Executive Summary

The international tax landscape has changed dramatically in recent years as a result of economic challenges, and new standards have been developed to enable countries protect their revenue bases. With a conservatively estimated annual revenue loss of USD 100 to 240 billion due to Base Erosion and Profit Shifting (BEPS), the stakes are high for governments around the world. With the political support of the G20 leaders, OECD and G20 countries have taken joint action to address the weaknesses within the international tax system that create opportunities for BEPS. Working with other countries, they have developed a comprehensive package of measures to address these challenges.

The time has come for practical action and countries and jurisdictions are now encouraged to join together to implement the package consistently on a global basis, and to develop further standards to address remaining BEPS issues on an equal footing within an inclusive framework.

The decision making body for the OECD's tax work - the OECD Committee on Fiscal Affairs (CFA) – will be opened up to interested countries and jurisdictions in order to put in place this new inclusive framework for BEPS Implementation.

Countries and jurisdictions interested in joining the framework are required

- to commit to the comprehensive BEPS Package and its consistent implementation; and
- to pay an annual member's fee to cover the costs of the framework.

Members of the framework will work on an equal footing to tackle tax avoidance, to improve the coherence of international tax rules, and to ensure a more transparent tax environment. In particular, the framework will

- develop standards in respect of remaining BEPS issues;
- review the implementation of agreed minimum standards through an effective monitoring system;
- monitor BEPS issues, including tax challenges raised by the digital economy; and
- facilitate the implementation processes of the members by providing further guidance and by supporting development of toolkits and guidance to support low-capacity developing countries.

All countries and jurisdictions are invited to contact the OECD Secretariat (at CTP.BEPS@oecd.org) to express their willingness to join the new framework on an equal footing. The first meeting of the framework will be held on 30th June-1st July 2016 in Kyoto, Japan.
1. BACKGROUND

1.1. The Base Erosion and Profit Shifting (BEPS) Project

The international tax landscape has changed dramatically in recent years. With political support of G20 leaders, the international community has taken joint action to increase transparency and exchange of information in tax matters, and to address weaknesses of the international tax system that create opportunities for BEPS. The internationally agreed standards of transparency and exchange of information in the tax area have put an end to the era of bank secrecy. With over 130 countries and jurisdictions currently participating, the Global Forum on Transparency and Exchange of Information for Tax Purposes has ensured consistent and effective implementation of international transparency standards since its establishment in 2009.

At the same time, the financial crisis and aggressive tax planning by multinational enterprises (MNEs) have put BEPS high on the political agenda. With a conservatively estimated annual revenue loss of USD 100 to 240 billion, the stakes are high for governments around the world. The impact of BEPS on developing countries, as a percentage of tax revenues, is estimated to be even higher than in developed countries.

1.2. Development of a comprehensive BEPS Action Plan

Therefore, in September 2013, G20 Leaders endorsed an ambitious and comprehensive plan, developed with OECD members, to restore confidence in the international tax system and to ensure that profits are taxed where economic activities take place and value is created. On the basis of this BEPS Action Plan, a comprehensive package of measures was developed and agreed in just two years. These measures are designed to be implemented domestically and through tax treaty provisions in a coordinated manner, supported by targeted monitoring and strengthened transparency. The package represents the results of a major and unparalleled effort by OECD and G20 countries working together on an equal footing, with the participation of an increasing number of developing countries, and with more than 60 countries¹ and regional tax organisations directly involved in the technical work.

The BEPS Package consists of reports on 15 actions that set out measures ranging from new minimum standards, revision of existing standards, as well as common approaches which will facilitate the convergence of national practices, and guidance drawing on best practices.

¹ Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, People’s Republic of China, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Peru, Philippines, Poland, Portugal, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States and Vietnam. At the same time, many more countries have participated in shaping the outcomes of the OECD/G20 BEPS Project through regional structured dialogues.
1.3. The BEPS Package

Four minimum standards were agreed, in particular to tackle issues in cases where no action by some countries would have created negative spill overs (including adverse impacts of competitiveness) on other countries. The minimum standards encompass the following:

1. **model provisions to prevent treaty abuse**, including through treaty shopping that will impede the use of conduit companies in countries and jurisdictions with favourable tax treaties to channel investments and obtain reduced rates of taxation;

2. **standardised Country-by-Country Reporting** that will give tax administrations a global picture of where MNE profits, tax and economic activities are reported, and the ability to use this information to assess transfer pricing and other BEPS risks, so they can focus audit resources where they will be most effective;

3. **a revitalised peer review process to address harmful tax practices**, including patent boxes where they include harmful features, as well as a commitment to transparency through the mandatory spontaneous exchange of relevant information on taxpayer-specific rulings which, in the absence of information exchange, could give rise to BEPS concerns;

4. **an agreement to secure progress on dispute resolution**, with the strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure (MAP).

