s desire to be seen as a leader in implementing the internationally recognized OECD principles.

**Hybrid structures**

Tax directors are re-examining their hybrid instruments, wary of any indication of profit shifting. They are performing gap analyses to determine the degree of change needed to comply with the expected new regulations. Current tax rules, introduced approximately two decades ago, do not allow Swiss parent companies to use hybrid structures with their immediate subsidiaries. Further, for over 50 years, Switzerland has had legislation in place that unilaterally inhibits the misuse of treaty benefits.

**Country-by-country reporting**

As the government seems determined to develop BEPS-compliant tax rules, tax directors of companies with operations in more than one jurisdiction are also preparing for a future in which CbyC reporting is the norm. As of 2017, CbyC reporting will be mandatory for Swiss companies meeting the respective criteria.

**Exchange of rulings**

Generally, as of January 2018, valid rulings may be exchanged spontaneously, depending whether they meet the respective criteria (in particular, where they have cross-border effect).
Limited-risk deductions

The Swiss tax authorities recently announced that they will examine the margins of limited risk distributors and commissionaires. The Swiss Federal Tax Administration’s current view is that the gross margins of such distributing units cannot exceed 3 percent, based on the usual function and risk profile of such set-ups. Together with a national interest group led by KPMG in Switzerland and other firms, many individual companies are in discussions with the tax administration regarding its peculiar approach to limited risk deductions.

Stefan Kuhn
Head of Corporate Tax
KPMG in Switzerland
Debate about the tax planning undertaken by multinational companies has been especially vigorous in the United Kingdom. The government has been very publicly studying possible remedies and, even in advance of the OECD BEPS Action Plan being completed, introduced a DPT to counter arrangements that are perceived to divert profits from the UK. Representatives from HM Treasury, HM Revenue & Customs and other government departments continue to be active in discussions on the BEPS Action Plan. Now that there is significantly more clarity over how the UK will implement the BEPS recommendations, many UK companies are assessing the impact on their businesses going forward.

Former Exchequer Secretary to the Treasury David Gauke has expressed the UK’s support for the OECD BEPS Action Plan: “We’ll continue to work through the G20 and OECD — on the digital economy, on coherence, on substance and on transparency — to make sure that this area is properly reformed.”

With a number of high-profile government officials involved in finalizing the remaining aspects of the OECD BEPS Action Plan, the UK government is sending a clear message that it is taking the OECD’s efforts seriously. Representatives from business, as well as the advisory community, have been actively encouraged by the OECD to get involved in helping to shape the Action Plan in a way that does not disturb ordinary commerce.

Tackling tax avoidance is not a new concept in the UK. In fact, the country has historically been proactive on anti-avoidance. The government has already introduced a new set of CFC provisions, and the regime has been amended to ensure that groups are not able to utilize the rules to generate a UK tax advantage. As noted, the government introduced a DPT discussed below.

It is understood that the UK tax legislative framework has been studied at the OECD in order to assess what might constitute best practice in designing rules to defeat perceived BEPS activity. For example, the OECD has considered the UK’s anti-arbitrage rules, which prevent companies from exploiting asymmetries between different tax regimes by using contrived arrangements. The new CFC provisions are also being reviewed as a potential model for tackling the artificial export of profits from one country to another.

In addition to the ongoing implementation of the BEPS initiatives, UK tax policy will now also need to take into account the UK’s exit from the EU widely referred to as ‘Brexit’. This is expected to happen in November 2018 at the earliest, and the application of all existing EU (or EU-influenced) legislation and regulation will continue in the interim. KPMG in the UK does not anticipate that Brexit will interrupt or change the UK’s commitment to implementing BEPS measures or its overall plan to tackle tax avoidance. However, once the UK has left the EU, it may no longer be obliged to implement EU initiatives related to tax, including tax avoidance.

**Diverted Profits Tax**

DPT, which is different from corporation tax, applies to diverted profits arising on or after 1 April 2015. DPT applies at a rate of 25 percent, which is higher than the UK’s current 20 percent corporation tax rate.

DPT applies to both UK and non–UK resident companies:

— For UK resident companies, DPT applies where profits are considered to have been diverted from the UK through arrangements or entities lacking economic substance.

— For non–UK resident companies, DPT applies where profits are considered to have been diverted from the UK by avoiding a UK PE.

Groups that are taking action to restructure as a result of DPT are considering other changes that are being implemented as a result of the BEPS Action Plan.

---


© 2016 KPMG International Cooperative (“KPMG International”). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.
In March 2016, the Chancellor of the Exchequer published an updated Business Tax Roadmap setting out the government’s plans for business taxes to 2020. The document summarizes the UK’s progress in implementing the OECD’s recommendations, and its priorities going forward. The following are some recommendations of particular interest, together with the latest developments in the UK.

**Unilateral BEPS actions to date**

**Hybrid mismatch arrangements**
In light of the OECD proposals on hybrid mismatch arrangements under Action 2 of the BEPS Action Plan, the UK is proposing to change its domestic rules. Draft legislation has been published, and the UK rules closely follow the OECD’s recommendations. The new rules will apply to payments made on or after 1 January 2017.

**Deductibility of corporate interest expense**
The UK announced it will introduce a new regime for the taxation of corporate interest expense. The new regime will apply to payments made on or after 1 April 2017. While final details of the new regime are yet to be published, it is clear that the new regime will broadly follow the OECD’s recommendations. Interest deductions will be restricted to 30 percent of EBITDA, and a group ratio rule will be put in place. Consultation on these measures is ongoing, and draft legislation is expected to be published by the end of 2016.

**Countering harmful tax practices**
The UK is introducing a reformed patent box regime, effective 1 July 2016, compliant with OECD recommendations.

**Transfer pricing**
A significant component of the OECD BEPS Action Plan relates to transfer pricing, particularly regarding the extent of documentation needed, hard-to-value intangibles, and risk and capital. The UK has adopted the revised OECD transfer pricing guidelines as of 1 April 2016. Like the tax departments of other international companies, those of UK companies have historically invested considerable efforts in ensuring their transfer pricing policies are robust. This area is complex, and companies are working to implement the revised OECD guidelines to ensure that business models are disrupted as little as possible.

**Transfer pricing documentation and country-by-country reporting**
The UK has implemented the BEPS Action 13 proposals on CbyC reporting, although it has remained silent on the Action 13 proposals related to master file and local file transfer pricing documentation. The UK rules for CbyC reporting are effective 1 January 2016. The UK government has also stated that it is in favor of the introduction of public CbyC, although there is no timetable for (or certainty of) this.

