



LIVE WEBCAST

THE BEPS PACKAGE

5 October 2015
4:00pm – 5:30pm (CEST)



INTRODUCTION



Speakers

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Join the discussion

Ask questions and comment throughout the webcast



Directly: Enter your question in the space provided



Via email: CTP.BEPS@oecd.org



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BEPS OVERVIEW



Features of the BEPS Project

Fast-pace

- 2-year time-bound

Inclusive

- OECD and G20 countries working together on an **equal footing**
- **14 Developing Countries, ATAF, CREDAF and CIAT** participating directly
- Other **60** Developing Countries participating *via* **Regional Networks** in Asia, Africa, Latin America and Eurasia

Transparent

- **23 Discussion Draft** published
- **12,000** pages of comments received
- **11 public consultations** with stakeholders and regular **webcasts**



What's in the BEPS package?

- **Minimum standards**
- **Reinforced international standards** on tax treaties and transfer pricing
- **Common approaches** and **best practices** for domestic law measures
- **Analytical reports** with recommendations (digital economy and multilateral instrument)
- **Detailed report on measuring BEPS**



15 Actions around 3 Main Pillars

Coherence

Hybrid Mismatch Arrangements (2)

CFC Rules (3)

Interest Deductions (4)

Harmful Tax Practices (5)

Substance

Preventing Tax Treaty Abuse (6)

Avoidance of PE Status (7)

TP Aspects of Intangibles (8)

TP/Risk and Capital (9)

TP/High Risk Transactions (10)

Transparency and Certainty

Measuring BEPS (11)

Disclosure Rules (12)

TP Documentation (13)

Dispute Resolution (14)

Digital Economy (1)

Multilateral Instrument (15)



COHERENCE

ACTIONS 2, 3, 4 AND 5



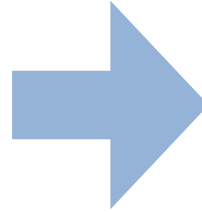
HYBRID MISMATCH ARRANGEMENTS



Action 2 – Hybrid Mismatch Arrangements

What is the problem?

Core aspect of
BEPS as hybrid
mismatch
arrangements
create non-
taxed/ stateless
income



Erode tax base of affected countries

Undermine fairness

Distort competition

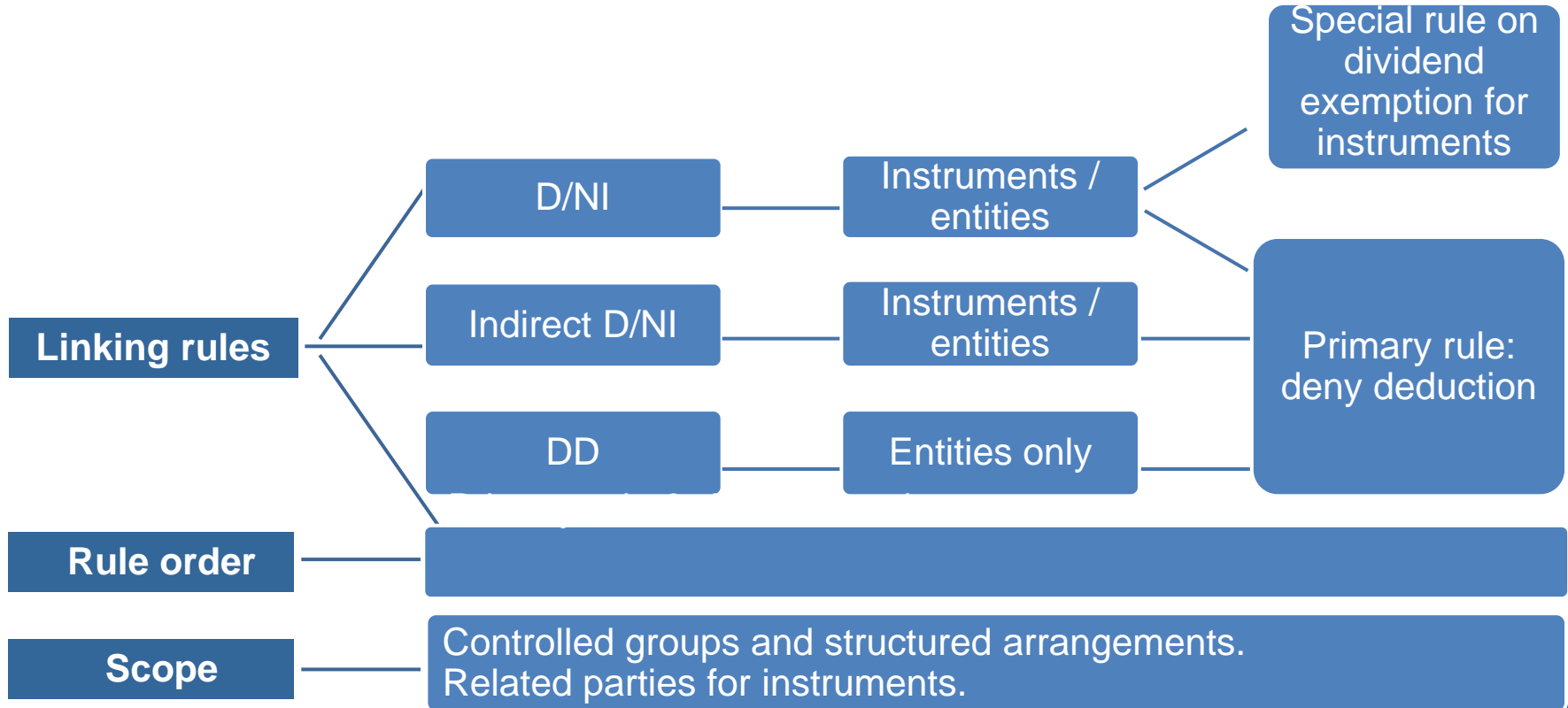
Inefficient

Non-transparent



Action 2 – Hybrid Mismatch Arrangements

What have we done to address it?





Final Hybrids Report (2015) What is new?

Guidance on implementation and operation of the rules including transitional rules



2015 Report- Updates and replaces 2014 Report & includes detailed Commentary and Examples

Outstanding issues

Treatment of stock lending and repos



Guidance on how to treat a payment that is included under a CFC regime



Guidance on operation of the imported mismatch rule



Treatment of hybrid regulatory capital under the hybrid financial instrument rule



Re-affirms the agreed outcome in 2014 Report



Final Hybrids Report (2015)

Where does this leave us?

