



BEPS and International Tax Compliance / Disputes

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Base Erosion & Profit Shifting

Conservative indication of magnitude of BEPS (as reflected on OECD website):

“Anywhere from 4% to 10% of global corporate tax income revenues i.e. **USD 100 to 240 billion annually.**”

Steps Taken by OECD

- OECD has formulated 15 Action Plans to combat BEPS.
- Over 80 developing countries & other non-OECD / non-G20 economies have participated directly in technical working groups.

BEPS Action Plans

1. Tax Challenges of Digital Economy
2. Neutralising Effects of Hybrid Mismatch Arrangements
3. Designing Effective CFC Rules
4. Limiting Base Erosion Involving Interest Deductions and Other Financial Payments
5. Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance
6. Preventing Grant of Treaty Benefits in Inappropriate Circumstances
7. Preventing Artificial Avoidance of PE Status
- 8-10. Aligning TP Outcomes with Value Creation
11. Measuring and Monitoring BEPS
12. Mandatory Disclosure Rules
13. Guidance on Transfer Pricing Documentation and Country-by-Country Reporting
14. Making Dispute Resolution Mechanisms More Effective
15. Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

Compliance Regime

- Action Plan 13 - 3 tiered approach to TP documentation:
 - Master File
 - Local File
 - Country-by-Country Report
- Details of each group entity doing business in each jurisdiction.

Compliance Regime

- Action Plan 12:
 - Mandatory Disclosure Rules
 - Taxpayers / Promoters to report transactions giving rise to revenue risks.
 - Revenue authorities to obtain early information on aggressive or abusive tax planning schemes.

Compliance Regime

- Paradigm change in compliance processes.
- Greater transparency.
- All business information – group-wise and entity-wise – open to scrutiny.
- Important that Revenue authorities are properly trained and equipped to enforce measures.

International Tax Disputes

- Action Plan 14 – Three main objectives:
 - Treaty obligations in relation to MAP must be implemented in good faith; MAP cases must be resolved in timely manner.
 - Administrative processes should promote prevention and timely resolution of treaty related disputes.
 - Eligible taxpayers should be able to access MAP easily.

International Tax Disputes

- Action Plan 15:
 - Development of multilateral instrument to enable countries to amend bilateral tax treaties, providing for mandatory MAP arbitration.
- No guidance on implementing mandatory arbitration.
- India not in favour of arbitration.
 - Indian system needs change but arbitration does not impinge on its sovereignty.

International Tax Disputes

- Judicial principles evolved in India over a period of time – whether in conflict with anti-BEPS measures?
- Evolution of new jurisprudential principles in implementation of BEPS Actions Plans?
- Amendment of domestic law?

Relevant Caselaws

- Delhi ITAT - Baker Hughes Singapore Pte Ltd [TS-214-ITAT-2015(DEL)].
 - No role for BEPS in judicial decision making process.
- Delhi ITAT - Mitsubishi Corporation India P. Ltd [TS-330-ITAT-2014(DEL)-TP] and Mumbai ITAT - Watson Pharma P Ltd [TS-3-ITAT-2015(Mum)-TP]
 - Relies on Report titled 'Guidance on Transfer Pricing Aspects of Intangibles'



THANK YOU!