**On the horizon**
The UK is committed to implement the following actions in line with OECD recommendations, once the OECD work has been completed:

- **Prevent treaty abuse** by denying benefits to persons whose main purpose is to gain access to tax benefits through those treaties. However, in its most recent budget, the government announced anti-avoidance measures in relation to royalty arrangements, including the introduction of anti-treaty shopping provisions for payments made on or after 17 March 2016.

- **Prevent the artificial avoidance of PE status** by re-examining and updating the rules governing the threshold at which a company becomes taxable in a foreign country, and working to prevent businesses from artificially fragmenting their operations to avoid breaching this threshold (i.e. through measures such as the DPT).

- **Make dispute resolution mechanisms more effective** by introducing arbitration where tax authorities cannot come to agreement or tax disputes have exceeded a certain length of time.

- **Develop a multilateral instrument** to enable participating jurisdictions to implement BEPS measures and enhance bilateral tax treaties. The UK is one of more than 96 countries that have so far said they will participate in the ad hoc group to develop a multilateral instrument to implement tax treaty measures to tackle BEPS.

---

For the remaining BEPS Actions, UK tax policy is considered as largely consistent with the OECD’s recommendations. Therefore, no material changes are expected in the following areas of tax policy:

— **Strengthen CFC rules** to make it more difficult for multinational enterprises based outside the UK to divert profits to low-tax countries (to level the playing field between those enterprises and UK domestic businesses).

— **Give attention to transparency and substance going forward.** The government is mindful of the need for compatibility with existing international law and for the support of fair competition, as well as the acknowledgment of legitimate commercial decisions with respect to R&D within the framework of globalized markets and operations.

— **Require disclosure of certain tax planning arrangements.** This builds on a mandatory disclosure scheme introduced in the UK in 2004 and will therefore be familiar to UK businesses.

### Impact on businesses

Now that the OECD has concluded most of the BEPS Actions, many UK-headquartered companies are responding to the legislative change that comes with local implementation of the OECD’s recommendations. With company directors and upper management taking more interest in the business impact of changing rules in the UK and other countries, many tax executives are modeling various scenarios and potential responses, with particular focus on their legal structures, financing arrangements and operating models. UK companies have also started factoring potential BEPS legislation into their future plans — for example, for proposed mergers and acquisitions.

The OECD BEPS Action Plan items are complex and interdependent, and some of the proposals released to date (e.g. interest deductibility, treaty shopping) offer flexibility in their implementation. However, now that the OECD proposals are (largely) finalized, we are starting to gain clarity over how individual countries will transpose them into their domestic law. In many respects, the early adoption and clear statements of intent issued by the UK government have been helpful to UK companies that are determining exactly how their tax positions will be affected. Companies that are taking steps now to review current and proposed structures in light of the BEPS project are in a strong position to adapt to the new corporate tax landscape quickly and effectively.

Robin Walduck
Partner, Head of International Tax
KPMG in the UK
Bracing for BEPS: are you ready?
Most companies will have to re-examine their tax strategies and structures. Communication will be more important than ever, as will the management of tax risk.

**Assess the impacts:** Companies should review their existing tax transactions and structures immediately to identify potential weaknesses according to the OECD BEPS Action Plan, and take steps to make improvements. The following areas will need close scrutiny: movement of functions, assets and personnel within the group; development of supporting legal, tax and transfer pricing documentation; and preparation of internal controls and working guidelines to mitigate tax risks.

With adequate preparation, multinational corporations will be able to adapt to the new tax landscape created by BEPS without suffering unwarranted disruptions in business operations or incurring excessive tax costs during the transition.

**Stay informed:** Companies should inform themselves about the practices and rules not only of local tax authorities but also of those in other countries, as the 'level playing field' principle will prompt countries to try to avoid competitive disadvantage. It is also important to pay attention to the OECD and the EU as BEPS implementation proceeds.

**Prepare for questions:** As auditors grow stricter, companies can expect to be asked about business and tax activity at any time. It will be important to ensure that board members, C-suite executives and the core tax team are aware of potential questions and challenges from any number of stakeholders — not only regulators but also investors, media and the general public.

**Think about reputational risk:** Recent history provides ample warnings that companies should ensure their tax decisions take into account potential reputational risks, not simply whether the organization has complied with the tax laws in various jurisdictions.

**Develop and maintain sound relationships with tax authorities:** Several companies have benefited from open and respectful relationships with local tax authorities. These appropriate relationships should be the norm for all companies and all the countries in which they claim business.

With the public debate on tax and morality at an all-time high, changes to international tax planning are inevitable. Greater scrutiny by tax authorities of international transactions will certainly be a part of those changes. Many structures will no longer be permissible. Transparency will be a major theme for both taxpayers and collectors, and we expect companies to be subject to more and stricter requirements to disclose where they have paid tax and how much they have paid.

Communication will be more important than ever, as will the management of tax risk.
Appendix: unilateral BEPS legislative actions in the European region
The OECD BEPS Action Plan final reports were published on 5 October 2015, and many countries are changing their tax legislation or administration in response. Below, we summarize such actions taken so far by European countries regarding the Action Plan’s 15 points.

### Action 1: Address tax challenges of the digital economy

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>New place-of-supply rules for business-to-consumer supplies of telecommunication, broadcasting and electronically supplied services; introduction of simplified registration regime.</td>
</tr>
<tr>
<td>Finland</td>
<td>The Finnish Tax Administration is running a project to address tax questions related to electronic commerce.</td>
</tr>
<tr>
<td>France</td>
<td>Greater scrutiny of digital companies; new requirements for segmented accounts. Tax searches have significantly increased in the last months, with the French tax authorities searching the mailboxes and documents of IT companies to see if there is a PE issue.</td>
</tr>
<tr>
<td>Greece</td>
<td>The VAT Directive regulating the treatment of digital services provided to customers has been domestically implemented since 2015; new regulations on taxation of online gambling games were introduced, taking effect 1 January 2016.</td>
</tr>
<tr>
<td>Ireland</td>
<td>Changes in VAT place-of-supply measures for digital supplies and related mini one-stop-shop requirements have been implemented.</td>
</tr>
<tr>
<td>Italy</td>
<td>New rules to tax online transactions pending in Parliament, including new PE definition (which introduces ‘virtual PE’ concept) and withholding tax on digital goods and services supplied by non-residents.</td>
</tr>
<tr>
<td>Portugal</td>
<td>New legal framework for online gambling and betting.</td>
</tr>
<tr>
<td>Romania</td>
<td>New regulations on authorization and taxation of online gambling.</td>
</tr>
<tr>
<td>Russia</td>
<td>New VAT regulation for electronically supplied services.</td>
</tr>
</tbody>
</table>

