

TTN CONFERENCE
DUBLIN
2014

RECENT DEVELOPMENTS IN BASE
EROSION AND PROFIT SHIFTING
(BEPS)

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WHAT IS BEPS?

- USING COMBINATION OF USING HOME AND HOST COUNTRY IS TAXED SYSTEMS
- TAX PLANNING STRATEGIES TAKING ADVANTAGE OF GAPS AND MISMATCHES IN TAX RULES IN DIFFERENT LOCATIONS TO MINIMISE EXPOSURE TO TAX

THE FIRST STEP

FEBRUARY 2013:

OECD REPORT: ADDRESSING BASE
EROSION AND PROFIT SHIFTING

WHY IS IT AN ISSUE?

- BUSINESS IS MORE INTERNATIONAL
- TAX SYSTEMS ARE NOT COORDINATED
- CAPITAL MOVES FREELY
- DIGITAL ECONOMY AND INTANGIBLES

CURRENT RULES

- FOR BRICKS AND MORTAR
- LOCAL
- CLEAR DISTINCTION

THE SECOND STEP

JULY 2013

ACTION PLAN ON BASE EROSION AND
PROFIT SHIFTING

OBJECTIVES

- PREVENT DOUBLE NON-TAXATION
- PREVENT NO OR LOW TAXATION BY SPLITTING INCOME FROM THE ACTIVITIES GENERATING IT

- COHERENCE OF CORPORATE INCOME TAXES
- REALIGNMENT OF TAX AND RELEVANT SUBSTANCE

- ADDITIONAL TRANSPARENCY AND
- CERTAINTY AND PREDICTABILITY FOR BUSINESS

SO FAR

- DISCUSSION DRAFT ON TRANSFER PRICING AND COUNTRY BY COUNTRY REPORTING
- GLOBAL STANDARD FOR AUTOMATIC EXCHANGE OF INFORMATION
- DISCUSSION DRAFT ON TAX CHALLENGES OF DIGITAL ECONOMY
- CONSULTATION ON TAX TREATY ABUSE
- CONSULTATION ON TAX CHALLENGES OF THE DIGITAL ECONOMY
- CONSULTATION ON COUNTRY BY COUNTRY REPORTING

DIGITAL ECONOMY:

- TAXPAYERS IN SIMILAR SITUATIONS
- WITH SIMILAR TRANSACTIONS
- SUBJECT TO SIMILAR TAX

EXAMPLE

- MANUFACTURER RENTS THREE-DIMENSIONAL PRINTER TO USER
- MANUFACTURER LICENSES SPECIFICATION TO USER
- MANUFACTURER MANUFACTURES AND SHIPS TO USER

LOCATION NOT ALWAYS RELEVANT TO SUBSTANCE

- HOW TO DEAL WITH BACK-UP SYSTEMS
- PERMANENT ESTABLISHMENT STANDARD, E.G. VIRTUAL P.E.
- TAXING DATA
- WHERE ARE TAXABLE ACTIVITIES?
- VAT

TREATY ABUSE

- BENEFICIAL OWNER
- TRANSACTION AIMED AT TREATY ABUSE: NEEDS EXTENSIVE ANALYSIS!
- SPLITTING CONTRACTS
- HIRING OUT LABOUR
- AVOIDING DIVIDENDS
- DIVIDEND TRANSFER

TREATY ABUSE

LIMITATION ON BENEFITS

- INTRODUCE US-TYPE RULE
- ACTIVE BUSINESS (MUST BE SUBSTANTIAL IF RELATED)
- NO DERIVATIVE BENEFITS

TREATY ABUSE

TIE BREAKER FOR ENTITIES

- MUTUAL AGREEMENT

TRIANGULATION

TREATY ABUSE

AVOID DOMESTIC RULES

- HYBRID
- ANTI-ABUSE
- CFC

NOT FOR DOUBLE NON-TAX

WHAT TO DO BEFORE ENTERING INTO TREATY

HYBRID MISMATCH

TRANSPARENT ENTITIES

- NEED TO BE TAXED TO RESIDENT OF STATE

TRANSACTIONS

- NO EXEMPTION IF PAYMENT DEDUCTIBLE (EU DIFFERENT)

TP COMPARABLES

- LACK OF COMPARATIVES, ESPECIALLY DEVELOPING COMPANIES
- PUBLIC DATABASES IMPRECISE
- USE FILED ACCOUNTS (!)
- SECRET COMPARATIVES
- SAFE HARBOURS

COUNTRY BY COUNTRY

MASTER FILE

COUNTRY BY COUNTRY

ALLOCATION OF:

- PROFITS
- TAXES
- ASSETS
- EMPLOYEES
- CERTAIN PAYMENTS AND RECEIPTS

BALANCE COSTS WITH BURDEN!

EXPECTED SOON (SEPTEMBER 2014):

- TAX CHALLENGES RAISED BY THE DIGITAL ECONOMY
- COUNTERING HARMFUL TAX PRACTICES
- PREVENTION OF ABUSE OF TAX TREATIES
- CHANGES TO TRANSFER PRICING RULES IN RELATION TO INTANGIBLES
- CHANGES TO TRANSFER PRICING RULES FOR DOCUMENTATION
- DEVELOPMENT OF MULTI-LATERAL INSTRUMENT TO IMPLEMENT MEASURES DEVELOPED IN COURSE OF WORK ON BEPS

EXPECTED LATER (SEPTEMBER 2015):

- RECOMMENDATIONS FOR STRENGTHENING CFC RULES
- RECOMMENDATIONS FOR RULES TO PREVENT BASE EROSION VIA INTEREST DEDUCTIONS ETC.
- COUNTERING HARMFUL TAX PRACTICES (NON-OECD MEMBERS)
- TREATY MEASURES TO PREVENT ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS

EXPECTED LATER – (CTD) (SEPTEMBER 2015):

- CHANGES TO TRANSFER PRICING RULES RE RISKS AND CAPITAL
- RECOMMENDATIONS ON DATA ON DEBTS TO BE COLLECTED AND METHODOLOGIES TO ANALYSE THEM
- RULES TO REQUIRE DISCLOSURE OF AGGRESSIVE TAX PLANNING
- MEASURES TO MAKE DISPUTE RESOLUTION MECHANISMS MORE EFFECTIVE

DECEMBER 2015

- CHANGES TO RULES TO LIMIT BASE EROSION
- HIGH INTEREST DEDUCTIONS ETC
- REVISION OF CRITERIA TO COUNTER HARMFUL TAX PRACTICES
- DEVELOPMENT OF MULTILATERAL INSTRUMENT