



## OECD COUNCIL APPROVES INCORPORATION OF BEPS AMENDMENTS INTO THE TRANSFER PRICING GUIDELINES

On May 23, 2016, the Organization for Economic Cooperation and Development ("OECD") Council approved the amendments to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("Transfer Pricing Guidelines"), as set out in the reports on Base Erosion and Profit Shifting ("BEPS") Actions 8 – 10 (*Aligning transfer pricing outcomes with value creation*) and 13 (Transfer pricing documentation and Country-by-Country Reporting"), issued in October 2015. Furthermore, the OECD Council adopted a recommendation that both the OECD member countries and non-member countries follow the guidance set out in the Actions 8 – 10 Report and the Action 13 Report.

### Specific BEPS changes:

The specific changes introduced in the Transfer Pricing Guidelines by these Reports are as follows:

- The current provisions of Chapter I, Section D of the Transfer Pricing Guidelines are deleted in their entirety and replaced by new guidance;
- Paragraphs are added to Chapter II of the Transfer Pricing Guidelines, immediately following paragraph 2.16;
- A new paragraph is inserted following paragraph 2.9;
- The current provisions of Chapter V of the Transfer Pricing Guidelines are deleted in their entirety and replaced by new guidance and annexes;
- The current provisions of Chapter VI of the Transfer Pricing Guidelines and the annex to this Chapter are deleted in their entirety and replaced by new guidance and annex;
- The current provisions of Chapter VII of the Transfer Pricing Guidelines are deleted in their entirety and replaced by new guidance; and
- The current provisions of Chapter VIII of the Transfer Pricing Guidelines are deleted in their entirety and replaced by new guidance.

The OECD is expected to issue a revised version of the Transfer Pricing Guidelines once it has formalized the pending amendments to other chapters, including Chapter IX (business restructurings).

### Implications

The conforming changes are expected to be approved later in 2016. Until then, it is stipulated that the provisions of the Transfer Pricing Guidelines should be interpreted to be consistent with those provisions of the Transfer Pricing Guidelines which have been amended by the 2015 BEPS Report on Actions 8 – 10 and 13 and, in case of perceived inconsistencies, the modified provisions prevail.

It is noted that countries take different approaches with respect to how these changes are incorporated into their domestic tax systems. In some countries, the domestic rules explicitly refer to the approved Transfer Pricing Guidelines, where other countries do not make such an explicit reference. In addition, some countries may consider that the changes apply after certain administrative or legislative procedures are completed, while other countries consider them effective immediately.