### Action 2: Neutralize effects of hybrid mismatch arrangements

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Anti-hybrid provisions aimed at eliminating possibilities for double non taxation introduced in 2016. Income from inbound dividends is not exempt from corporate income tax, when the distributed amounts are tax-deductible expenses and/or decrease the taxable result of the distributing entity regardless of their accounting treatment at the level of the distributing entity.</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Anti-hybrid provisions enacted for inbound dividends, denying equity treatment if a foreign-sourced dividend is deducted by the paying affiliate.</td>
</tr>
<tr>
<td>Country</td>
<td>Description</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Czech Income Tax Act amended in 2016 to include limitation of tax exemption for so-called hybrid loans, but, due to an inappropriate EU Directive implementation, the limitation currently applies only to dividends received from subsidiaries located outside the EU; this should be changed as of 1 January 2017.</td>
</tr>
<tr>
<td>Estonia</td>
<td>New legislation on corporate dividends, in effect as of November 2016, allows tax exemption on dividends received from a foreign entity only if the foreign entity has not had the right to deduct the dividend from its taxable income (e.g. as interest).</td>
</tr>
<tr>
<td>Finland</td>
<td>Anti-hybrid rule implemented in accordance with the amended Parent-Subsidiary Directive, effective 1 January 2016.</td>
</tr>
<tr>
<td>France</td>
<td>Existing rules limit opportunities for hybrid instruments, including rules aimed at disallowing (i) participation exemption, if the amount of dividend has been deducted by the subsidiary; and (ii) deductibility of interest, if the amount is not subject to a minimum taxation at the foreign lender’s level.</td>
</tr>
<tr>
<td>Germany</td>
<td>Anti-hybrid rules in place (correspondence principle for dividends).</td>
</tr>
<tr>
<td>Greece</td>
<td>A new rule targeting hybrid loan arrangements between affiliated enterprises (profit participating loans) aims to prevent double non-taxation of dividends distributed by EU-affiliated entities (subsidiaries) to their parents (Greek legal entities), as of 1 January 2016.</td>
</tr>
<tr>
<td>Hungary</td>
<td>A new anti-hybrid rule in effect since 2015 declares as a principle that any differences between the legal classification of legal relations that are affected by international treaties cannot result in double non-taxation; if they do, Hungary would include the relevant income in the taxable base.</td>
</tr>
<tr>
<td>Ireland</td>
<td>Existing provisions limit opportunity for hybrid structures.</td>
</tr>
<tr>
<td>Italy</td>
<td>Anti-hybrid provisions already exist with respect to inbound dividends, denying equity treatment if a foreign-sourced dividend is deducted by the paying affiliate; Italy lacks a provision on hybrid entities.</td>
</tr>
<tr>
<td>Lithuania</td>
<td>General anti-avoidance provisions based on the amended EU Parent-Subsidiary Directive were implemented as of March 2016 for inbound and outbound dividends.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Domestic law was amended to include an anti-hybrid rule in line with the EU Parent-Subsidiary Directive as of 2016.</td>
</tr>
<tr>
<td>Malta</td>
<td>Guidelines issued emphasizing that Maltese participation exemption does not apply to hybrid instruments in case of underlying debt; participation exemption system amended in line with EU Parent-Subsidiary Directive.</td>
</tr>
<tr>
<td>Norway</td>
<td>Under changes to the exemption system, as of 1 January 2016, Norwegian shareholders are denied tax exemption where the foreign distributing company is entitled to a deduction for the distribution, typically because the payment is classified as interest in the distributor’s jurisdiction.</td>
</tr>
<tr>
<td>Poland</td>
<td>Rules on corporate dividends, introduced as of 2015, disallow participation exemption if the amount of dividend has been included in the tax-deductible costs of an entity paying the dividend.</td>
</tr>
<tr>
<td>Portugal</td>
<td>Rules regarding dividends from foreign entities revised under 2014 reform.</td>
</tr>
<tr>
<td>Romania</td>
<td>Treaty benefits are denied for “artificial cross-border transactions”; adjusted legislation to reflect the new provisions of the Parent-Subsidiary Directive.</td>
</tr>
<tr>
<td>Country</td>
<td>Details</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Received dividends are generally not taxable, but if tax deductible in the paying country, they become taxable in Slovakia. Dividends may become taxable if they are received as a result of artificial arrangements.</td>
</tr>
<tr>
<td>Spain</td>
<td>Anti-hybrid legislation in force as of 1 January 2015.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Introducing anti-hybrid rules in line with the latest amendments to the Parent-Subsidiary Directive.</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Current tax rules (introduced about 2 decades ago) do not allow Swiss parent companies to use hybrid structures with their immediate subsidiaries.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Draft legislation has been published, and the new rules will apply to payments made on or after 1 January 2017.</td>
</tr>
</tbody>
</table>

