

Hyperion Focus 16

BEPS, Transfer Pricing and Country-by-Country Reporting: Developments in the global tax environment

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Agenda

- ▶ Background to recent tax developments
- ▶ Political drivers
- ▶ The OECD's response
- ▶ The EU's response
- ▶ The UK's response
- ▶ Data and financial information requirements under the new measures

Background to recent tax developments



Political drivers

“I will call on fellow leaders to get behind this action plan to ensure that we break down the walls of corporate secrecy, once and for all, and that all companies pay their fair share”

– David Cameron, July 2013

“[We] lend our strong support to the Base Erosion and Profit Shifting Action Plan”

– Jean-Claude Juncker, November 2014

“The lack of tax harmonisation in the European Union is one of the main causes allowing aggressive tax planning, base erosion and profit shifting to develop”

– German, French and Italian finance ministers in an open letter, December 2014

“This isn't about whether you have low taxes or high taxes, this is about paying your taxes”

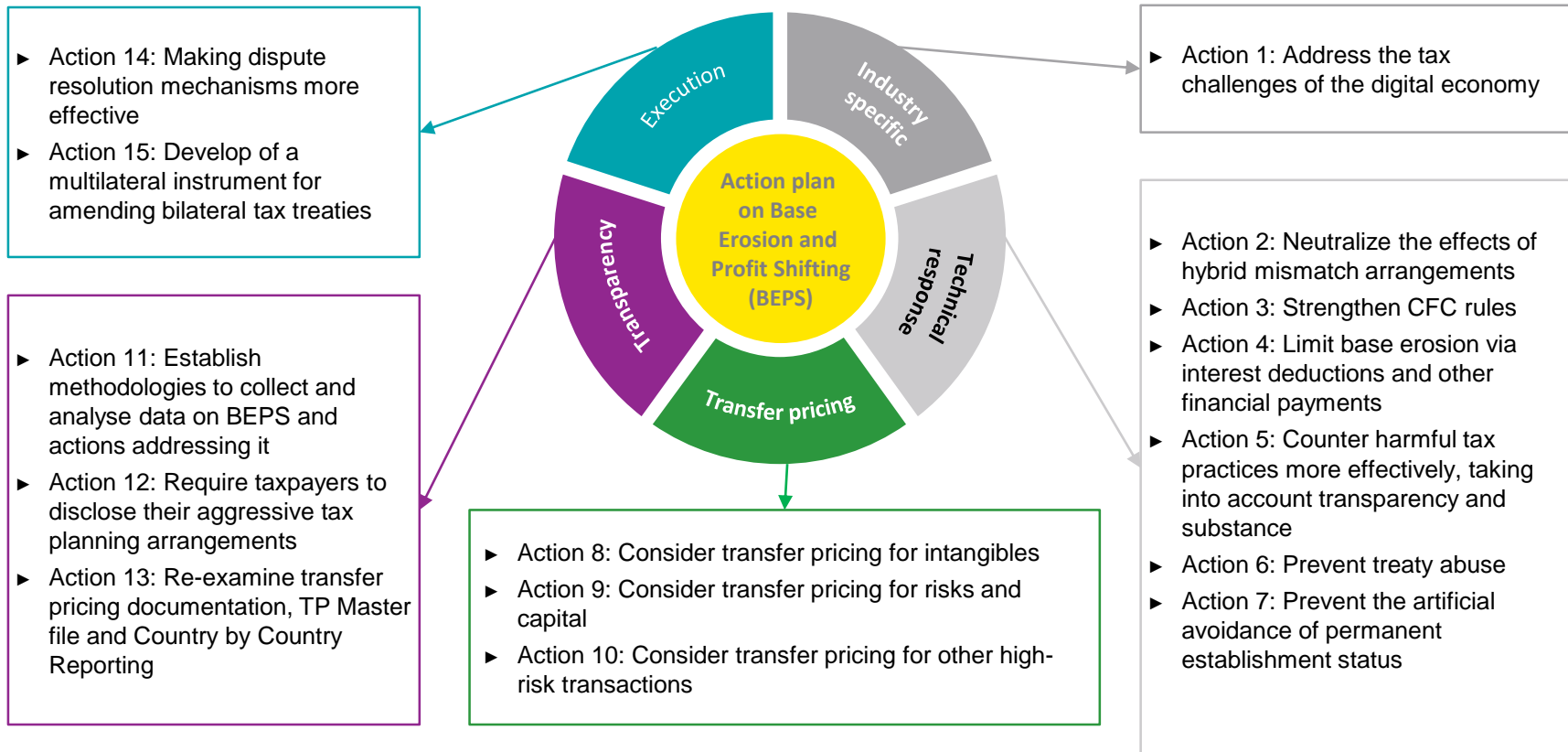
– George Osborne, October 2015

“If you're a tax-dodger, we're coming after you”

