

Conference organized by:  
Institute for Austrian and International Tax Law Vienna

# **Implementing Key BEPS Actions: Where do we stand?**

RUST CONFERENCE 2017

QUESTIONNAIRE

GUIDELINES

## **Implementing Key BEPS Actions: Where do we stand?**

### **1. Anti-BEPS measures before the BEPS project and policy impact of the BEPS project**

Had there been any discussion of aggressive tax planning or base erosion and profit shifting before the BEPS project was initiated? If so, briefly describe the background and the outcome of these discussions. To what extent were the suggestions from earlier reports issued by the OECD (e.g. "Harmful Tax Competition" and/or "Hybrid Mismatch Arrangements") or by the EU (e.g. the Commission's "Action Plan to strengthen the fight against tax fraud and tax evasion" and/or "Recommendations on aggressive tax planning") already implemented?

Were anti-BEPS measures implemented by your country prior to the BEPS project or before the final suggestions and recommendations of the OECD were issued?

How did the BEPS project influence the discussion and focus on certain tax issues in your country, both in the media and at the expert level? What policy impact, if any, did the BEPS project have?

### **2. Measures against hybrid mismatch arrangements (BEPS Action 2)**

Which measures against hybrid mismatch arrangements were already in force in your country before the BEPS project? Which measures have been introduced since the BEPS project began? Which measures are planned? Do these measures fully (or at least partly) coincide with the final report on Action 2? If not, briefly describe the main deviations and – if known – the reasons for these deviations. If your country is an EU Member State, how has the amendment of article 4 of the Parent-Subsidiary Directive been implemented and which measures are planned in order to implement article 9 of the Anti-Tax Avoidance Directive (ATAD)?

In BEPS Action 2 the OECD deals with many possible situations of hybrid mismatch arrangements and provides detailed recommendations (e.g. scope of rules, definitions, sample provisions). To what extent have these recommendations been taken into account? Which hybrid mismatch arrangements remain possible or are not specifically tackled? Give your opinion on the measures against hybrid mismatch arrangements proposed by the OECD.

### **3. Controlled foreign company rules (BEPS Action 3)**

Did your country already have controlled foreign company (CFC) rules before the BEPS project? Did it modify its existing CFC rules in order to align them with the OECD recommendations, or have new CFC rules been introduced? If your country is an EU Member State, will it follow article 7(2)(a) or article 7(2)(b) of the ATAD? Will it go beyond the minimum standard?

Does your country have rules that have an effect similar to CFC legislation (e.g. passive foreign investment company (PFIC) rules or anti-avoidance rules against base companies)?

If your country does not have CFC rules and does not plan to implement such a regime, briefly describe the underlying policy rationale. State your opinion on the CFC rules proposed by the OECD.

### **4. Interest deductions and other financial payments (BEPS Action 4)**

Which rules dealing with interest deductions or other financial payments were in force in your country before the BEPS project? To what extent did these rules follow or deviate from the best-practice approach as described by the OECD? Has the best-practice approach had any impact on the existing rules (modification)? Have new rules been introduced or are new rules planned? Is your country planning to follow the recommended approach? State your opinion on the measures proposed in BEPS Action 4. If your country is an EU Member State, will it go beyond the minimum standard proposed by article 4 of the ATAD?

## **5. Countering harmful tax practices (BEPS Action 5)**

Which measures were in force in your country before the BEPS project that could be regarded as harmful under the new OECD definition of harmful tax practices? Have these measures been modified or abandoned as a result of the BEPS project? Has your country abolished harmful tax practices after the 1998 OECD report? Which measures remain vulnerable? If your country is an EU Member State, have State aid rules had any impact on measures that could be regarded as harmful?

