

Foundation for International Taxation Conference

BEPS in India: Impact on Indian Tax Policy and Compliance

Presentation By

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G-20 BEPS Project

- **First sincere and time bound global effort in many years to tackle problems in international tax rules**
- **All OECD and G-20 countries worked on equal footing**
- **All Reports adopted with consensus**
- **India, a G-20 member, significantly contributed to the BEPS Project**
- **Provided emerging and market economy perspective**

Indian Taxation System

- **India taxes worldwide income of its tax residents**
- **Double taxation is avoided by giving credit of tax paid in the other country**
- **Non-residents are taxed on income sourced in India**
- **Major component of revenue is corporation tax: Vulnerable to BEPS**

Necessity of BEPS Measures

- **BEPS indicators confirm significant profit shifting and is likely to increase and creating adverse economic distortions**
- **Current anti-avoidance mechanisms hampered by asymmetry of available information with the tax administration and taxpayer**
- **Source based taxation practically difficult to implement due to over-emphasis on concepts of residence based tax rules**

BEPS Project: Indian Response

- **Tax administration- Implementation of measures (changes in domestic law)**
- **Changes in tax treaty rules and adoption of best practices**
- **Need for increased guidance and allocation of resources for prevention and prompt resolution of disputes**
- **Building capacity of tax administration**
- **Compliance issues and preparedness for business**

SOME CRITICAL MEASURES

Dispute Resolution Mechanism

- **Necessity of effective and efficient prevention of double taxation**
- **Certainty to compliant taxpayers and ensuring no unintended double taxation**
- **Strengthening the effectiveness and efficiency of the MAP Process**

Improving MAP Process

- **BEPS Report has developed certain minimum standards with respect to the resolution of treaty related disputes**
- **Countries committed to seek to resolve MAP cases within an average timeframe of 24 months**
- **Minimum standard is complemented with a set of best practices**
- **India is committed to implement the Report on Action 14, except that India does not subscribe to mandatory binding MAP Arbitration**

Transfer Pricing Documentation

- **Domestic legislation to ensure implementation of new Country-by-Country Reporting requirements**
- **BEPS Report provides for implementation of the requirement for fiscal years beginning on or after 1 January 2016**
- **Requirement to MNEs with annual consolidated group revenue equal to or exceeding EUR 750 million**
- **Not many Indian MNEs would be covered**

Transfer Pricing Documentation

- **Aligning the present TP Rules to the new standardised approach of TP documentation: Master File, Local File, and Country by Country Reporting**
- **Establishing mechanisms to receive and transmit the information from/to tax administrations in other countries**
- **Mutual Administrative Assistance in Tax Matters, Competent Authority Agreement, and Tax Treaties etc.**

Transfer Pricing: Other issues

- **Risk assessment system being developed for the effective use of information received**
- **Centralised receipt of information from other countries and need based dissemination to the field officers**
- **Adequate safe guards for ensuring confidentiality of information received and data protection**

Exchange of Information

- **Already in the process of putting appropriate systems in place for automatic exchange of information**
- **Information already received under FATCA after US satisfaction on existing systems and practices that ensure the confidentiality of information received and use as per the agreement**

Disclosure Rules

- **Ensuring that information regarding potentially aggressive or abusive tax planning schemes is available to tax administration at the earliest for necessary action**
- **Promoters and users of the schemes are identified and deterrence is created**
- **Recommendations do not represent a minimum standard but India may consider bringing such rules**
- **Rules may be necessary to ensure level playing field and sharing of information with counterparts in other countries**

Taxation of Digital Economy

- Major work on current business models used in digital economy
- Important features: mobility, reliance on data, network effects, the spread of multi-sided business models, a tendency toward monopoly or oligopoly and volatility
- Importance of market economies in value creation
- Report suggests options for countries to introduce measures in domestic laws as additional safeguards against BEPS, provided they respect existing treaty obligations, or in their bilateral tax treaties.

Taxation of Digital Economy

- **Options are:**
 - (i) New nexus in the form of a significant economic presence**
 - (ii) Withholding tax on certain types of digital transactions, and**
 - (iii) An equalisation levy**
- **Countries have started taking domestic measures**
- **Current scenarios in India being examined to decide on suitable measures**

BEPS: Transfer Pricing

- Transfer pricing outcomes better align with value creation/economic activities of the MNE group.**
- The actual conduct will supplement or replace the contractual arrangements if the contracts are incomplete or are not supported by the conduct.**
- Disregarding of arrangements if transaction lacks commercial rationality**

BEPS: Transfer Pricing

- **The risks could be allocated to the party that does exercise control on risks and does have the financial capacity to assume the risks**
- **In respect of intangibles, the legal ownership alone does not necessarily generate a right to all (or indeed any) of the return that is generated by the exploitation of the intangible**
- **The group companies performing important functions, controlling economically significant risks and contributing assets will be entitled to an appropriate return reflecting the value of their contributions**

BEPS: Transfer Pricing

- **Guidance on transactions involving commodities as well as on low value-adding intra-group services**
- **BEPS report in line with current practices of Indian tax administration**
- **The emphasis in India now focused on consistent application and uniformity of practices: Prevention and speedy resolution of transfer pricing disputes**

Changes in PE definition

- **Changes to Article 5(5), 5(6) and Commentary to tackle the artificial avoidance of PE status**
- **Article 5(4) modified to ensure that each of the exceptions is restricted to activities that are otherwise of a “preparatory or auxiliary” character**
- **Rule against “fragmentation of activities” and “splitting of contracts” also added**
- **Similar provisions already in most Indian tax treaties and changes confirm Indian understanding**
- **Proposed Multilateral instrument likely to modify treaties to incorporate the proposed changes**

Treaty Anti-Abuse Rules

- **Minimum standard to counter treaty shopping**
- **Stated purpose of a tax treaty to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements will be included in tax treaties**
- **Limitation of Benefit (LOB) Rule and Principal Purpose Test (PPT) Rule also provided**

Other measures

- **Limiting interest deductions and other financial payments (Action 4)**
- **Controlled Foreign Company Rules (Action 3)**
- **Rules to address Hybrid Mismatch Arrangements (Action 2)**
- **These are being studied to determine the suitability of appropriate measures**

Questions?

Thank you very much!