Rules apply to all types of arrangements (incl. instruments and entities) and whether all countries participate or not

Comprehensive

Eliminates the mismatch benefit without affecting any other tax or regulatory outcomes

Stop hybrids

Related parties and structured transactions

Targeted and workable

Agreed rule order with detailed commentary explaining effect and interaction of the rules

Avoid double taxation



CFC RULES



Action 3 – Designing Effective CFC rules

- Recommendations for the design of effective CFC rules to combat BEPS and long-term deferral
- **Not a minimum standard** but sets out building blocks for effective CFC rules:
 - Definition of a CFC
 - CFC exemptions and threshold requirements
 - Definition of CFC income
 - Rules for computing income
 - Rules for attributing income
 - Rules to prevent or eliminate double tax
- Co-ordination with other relevant actions including; digital economy, hybrids, interest and transfer pricing



Action 3 – Designing Effective CFC rules

Final report recognises that different policy considerations underpin CFC rules and this determines their scope

Shared policy considerations

- Deterrent
- Backstop to transfer pricing
- Balance effectiveness with compliance burden
- Balance effectiveness with avoidance of double taxation

Specific policy objectives may be prioritised differently (i.e. worldwide versus territorial tax system)

- Balance between taxing foreign income and maintaining competitiveness
- Extent to which prevent base stripping (i.e. parent or foreign base stripping).



Action 3 – Designing Effective CFC rules

Some key points in final report

- Definition of a CFC
 - Includes transparent entities and PE's where they raise BEPS concerns
 - Report also includes a form of anti-hybrid rule to prevent avoidance of CFC rules
- CFC Exemptions and threshold requirements
 - Final report clearer on tax rate exemptions and use of lists such as a white list
- Definition of CFC income
 - Recognising different policy objectives there is more flexibility and options
- Elimination of double taxation
 - Stronger emphasis on ensuring that rules do not lead to double taxation



INTEREST DEDUCTIONS



Action 4 – Interest deductibility

What is the problem?

“no or low taxation associated with practices that artificially segregate taxable income from the activities that generate it”

BEPS Action Plan, chapter 3



location of third party interest in high tax countries

quantity of related party interest, in excess of group's actual interest cost

use of interest expense to fund tax exempt income



Action 4 – Interest deductibility

The key building blocks

Fixed ratio rule

- Allows net interest deductions up to a fixed net interest/tax EBITDA ratio
- Applies to interest paid to third parties and intragroup
- Fixed ratio between 10%-30%
- Factors assist countries in setting ratio



Group ratio rule

- Allows interest deductions up to net interest/EBITDA ratio of group
- Countries may instead apply a different group ratio rule (e.g. equity escape) or no group ratio rule



Action 4 – Interest deductibility

The key building blocks

Targeted rules

- Protect fixed ratio rule and group ratio rule from planning
- Address specific BEPS risks



Additional optional elements

- *De minimis* threshold
- Carry forward/back provisions
- Exclusion for 3rd party interest funding certain public-benefit assets



Action 4 – Interest deductibility

Next steps

Further work on the detailed design and operation of the group ratio rule

Specific rules to take into account features of the banking and insurance sectors

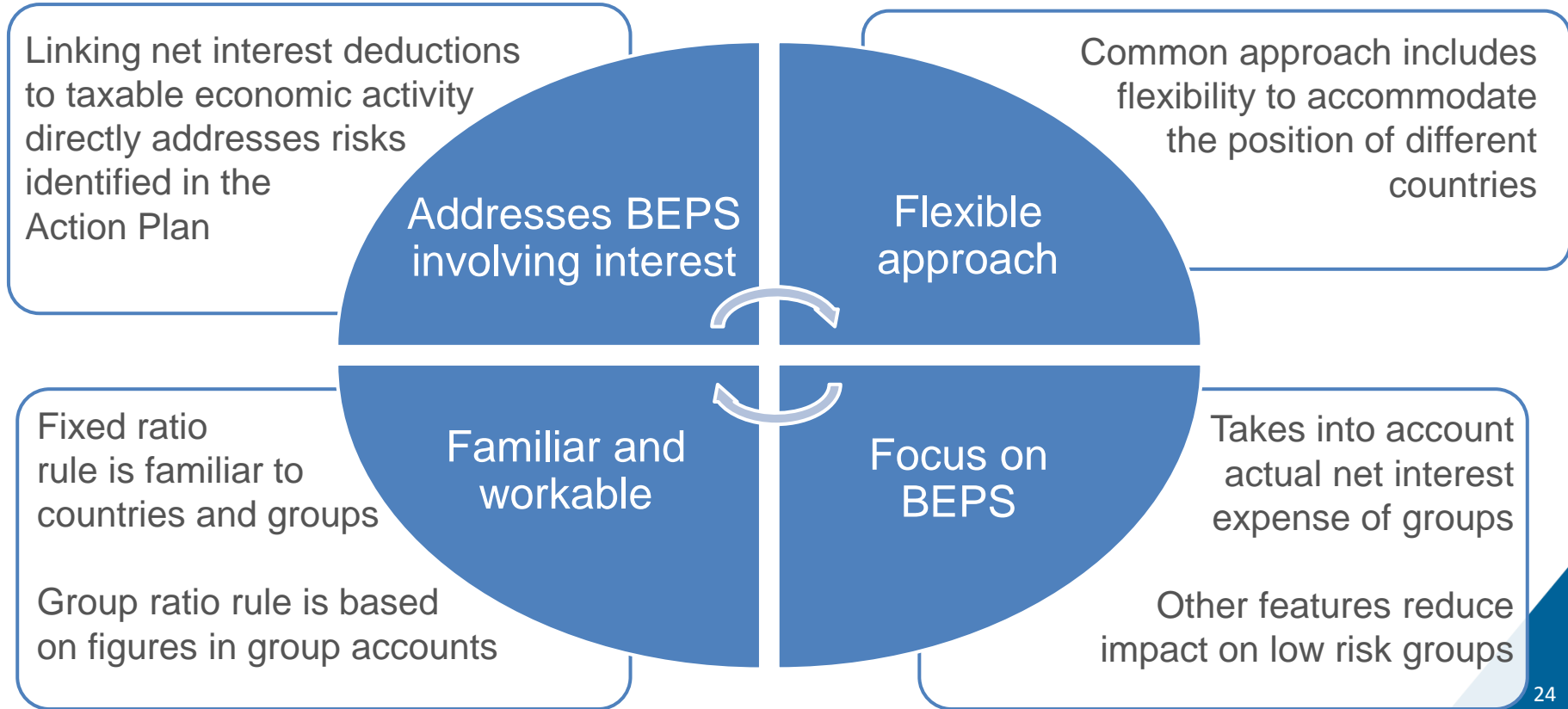


Work will be completed by the end of 2016



Action 4 – Interest deductibility

What has been achieved?





