



STRENGTHENING EXTRACTIVE SECTOR MANAGEMENT IN MONGOLIA

Base Erosion Profit Shifting (B.E.P.S) - an Overview

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Action Plan


- Diagnostic in the OECD BEPS (Base Erosion and Profit Shifting) Report, dated October 2012.
- Consists of 15 specific actions aimed at correcting BEPS issues, to be developed. Each action describes the issue or issues to be addressed, the expected outcome and the deadline
- The message was clear: Let's make the necessary changes through the amendment of domestic tax rules and DTTs, as well as multilateral instruments, without departing from the traditional paradigms in international taxation
- "For better or for worse, the OECD Action Plan for tackling base erosion and profit shifting will occupy a corner of tax policymakers' and tax experts' desks for years to come"



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Basis for Action Plan

- the States' sovereignty to enact their own tax rules
- the acknowledgement of the separate legal personality of entities for tax purposes
- the allocation of tax jurisdiction among States on the basis of residence and source, and the application of the PE concept insofar as business income is concerned
- the arm's length principle and the application of TP adjustments to make it effective as long as related entities are concerned
- As BEPS progresses some of these paradigms might become weaker and even diluted altogether




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Action Plan (1)




Action	Summary	Output
1 Digital Economy	Addressing the Tax Challenges of the Digital Economy.	Report
2 Hybrids	Neutralising the Effects of Hybrid Mismatch Arrangements - model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effects of hybrid instruments and entities (e.g. double non-taxation, double deduction, long-term deferral).	Domestic Law/Model
3 CFC Rules	Designing Effective Controlled Foreign Company (CFC) Rules - recommendations to strengthen rules for the taxation of CFCs.	Domestic Law
4 Interest Deductions	Limiting Base Erosion Involving Interest Deductions and Other Financial Payments – common approaches based on best practices for preventing base erosion through the use of interest expense.	Domestic Law/TPG






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		Action Plan (2)
5	Harmful Tax Practices	Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance - revamps the work on harmful tax practices with a focus on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for preferential regimes, such as IP regimes.
6	Treaty Abuse	Preventing the Granting of Treaty Benefits Inappropriate Circumstances - model treaty provisions and recommendations regarding the design of domestic rules to prevent treaty abuse.
7	Permanent Establishment Status	Preventing the Artificial Avoidance of Permanent Establishment Status - changes to the definition of permanent establishment to prevent its artificial circumvention, e.g. via the use of commissionaire structures and the likes.
8-10	Transfer Pricing	Aligning Transfer Pricing Outcomes with Value Creation - guidance to assure that transfer pricing outcomes are in line with value creation in relation to intangibles, including hard-to-value ones, to risks and capital, and to other high-risk transactions.
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		Action Plan (3)
11	BEPS Data Analysis	Measuring and Monitoring BEPS - methodologies to collect and analyse data on BEPS and the actions to address it.
12	Disclosure of Aggressive Tax Planning	Mandatory Disclosure Rules - recommendations regarding the design of mandatory disclosure rules for aggressive tax planning schemes.
13	Transfer Pricing Documentation	Transfer Pricing Documentation and Country-by-Country Reporting - revised guidance on transfer pricing documentation, including the template for country-by-country reporting, to enhance transparency while taking into consideration compliance costs.
14	Dispute Resolution	Making Dispute Resolution Mechanisms More Effective - solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, as well as arbitration.
15	Multilateral Instrument	Developing a Multilateral Instrument to Modify Bilateral Tax Treaties - analysis of the legal issues related to the development of a multilateral instrument to enable countries to streamline the implementation of the BEPS treaty measures, as well as the mandate to carry out that work.
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		<h2>Action Plan (2)</h2>
<p>5 Harmful Tax Practices</p>	<p>Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance - revamps the work on harmful tax practices with a focus on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for preferential regimes, such as IP regimes.</p>	<p>Identify OECD/Non-OECD and Revise Criteria</p>
<p>6 Treaty Abuse</p>	<p>Preventing the Granting of Treaty Benefits Inappropriate Circumstances - model treaty provisions and recommendations regarding the design of domestic rules to prevent treaty abuse.</p>	<p>Domestic Law/Model</p>
<p>7 Permanent Establishment Status</p>	<p>Preventing the Artificial Avoidance of Permanent Establishment Status - changes to the definition of permanent establishment to prevent its artificial circumvention, e.g. via the use of commissionaire structures and the likes.</p>	<p>Model</p>
<p>8-10 Transfer Pricing</p>	<p>Aligning Transfer Pricing Outcomes with Value Creation - guidance to assure that transfer pricing outcomes are in line with value creation in relation to intangibles, including hard-to-value ones, to risks and capital, and to other high-risk transactions.</p>	<p>TPG/Model</p>
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		<h2>Are these new issues?</h2>
<p>Quote:</p> <p><i>“Recently more and more enterprises organized abroad by [domestic] firms have arranged their corporate structures aided by artificial arrangements between parents and subsidiary regarding intercompany pricing, the transfer of patent licensing rights, the shifting of management fees, and similar practices [...] in order to reduce sharply or eliminate completely their tax liabilities at home and abroad.”</i></p>		
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New issues ?



U.S. President John F. Kennedy
Special Message to the Congress on Taxation
April 20th, 1961



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Specific B.E.P.S. issues related
to the Extractive Sector

1. Excessive interest deductions
2. Abusive transfer pricing
3. Undervaluation of mineral exports
4. Indirect transfer of mining asset
5. Inadequate ring-fencing

Others:

- Harmful tax incentives
- Tax stabilization
- International tax treaties
- Metals Streaming
- Abusive Hedging arrangements



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