KPMG
cutting through complexity

8 October 2015

BEPS Action Plans in Nutshell

Action No.	Action Plan	Approach/rules provided	Approach/rules explained
1	Addressing the tax challenges of the Digital Economy (DE)	1. No special tax regime prescribed but Base Erosion Profit Shifting (BEPS) measures to address challenges of DE 2. Destination-based taxing rights for Goods and Services Tax (GST)/ Value Added Tax (VAT)	1. **No special tax regime** has been proposed for the DE as existing BEPS measures on Controlled Foreign Companies (CFC), Permanent Establishment (PE) and transfer pricing construed sufficient to address the same. 2. Organisation for Economic Co-operation and Development (OECD's) international **VAT/GST guidelines** to address challenges of collection and avoidance to be addressed by adopting destination-based taxing rights that require DE suppliers to collect and remit VAT. **Notes**: 1. Monitoring will continue with a further report in 2020. 2. The report encourages countries to tackle digital BEPS challenges unilaterally which may lead to inconsistency.
2	Neutralising the effects of hybrid mismatch arrangements	Rule-based approach to avoid undesired tax outcome: 1. Primary rules 2. Secondary or defensive rules	**1. Primary rule:** To provide that the taxpayer is denied deduction in the source country for payment to the extent the amount is not included in the taxable income of recipient in counter party jurisdiction or when the amount is also deductible in the counter party jurisdiction. **2. Secondary or defensive rules**: To provide for either - inclusion as income of deductible payment (in counterparty jurisdiction); or - denial of duplicate deduction.
3	Designing effective Controlled Foreign Company rules	Six building blocks for design of effective CFC rules that address BEPS concern	The six building blocks include: Rules for defining CFC, CFC exemptions and threshold requirement, Definition of CFC income, Changes to computation of income,

			Rules for attribution of income and Prevention and elimination of double taxation. **Notes**: 1. Rules apply to CFC where the effective tax rates are meaningfully lower than the parent jurisdictions. 2. The recommendations are not minimum standards. 3. The definition of CFC income is one of the key building blocks, but is an area where there are differing views. A non-exhaustive list of approaches (e.g. substance and excess profits analysis) has been included to accommodate those differing views.
4	Limiting base erosion involving interest deductions and other financial payments	1. Fixed Ratio Rule (FRR) 2. Group Ratio Rule (GRR) 3. Equity Escape Rule (EER) 4. Additional Clause	1. **Fixed Ratio Rule**: This rule limits the entity's net deductions for interest and interest equivalent to a percentage of pre-tax earnings before interest, depreciation and amortisation i.e. (EBITDA). Recommended range of 10 to 30 per cent. 2. **Group Ratio Rule**: Permits the entity with net interest expense above a country's fixed ratio to deduct interest upto its group level ratio-third party interest EBIDTA. 3. **Equity Escape Rule**: Under this rule an entity level comparison is done of equity and assets to those held by its group. 4. **Further options** suggested includes a de minimis threshold, public benefit exemption, carry forward or carry back of disallowed interest expense and or unsused interest capacity and other targeted anti-avoidance rules. **Notes**: 1. Currently, there are no thin capitalisation rules in India. 2. External Commercial Borrowings (ECB) guidelines currently govern the limits for capitalisation/borrowing and provide regulatory capping of interest on such borrowings.
5	Countering harmful tax practices more effectively, taking into account transparency and substance	Modified nexus approach	**Approach includes:** Allow benefits from the Intellectual Property (IP) regime only to the extent the taxpayer contributes to the development of IP i.e. ratio of qualifying Research and Development (R&D) expenditures to total/overall R&D expenditure. **Note:** 16 regimes have been found to be partly or wholly inconsistent with nexus approach. Report recommends review of possible amendments to the regimes.