HARMFUL TAX PRACTICES (ACTION 5)



Action 5 - Countering harmful tax practices more effectively

What Action 5 set out to do:

- Requiring substance for all preferential regimes
- Improve transparency, including compulsory spontaneous exchange of certain rulings
- Engage with third countries
- Consider revisions or additions to the existing framework



Action 5 - Countering harmful tax practices more effectively

What we have delivered:



- An agreed approach on defining substance for all preferential regimes, whether IP regimes or non-IP regimes



- A completed review of 43 regimes in OECD and G20 countries



- An agreed framework for the exchange of rulings in 5 clearly defined risk categories pursuant to agreed deadlines and in an agreed format



- Agreement on integrated approach for engagement with third countries



- Agreement that revisions or additions need to take account of impact of work on substance and transparency



Action 5 - Countering harmful tax practices more effectively

Substantial activity & IP Regimes / Nexus

The policy

- Realigning taxation with value creation
- Allowing regimes intended to encourage R&D without creating harmful effects
- Not a policy recommendation but a “box around the box”

The basic approach

- A proportionate approach: the amount of benefiting income depends on the proportion of R&D expenditure incurred by the benefiting taxpayer
- Qualifying expenditures include outsourcing to unrelated parties but not outsourcing to related parties or acquisitions
- 30 percent uplift permitted



Action 5 - Countering harmful tax practices more effectively

What's new since February:



- Agreed approach to tracking and tracing including transitional rules that reflect business concerns and government's compliance needs
- Agreed definition of qualifying IP assets to include 3 categories:



- Patents defined broadly
- Copyrighted software
- Other similar IP assets that meet specific conditions including restrictions on company size and amount of benefiting income



- Agreed safeguards:
 - To prevent IP assets (not already in a regime) being shifted from related parties after 1 January 2016.
 - Enhanced transparency for all new entrants after 6 Feb 2015



Action 5 - Countering harmful tax practices more effectively

Transparency – Compulsory spontaneous exchange

Categories of rulings

1. Rulings related to preferential regimes
2. Unilateral APAs and other TP rulings
3. Rulings given a unilateral downward adjustment
4. Permanent establishment (PE) rulings
5. Related party conduit rulings
6. Other rulings subsequently agreed to give rise to BEPS concerns

To be exchanged with

1. Countries of residence of related parties with a transaction covered by the ruling, or in the case of PE ruling country of head office/PE as case may be
2. Country of Immediate Parent Co
3. Country of Ultimate Parent Co



Action 5 - Countering harmful tax practices more effectively

Transparency – Compulsory spontaneous exchange

Past rulings by 31 December 2016

Past rulings: Issued on or after 1 January 2010 and still in effect on 1 January 2014

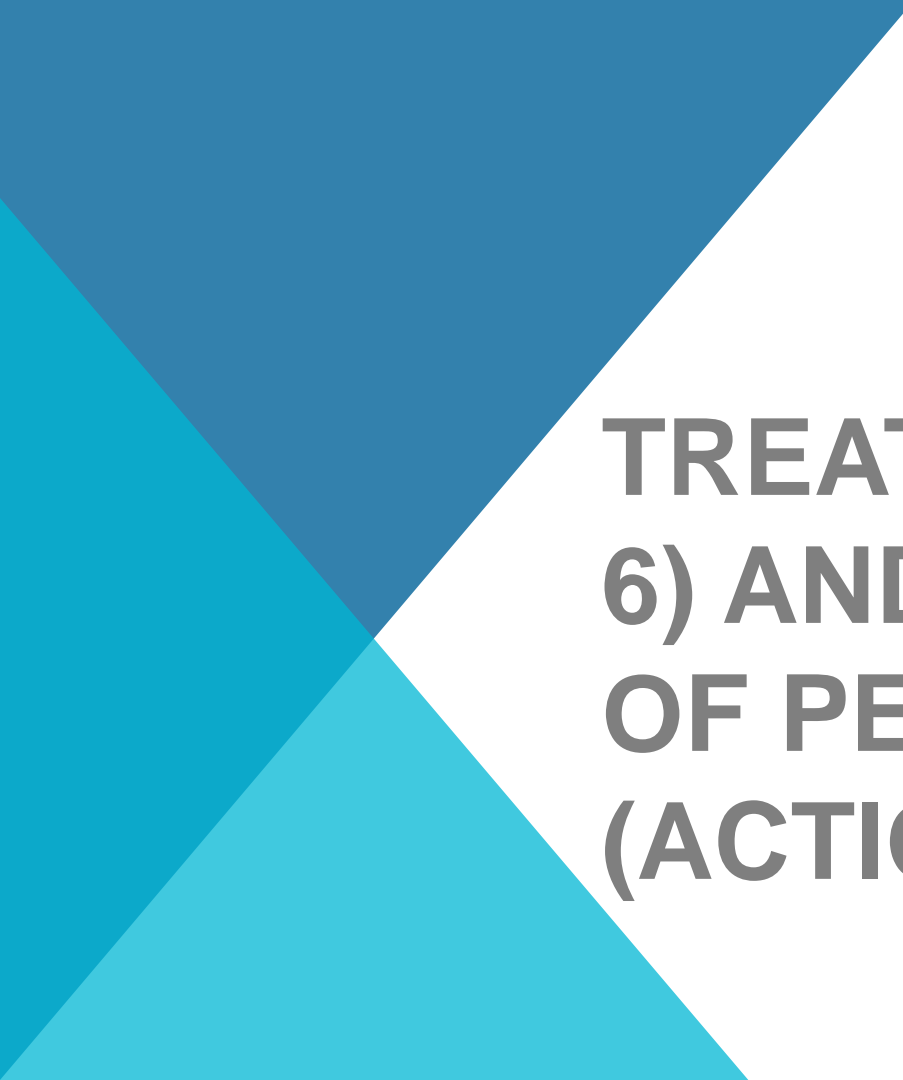
Future rulings within 3 months

Future rulings: Issued on or after 1 April 2016



SUBSTANCE

ACTIONS 6, 7, 8-10



TREATY ABUSE (ACTION 6) AND CIRCUMVENTION OF PE DEFINITION (ACTION 7)



Action 6 - Prevent Treaty Abuse

Treaty abuse, and in particular treaty shopping, is one of the most important sources of BEPS

The new treaty anti-abuse rules included in the Report on Action 6 first address treaty shopping (e.g. the use of a letterbox company in a treaty State)

All OECD and G20 countries have committed to eradicate treaty shopping through the inclusion of alternative provisions aimed at denying treaty benefits in various circumstances (minimum standard)

The Report also includes more targeted rules designed to address other forms of treaty abuse



Why so many different rules?

