BEPS Action Plans

Progress to date and impact of GCC implementing minimum standards

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Agenda

- BEPS overview
- BEPS Minimum Standards
- OECD's Multilateral Instruments (MLI)
- BEPS in the GCC region
- Impact of BEPS (What it means for the GCC)
- Q&A

BEPS overview

Introduction

WHAT IS BEPS?	• Base Erosion and Profit Shifting – Tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations • OECD/G20 BEPS Project – 15 actions to equip governments with domestic and international instruments to address tax avoidance
WHY BEPS?	• Protection of tax base • Ensure that multinationals pay fair share of taxes • Correlation between operations conducted in a particular jurisdiction with the respective tax liability
HOW IT WILL BE ACHIEVED?	• Action Plans to reshape international tax rules • Global consistency in application of tax rules

BEPS – setting the scene

`Letterbox´ company	▪ No substance ▪ No risks, no functions, no activities
Tax havens	▪ Bermuda ▪ British Virgin Islands ▪ Cayman Islands ▪ Others
Paying too little corporate income tax	▪ Relative to total turnover ▪ `Fair share´ ▪ Eroding `fair share´ in developing countries
International mismatches	▪ Hybrid entities ▪ Hybrid financial instruments
Opacity	▪ Lack of corporate tax transparency ▪ Lack of effective exchange of tax information

OECD – Intergovernmental economic organisation with 36 member countries, responsible for stimulating economic progress and world trade and for implementation of BEPS action plans

EU – Active participation in the OECD BEPS initiative, including introduction of Anti Tax Avoidance Directives (in line with BEPS)

GCC – Recent inclusion of GCC countries (except Kuwait) in the BEPS Inclusive Framework

BEPS Action Plan

Digital economy 1	Hybrid mismatch 2	CFC rules 3	Interest deductions 4	Harmful tax practices 5
Prevent treaty abuse 6	PE Status 7	Intangibles 8	Risk & Capital 9	High-Risk Transactions 10
BEPS data analysis 11	Disclosure of aggressive tax planning 12	Transfer pricing documentation 13	Dispute resolution 14	Multilateral instrument (MLI) 15

Finalized in October 2015, OECD's Action Plan

Focuses on base erosion and profit shifting (BEPS) to combat aggressive tax planning.

Acts as a tool for countries to align taxation of profits with the actual place of economic activity.

The 3 key pillars are – Coherence, substance and transparency.

What is BEPS

- The OECD's Action Plan contains **15 actions** to address base erosion and profit shifting (BEPS) and combat aggressive tax planning.

- The BEPS Action Plan intends to achieve this through 3 fundamental principles:

Actions 5, 11 - 15 — Tax transparency and reporting tax data and information

Actions 1, 7-10 — Aligning transfer pricing and profits with substance and value creation

Actions 2,3,4 and 6 — Combatting the application of artificial interest deductions, hybrid mismatches, and treaty benefits

BEPS progress

BEPS progress		
BEPS	**Corresponding EU Initiatives *(extract)***	**Unilateral implementation**

— **OECD and G20 Member States -** committed to implement all Actions
— **BEPS Associates –** only Minimum Standards (Actions 5, 6, 13 and 14)
— **Multilateral Instrument (MLI)** (over 2,000 tax treaties instantly amended)
	— Amended EU Parent-Subsidiary Directive
	— Anti-Tax Avoidance Directive (ATAD 1 and ATAD 2 will be implemented by December 2018 and 2019 respectively)
	— EC Digital Economy Expert Group
	— Proposal for new directives
	  — Digital Services Tax
	  — Significant Digital Presence
	— EU Accounting Directive
	— EU Capital Requirement Directive
	— EU State Aid provisions
	— EC recommendations
		— Domestic tax / law changes
		— Changes in court/judicial practices

Key OECD tools

Inclusive Framework (Minimum standards)

Allows non-OECD members to participate and adopt anti-BEPS measures by committing to and adopting minimum BEPS standards.

It is one of the screening criterion of the EU Code of Conduct Group.

Multilateral instrument (MLI)

To avoid bilateral renegotiations of treaty and consistently implement BEPS measures .

OECD Secretary General acts as depository and records the reservations, choices made by the signatories, as well as supports governments in successful implementation.

Multilateral Competent Authority Agreement (MCAA) on AEOI

Standardized and efficient mechanism to facilitate the automatic exchange of information (AEOI) in accordance with the Standard for Automatic Exchange of Financial Information in Tax Matters – without the need for bilateral agreements.