- Theresa May, October 2016

The OECD's response

Base Erosion and Profit Shifting (BEPS) Action Plan



The EU's response

Anti-Tax Avoidance Directive (ATAD)

- ▶ Came into force on 8 August 2016 with the majority of the measures to be adopted by EU Member States by 31 December 2018
- ▶ The ATAD includes measures that cover:
 - ▶ Interest restrictions
 - ▶ CFC rules
 - ▶ Hybrids
 - ▶ A general anti-abuse rule
 - ▶ Exit taxation
- ▶ Many of these areas have already been addressed, or are being addressed, by the UK

The UK's response

Specific measures adopted in the UK

- ▶ Country-by-Country Reporting (CBCR)
- ▶ Transfer pricing
- ▶ Interest limitation rules
- ▶ Publication of tax strategy for large corporations
- ▶ Anti-hybrid legislation

Implementation of Country-by-Country Reporting

- ▶ A requirement for UK parented groups to submit a CBCR report if they have a consolidated turnover greater than €750 million
- ▶ Applies for accounting periods that start on or after 1 January 2016
- ▶ Company will have 12 months from the end of the accounting period to file the report with HMRC
- ▶ Enabling power for UK to require companies to include a CBCR report as part of their published tax strategy but no timetable for this to be implemented

Information required

- ▶ For all tax jurisdictions that the group has a presence in:
 - ▶ Unrelated and related party revenue
 - ▶ Profit/(Loss) before tax
 - ▶ Income tax paid (on a cash basis)
 - ▶ Income tax accrued for current year
 - ▶ Stated capital
 - ▶ Accumulated earnings
 - ▶ Number of employees
 - ▶ Tangible assets other than cash and cash equivalents, and
 - ▶ The main business activities associated with the tax jurisdictions

Transfer pricing

- ▶ In addition to CBCR requirements, groups will also be required to keep an up to date transfer pricing masterfile and relevant local files on hand
 - ▶ A masterfile includes information relevant for all group members
 - ▶ A local file may be required for all material transactions for a local taxpayer
- ▶ Greater qualitative detail is required than is necessary for CBCR, especially for the local files
- ▶ Actions 8 to 10 of the OECD BEPS Action Plan may also require existing transactions to be revisited in relation to pricing, substance requirements, etc.

Information required

- ▶ Masterfile
 - ▶ Group background and strategy
 - ▶ Key customer, competitors, risks and markets for the group
- ▶ Local files
 - ▶ To provide support on specific transactions to display they are at arm's length
 - ▶ Any related party transaction costs/ incomes and the method used to determined the correct arm's length pricing

Interest limitation rules

- ▶ From 1 April 2017, a Fixed Ratio Rule will cap the amount of relief for interest to 30% of EBITDA in the UK, with a *de minimis* allowance of £2 million net UK interest expense per annum for all groups
- ▶ Deviations are allowed from 30% of EBITDA by electing into the Group Ratio Rule which takes into account the total debt levels of the world wide group

Information required

- ▶ Fixed Ratio Rule
 - ▶ Interest amounts
 - ▶ EBITDA related to UK operations
- ▶ Group Ratio Rule
 - ▶ Total group interest, segregating any costs related to related party debt, financing costs on profit participating loans, perpetual debt, compound instruments and hybrid debt
 - ▶ Group wide EBITDA, as defined by the proposed law

Publication of tax strategy for large corporations

- ▶ Applies to all businesses that have a UK turnover of more than £200 million or a relevant balance sheet total more than £2 billion
 - ▶ Businesses defined broadly to include all UK groups and sub-groups and any other UK companies and UK Permanent Establishments.
 - ▶ Non-UK groups (and their UK sub-groups) included only to the extent the non-UK group is within the CBCR requirement, but if included then the scale of the UK activity is irrelevant
- ▶ Requires publishing the report on the internet for the period covered by the business's annual report

Information required

- ▶ Approach of the UK group to risk management and governance arrangements in relation to UK taxation
- ▶ Attitude of the group to tax planning that affects UK taxation
- ▶ Level of risk in relation to UK taxation that the group is prepared to accept
- ▶ Approach toward dealings with HMRC
- ▶ Some groups may choose to disclose something like “Total Tax Contribution”

Questions?



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Thank you



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