Treaty abuse, like abuse of domestic law, is best addressed through a combination of

- **Specific anti-abuse rules**, which provide greater certainty but can only deal with known abusive strategies that can be addressed through general objective criteria
- **More general anti-abuse rules** or judicial doctrines, which are less certain but offer protection against abusive transactions that have not previously been identified or addressed or that require a more case-by-case analysis



A minimum standard to prevent treaty shopping

Minimum level of protection against treaty shopping

Countries should agree to include in their tax treaties:

- An **express statement** that their common intention is to eliminate double taxation without creating opportunities for treaty shopping, and
- **Either**
 - The general treaty anti-abuse rule
 - The LOB rule supplemented by a mechanism that would deal with conduit arrangements not already dealt with in tax treaties, or
 - Both the general treaty anti-abuse rule and the LOB rule



Action 7 – Prevent the Artificial Avoidance of PE Status

These changes address techniques used to inappropriately avoid being taxed in a State, including

Replacing a distributor with a “commissionaire arrangement” through which a local member of a multinational group sells products belonging to foreign members of that group

Taking advantage of exceptions that were initially adopted to prevent the taxation of mere preparatory or auxiliary activities carried on by foreign enterprises, in particular by artificially fragmenting business activities between parts of a multinational enterprise

Splitting-up construction contracts in order to qualify for an exception based on the time during which an enterprise is active on a construction site



Restoring the integrity of the PE definition


As a matter of **policy**, where the **activities that an intermediary exercises in a country are intended to result in the regular conclusion of contracts to be performed by a foreign enterprise**, that enterprise should be considered to have a taxable presence in that country unless the intermediary is performing these activities in the course of an independent business

The changes to Art. 5(5) and 5(6) included in the Report on Action 7 will address *commissionnaire* arrangements and similar strategies by **ensuring that the wording of these provisions better reflect this underlying policy**



Importance of attribution of profit issues

Important to provide additional guidance concerning the amount of profits that will result from the changes to the definition of permanent establishment made through the Report



Follow-up work will therefore be carried out in 2016 on these attribution of profit issues (in parallel with work on the Multilateral Instrument).



REVISED TP GUIDANCE (ACTIONS 8-10)



Overview

The Report, *Aligning Transfer Pricing*

Outcomes with Value Creation, contains 6 interlinked sections

- Guidance for **Applying the Arm's Length Principle**
- Guidance on **Commodity Transactions**
- Further work on **Transactional Profit Split** is scoped
- Guidance on **Intangibles**
- Guidance on **Low Value-adding Intra-group Services**
- Guidance on **Cost Contribution Arrangements**
- In addition, the Report on Action 13 sets out the revised standard for **Transfer Pricing Documentation**



Key themes

Accurate delineation of the actual transaction is fundamental: contracts are reviewed against conduct

Legal ownership alone does not create entitlement to profits

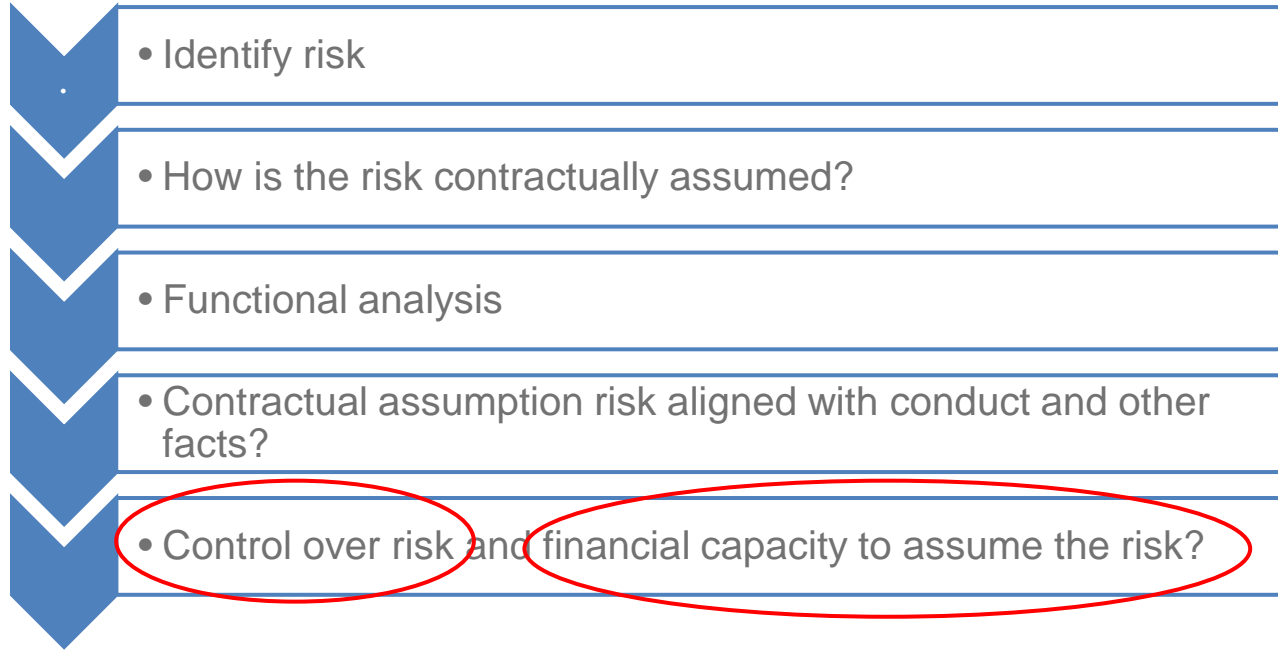
Provision of funding alone: no more than a risk-free financial return

Differences between anticipated and actual profits are allocated depending on assumption of risk / functions that warrant a profit share

Information asymmetry and lack of transparency are addressed (hard-to-value-intangibles, commodities and services)



New guidance on risk: analytical framework





New guidance: Intangibles

Legal ownership alone: no right ultimately to retain the returns from exploitation of intangibles

Funding often coincides with the taking of certain financial risks

- Provided the funder exercises control

Financial risk is separate from, but may be related to development risk

A funder which only assumes funding risk but does not perform functions relating to the intangible:

- risk-adjusted rate of financial return on funding

A funder that does not control financial risk:

- no more than a risk-free financial return



New guidance: Hard-to-value intangibles

HTVI are intangibles for which

- No reliable comparables exist and
- Financial projections or other assumptions for valuation are highly uncertain

