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OECD publishes 2014 BEPS deliverables

On 16 September 2014, the OECD published its 2014 BEPS deliverables. The BEPS Project aims to provide governments with clear international solutions for fighting corporate tax planning strategies that exploit gaps and loopholes of the current system to artificially shift profits to locations where they are subject to more favorable tax treatment. The OECD work is based on a BEPS Action Plan endorsed by the G20 in July 2013, which identified 15 key areas to be addressed by 2015; with 7 actions to be delivered in September 2014.

The 2014 BEPS deliverables contain:

1. Two final reports
   - ✓ Action 1 “Addressing the Tax Challenges of the Digital Economy”
   - ✓ Action 15 “Developing a Multilateral Instrument to Modify Bilateral Tax Treaties”

2. One interim report
   Action 5 “Countering Harmful Tax Practices More Effectively, taking into account Transparency and Substance”. The deadline for the final report is September 2015

3. Four reports containing draft recommendations:
   - ➢ Action 2 “Neutralising the Effects of Hybrid Mismatch Arrangements”,
   - ➢ Action 6 “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances”
   - ➢ Action 8 “Guidance on Transfer Pricing Aspects of Intangibles”, and
   - ➢ Action 13 “Guidance of Transfer Pricing Documentation and Country-by-Country Reporting”

   These four reports have been agreed upon, and will be finalized with further work on implementation and interaction with the 2015 deliverables.

The BEPS reports, and its 2014 deliverables, can be categorized into three key objectives:

1. To counter tax planning which makes improper use of tax treaties or which abuses disparities between domestic tax laws (hybrid mismatch arrangements). In essence, the proposed measures entail:
   - Developing treaty provisions (anti treaty shopping objective to be included in title and preamble of tax treaties, specific anti abuse rule based on Limitation of Benefits, and/or general anti abuse rule (Principle purpose test) and domestic rules to prevent improper use of tax treaties);
   - Developing domestic law provisions aimed at avoiding hybrid mismatches.

2. To counter tax planning aimed at allocating significant income to group companies in low taxed jurisdictions merely on the basis of their legal ownership of valuable assets (most often IP) and contractual risk, while such group companies have no people to manage the associated risks. In essence, the proposed measures entail:
   - Greater reliance on functional analysis and value chain analysis;
   - Expansion of the scope of CFC legislation (treating income from remotely provided electronic products and services as income for CFC purposes).

3. To develop guidance for transfer pricing documentation and Country-by-Country reporting, as well as a multilateral instrument to modify bilateral tax treaties. Although some countries participating in the BEPS project may strike a different balance between tax administration information needs, and the inappropriate use of information and compliance burden and costs, it is mandated these countries will carefully review the implementation of the new standards and will reassess no later than the end of 2020 whether modifications to the content of these reports should be made.

Implementation: the goal of Action 15 is to streamline the implementation of the tax treaty-related BEPS measures. Drawing on the expertise of public international law and tax experts, the present report explores the technical feasibility of a multilateral hard law approach and its consequences on the current tax treaty system. It concludes that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly.

The full reports on the 2014 deliverables can be found by using the following link:
http://www.oecd.org/ctp/beps-2014-deliverables.htm

If you have any questions on this Tax News Bulletin, please do not hesitate to contact Otterspeer, Haasnoot & Partners.