**Action 3**

**Strengthen controlled foreign company rules**

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>No CFC legislation currently; CFC legislation is expected to be implemented as of 1 January 2019 as a result of the ATA Directive.</td>
</tr>
<tr>
<td>Finland</td>
<td>The Audit Committee is running a project to develop means to prevent international tax avoidance overall; whether this will affect the Finnish CFC legislation is unknown.</td>
</tr>
<tr>
<td>France</td>
<td>CFC legislation in force.</td>
</tr>
<tr>
<td>Germany</td>
<td>CFC legislation in force; some adjustments expected due to the EU ATA Directive.</td>
</tr>
<tr>
<td>Greece</td>
<td>CFC rules apply from 2014 onward.</td>
</tr>
<tr>
<td>Hungary</td>
<td>CFC legislation in force.</td>
</tr>
<tr>
<td>Iceland</td>
<td>CFC legislation introduced in 2010.</td>
</tr>
<tr>
<td>Ireland</td>
<td>No CFC legislation currently; CFC rules are expected to be introduced by 1 January 2019 in line with the EU ATA Directive.</td>
</tr>
<tr>
<td>Italy</td>
<td>Existing rules were amended twice in 2015, and seem substantially compliant with Action 3.</td>
</tr>
<tr>
<td>Poland</td>
<td>CFC rules introduced as of 2015.</td>
</tr>
<tr>
<td>Portugal</td>
<td>CFC rules in force.</td>
</tr>
<tr>
<td>Romania</td>
<td>Introduction of CFC rules currently considered.</td>
</tr>
<tr>
<td>Russia</td>
<td>CFC rules further developed in 2016; blacklist of tax haven jurisdictions published.</td>
</tr>
<tr>
<td>Spain</td>
<td>CFC rules recently strengthened.</td>
</tr>
<tr>
<td>Sweden</td>
<td>CFC legislation in force.</td>
</tr>
<tr>
<td>Turkey</td>
<td>CFC legislation introduced in 2006 and currently in force.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>CFC rules in force; new rules were introduced in 2013, and no further substantive changes are expected.</td>
</tr>
<tr>
<td>Country</td>
<td>Actions Taken</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Austria</td>
<td>Restrictions on deductions introduced.</td>
</tr>
<tr>
<td>Belgium</td>
<td>Thin capitalization rules strengthened.</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>General debt-to-equity thin capitalization rules are in place; EBITDA-based</td>
</tr>
<tr>
<td></td>
<td>interest deductibility limitation is expected to be implemented as a result</td>
</tr>
<tr>
<td></td>
<td>of the ATA Directive.</td>
</tr>
<tr>
<td>Finland</td>
<td>Limits on deductibility of interest apply as of 2014; the limitation might be</td>
</tr>
<tr>
<td></td>
<td>expanded to apply also to non-related-party interests.</td>
</tr>
<tr>
<td>France</td>
<td>Thin capitalization rules strengthened; interest deductibility limited where</td>
</tr>
<tr>
<td></td>
<td>beneficiary is subject to low taxation.</td>
</tr>
<tr>
<td>Germany</td>
<td>Earnings-stripping rules in place; minor amendments expected due to the EU</td>
</tr>
<tr>
<td></td>
<td>ATA directive.</td>
</tr>
<tr>
<td>Greece</td>
<td>Stricter provisions for deductibility as of 2014, including thin capitalization</td>
</tr>
<tr>
<td></td>
<td>rules and rules denying deductibility of expenses paid to tax residents in</td>
</tr>
<tr>
<td></td>
<td>non-cooperative state(s) and state(s) with a preferential tax regime unless</td>
</tr>
<tr>
<td></td>
<td>the taxpayer proves that such expenses concern real and ordinary transactions.</td>
</tr>
<tr>
<td>Hungary</td>
<td>As of 2012, a more restrictive dividend definition was introduced to domestic</td>
</tr>
<tr>
<td></td>
<td>law to tackle deduction/non-inclusion; under the rule, dividend income is tax</td>
</tr>
<tr>
<td></td>
<td>deductible only if the payer did not deduct it from its pre-tax profit.</td>
</tr>
<tr>
<td>Iceland</td>
<td>A bill in relation to thin capitalization is with Congress but not yet approved.</td>
</tr>
<tr>
<td>Ireland</td>
<td>Existing targeted measures in place limit tax deductions for interest; Ireland</td>
</tr>
<tr>
<td></td>
<td>will likely seek to defer implementation of EU ATA Directive interest limitation</td>
</tr>
<tr>
<td></td>
<td>rule until after the general 1 January 2019 adoption date.</td>
</tr>
<tr>
<td>Italy</td>
<td>Existing restrictions on interest deduction (i.e. up to 30 percent of EBITDA)</td>
</tr>
<tr>
<td></td>
<td>seem compliant with Action 4.</td>
</tr>
<tr>
<td>Malta</td>
<td>Plans to implement the provisions of the EU ATA Directive to take effect as</td>
</tr>
<tr>
<td></td>
<td>of 2019, except for the interest deduction limitation, which will take effect</td>
</tr>
<tr>
<td></td>
<td>1 January 2024.</td>
</tr>
<tr>
<td>Norway</td>
<td>Further tightening of the rules limiting interest deductibility and introduction</td>
</tr>
<tr>
<td></td>
<td>of withholding tax on interest and royalties are currently under review by</td>
</tr>
<tr>
<td></td>
<td>the Ministry of Finance. The outcome is expected to be presented this fall.</td>
</tr>
<tr>
<td></td>
<td>As of 1 January 2016, deduction of intra-group interest is limited to 25 percent</td>
</tr>
<tr>
<td></td>
<td>of tax EBITDA.</td>
</tr>
<tr>
<td>Poland</td>
<td>More restrictive thin capitalization regime introduced as of 2015 (equity-based</td>
</tr>
<tr>
<td></td>
<td>alternative method available).</td>
</tr>
<tr>
<td>Portugal</td>
<td>Earnings-stripping rules introduced in 2013, limiting interest deductibility,</td>
</tr>
<tr>
<td></td>
<td>tightened under 2014 reform; increased scrutiny of transfer pricing practices.</td>
</tr>
<tr>
<td>Romania</td>
<td>Tightening thin capitalization rules.</td>
</tr>
<tr>
<td>Russia</td>
<td>Extended, more sophisticated thin-capitalization rules introduced; adoption of</td>
</tr>
<tr>
<td></td>
<td>fixed ranges for interest deductibility purposes that prevail over transfer</td>
</tr>
<tr>
<td></td>
<td>pricing rules.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Earnings-stripping rules implemented as of 1 January 2015 effectively limit</td>
</tr>
<tr>
<td></td>
<td>interest deduction on related-party loans.</td>
</tr>
</tbody>
</table>
Spain | Stricter interest deduction rules in force as of 1 January 2015.
---|---
Sweden | Strict interest deduction rules introduced in 2013 deny deduction of intragroup interest cost (with exceptions); the Swedish Tax Agency is scrutinizing intra-group restructurings and stepping up audit activity in this area; existing rules potentially contrary to EU law (pending EC infringement procedure).
United Kingdom | New BEPS-compliant rules for interest are being drafted and will be implemented for payments made on or after 1 April 2017.

