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FISCALITÉ DES ENTREPRISES

BEPS ACTION PLAN AND AEOI PROGRAM: WHAT IS PLANNED AND HOW TO FACE THE CORRESPONDING CHALLENGES

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AGENDA

- Introduction
- The BEPS action plan
  - Actions and timetable
  - First recommendations issued
  - Examples of potential application
- The AEOI program
  - The Global Forum
  - The Convention on Mutual Admin Assistance on Tax Matters
  - The Common Reporting Standard for automatic exchange of tax info
  - Examples of positive application of EOI
- Impact in the developing countries
- Conclusion

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INTRODUCTION

- BEPS = Base Erosion and Profit Shifting

- Aims at constituting « the building blocks for an internationally agreed and coordinated response to corporate tax planning strategies that exploit the gaps and loopholes of the current international tax system to artificially shift profits to locations where they are subject to more favorable tax treatment » (OECD General-Secretary Angel Gurria, Sept. 16, 2014)

- Ultimate purpose: to align taxation of the profits with economic activity and value creation

INTRODUCTION

- AEOI = Automatic Exchange Of Information (in the tax field)

- Aims at fighting against tax evasion and protecting the integrity of tax systems throughout the world

- Ultimate purpose: to provide for annual automatic exchange between governments of financial account information reported to governments by financial institutions and covering accounts held by individuals and entities, including trusts and foundations

BEPS ACTION PLAN
ACTIONS AND TIMETABLE

Number	Description	Due date of report
Action 1	Address the challenges of the digital economy	September 2014
Action 2	Neutralise the effects of hybrid mismatch arrangements	September 2014
Action 3	Strengthen CFC rules	September 2015
Action 4	Limit base erosion via interest deductions	Sept-Dec 2015
Action 5	Counter harmful tax practices	Sept 14 – Sept 15
Action 6	Prevent treaty abuse	September 2014
Action 7	Prevent artificial avoidance of PE status	September 2015
Action 8	TP outcome in line with value creation : intangibles	Sept 14 – Sept 15
Action 9	TP outcome in line with value creation : risks and capital	September 2015
Action 10	TP outcome in line with value creation : other high-risk transactions	September 2015
Action 11	Establish methodologies to collect and analyse data on BEPS	September 2015
Action 12	Require taxpayers to disclose their aggressive tax planning schemes	September 2015
Action 13	Re-examine transfer pricing documentation	September 2014
Action 14	Make dispute resolution mechanisms more effective	September 2015
Action 15	Develop a multilateral instrument	Sept 14 – Dec 15

BEPS ACTION PLAN
FIRST RECOMMENDATIONS ISSUED

- Action 1:
  - Not ring-fencing the digital economy from the rest of the economy for tax purposes
  - Ensuring that core activities cannot inappropriately benefit from the exception from PE status (ref. Action 7): nexus and preparatory activity
  - Adapting the CFC rules to make sure that income earned from remote sales of digital goods and services is properly covered (ref. Action 3)
  - Collecting VAT on digitally-performed B2C transactions in the market jurisdiction

BEPS ACTION PLAN
FIRST RECOMMENDATIONS ISSUED

Action 2

Mismatch	Arrangement	Primary response	Defensive rule
Deduction / No Inclusion	Hybrid financial instrument	Deny payer deduction	Include as ordinary income
	Disregarded payment made by a hybrid	Deny payer deduction	Include as ordinary income
	Payment made to a reverse hybrid	Deny payer deduction	N/A
Double deduction	Deductible payment made by a hybrid	Deny parent deduction	Deny payer deduction
	Deductible payment made by a dual resident	Deny resident deduction	N/A
Indirect Deduction / No Inclusion	Imported mismatch arrangements	Deny payer deduction	N/A

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BEPS ACTION PLAN
FIRST RECOMMENDATIONS ISSUED

- Action 5:
  - Improving transparency
    - *Example: compulsory spontaneous exchange of information on rulings granting preferential regimes*
    - *Flowchart detailing how it works available (Annex A of the interim report)*
  - Requiring substantial activity for any preferential regime
    - *Example: patent box regimes*

