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FISCALITÉ DES ENTREPRISES

# TAX GOVERNANCE AND BEPS ISSUES: WHAT WILL THE POST-BEPS TAX WORLD LOOK LIKE ?

Jérôme BOGAERT

Managing Partner, International Tax Group

HARMONY, French law firm

Member of the IAFEI ITC Committee

# AGENDA

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- Introduction
- Tax governance and BEPS: common goals
- Tax governance and BEPS: interactions
- Tax governance and BEPS: main risks
- Example of BEPS application in an international context
- Conclusion

# INTRODUCTION

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- BEPS = Base Erosion and Profit Shifting
- Aims at constituting « the building blocks for an internationally agreed and coordinated response to corporate tax planning strategies that exploit the gaps and loopholes of the current international tax system to artificially shift profits to locations where they are subject to more favorable tax treatment »

*OECD General-Secretary Angel Gurría, Sept. 16, 2014*
- Ultimate purpose: to align taxation of the profits with economic substance and value creation



# INTRODUCTION

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- Tax Governance for businesses: the process of steering or guiding a corporate group in relation to its taxation responsibilities, embracing all taxes affecting the group and all rights, responsibilities and risks in relation to these taxes

*Marius van Blerck, former Head of Tax, Standard Bank Group, 2011*

- Good Tax Governance for tax administrations: making sure that the global and local tax environment:
  - Creates or preserves business-friendly tax systems
  - Promotes growth-friendly taxation
  - Actually tackles tax evasion and aggressive tax planning

*EU Platform for tax good governance, July 10, 2015*



# TAX GOVERNANCE AND BEPS: COMMON GOALS

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- Restoring public trust in the domestic and international tax systems
- Providing greater certainty to the business community and more consistency between tax policies from one country to the other
- Reducing unfair tax competition among the states and between companies
- Improving the warranties given to taxpayers and investors



# TAX GOVERNANCE AND BEPS: INTERACTIONS

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- Enhancing transparency and exchange of information without breaking the minimum confidentiality level  
=> *actions 5, 12, 13*
- Ensuring that profit sharing within groups fits with the underlying substance and business rationale  
=> *actions 3 (CFC), 5, 6 (PPT), 7 (preparatory activities)*
- Reducing double taxation as well as double non-taxation  
=> *actions 2 (hybrids), 4 (interest deduction)*



# TAX GOVERNANCE AND BEPS: INTERACTIONS

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- Avoiding artificial profit shifting in low-tax jurisdictions through inappropriate transfer pricing policies  
=> *actions 8, 9, 10*
- Improving resolution of tax disputes between states (global), and between a given state and its resident taxpayers (local)  
=> *action 14 (DRM)*

# TAX GOVERNANCE AND BEPS: MAIN RISKS

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- Implication of the non-OECD countries: a big challenge  
=> *regional network meetings on BEPS (Asia, Latin Am...)*
- Unbalanced application of the BEPS package  
=> *different levels of involvement creating potential distortions in tax competitiveness and impacting growth in the countries taking the lead negatively*
- If there is no minimum consensus both on the principles, the main solutions and their implementation tools, is there a risk of « do nothing » outcome ?





# BEPS ACTION PLAN

## EXAMPLE OF POTENTIAL APPLICATION

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### France: Double Tax Treaty signed with Colombia (June 2015)

#### ○ Action 6:

- Including in the preamble a clear statement that the Contracting States intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, with a clear reference to treaty shopping
- Adding a general anti-abuse clause based on the main purposes of the transactions and/or arrangements reviewed => principal purposes test or PPT and explicitly referring to the beneficial owner of the revenues
- Completing the articles on the main specific categories of flows (dividends, interest or royalties) through a specific PPT clause



# BEPS ACTION PLAN

## EXAMPLE OF POTENTIAL APPLICATION

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### France: Double Tax Treaty signed with Colombia (June 2015)

- Action 7:
  - Including a new anti-fragmentation rule in article 5 on PE, whereby the overall activity resulting from the combination of the activities carried on by two connected enterprises at the same place, or by the same enterprise at two different places, is not of a preparatory or auxiliary character, provided that the business activities carried on constitute complementary functions that are part of a cohesive business operation
  
- Action 14:
  - Including an arbitration clause as tax dispute resolution mechanism between the Contracting States, when they do reach any agreement to avoid double taxation after 2 years of competent authority procedure



# CONCLUSION

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- BEPS Action Plan: strong political will throughout the OECD member states at the beginning...
- But still to be shared by many developing countries...
- And the concrete outcome is still to be clarified (action 15 ?)
- Should nevertheless give rise to significant changes of the international tax rules over the mid and long-term...
- becoming a very powerful tool in the hands of the tax authorities to tackle base erosion, profit shifting and tax avoidance
- Must be taken by the taxpayers as an opportunity to improve their tax policy and their tax governance



# ANNEX : BEPS ACTION PLAN

## ACTIONS AND TIMETABLE

Number	Description	Due date of report
Action 1	Address the tax challenges of the digital economy	September 2014
Action 2	Neutralise the effects of hybrid mismatch arrangements	September 2014
Action 3	Strengthen CFC rules	October 2015
Action 4	Limit base erosion via interest deductions	December 2015
Action 5	Counter harmful tax practices	Sept 14 – Oct 15
Action 6	Prevent treaty abuse	Sept 14 – Oct 15
Action 7	Prevent artificial avoidance of PE status	October 2015
Action 8	TP outcome in line with value creation : intangibles	Sept 14 – Oct 15 ?
Action 9	TP outcome in line with value creation : risks and capital	October 2015 ?
Action 10	TP outcome in line with value creation : other high-risk transactions	October 2015 ?
Action 11	Establish methodologies to collect and analyse data on BEPS	October 2015
Action 12	Require taxpayers to disclose their aggressive tax planning schemes	October 2015
Action 13	Re-examine transfer pricing documentation	Sept 14 – June 15
Action 14	Make dispute resolution mechanisms more effective	October 2015 ?
Action 15	Develop a multilateral instrument	Sept 14 – Dec 15



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Jérôme BOGAERT  
DFCG (France) member  
Member of IAFEI International Tax Committee

HARMONY – French law firm  
Managing partner

[jerome.bogaert@harmony-avocats.com](mailto:jerome.bogaert@harmony-avocats.com)

+33 (0)611 901 505