### Action 5

Counter harmful tax practices more effectively, taking into account transparency and substance

<table>
<thead>
<tr>
<th>Country</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cyprus</td>
<td>IP regime to be modified to take into account the OECD recommendations (i.e. in line with the modified nexus approach).</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>No preferential IP regimes (i.e. patent box) in place</td>
</tr>
<tr>
<td>Estonia</td>
<td>New anti-abuse rules introduced concerning foreign-dividend taxation, taking effect as of November 2016.</td>
</tr>
<tr>
<td>Finland</td>
<td>The Council of State has expressed support for implementing automatic exchange of information on cross-border tax rulings and has submitted its letter to the Parliament.</td>
</tr>
<tr>
<td>France</td>
<td>Substance is under scrutiny. The French preferential IP regime (reduced CIT rate of 15 percent on income deriving from certain IP assets) has been considered as inconsistent with the OECD’s modified nexus approach. Some modifications may be made to the French tax law to comply with OECD’s BEPS recommendations.</td>
</tr>
<tr>
<td>Greece</td>
<td>Special and general anti-avoidance rules introduced in 2014 incorporate the general substance-over-form principle.</td>
</tr>
<tr>
<td>Hungary</td>
<td>In 2016, significant amendments to the Hungarian patent box regime were introduced, which entered into force as of 1 July 2016. These amendments have adapted the domestic regulation in line with the modified nexus approach endorsed by the OECD and the EU. Parallel transitional and grandfathering rules also entered into force.</td>
</tr>
<tr>
<td>Iceland</td>
<td>A general anti-avoidance bill includes burdensome disclosure requirements for tax advisers in relation to CFC country advice. The bill has not yet been passed.</td>
</tr>
<tr>
<td>Ireland</td>
<td>Patent box (i.e. ‘Knowledge Development Box’ — KDB) provides a 6.25 percent tax rate on qualifying income as of 1 January 2016 and is compliant with the OECD’s modified nexus approach. Detailed revenue guidance was released in July 2016. Guidelines have also been released for implementation of exchange of tax ruling information under both OECD requirements as of 1 April 2016 and the EU DAC as of 1 January 2017.</td>
</tr>
<tr>
<td>Country</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
</tr>
<tr>
<td>Italy</td>
<td>Anti-avoidance provision replaced with a new definition of ‘abuse-of-law’ and unified concepts of ‘abuse of law’ and ‘tax avoidance’. Restrictions to deduct costs from tax havens repealed since 2016. The Italian Patent Box regime, introduced in 2015, is substantially compliant with the modified nexus approach. The application of the benefit to trademarks and know-how is not compliant with the OECD recommendations and should be repealed soon.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Old IP regime repealed with transition period until 2021. Ongoing work on a new IP regime taking into account the OECD work (i.e. in line with the modified nexus approach). Bill transposing DAC 3 (for the exchange of cross-border rulings and APAs as of 1 January 2017) was voted mid-July 2016.</td>
</tr>
<tr>
<td>Malta</td>
<td>GAARs under domestic law deny tax benefits where a transaction's purpose is to avoid Maltese taxes.</td>
</tr>
<tr>
<td>Norway</td>
<td>Official committee recommended incorporating current administrative anti-abuse rules, with some changes, into Norwegian tax law. In March 2016, the Ministry of Finance started consultations on the incorporation of an anti-abuse rule in the tax legislation. The outcome is expected to be presented this fall.</td>
</tr>
<tr>
<td>Poland</td>
<td>Introduction of a specific anti-avoidance clause to the Polish participation exemption taking effect 1 January 2016, GAARs will be introduced 15 July 2016; plans to introduce a specific anti-avoidance clause as of 2017 in the share-for-share exemption provisions.</td>
</tr>
<tr>
<td>Portugal</td>
<td>IP regime to be modified to take into account the OECD work (modified nexus approach). Increased scrutiny of transfer pricing practices.</td>
</tr>
<tr>
<td>Romania</td>
<td>Under general anti-abuse provisions (substance-over-form principle), transactions can be disregarded or adjusted for tax purposes.</td>
</tr>
<tr>
<td>Russia</td>
<td>Signed Mutual Competent Authority Agreement in 2016 and committed to undertake first automatic exchange of information starting as of 2018; introduced law on obligatory disclosure of ultimate beneficial owners by companies; substance-over-form approach confirmed by various clarifications of the tax authorities and the courts.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Substance-over-form principle broadened.</td>
</tr>
<tr>
<td>Spain</td>
<td>Substance-over-form approach strengthened (through modifications to the GAARs in the General Tax Law). New regulation adapting the Spanish patent box regime to the OECD’s modified nexus approach applies as of 1 July 2016.</td>
</tr>
<tr>
<td>Turkey</td>
<td>Substance-over-form principle is already a general principle arising from the Tax Procedure Law. Tax inspectors sometimes stretch the principle to support their views. Turkey signed the Convention and protocol on Mutual Administrative Assistance in Tax Matters on 3 November 2011. It is still being approved and ratified, and it is expected to be in effect for first automatic exchange of information in 2018. Turkey’s intergovernmental agreement (IGA Model I) with the United States has been approved and ratified by the Turkish Parliament.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>A new patent box regime is expected to come into force as of 1 July 2016, operating in parallel with the current patent box regime, which is to be grandfathered until June 2021.</td>
</tr>
<tr>
<td>Country</td>
<td>Measures/Actions</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Some tax treaties are being renegotiated to include explicit limitation-on-benefits clauses.</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Beneficial ownership requirement must be met for tax treaty purposes; general abuse-of-law principle applies for tax matters including tax treaty applications.</td>
</tr>
<tr>
<td>Finland</td>
<td>The Finnish Tax Administration is running a project that aims to promote Finland's international cooperation.</td>
</tr>
<tr>
<td>France</td>
<td>Anti-treaty shopping clause in new tax treaties.</td>
</tr>
<tr>
<td>Germany</td>
<td>New German model tax treaty contains switchover and subject-to-tax rules as well as specific anti-avoidance rules.</td>
</tr>
<tr>
<td>Hungary</td>
<td>A new GAAR aims to deny tax exemption on income not taxable in any of the countries under a tax treaty due to different interpretation of the facts and/or the treaty itself, allowing the tax authority to bypass the normal MAP in such cases and proceed directly to deny the exemption.</td>
</tr>
<tr>
<td>Ireland</td>
<td>Awaiting release of multilateral instrument measures.</td>
</tr>
<tr>
<td>Italy</td>
<td>Existing rules to be reviewed.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>First new treaty including some of the BEPS Action 6 recommendations was signed with Senegal in February 2016.</td>
</tr>
<tr>
<td>Poland</td>
<td>Reviewing and amending tax treaties, with plans to introduce a definition of ‘Polish-source income’ as of 2017.</td>
</tr>
<tr>
<td>Romania</td>
<td>Increased withholding tax of 50 percent for payments to companies resident in non-treaty countries in relation to artificial transactions; renewing existing treaties to add information exchange and administrative cooperation clauses.</td>
</tr>
<tr>
<td>Russia</td>
<td>Introduced beneficial ownership concept in tax law; enhanced tax audits on improper use of tax treaties are currently in place; significant amount of new court practice has emerged in this area.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Whitelist of treaty states established; withholding and security taxes significantly increased on payments to non-treaty countries; payments to non-treaty countries deductible only after the required withholding, settlement and notification to tax authorities are complete.</td>
</tr>
<tr>
<td>Sweden</td>
<td>The Swedish government has been increasing the number of Swedish tax treaties in the past few years and is seeking to include tax information exchange clauses.</td>
</tr>
<tr>
<td>Switzerland</td>
<td>For over 50 years, Switzerland has had legislation in place to unilaterally inhibit the misuse of treaty benefits.</td>
</tr>
<tr>
<td>Turkey</td>
<td>Renewing existing treaties to add information exchange and administrative cooperation clauses.</td>
</tr>
</tbody>
</table>
### Action 7  Prevent artificial avoidance of permanent establishment status