BEPS ACTION PLAN
FIRST RECOMMENDATIONS ISSUED

- Action 6:
  - Including in the title and preamble of the DDTs a clear statement that the Contracting States intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, with a clear reference to treaty shopping
  - Including in the DDTs a specific anti-abuse rule based on the LOB provisions: only qualifying persons may benefit from the treay provisions
  - Adding in the DDTs a general anti-abuse rule based on the main purposes of the transactions and/or arrangements reviewed => principal purposes test or PPT
  - Inserting in the DDTs a clause specifying that treaties do not restrict a State's right to tax its own residents => saving clause already existing

BEPS ACTION PLAN
FIRST RECOMMENDATIONS ISSUED

- Action 8:
  - In specific cases, applying rules based on actual results to price transfers of hard to value intangibles and potentially other assets
  - Limiting the return to entities whose activities are limited to providing funding for the development of intangibles. Treating such entities as lenders rather than equity investors ?
  - Requiring contingent payment terms and/or the application of profit split methods for certain transfers of hard to value intangibles
  - Requiring application of specific rules to certain situations involving excessive capitalisation of low function entities

BEPS ACTION PLAN
FIRST RECOMMENDATIONS ISSUED

- Action 13:
  - Revised standards for TP documentation: 3-tier approach
    - *Master file: available to all relevant country tax administrations*
    - *Local file: available to the tax administration of the country where the entity under review is resident*
    - *Country-by-country reporting: available to the tax administration of the jurisdiction where the ultimate parent company is resident*
  - Template for country-by-country reporting of income, earnings, taxes paid and certain measure of economic activity
    - *Revenues, PBT, CIT paid and accrued*
    - *Total headcount, capital, retained earnings and tangible assets*
    - *List of resident entities and their main business activity(ies)*

BEPS ACTION PLAN
FIRST RECOMMENDATIONS ISSUED

- Action 15:
  - Objective: exploring the feasibility of a multilateral instrument that would have the same effects as a simultaneous renegotiation of thousands of bilateral tax treaties
  - Ultimate goal: streamlining the implementation of the tax treaty-related BEPS measures and recommendations
  - Conclusion : such instrument is feasible and even desirable, and negotiations should be convened quickly (from the beginning of 2015)

BEPS ACTION PLAN

EXAMPLES OF POTENTIAL APPLICATION

EU: recent amendment to the Parent-Subsidiary Directive (14/06/20)

- Objective: preventing the double non-taxation of corporate groups deriving from hybrid loan arrangements, in situations where there are mismatches between domestic tax rules so as to avoid paying taxes on profits distributed within the group

- Solution: income coming from deductible payments for the paying company will no longer be excluded from the tax base of the receiving company (see defensive rule described in Action 2 of the BEPS action plan in first D/NI case)

- Rule must be transposed by Member States on Dec. 31, 2015

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BEPS ACTION PLAN

EXAMPLES OF POTENTIAL APPLICATION

France: Article 22 of Finance Bill for 2014 (14/12/31 – 13/09/25)

- Objective: preventing D/NI situations where deductible interest payments for French CIT purposes give rise to very-low taxation (or even no taxation at all) in the country of residence of the receiving entity (see scope of Action 4 of the BEPS Plan)

- Solution: such interest payments are disallowed for French CIT purposes, i.e. the corresponding amount must be added back to the taxable income of the paying entity

- Rule must be transposed by Member States on Dec. 31, 2015

AEOI PROGRAM

3 main tools developed by OECD and associated countries

- The Global Forum on Transparency and Exchange of Information for Tax Purposes

- The Convention on Mutual Administrative Assistance on Tax Matters

- The Common Reporting Standard for automatic exchange of tax information

AEOI PROGRAM
THE GLOBAL FORUM

- Created in the early 2000's
- 122 member states on equal footing

- Main objective: ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area through an in-depth peer review process

- 143 peer reviews completed
- Compliance ratings assigned to 64 jurisdictions
- 12 countries blocked from moving to Phase 2

