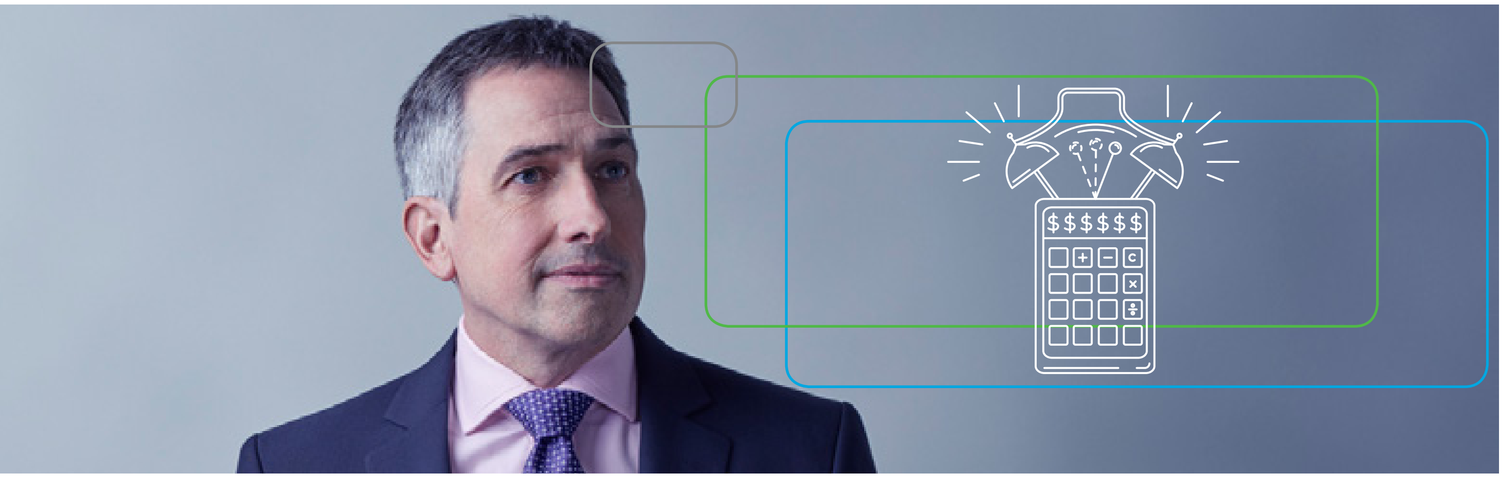


TAKING THE INTERNATIONAL (TAX) PULSE FOR INTERNATIONALLY ACTIVE COMPANIES

During the past few months, several major tax regulations and proposals were published by organizations such as the European Union, the OECD and the European Commission.

Although many of these developments may have found their origin in Europe, most of these developments will have a significant impact on international tax structuring. Examples are the Final BEPS reports issued by the OECD on October 5, 2015, the State Aid investigations conducted by the European Commission in various European countries and the mandatory exchange of tax rulings.

These developments have not come as a surprise and particularly find their origin in the fact that today's international landscape is very different, also making it far easier for companies to trade across country borders. As the number of companies operating internationally has grown tremendously, the tax systems that governed their operations also increased in both complexity and inconsistency. Following that, the rapid development of global trade has exposed mismatches between country legislation, leading to tax opportunities for internationally active companies. Below, we have summarized the recent developments.

Item	Description	Comments
BEPS	A package of measures for a comprehensive reform of international tax rules, focused on improving coherence, transparency and enhancing substance in international tax structuring.	The BEPS initiative attempts to combat overly aggressive tax planning structures, aimed at misaligning the economic substance with value creation, which landed profits in low/no tax jurisdictions, by increasing transparency, country co-operation and updating the existing ruleset for international taxation.
State Aid	The EC is investigating rulings previously accepted and approved by the tax authorities of individual countries and publicizing them as to challenge these agreements. If the EC concludes that the arrangements constitute state aid, the authorities are required to recover the benefit granted.	Currently, several state aid investigations have been published, concerning amongst others Apple (Ireland), Amazon (Luxembourg), Fiat (Luxembourg) and Starbucks (Netherlands). In two of these cases, namely Fiat and Starbucks, the EC concluded that the rulings constitute state aid.
Exchange of tax rulings	In a push for further international transparency, the EU has reached unanimous agreement to implement the automatic exchange of information on tax rulings.	The new rules should lead to greater cooperation between countries on tax matters and will act as a deterrent from using tax rulings for tax abuse. The agreement also covers existing rulings of the past five years. The new rules are expected to be implemented into national law by the end of 2016.