Information asymmetries between taxpayer and tax administration add to risk tax administration in valuating these intangibles

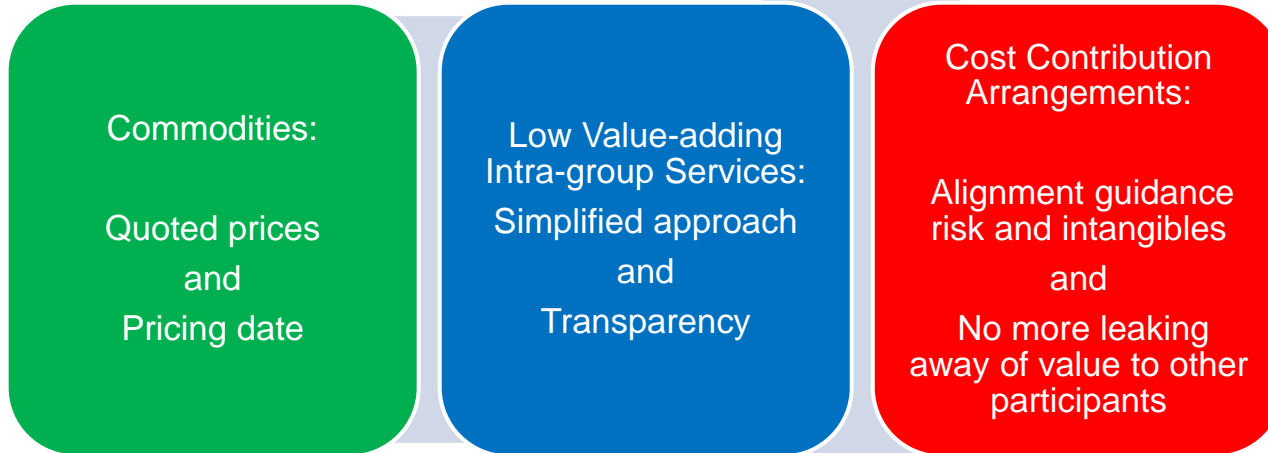
If the taxpayer **cannot demonstrate** its pricing is based on a thorough analysis,

- *Ex post* outcomes as **presumptive evidence** about the appropriateness of *ex ante* pricing arrangements under the arm's length principle

Several exemptions based on unforeseeable developments, materiality, time period, and APAs



Other new guidance





Important notions



“Groupness” and synergetic benefits can be dealt with through the alp

Contracts alone do not attract profits

Simplification and practical approaches can be achieved within the alp



Follow up work

Further revised guidance
(transactional profit splits,
financial transactions and
consolidation of other parts of
the TPG with the new
guidance)

Work mandated by the G20
Development Working Group
on TP **toolkits for Low
Income Countries**

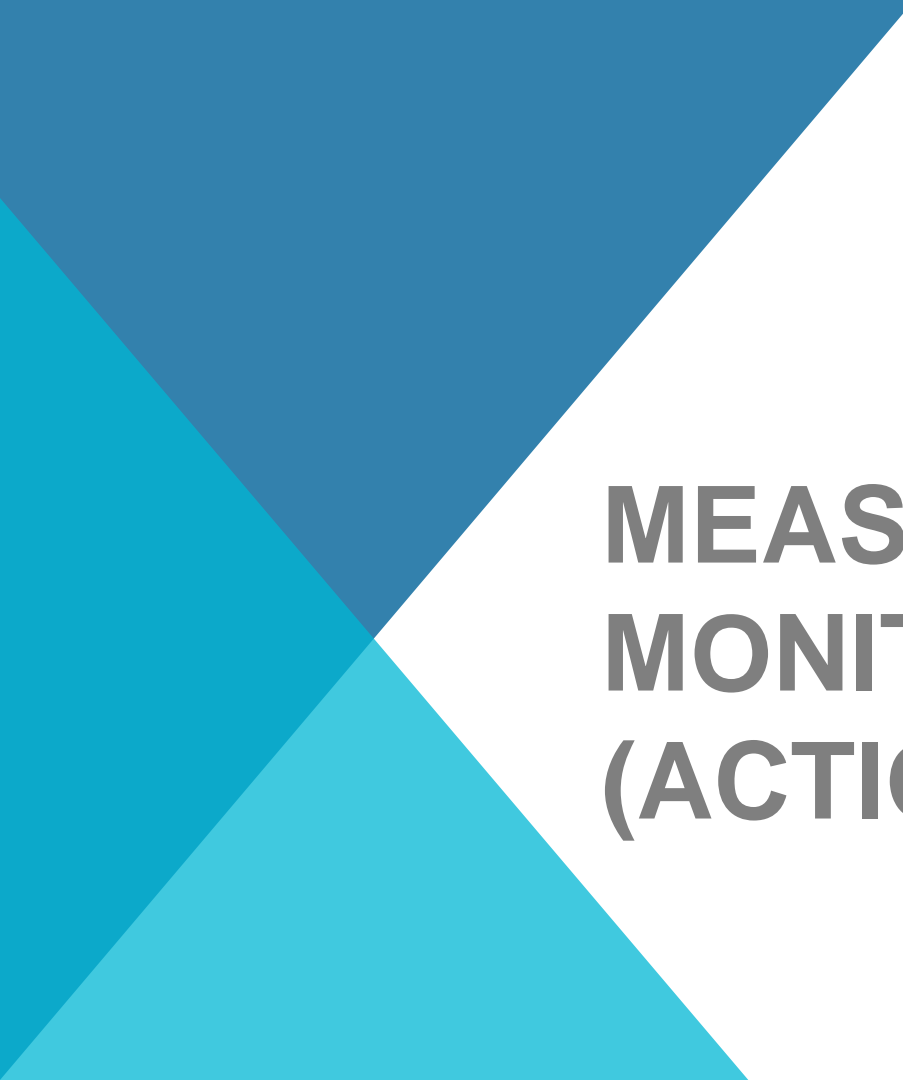


**Implementation HTVI
and Low Value Adding
Services**



TRANSPARENCY

ACTIONS 11, 12, 13, 14



MEASURING AND MONITORING BEPS (ACTION 11)



Action 11: Key findings

- Better data is needed to measure and monitor BEPS and the actions taken to address BEPS in the future
 - Currently available data is incomplete and inadequate
 - Better data, including country-by-country reports, will improve future analysis
- In spite of data limitations, many prior empirical studies, new OECD research and BEPS Indicators find the existence of BEPS
- BEPS creates significant fiscal and economic effects
 - Global annual net revenue loss of 4-10% of corporate income tax (USD 100-240 billion) at 2014 levels
 - BEPS causes many economic distortions