AEOI PROGRAM
THE CONVENTION ON MUTUAL ASSISTANCE

- 68 States have signed the Convention. The Philippines is the last signatory

- 15 additional jurisdictions coveredd through territorial extension: Jersey, BVI, Cayman Islands (UK overseas territories)…

- The most powerful international instrument to fight international tax avoidance and evasion

AEOI PROGRAM

THE COMMON STANDARD FOR AEOI

Main milestones

- September 6, 2013: G20 leaders committed to AEOI as the new global standard
- February 23, 2014: Common Reporting Standard for AEOI endorsed by G20 Finance Ministers
- May 6, 2014: OECD Declaration on AEOI in Tax Matters endorsed by all 34 Member States + others. Now, 65 jurisdictions committed, among which 40 for 2017
- July 15, 2014: Standard approved by the OECD Council

AEOI PROGRAM

THE COMMON STANDARD FOR AEOI

What is it about ?

- It sets out:
  - Financial account information to be exchanged
  - Financial institution that need to report
  - Different types of accounts and taxpayers covered
  - Common due diligence procedure to be followed by FIs

- It includes:
  - Guidance for implementation by governments and FIs
  - Detailed model agreements
  - Standards for harmonized technical and info technology modalities (standard format and requirements for secure transmission of data)

AEOI PROGRAM

EXAMPLES OF EOI POSITIVE APPLICATION

Reducing or canceling penalties

- Situation: French resident co reassessed for CIT purposes on profits unduly transferred to an affiliate based in Switzerland

- Issue: 40% or 80% penalties if the beneficiary is subject to a low-tax regime vs interest for late payment only if it is actually taxed at an acceptable rate

- Solution: request for international administrative assistance launched by the French tax authorities to get information on the tax regime applicable to the beneficiary in Switzerland

AEOI PROGRAM

EXAMPLES OF EOI POSITIVE APPLICATION

Avoiding VAT reassessments

- Situation: French resident co reassessed for VAT purposes on so-called « triangular operations » declared under the reverse-charge mechanism. Deductibility of input VAT denied

- Issue: Input VAT becomes deductible again if the local VAT has properly been declared in the other EU country where the goods are delivered

- Solution: request for international administrative assistance launched by the French tax authorities to get information on the VAT regime applied in Italy and Spain

BEPS ACTION PLAN AND AEOI PROGRAM

IMPACT IN THE DEVELOPING COUNTRIES

Report to G20 development working group on BEPS impact

- Part 1 presented at G20 DWG meeting in Hobart in May 2014
- Part 2 presented at G20 DWG meeting in Perth in Sept. 2014

- Part 1 main conclusions:
  - Developing countries face specific policy issues and implementation challenges that are not always shared with developed countries
  - Some BEPS Actions are of more relevance and concern to developing countries than others: actions 4, 6, 7, 10, 11 and 13
  - Over the long term, however, all BEPS actions are likely to become important to developing countries
  - There are other base erosion issues, not covered in the BEPS Project, which are of immediate concern for developing countries