OECD Model Convention

Template for countries to conclude bilateral agreements.

Assists business in treaty interpretation and uniform application of tax principles

Last updated in 2017 to incorporate treaty related measures.

BEPS minimum standard

Action 5 : Harmful tax practices

Emphasis is placed on preferential tax regimes that are resulting in harmful tax practices (e.g. earning stripping).

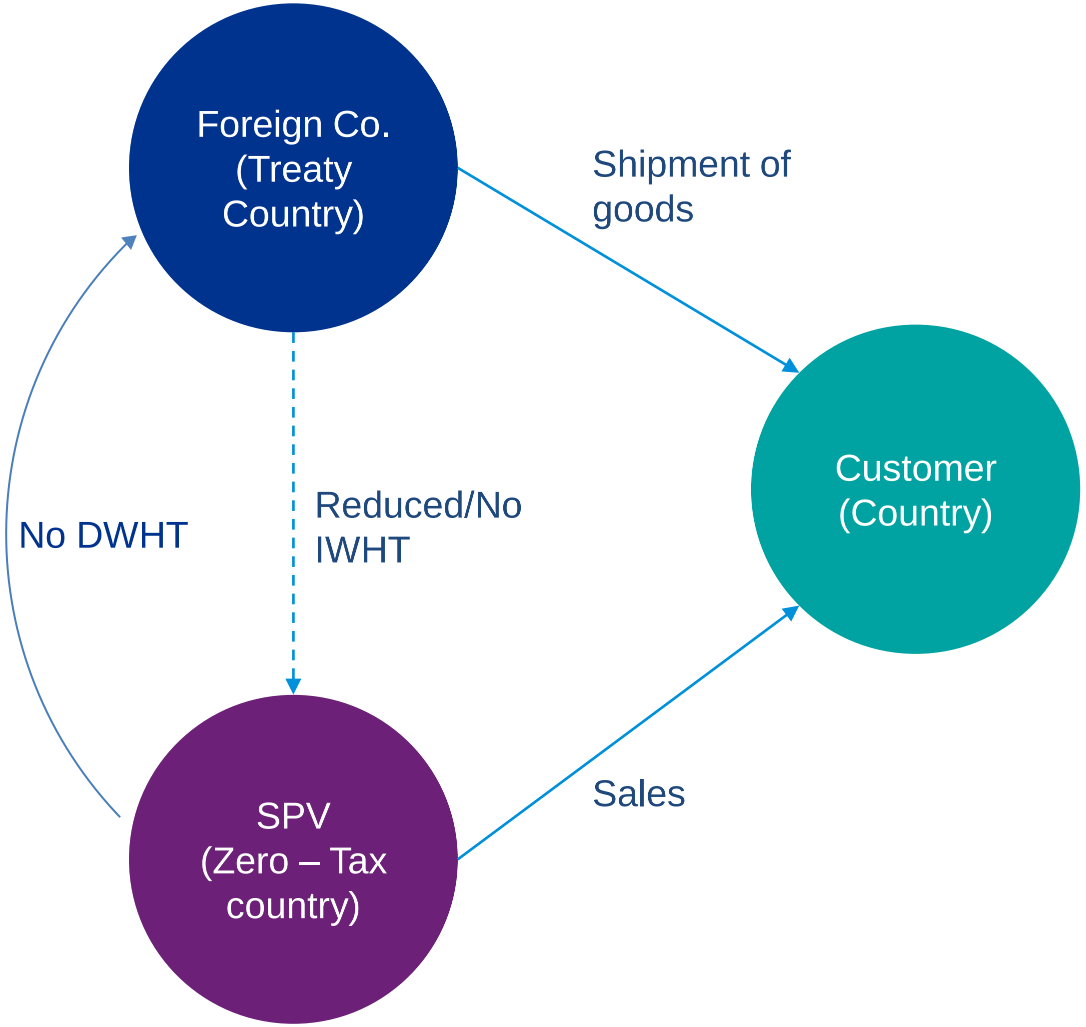
Minimum requirements include:

1. Amend / abolish regimes (e.g. IP regimes) deemed harmful
2. Introduce substantial activity requirement
3. Introduce spontaneous exchange of rulings

Key considerations

— The SPV must demonstrate that it has sufficient substance to act as a trading and financing hub.