Linking the trends that can be found in these developments should result in more transparency, coherence and substance in international tax structuring applied by companies internationally active, however with far reaching consequences transcending in ever increasing compliance burdens.

Transparency via automatic exchange of tax information is a key weapon in the battle against overly aggressive tax planning, as countries will be able to apply their own tax rules more effectively. The aim is to abolish aggressive tax planning structures, examples of which can be found in the state aid investigations, without curbing the globalization of international trade, bringing in line economic substance with the jurisdictions in which they are created, while maintaining an attractive tax climate for businesses.

Different measures, different paces, different nuances
The BEPS report is undoubtedly a milestone in international tax law. While there is no need for the tax climate of businesses and countries to suffer, this can only be achieved if the measures are coordinated and implemented in all countries in a similar timeframe in the same manner. The rapid pace of the OECD's efforts, combined with the changing perspective of taxation, increased sharing of information between tax authorities in different countries, and the pressure on governments to collect additional tax revenues, result in significant changes to domestic tax laws and treaties.

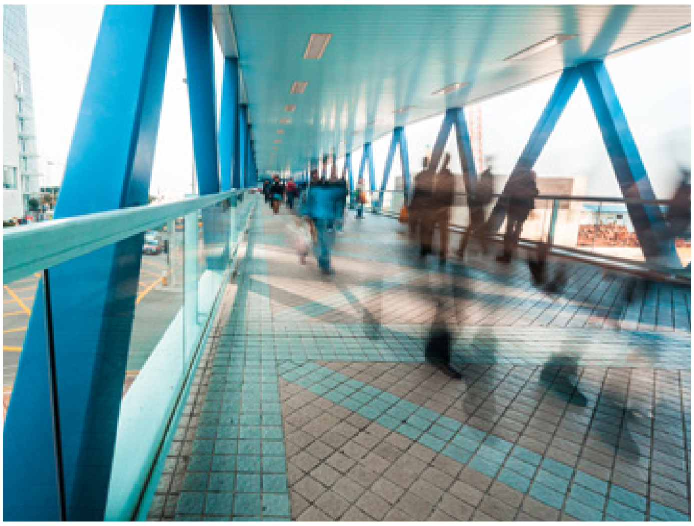
While some of the proposals will entail increased complexity, having a consistent tax platform is ultimately important to companies internationally active. The alternative would be to implement individual country measures, such as the UK Diverted Profits Tax, which creates inconsistency and uncertainty, or inconsistent implementation in case countries introduce different thresholds (in case of European patent boxes or the introduction of CBC reporting with differentiated thresholds). Differences could hinder the ultimate results of the project, as a prolonged transitional period and incoherent application of the developed measures under BEPS could lead to a negative impact on competition and economic growth, creating both uncertainty for companies and new mismatches.

Through a consistent coordinated consensus based approach, the OECD member states, alongside the EU, the EC and the individual countries themselves attempt to create a level playing field for internationally active companies. In this regard, the Convention on Mutual Administrative Assistance in Tax Matters which has more than 80 country signatories and continues to grow is a useful precedent, and one of the potential options for government to government exchange of CBC information. The increase in transparency will not only benefit the tax revenues of countries, but will also create a more open, reliable and coherent taxation system for multinationals. The quality and reliability of the tax system hinges on the efforts and continued consensus between countries during the current transitional period.

How to adopt?
Companies will need to look at their business model as a result of the international (tax) changes, whereby different industries will be affected in different ways. The changes around financing, transfer pricing and the definition of taxable presence may require adjustments to the business model in order to comply with the new requirements or thresholds. If business model changes are required, organizations should initiate activities now because strategic modifications have notoriously far stretched horizons for implementation.

It is imperative for companies to have a pro-active attitude to the changing international environment and to stay up-to-date about these recent developments and assess how the current developments impact the business model. In addition to increased compliance risk, the impact of these changes is on the organization's effective tax rate. This could present management with a material issue that needs to be disclosed to investors and may ultimately impact profitability.

Businesses should reflect on the likely impact for them based on their global footprint, operating model and strategic priorities and should prioritize which aspects of the OECD guidance and recommendations to pay particular attention to over the next 12 months.



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