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>No changes to the PE concept are expected in the near future.</td>
</tr>
<tr>
<td>France</td>
<td>New PE definition to be introduced in tax treaties.</td>
</tr>
<tr>
<td>Greece</td>
<td>Existing PE laws remain strict.</td>
</tr>
<tr>
<td>Italy</td>
<td>New provisions were introduced in 2016 on the attribution of profits to Italian PEs and a regulation on the determination of free capital of PEs in the banking industry recalls the OECD BEPS principles on the attribution of profits to PEs. More implementation of regulations is expected soon. The PE definition, as interpreted by case law and tax authorities, substantially complies with BEPS Action 7.</td>
</tr>
<tr>
<td>Poland</td>
<td>Intention to put more emphasis on tax audits of entities doing business in Poland through unregistered PEs.</td>
</tr>
<tr>
<td>Portugal</td>
<td>Increased scrutiny of transfer pricing practices.</td>
</tr>
<tr>
<td>Spain</td>
<td>In practice, Spain’s tax authority already broadens the definition of PE and applies a more economic concept.</td>
</tr>
<tr>
<td>Sweden</td>
<td>New registration rules for foreign employees present in Sweden have increased the Swedish Tax Agency’s interest in determining whether these employees’ activities trigger PE status for their employer.</td>
</tr>
<tr>
<td>Turkey</td>
<td>More audit scrutiny is being devoted to PE issues.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>New ‘diverted profits tax’ (at a rate of 25 percent, rather than the current 20 percent for corporation tax) introduced 1 April 2015 to counter perceived contrived arrangements to divert profits from the UK.</td>
</tr>
</tbody>
</table>

### Actions 8, 9 and 10  Ensure transfer pricing outcomes are in line with value creation

**Action 8 — intangibles**  
**Action 9 — risks and capital**  
**Action 10 — other high-risk transactions**

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Increased tax audits and greater scrutiny of transfer prices.</td>
</tr>
<tr>
<td>Belgium</td>
<td>More scrutiny of transfer prices.</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Follows OECD transfer pricing guidelines, which are indirectly implemented into Czech tax law by the arm’s length provision and by reference to Guideline D-334. The BEPS amendments partially incorporated into the OECD transfer pricing guidelines will be applicable in the Czech Republic also. Since 2015, together with their tax return, taxpayers also need to file a special transfer pricing disclosure with basic information about related-party transactions (e.g., transaction type, magnitude and country — separately for each related party). Substance, functions and risks allocation are now closely scrutinized in tax audits.</td>
</tr>
<tr>
<td>Finland</td>
<td>Although the revised transfer pricing guidelines have not been directly implemented in Finland, the OECD transfer pricing guidelines are generally regarded as soft law and followed in practice.</td>
</tr>
</tbody>
</table>
France  
Increased tax audits and greater scrutiny of transfer prices.

Greece  
Greater scrutiny of transfer prices.

Iceland  
Transfer pricing regulations introduced 1 January 2014.

Ireland  
In the past, Ireland has formally adopted OECD guidelines as its domestic transfer pricing guidance. Ireland is expected to review the updated OECD guidelines and formally adopt them as the basis for future Irish transfer pricing guidance.

Italy  
Amendments to the OECD guidelines in light of BEPS Actions 8 — 10 should not require implementation, as Italian tax law directly refers to the OECD guidelines. Transfer pricing documentation disclosure allows taxpayers to be released from any assessed penalties. A 2015 decree on growth and internationalization clarifies that the arm’s length standard does not apply to domestic transactions. According to the new decree, no criminal penalties should apply in cases of transfer pricing adjustments.

Lithuania  
Increase in transfer pricing audits, with special focus on related-party loans, management services and royalties.

Luxembourg  
More detailed transfer pricing rules are expected.

Poland  
Increased tax audits and greater scrutiny of transfer prices.

Portugal  
Increased scrutiny of transfer pricing practices.

Romania  
Increased scrutiny of transfer prices and tightening of transfer pricing reporting requirements.

Russia  
Russia is not a member of OECD, but the Russian tax authorities are aware of BEPS recommendations and can apply them in practice. In particular, during audits, the Russian tax authorities are scrutinizing transfer pricing for commodities, intra-group services and royalties.

Slovakia  
Rules amended to broaden scope of transfer pricing rules to also cover domestic transactions.

Spain  
The Spanish Tax Administration follows the OECD approach in this respect.

Sweden  
The Swedish Tax Agency has declared that it considers the BEPS report Aligning Transfer pricing Outcomes with Value Creation a mere clarification of the arm’s length principle. Therefore, the Agency holds the position that the guidance in the report shall have both direct and retroactive effect on the interpretation of the arm’s length principle in Sweden.

Turkey  
Increased transfer pricing audits. The Turkish Revenue Administration also covered certain items of Actions 8, 9 and 10, such as location savings, local market features, multinational entity group synergies and transfer of IP under the title ‘comparability factors’, and cost contribution arrangements in a draft communiqué published in March 2016.

United Kingdom  
Adopted the revised OECD guidelines as of April 2016.