Economic analysis of BEPS

- More than 100 empirical studies report evidence of BEPS
- New OECD research finds that global net annual revenue loss of 4-10% of corporate income tax (USD 100-240 billion) at 2014 levels
- BEPS creates many economic distortions
 - ETRs of large MNEs are 4-8½ percentage points lower than similar domestic firms
 - Favours intangible investments, companies locating debt in high-tax countries and distorts the location of FDI
 - Creates negative tax spillovers across countries
- Anti-avoidance rules are found to be effective in preventing BEPS in individual countries, but could be more effective if implemented in coordinated way
- Taxes matter significantly in shifting mobile income, but more analysis is needed on the extent of tax effects on shifting real economic activity



Recommendations to improve monitoring

- The OECD to work with governments to publish a new regular Corporate Tax Statistics publication
 - The publication will compile a range of relevant data in an internationally consistent format, including aggregated and anonymised statistical analyses prepared by governments based on Action 13 country-by-country report data
- The OECD to work with governments to refine BEPS indicators and produce periodic reports on the estimated revenue impacts of proposed and enacted BEPS countermeasures
- More research is needed on MNEs, including by tax administrations in collaboration with academic researchers
- Better data and refined analyses will improve the measurement and monitoring of BEPS and countermeasures in the future



MANDATORY DISCLOSURE RULES (ACTION 12)



Action 12 – Mandatory disclosure rules

- Tax authorities face a lack of timely, comprehensive and relevant information on aggressive tax planning which can be addressed by mandatory disclosure rules (“MDR”).
- MDR requires disclosure, often before returns are filed, of certain transactions, by promoters, taxpayers or both
- Advantages over other disclosures:
 - Information received early
 - Disclosure mandatory but no ruling on substance.
 - Can apply to a broad range of taxpayers including promoters of schemes as well as users
 - Can be targeted at risks / transactions of particular concern (via “hallmarks”)



Action 12 – Mandatory disclosure rules

- Not a minimum standard but 3 key outputs for countries wishing to adopt MDR:
 1. Framework for the design of rules that are flexible to country specific risks and needs
 2. Special recommendations for rules that focus on international tax schemes
 3. Enhanced models of information sharing using the JITSIC network as a platform



TP DOCUMENTATION (ACTION 13)



Transfer Pricing Documentation including Country-by-Country Reporting

Report consolidates previous documents

Guidance on Transfer Pricing Documentation and CbC Reporting published in September 2014

Guidance on the Implementation of Transfer Pricing Documentation and CbC Reporting published in February 2015.

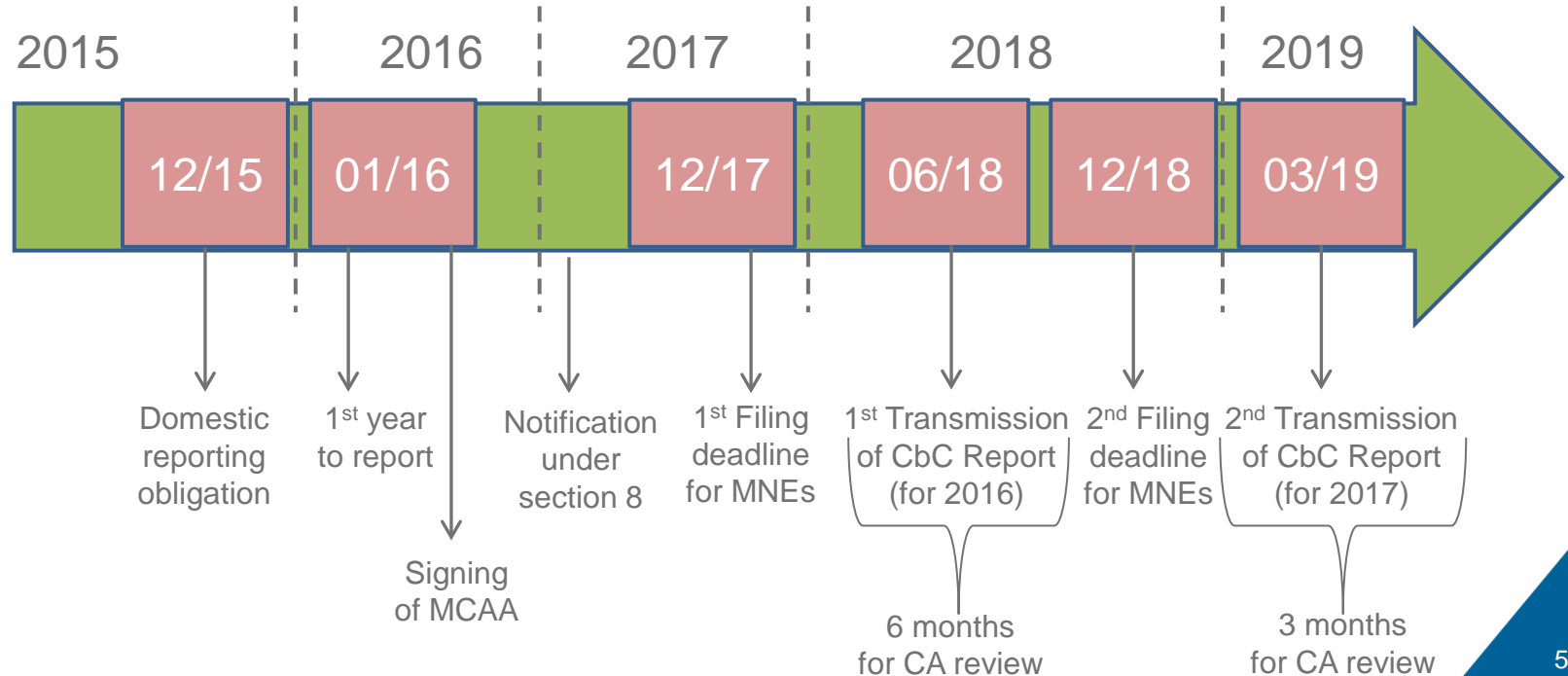
CbC Reporting Implementation Package released in June 2015