— “Sufficient substance” is subjective but typically could consist of (leasing, significant people function etc.)



Action 6 : Treaty abuse

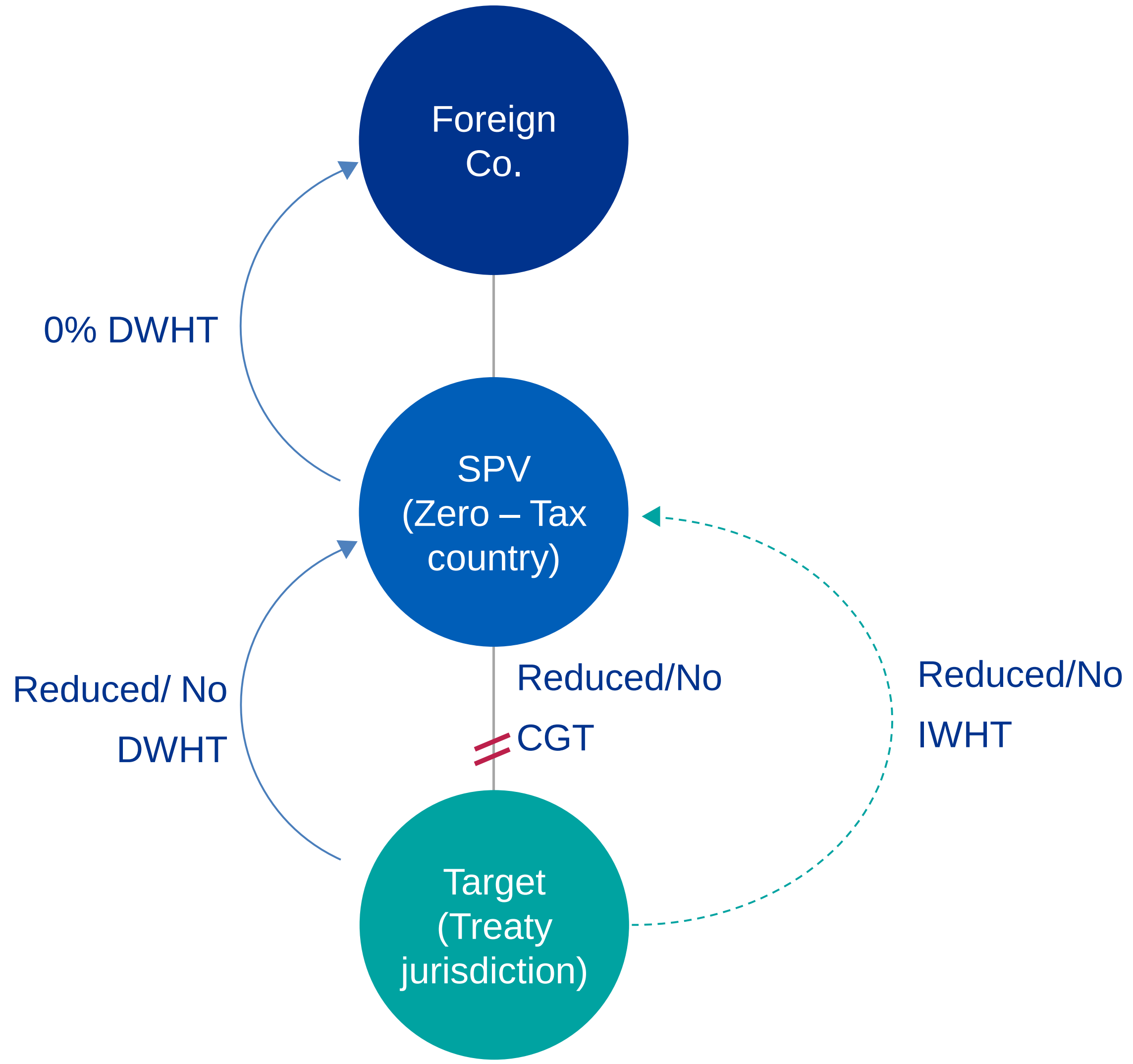
Focus is on preventing tax minimization structures through treaty shopping.