---

**Action 11**  
**Establish methodologies to collect and analyze data on BEPS and the actions to address it**

Finland  
The Council of State set up a working group in January 2016 to assess the economic effects of BEPS actions and related EU initiatives in Finland.
### Action 12  
**Require taxpayers to disclose their aggressive tax planning arrangements**

<table>
<thead>
<tr>
<th>Country</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Mandatory disclosure of tax haven payments.</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Mandatory disclosure of information about related-party transactions and transactions with low-tax jurisdiction entities together with the submission of the corporate income tax return.</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>No rules currently. As an EU member state, the Czech Republic would implement such rules if required by an EU directive within the required timeline.</td>
</tr>
<tr>
<td>France</td>
<td>List of aggressive tax strategies published by the French tax authorities.</td>
</tr>
<tr>
<td>Ireland</td>
<td>Already has mandatory disclosure of tax planning with defined hallmarks.</td>
</tr>
<tr>
<td>Poland</td>
<td>Extended reporting requirements under transfer pricing and CFC regulations.</td>
</tr>
<tr>
<td>Portugal</td>
<td>Disclosure provisions introduced in 2008 and subsequently refined.</td>
</tr>
<tr>
<td>Russia</td>
<td>CFC rules oblige Russian taxpayers to disclose participation in foreign companies (including trusts, funds and foundations). Foreign companies that hold Russian-situs immovable property must submit data about their chain of owners (up to 5 percent of indirect ownership).</td>
</tr>
<tr>
<td>Sweden</td>
<td>The Swedish government has announced its intentions to investigate reporting obligations for tax advisors. Currently, the government is preparing instructions to a working group, that will investigate such legislation.</td>
</tr>
<tr>
<td>Turkey</td>
<td>Companies registered with the Large Corporation Tax Office are required to prepare transfer pricing reports by April of a fiscal year following the end of the preceding calendar year and submit them upon request. A 30 percent withholding tax in the Corporate Tax Law applies to payments to ‘tax havens’, but no blacklist of tax havens has been published to date.</td>
</tr>
</tbody>
</table>

### Action 13  
**Re-examine transfer pricing documentation**

<table>
<thead>
<tr>
<th>Country</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Legally defined transfer pricing documentation requirements (master file, local file) introduced for Austrian companies that are part of international groups and have sales of more than EUR50 million. CbyC reporting introduced in line with Article 13.</td>
</tr>
<tr>
<td>Belgium</td>
<td>Introduced CbyC reporting and transfer pricing documentation requirements as of the 2016 tax year, with the first reports to be filed in 2017.</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>No statutory requirement for transfer pricing documentation, but generally, it is expected that OECD-style transfer pricing documentation will be presented during a tax audit. The Czech Republic signed the Multilateral Competent Authority Agreement for automatic exchange of CbyC reports in January 2016.</td>
</tr>
<tr>
<td>Finland</td>
<td>The Ministry of Finance released a draft bill for public comment that would amend Finnish transfer pricing documentation requirements and introduce CbyC reporting. The amended legislation would be in force as of 2017, but it already applies to 2016 and later tax years.</td>
</tr>
<tr>
<td>Country</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>France</td>
<td>Creation of an abridged transfer pricing declaration/CbyC reporting obligation for banking and mining sectors. Local file and master file reporting already required by French law. The abridged transfer pricing declaration and the CbyC reporting obligation, initially applicable for the banking and mining sectors, have been extended to all companies (under certain conditions).</td>
</tr>
<tr>
<td>Germany</td>
<td>Draft legislation for amending transfer pricing documentation and implementing CbyC reporting published in June 2016.</td>
</tr>
<tr>
<td>Greece</td>
<td>Stricter documentation requirements apply from 2014 onward; no action taken yet for CbyC reporting.</td>
</tr>
<tr>
<td>Iceland</td>
<td>Iceland signed the agreement to adopt the Common Reporting Standard in October 2014.</td>
</tr>
<tr>
<td>Ireland</td>
<td>CbyC reporting legislation and supporting regulations were enacted in 2015, effective for accounting periods beginning on or after 1 January 2016.</td>
</tr>
<tr>
<td>Italy</td>
<td>In 2016, introduced CbyC reporting obligations in its tax law, but implementing rules are not yet issued and the requirements are not completely in effect.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Draft legislation transposing the directive on CbyC reporting was issued on 2 August 2016.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>As of 1 January 2016, new rules on CbyC reporting and transfer pricing documentation have been introduced.</td>
</tr>
<tr>
<td>Norway</td>
<td>The Norwegian Ministry of Finance has sent proposed CbyC reporting regulations to the Norwegian Parliament, which are likely to pass. The proposal is mainly in line with the Action 13 report, although the threshold for preparing CbyC reports is 6.5 billion Norwegian kroner (NOK).</td>
</tr>
<tr>
<td>Poland</td>
<td>Extended transfer pricing reporting requirements will be in force as of 1 January 2017 (local and master file, obligatory benchmarking for taxpayers exceeding certain thresholds); CbyC reporting for largest taxpayers and groups introduced as of 1 January 2017.</td>
</tr>
<tr>
<td>Portugal</td>
<td>CbyC reporting requirements implemented.</td>
</tr>
<tr>
<td>Romania</td>
<td>Stricter transfer pricing documentation requirements as of 2016.</td>
</tr>
<tr>
<td>Russia</td>
<td>Draft law for CbyC reporting is being considered and expected to be introduced in 2017 (report for 2016 is voluntary at a taxpayer’s discretion). No plans to introduce the master file were announced as of July 2016, but the Russian Ministry of Finance is considering it.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Broadened both the scope of transfer pricing documentation and the circumstances in which it is required.</td>
</tr>
<tr>
<td>Spain</td>
<td>CbyC reporting requirements implemented.</td>
</tr>
<tr>
<td>Sweden</td>
<td>The government has tasked the Swedish Tax Agency with presenting a proposal on the implementation of the new documentation requirements; the proposal includes master file, local file and CbyC reporting. The first reports are required for the fiscal year starting on or after 1 January 2016, from multinational groups with total revenue of at least 7 billion Swedish kronor (SEK). Small and medium sized companies that are part of a group with less than 250 employees and have either revenue less than SEK450 million or total assets less than SEK400 million are exempt from master and local file reporting, while trading companies exceeding these limits will be subject to the documentation requirements. The law is proposed to be effective as of 1 January 2017.</td>
</tr>
</tbody>
</table>
Turkey

The Turkish Revenue Administration covered all Action 13 items (master file, local file and CbyC reporting) along with additional local requirements in the Draft Communiqué Regarding Disguised Profit Distribution via Transfer pricing, which was published for public comment in March 2016. Before the communiqué is finalized, a Council of Ministers’ decree is expected to be published in 2016 to amend the current decree regarding the documentation requirements.

United Kingdom

Legislation is now in force to incorporate the Action 13 CbyC proposals into UK law. Effective 1 January 2016.

For weekly updates on how countries are responding to Action 13, please visit kpmg.com/action13updates.

**Action 14**

Make dispute resolution mechanisms more effective

**Czech Republic**

No action expected.