BEPS ACTION PLAN AND AEOI PROGRAM
IMPACT IN THE DEVELOPING COUNTRIES

Report to G20 development working group on BEPS impact

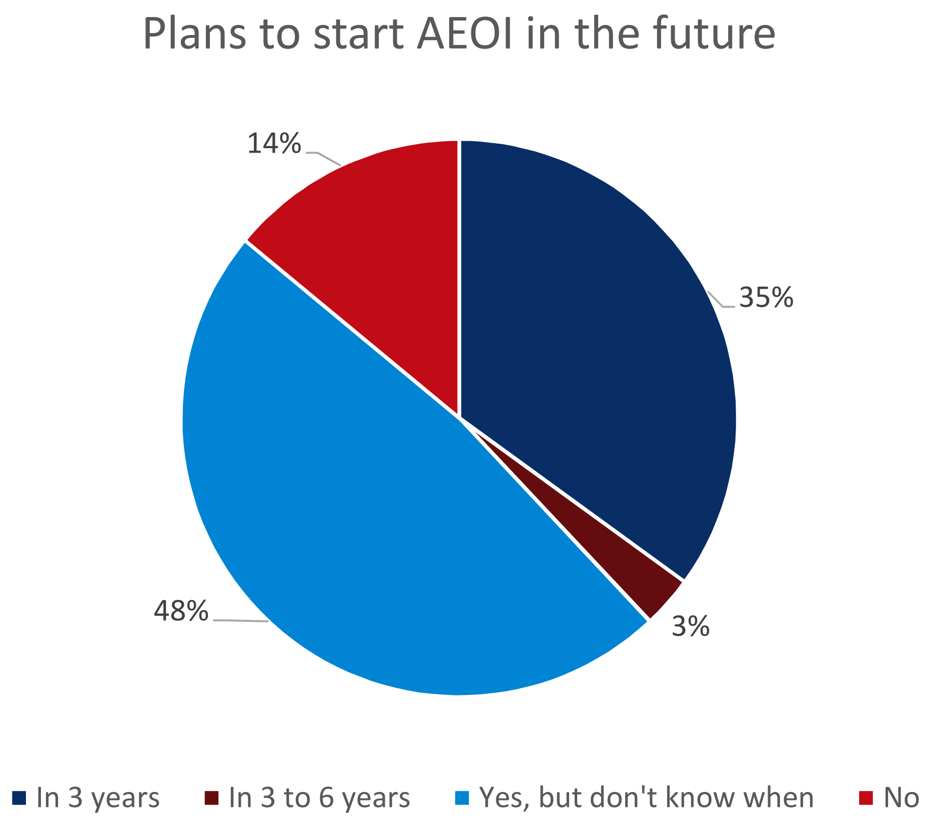
- Part 2 main recommendations:
  - The OECD to put in pllace a new structured dialogue process, with clear avenues for developing countries to work together and directly input into the BEPS Project, in particular on the highest priority actions for them
  - Toolkits to assist developing countries implement BEPS solutions
  - Challenges deriving from the abuse of treaties (Action 6 and 7)
  - Dialogue to be engaged with developing countries on the design and potential benefits of a multilateral instrument
  - Adressing tax loss on indirect transfers of assets
  - Adressing lack of TP comparability data
  - Adressing wasteful tax incentives
  - Building, training and strengthening the required resources

BEPS ACTION PLAN AND AEOI PROGRAM
IMPACT IN THE DEVELOPING COUNTRIES

Report to G20 DWG on AEOI roadmap (08/05/14)

- Main conclusions:
  - 3 developing countries are currently sending information automatically, compared to 50 developed countries, and the level of readiness to implement AEOI is very different (see next slide)
  - Key challenges preventing developing countries from implementing AEOI:
    - *Urgency of other basic domestic reforms*
    - *High costs of IT infrastructure needed*
    - *Human resources required to analysing and using received data*
    - *Difficulty of making legislative changes*
    - *Limited awareness of EOI practices*

BEPS ACTION PLAN AND AEOI PROGRAM
IMPACT IN THE DEVELOPING COUNTRIES



BEPS ACTION PLAN AND AEOI PROGRAM
IMPACT IN THE DEVELOPING COUNTRIES

Report to G20 DWG on AEOI roadmap (08/05/14)

- Main recommendation: a stepped approach
  - Step 1: becoming a Global Forum member
  - Step 2: developing building blocks, i.e. building capacity for the Standard in ways that are consistent with domestic revenue mobilisation needs and other tax administration reforms: cost/benefit ratio to be optimised
  - Step 3: implementing the Standard progressively:
    - *Understanding: how it works and looks like (templates, format…)*
    - *Consultation: with the local financial industry*
    - *Legislation and international agreements*
    - *Implementation: IT tools and training*

CONCLUSION

- BEPS Action Plan and AEOI Program: strong political will throughout the OECD member states, still to be shared by some developing countries
- Will give rise to huge changes in the international tax rules over the mid and long-term, also in the developing countries
- Will require significant or even massive investments in human and technological resources
- Will become a very powerful tool in the hands of the tax authorities to tackle base erosion, profit shifting and tax avoidance
- Must be taken by the taxpayers as an opportunity to improve their tax policy

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