			Information will be exchanged spontaneously in relation to certain rulings including preferential regimes.
6	Preventing the granting of treaty benefits in inappropriate circumstances	New anti-abuse strategies to counter 'letter box companies'	**Strategies include:** 1. Clear statement in tax treaties to the effect that states entering into a tax treaty intend to avoid creating opportunities for non-taxation, reduced taxation through tax evasion or avoidance including through treaty shopping arrangements. 2. Limitation on Benefits rule (LOB) in tax treaties based on the legal nature, ownership in and general activities of the entity which seek to ensure that there is sufficient link between entity and its state of residence. 3. A general anti-abuse rule based on 'principal purpose of transactions' or arrangements test (PPT). **Note:** Wordings and work on the simplified and detailed LOB clause and commentary is expected to be finalised in early 2016, in light of changes to the U.S. model of LOB (which is expected to be finalised by the end of 2015).
7	Preventing the artificial avoidance of PE status	1. Amendment to Article 5 of the model tax treaty 2. Anti-fragmentation rule for preparatory and auxiliary activities	**Amendments include:** 1. In view of dramatic changes in the way the business is conducted in the e-commerce environment , activities which were previously treated as preparatory and auxiliary may now correspond to core activities. Therefore, Article 5(4) is modified to ensure exceptions included in PE creation are restricted to activities that are 'preparatory and auxiliary' in nature. 2. Scope of Article 5(5) and 5(6) is expanded (including commentary) to prevent tax abuse using commissionnaire arrangements and similar strategies. 3. A new anti-fragmentation rule seeks to deny the preparatory and auxiliary exception if the foreign enterprise or a related enterprise carries on related activities in the same jurisdiction and those activities, taken as a whole, go beyond preparatory and auxiliary nature.

8 to 10	Aligning transfer pricing outcomes with value creation	1. Hard to value Intangibles 2. Control over risk 3. Cash boxes	1. For intangibles: Legal ownership alone does not create right to return generated from exploitation of IP. Group companies performing important functions, controlling economically significant risks and contributing assets determined through accurate delineation of actual transaction, will be entitled to returns reflecting value of their contributions. 2. Control over risks: Risks would be allocated to the party that exercises control and has financial capacity to assume risks. Contractual relations between parties be viewed in combination with conduct of parties. Report prevents allocation to locations where no contributions are made. 3. Cash boxes are capital rich entities without any relevant corresponding economic activity. Report suggests cash boxes will be entitled only to risk-free returns to the extent of their capital contributions. **Note:** Intangible related returns accrue to the entities which carry out DEMPE functions – development, enhancement, management, protection and exploitation in relation to that intangible. Need to accurately delineate a transaction so that the actual conduct of parties will replace contractual arrangements where they are incomplete or out of line with the conduct. Transactions can be disregarded for Transfer Pricing (TP) purposes where they lack commercial rationality.
11	Measuring and monitoring BEPS	Six indicators to act as dashboard of BEPS behaviour	Improved data and analysis tools are recommended with an intention to lead to better identification of BEPS activities and impact of the actions taken to address BEPS.
12	Mandatory disclosure rules	Taxpayer to disclose aggressive tax planning arrangement	Tax authorities to introduce a mandatory disclosure regime with design features that include who reports, what to report, when to report and consequences of non-reporting.

13	Transfer pricing documentation and Country by Country (CbC) reporting	Three tier standardised approach (Three papers previously released have been consolidated to create the text of new Chapter V of OECD Guidelines (i.e there are no new materials published besides the executive summary)	**Multinational Enterprises (MNEs) to provide all relevant government information on their global allocation of income, economic activities, taxes paid amongst countries according to the following templates:** Master file- dealing with high-level global information about a multinational corporation (MNC) group and its TP policies. Local file- specific to each country and analysis of TP documents. CbC reporting- provides annual information for each jurisdiction in which MNE do business, the amount of revenue, profit before tax, income tax paid, no. of employees, capital, business activities, etc. **Note:** CbC requirements are to be implemented for fiscal years beginning 1 January 2016 onwards and would apply to MNE groups having consolidated revenues equal to or more than EUR750 million.
14	Making dispute resolution mechanisms more effective	Strengthening the effectiveness and efficacy of Mutual Agreement Procedure (MAP)	**Agreement by countries on dispute resolution:** Agreement on minimum standard to secure progress on dispute resolution with effective monitoring mechanism. MAP arbitration: MAP arbitration to be included in their bilateral tax treaties to guarantee resolution within specified time frame. **Note:** India is not a signatory to the agreement seeking MAP arbitration.
15	Developing a multilateral instrument to modify bilateral tax treaties	Innovative approach to resolve international tax matters	An adhoc group to develop a multilateral instrument on tax treaty measures to tackle BEPS and conclude the work by 31 December 2016.

Note: the full package of BEPS measures are being presented to G20 Finance Ministers on 8 October 2015 and would be subsequently presented to G20 leaders at their summit on 15-16 November 2015

www.kpmg.com/in

Ahmedabad
Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru
Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh
SCO 22-23 (Ist Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai
No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi
Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad
8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi
Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata
Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai
Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida
6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune
703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

© 2015 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.