**Ireland**

Confirmed adherence to MAP minimum standard in October 2015, and formalized APA procedures in June 2016. Ireland is a member of the working group developing a mandatory binding arbitration resolution mechanism.

**Romania**

Changes to procedures for APAs and advance tax rulings as of 2016.

**Sweden**

The advance tax ruling procedure is under review.

**Action 15**

Develop a multilateral instrument

**Bulgaria**

Bulgaria is a member of the ad hoc group that is developing the multilateral instrument on tax treaty measures to tackle BEPS.

**Ireland**

Ireland is a member of this ad hoc group.

**Luxembourg**

Luxembourg is a member of the ad hoc group.

**Russia**

Russia is a member of the ad hoc group.

**Turkey**

Turkey is a member of the ad hoc group.

**United Kingdom**

The UK is a member of the ad hoc group.


Note: This publication highlights the most significant BEPS-related developments in Europe. Legislation relating to BEPS is continually evolving, and we expect continued developments throughout the region. Please visit kpmg.com/beps often for more information and the latest on BEPS developments from around the world.
Global contacts

Vinod Kalloe
Head of International Tax Policy
KPMG Meijburg & Co,
in the Netherlands
T: +31 88 909 1657
E: kalloe.vinod@kpmg.com

Manal Corwin
Head of US International Tax and
Head of Global BEPS Network
KPMG in the US
T: +1 202 533 3127
E: mcorwin@kpmg.com

Country contacts

Austria
Barbara Polster
Partner, International Tax
KPMG in Austria
T: +43 1 31 332 815
E: bpolster@kpmg.at

Hans Zöchling
Head of International Tax
KPMG in Austria
T: +43 1 31 332 259
E: hzoehchling@kpmg.at

Belgium
Eric Warson
Head of International Tax
KPMG in Belgium
T: +32 2 708 37 72
E: ericwarson@kpmg.com

Bulgaria
Kalin Hadjidimov
Partner
KPMG in Bulgaria
T: +359 2 9697 700
E: khadjidimov@kpmg.com

Czech Republic
Daniel Szmaragowski
Director, Tax
KPMG in Czech Republic
T: +420 222 123 841
E: dszmaramowsk@kpmg.cz

Estonia
Joel Zemask
Director, Tax
KPMG in Estonia
T: +3726268791
E: jzemask@kpmg.com

Finland
Jussi Antero Järvinen
Partner, Head of International Tax
KPMG in Finland
T: +358 20 760 3077
E: jussi.jarvinen@kpmg.fi

France
Nathalie Cordier-Deltour
Partner, International Tax
Fidal, France
T: +33 1 55 68 14 54
E: nathalie.cordier-deltour@fidal.com

Germany
Franz Prinz zu Hohenlohe
Head of International Tax
KPMG in Germany
T: +49 89 9282 1186
E: franzhohenlohe@kpmg.com

Greece
Effie Adamidou
Tax Partner
KPMG in Greece
T: +30 210 60 62 120
E: eadamidou@kpmg.gr

Georgia Stamatelou
Tax Partner
KPMG in Greece
T: +30 210 60 62 123
E: gstamatelou@kpmg.gr

Hungary
Gábor Beer
Partner
KPMG in Hungary
T: +36 1 887 7329
E: gabor.beer@kpmg.hu

Iceland
Ágúst Guðmundsson
Partner
KPMG in Iceland
T: +354 5456152
E: akgudmundsson@kpmg.is

Ireland
Sharon Burke
Partner, International Tax
KPMG in Ireland
T: +353 1 410 1196
E: sharon.burke@kpmg.ie

Adrian Crawford
Head of International Tax
KPMG in Ireland
T: +353 1 410 1351
E: adrian.crawford@kpmg.ie
Italy
Domenico Busetto
Head of International Tax
KPMG in Italy
T: +39 045 81 14 3 23
E: dbusetto@kstudioassociato.it

Lithuania
Birutè Petrauskaitè
Head of Tax & Legal Services
KPMG in Lithuania
T: +370 5 2102 600
E: bpetrauskaite@kpmg.com

Luxembourg
Sébastien Labbé
Partner, Head of Tax
KPMG in Luxembourg
T: +352 22 51 51 5565
E: sebastien.labbe@kpmg.lu

Louis Thomas
Head of International Tax
KPMG in Luxembourg
T: +352 22 51 51 5527
E: louis.thomas@kpmg.lu

Malta
André Zarb
Partner, Head of Tax
KPMG in Malta
T: +356 2563 1004
E: andrezarb@kpmg.com.mt

Netherlands
Wilbert Kannekens
Head of Tax
KPMG Meijburg & Co, in the Netherlands
T: +31 88 909 1619
E: kannekens.wilbert@kpmg.com

Norway
Anders H Liland
Partner
KPMG in Norway
T: +47 4063 9188
E: anders.liland@kpmg.no

Poland
Marcin Rudnicki
Head of International Tax
KPMG in Poland
T: +48 22 528 11 77
E: mrudnicki@kpmg.pl

Portugal
Luís Magalhães
Head of Tax
KPMG in Portugal
T: +351 210 110 087
E: imagalhaes@kpmg.com

Romania
Ramona Jurubita
Partner
KPMG in Romania
T: +40 372 377 795
E: rjurubita@kpmg.com

Russia
Anna Voronkova
Partner
KPMG in Russia
T: +7 495 937 4444
E: avoronkova@kpmg.ru

Slovakia
Ciram Tomas
Partner
KPMG in Slovakia
T: +421 2 59984 306
E: tciran@kpmg.sk

Spain
Carolina del Campo Azpiazu
Partner
International Tax & Global Transfer Pricing Services
KPMG in Spain
T: +34 91 456 82 03
E: cdelcampo@kpmg.es

Jaime Peiro
Senior Manager, International Tax
KPMG in Spain
T: +34 91 456 59 56
E: peiro@kpmg.es

Sweden
Tina Zetterlund
Partner
KPMG in Sweden
T: +46 8 723 92 84
E: tina.zetterlund@kpmg.se

Switzerland
Stefan Kuhn
Head of Corporate Tax
KPMG in Switzerland
T: +41 58 249 54 14
E: stefankuhn@kpmg.com

Turkey
Abdulkadir Kahraman
Head of Tax
KPMG in Turkey
T: +90 216 681 9000
E: akahraman@kpmg.com

United Kingdom
Robin Walduck
Partner, Head of International Tax
KPMG in the UK
T: +44 20 7311 1816
E: robin.walduck@kpmg.co.uk