Action 6 requires:

- Treaties to have a preamble stating they are not an instrument for double non-taxation
- Treaties to include an objective Limitation of benefit (LOB) test or a subjective Principal purpose test (PPT)

Key considerations

- Structures relying on treaty benefits need to be reviewed in light of PPT test
- Monitor asymmetrical positions on the MLI by treaty partners
- Documentation supporting presence in zero Tax jurisdiction may be required
- Is “tax residency certificate” enough? Beneficial Ownership concept gaining momentum



Action 13 : Country-by-country reporting (CbCR)

What is CbCR?

- To be prepared/filed by MNEs with consolidated revenues > EUR 750 million in the preceding year
- CbCR to be filed by ultimate parent entity (UPE) or a nominated surrogate parent entity (SPE)

What are the objectives?

- Provide tax authorities with a high level overview of the global operations and tax risk profile of MNEs
- Tool for detection and identification of transfer pricing and BEPS related risks

Adoption status and regional developments

- 60 jurisdictions have already adopted CbCR
- The UAE has committed to adopt the BEPS minimum standards, which include CbCR.

Impact on UAE-headquartered MNE groups

- CbCR could be implemented as early as FY20 by the UAE.
- CbCR could be submitted using a Ministry of Finance portal
- SPE notifications no longer required

Action 13 : Transfer pricing documentation

Action 13 is immediately relevant to multinational groups headquartered in the Middle East, since the requirement to prepare a group Master file, Local files and a CbCR may exist due to operational presence in other jurisdictions that have adopted Action 13

Strategic split of information based on local or global audience

Master file

- Provide a high-level overview of the MNE group business i.e. global business operations, transfer pricing policies, and its global allocation of income and economic activity.
- Overall information of the MNE group or it may be presented by line of business.

Master File puts CbCR in global context

Country-by-country report (CbCR)

- Aggregate tax jurisdiction wide information relating to the global allocation of income, taxes paid, and certain indicators of economic activity in which the MNE operates.
- List of all entities, branches and Permanent Establishments (PE's).
- Assumptions and narrative to support and explain the data.

Local file puts CbCR in local context

Local file

- Detailed information relating to specific intra-group transactions.
- Assuring the tax authority that the local entity has complied with the arm's length principle for its material intra-group transactions.
- Focuses on information relevant to the transfer pricing analysis of a local entity.
- Similar details required for each legal entity (subject to local law).

Action 14 : Dispute resolution

What it means for businesses in the GCC

Focuses on improving the effectiveness of mutual agreement procedure (MAP) in resolving treaty-related disputes.	Aims to minimize the risks of, uncertainty and unintended double taxation by ensuring consistent and proper implementation/application of tax treaties.	UAE is not new to initiating MAP with foreign jurisdictions.

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OECD's Multilateral Instrument (MLI)

Objective and features of MLI

- Multilateral Convention to implement Tax Treaty related BEPS measures ("MLI") released in November 2016
- Fights BEPS by implementing tax treaty related measures developed through OECD BEPS Action Plans
- A tool assisting governments in modifying the application of thousands of bilateral tax treaties concluded to eliminate double taxation
- BEPS measures transposed into more than 2,000 tax treaties worldwide
- Offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/ G20 BEPS Project into bilateral tax treaties worldwide.

Provides a vehicle for the swift and consistent implementation of the BEPS tax treaty based measures (Actions 2, 6, 7 and 14)	Not an amending protocol – operates alongside existing treaties but modify their application	Provides flexibility to select covered tax treaties and applicable provisions (where possible)

MLI flexibility

Allowing countries to select “covered” tax treaties;