## **6. Implementation of transfer pricing suggestions (BEPS Actions 8-10 and 13) and mandatory disclosure rules (BEPS Action 12)**

To what extent does your country rely on the OECD Transfer Pricing Guidelines (OECD Guidelines)? How do modifications of the OECD Guidelines impact the tax practice (e.g. ambulatory approach, separate guidelines issued by the tax authorities, implementation by law)? How has your country reacted to the OECD suggestions with regard to transfer pricing? Are the transfer pricing suggestions adhered to by the tax authorities? Are there any deviations from the OECD Guidelines, as updated by the BEPS project, that remain? How far have your practices been influenced by the UN Manual on Transfer Pricing and the recently issued World Bank handbook on transfer pricing in developing countries? To what extent has your country modified its transfer pricing documentation rules in order to adhere to the OECD suggestions? How is your country planning to introduce country-by-country reporting? If your country is an EU Member State, will there be any deviations from the EU Directive on Administrative Cooperation in the Field of Taxation? Will the information be disclosed to the public or will it remain confidential?

Does your country have mandatory disclosure rules? Have such rules been introduced or are such rules planned? State your opinion on mandatory disclosure rules. Is public disclosure in line with your country's constitution?

## **7. Implementation of the multilateral instrument (BEPS Action 15)**

Has your country participated in the negotiation of the multilateral instrument? Why or why not? Is your country planning to sign the agreement? Why or why not? Is your country planning to modify all of its tax treaties or will certain tax treaties be excluded (e.g. because they are "too old" and therefore "too different"; because a specific tax treaty with an important treaty partner should be left to bilateral negotiations; or because the Nordic Tax Convention is already multilateral and thus raises specific problems)? Does the fact that all bilateral tax treaties will be modified by the multilateral instrument have any impact on the parliamentary procedure (e.g. special evaluation process, input from stakeholders)? Will consolidated versions of the relevant tax treaties be prepared for purposes of clarity? What legal value will these consolidated versions have? How does your country deal with problems of language (as the multilateral instrument will be authentic only in English and French)? State your opinion on the multilateral instrument.

## **8. Specific issues regarding tax treaty provisions (BEPS Actions 2, 6-7 and 14)**

Did your country follow certain OECD recommendations (e.g. limitation-on-benefits rules) in tax treaties as a standard policy prior to the BEPS project or did your country accept such rules when requested or suggested by a tax treaty partner?

If your country has recently concluded new tax treaties, to what extent have (other) recommendations from the BEPS project already been implemented?

If your country is planning to be a contracting party to the multilateral instrument, which options (limitation-on-benefits and/or principal-purpose test) or reservations it is planning to make, and what are the policy reasons behind these choices?

Are there any specific problems of implementation that the multilateral instrument might raise with regard to certain bilateral tax treaty provisions (e.g. does a tax treaty already contain a general anti-abuse rule that raises the

question of the relationship with the new principal-purpose test) or have such problems been fully avoided with reservations?

Will your country apply the Arbitration Clause? Why or why not? Do you believe that the reservations and options in the multilateral instrument help to solve problems of aggressive tax planning and BEPS while, at the same time, taking account of different tax policies and differences between bilateral tax treaties? Or do they rather prevent harmonization of anti-abuse measures and thereby introduce new opportunities for aggressive tax planning and BEPS?

## **SOME PRACTICAL GUIDELINES**

Paper length: 20 pages, Times New Roman 12 pt.

Format: preferably Microsoft Word

Bibliographic references (footnotes) and quotations: please follow the attached guidelines.

### **Deadline for delivery of the paper: May 15, 2017**

Please also provide **a brief biographical statement** (3-5 lines) for the “List of Contributors” in the book, as well as a list of abbreviations used in your paper, by the above-mentioned deadline. Ensure that **graphics and charts** in the final version are **black-and-white** or **greyscale only** (*no* color graphics are allowed for the book!), and email them as separate files in xlsx, docx, pptx, jpg or tif format. Resolution of images should be at least **300 DPI** to ensure good quality for printing.

**The national reports (papers) will be made available for download on a password-protected conference website**, so that the conference participants can be well prepared for the discussions.

On the basis of the national reports, we will identify the most relevant topics and select speakers who will present selected issues in a three-minute input statement to encourage public debate.

After the conference, there will be a short period of time granted for authors to include the findings of the conference in their respective papers. We will organize linguistic editing of the final reports.

If you have any questions or concerns, please do not hesitate to contact us at Renee.Pestuka@wu.ac.at. We will be happy to assist you.