Example timeline

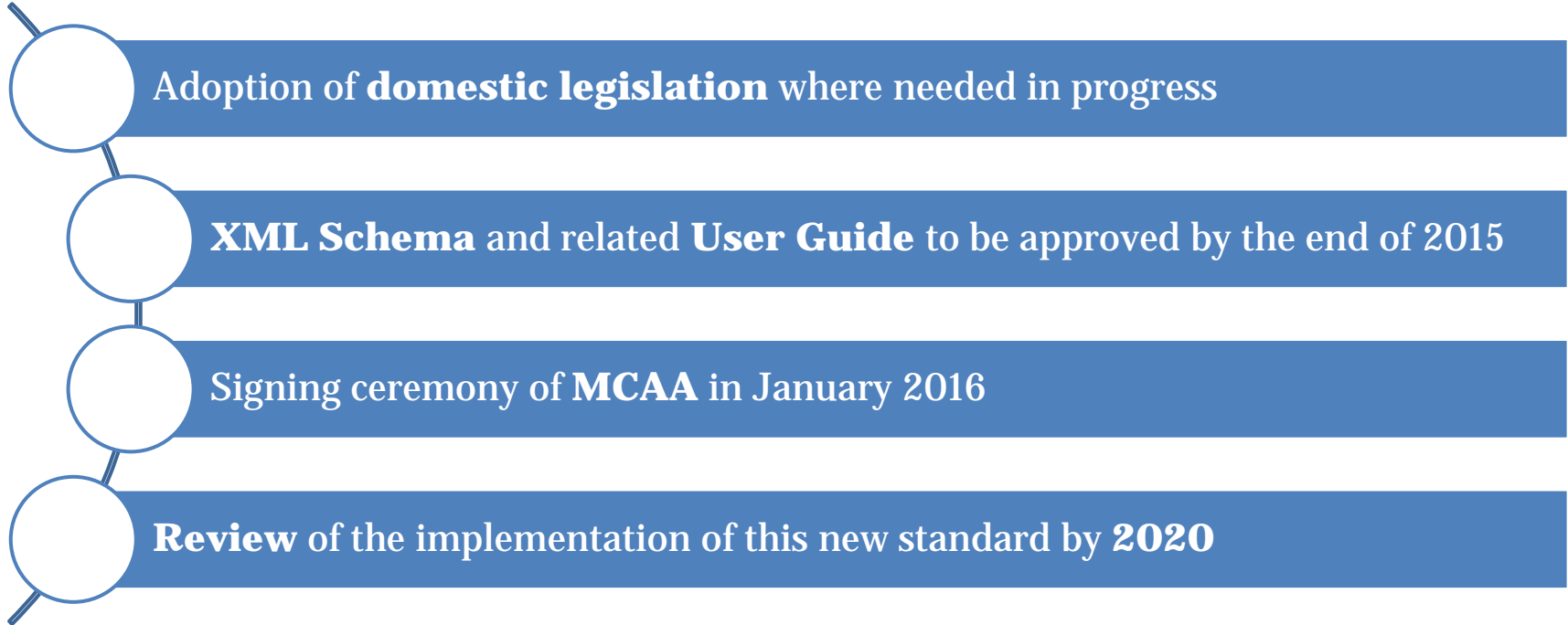
Example of the timing of the exchange

(Sections 3,8 CbC MCAA):





Next Steps for CbC

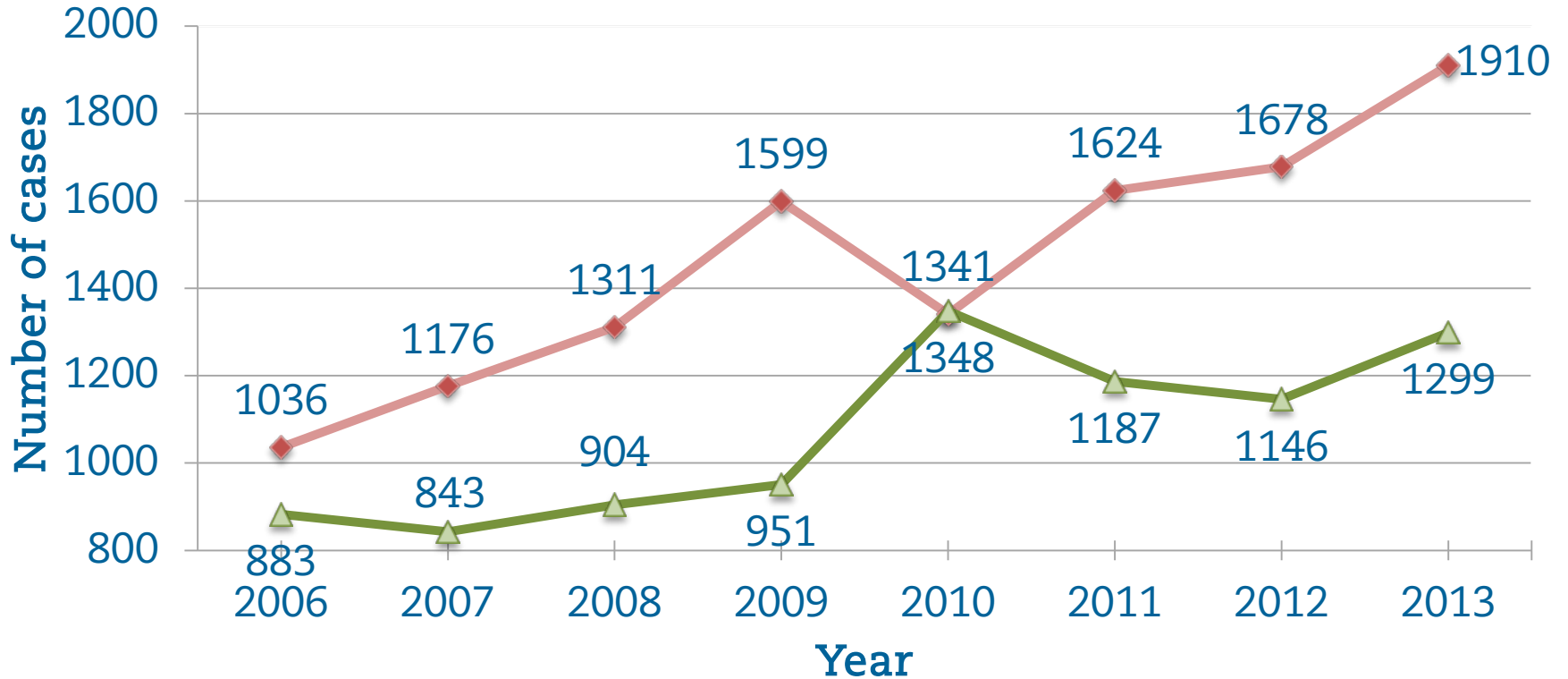




DISPUTE RESOLUTION (ACTION 14)



MAP cases initiated completed by year





Minimum Standard



Peer review



Supplementary commitment

Mandatory binding

MAP arbitration

Over 20 countries





Peer review

Implementation of the Action 14 minimum standard to be reviewed through robust peer-based monitoring mechanism.