Alternative options for meeting minimum standard

Flexibility to apply optional or alternative provisions

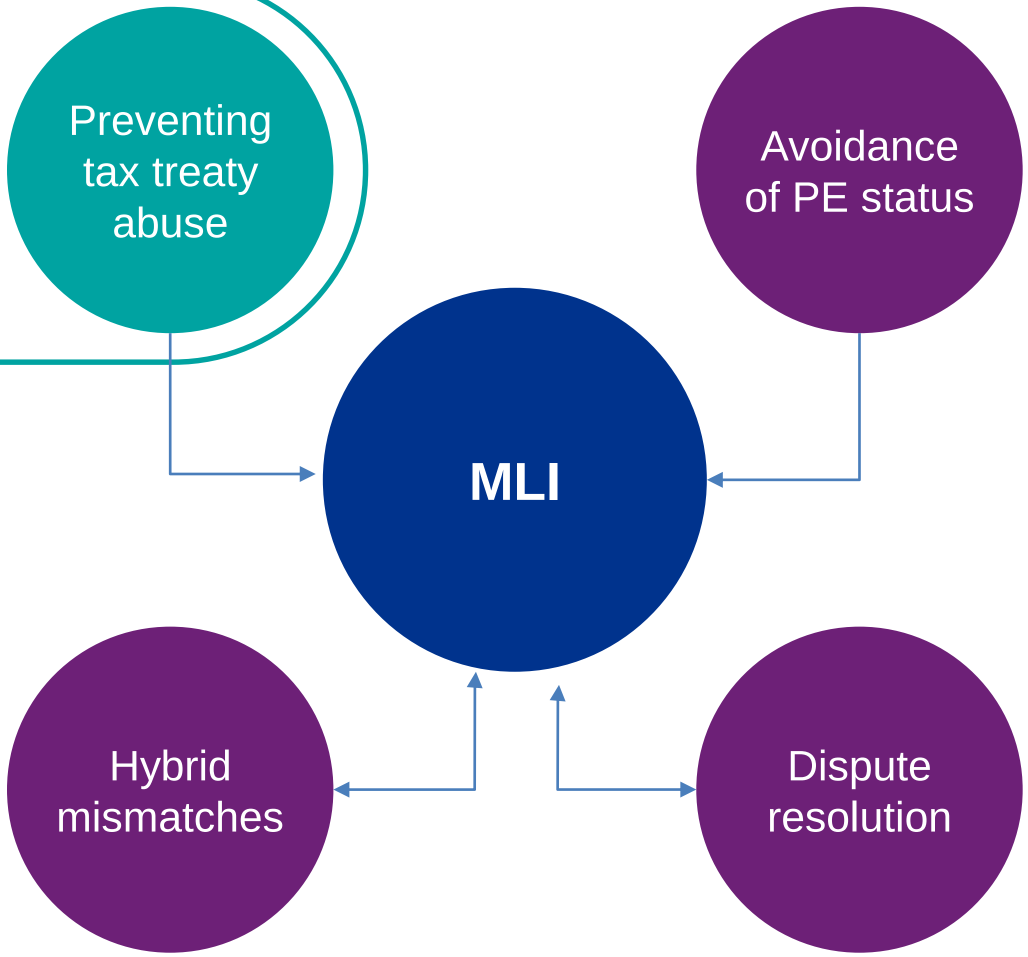
Possibility to opt out completely or partially of certain provisions (‘reservations’)

Possibility to apply reservations to a subset of covered tax treaties

BEPS measures in the MLI

Action 6

— treaty shopping
— dividend stripping
— land rich shares
— PE's third countries.



Action 7

— prep and aux
— fragmentation and splitting
— commissionaires.

Action 2

— payments to hybrids
— dual residents tie breaker
— double exemption.

Action 14

— time limits
— corresponding adjustments
— arbitration.

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BEPS in the GCC region

BEPS implementation in the GCC

UAE: Member of BEPS Inclusive Framework

Kuwait: not participating in BEPS Inclusive Framework

KSA: Member of the BEPS Inclusive Framework

Oman: Member of the BEPS Inclusive Framework

Qatar: Member of the BEPS Inclusive Framework

Bahrain: Member of the BEPS Inclusive Framework

BEPS in the UAE

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April, 2017
UAE signed the MAC

December, 2017
UAE included in the Blacklist by EU Commission

January, 2018
UAE taken off the Blacklist and included in the grey list.

July, 2018
MLI entered into force

October, 2018
UAE commits to implementation of the Minimum Standards

December, 2018
UAE to meet commitments made to EU COC Group

BEPS in the GCC

7 June, 2017
Kuwait signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI)

20 October, 2017
Oman joined the BEPS Inclusive Framework

14 November, 2017
Qatar joined the Base Erosion and Profit Shifting (BEPS) Inclusive Framework

11 May, 2018
Bahrain joined the Base Erosion and Profit Shifting (BEPS) Inclusive Framework (BEPS IF)

27 June, 2018
UAE signed the BEPS (Base Erosion and Profit Shifting) Multilateral Convention

18 September, 2018
Saudi Arabia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI)

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What BEPS means for GCC based MNEs

Potential impact of BEPS related changes

- Increased Tax governance
- Additional disclosure requirements
- Easy availability and exchange of information
- Historic structures being tested in light of BEPS
- Increased compliance on account of CbCR
- Holding company structures being challenged

Q&A

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