Monitoring process

Terms of reference and assessment methodology to be developed by Q1 2016.



HORIZONTAL WORK

ACTIONS 1 AND 15



DIGITAL ECONOMY (ACTION 1)



The Tax Challenges of the Digital Economy

- It is **impossible to ring fence the digital economy for tax purposes**
- Digital economy presents key features and fosters business models which raises **related but different issues**:
 - ***BEPS issues***
 - ***Broader tax challenges***



BEPS and the Digital Economy

- While there are **no unique BEPS issues**, key features of the digital economy exacerbate BEPS concerns
- These have been taken into account and **addressed in the BEPS work, chiefly**
 1. **PE**: changes to agency PE definition and regarding preparatory and auxiliary activities
 2. **TP**: delineation of actual transaction, intangibles, special approach on HTVI, scope of guidance on profit splits
 3. **CFC**: coverage of income from digital sales
- **Measures expected** to address **BEPS issues** exacerbated by the digital economy.



Broader tax challenges

- ***Collection of VAT on cross-border B2C transactions:*** Agreement on **destination principle** and on simplified mechanisms for ensuring collection where the consumer lives
- ***Modify the exceptions to PE status:*** agreed and included on Action 7 report, whether it raises BEPS issues or not



Broader tax challenges

- **Nexus and data** challenges analysed with potential options and related technical issues
 - *Significant economic presence (SEP)*
 - *WHT*
 - *Equalisation levy*
- These options **not adopted** as international standards
- Countries could introduce them in **domestic laws** as additional safeguards against BEPS, provided they respect existing treaty obligations, or in their **bilateral tax treaties**



Next steps

- **Monitor** developments, impact of BEPS measures, and analyse data which become available
- Future monitoring work will **inform** whether further work on the three options should be carried out multilaterally
- **Detailed mandate to be developed during 2016** in the context of designing an inclusive post-BEPS monitoring process.



MULTILATERAL INSTRUMENT (ACTION 15)



Multilateral Instrument

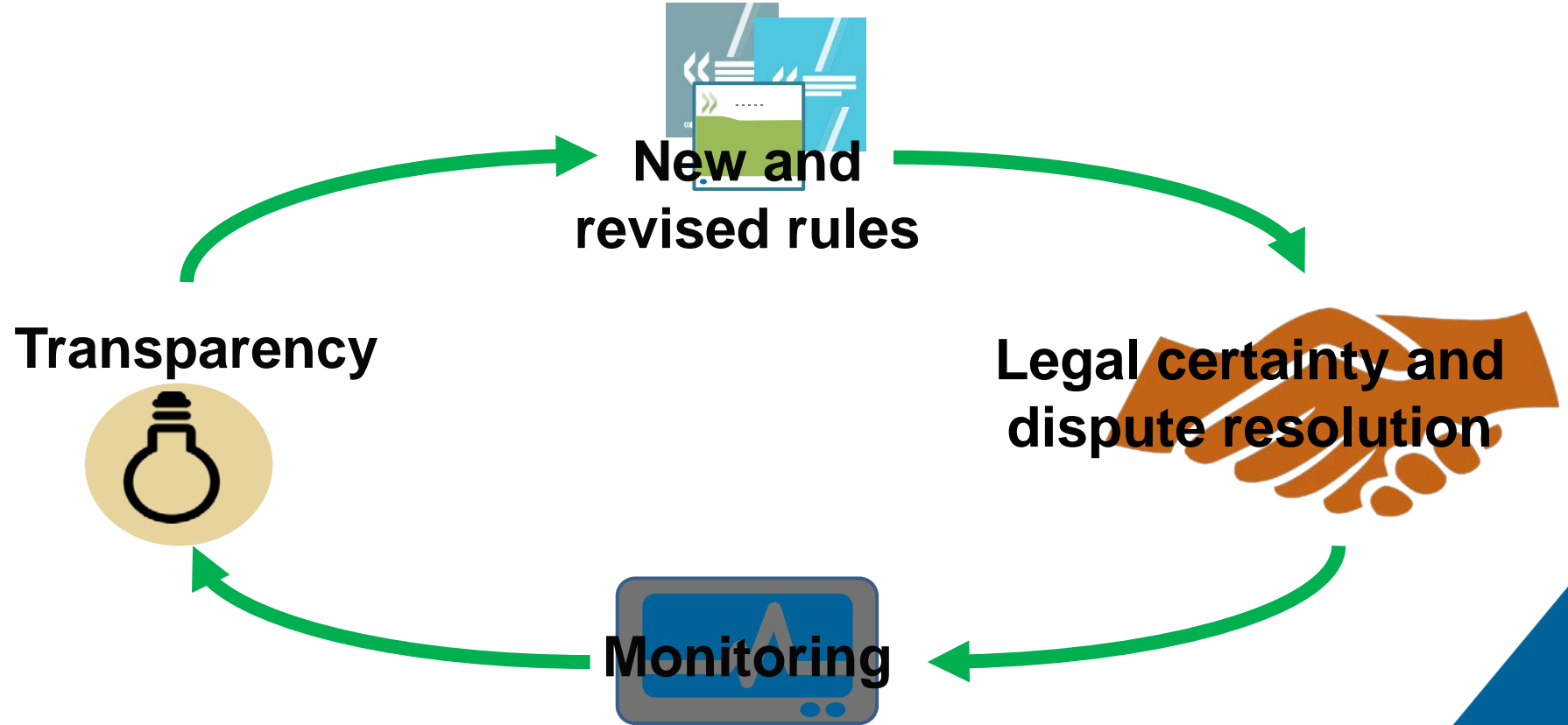
- **Analytical report concluded that MLI is feasible and desirable**
- **Work launched and ongoing**
 - About 90 jurisdictions participating on equal footing to date
 - First procedural meeting in May
 - Inaugural meeting in November
 - Consultations expected
- **Open for signature in 2016 by any interested jurisdiction**



WHAT'S NEXT?



What's next?





Developing an Inclusive Framework

- Supporting implementation to ensure consistency
- Monitoring implementation important to ensure **level playing field and to assess impact of the measures**
- **Monitoring** may take **different forms** depending on the item concerned, minimum standards, international standards, common approaches, relevant developments, etc.
- G20 Finance Ministers: *“We will continue to work on an equal footing as we monitor the implementation of the BEPS project outcomes at the global level, in particular, [...] and we **call on the OECD to prepare a framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions, particularly developing economies, on an equal footing**”*



**JOIN THE
DISCUSSION**



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Ask questions and comment



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