Existing standards have been updated and will be implemented, noting however that not all countries that have participated in the BEPS Project have endorsed the underlying standards on tax treaties or transfer pricing. In other areas, such as recommendations on hybrid mismatch arrangements and best practices on interest deductibility, countries have agreed a general tax policy direction. In these areas, they are expected to converge over time through the implementation of the agreed common approaches, thus enabling further consideration of whether such measures should become minimum standards in the future. Guidance based on best practices will also support governments intending to act in the areas of mandatory disclosure initiatives or controlled foreign company (CFC) legislation. An overview of the BEPS Package is provided in Annex 1.

1.4. Implementation of the BEPS Package through a joint action

The BEPS Package was agreed and delivered by OECD members and by G20 economies, and endorsed by the G20 Leaders Summit in Antalya on 15-16 November 2015. Even though some elements of the BEPS Action Plan have yet to be finalised in 2016 and 2017, the main tasks ahead relate to the implementation of the agreed package.

Implementation of the BEPS Package into different tax systems should not result in conflicts between domestic systems and interpretation of the new standards should not lead to increased disputes. The need to ensure a level playing field among countries and jurisdictions is key in the fight against tax avoidance. Therefore, in order to support an **effective and consistent implementation, OECD and G20 countries have agreed to continue to work together to implement the BEPS Package and to develop standards on remaining BEPS issues**. Developing countries struggling to fight against tax avoidance can benefit from the work that has already been done in the OECD/G20 BEPS Project as
well as from joining the implementation of the BEPS Package, with support from and assistance by international and regional organisations.

**These considerations require the implementation process to be inclusive.** The process will include countries and jurisdictions in relation to which implementation of the minimum standards will be necessary to ensure a level playing field is achieved. In the Global Forum on Transparency and Information Exchange for Tax Purposes, “jurisdictions of relevance” are subject to monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. For the same reasons a similar process is needed for the implementation of the BEPS Package. Jurisdictions of relevance for BEPS purposes will be informed about the minimum standards, and invited to commit to the comprehensive BEPS Package and participate in the review process. More importantly, inclusiveness also means that the implementation process will be open to interested jurisdictions. As the BEPS Package represents a significant achievement in the global fight against tax avoidance, a number of countries and jurisdictions have already expressed interest in committing to the BEPS Package and its consistent implementation.

OECD and G20 countries have agreed to continue to work together in a framework for BEPS Implementation. At their meeting in Antalya in November 2015, the G20 Leaders called for such framework to be open to all interested countries and jurisdictions, including developing countries:

“…We, therefore, strongly urge the timely implementation of the project and encourage all countries and jurisdictions, including developing ones, to participate. To monitor the implementation of the BEPS project globally, we call on the OECD to develop an inclusive framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions which commit to implement the BEPS project, including developing economies, on an equal footing.”

2. ESTABLISHMENT OF THE INCLUSIVE FRAMEWORK

2.1. Design of the framework

In response to the call of the G20 Leaders, **OECD members and G20 countries have developed an inclusive framework** which allows interested countries and jurisdictions to work with OECD and G20 members on developing standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. To join the framework, interested countries and jurisdictions are required to commit to the comprehensive BEPS Package and its consistent implementation and to pay an annual BEPS Associate fee. However, it is recognised that interested non-G20 developing countries’ timing of implementation may differ from that of other jurisdictions, and that their circumstances should be appropriately addressed in the framework. Also, a reduced fee may be applied to developing countries with significant resource constraints.

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2 Par. 15, http://g20.org.tr/g20-leaders-commenced-the-antalya-summit/.
This new framework broadening the participation in the OECD/G20 BEPS project has been **endorsed by the G20 Finance Ministers** at their meeting on 26-27 February 2016 in Shanghai, China:

“…To ensure a consistent global approach, we endorse the inclusive framework proposed by the OECD for the global implementation of BEPS project and encourage all relevant and interested non-G20 countries and jurisdictions, which commit to implement the BEPS project, including developing countries, to join in the framework on an equal footing. We support that the specific challenges faced by developing countries in BEPS implementation should be appropriately addressed under the framework…”

**With this strong political support, the inclusive framework is now being put in place.** Countries and jurisdictions that will join the inclusive framework will participate as **BEPS Associates in the OECD CFA and its subsidiary bodies on an equal footing** with OECD Members, and with non-OECD G20 countries that already participate in the project as BEPS Associates. The CFA is the key OECD decision making body on tax matters through which the OECD member and partner countries develop and carry out the work programme on tax.

### 2.2. Participating in the decision-making body on an equal footing

The work programme on tax is **carried out by the CFA through groups of national experts** organised by technical area in Working Parties and other bodies (see Annex 2). These working groups develop international tax standards and guidance, as well as all the technical work. The working groups, being subsidiary bodies of the CFA, meet regularly, and discuss draft documents prepared by the OECD Secretariat, with input received by members of the related groups. During these meetings, where technicalities are discussed and standards are developed, delegates reach agreements by consensus. The **working groups report to the CFA** where senior officials of member countries can: i) decide, on a consensus-based approach, on the working groups’ outcomes; ii) hold further discussions on issues working groups could not reach consensus on; or iii) require the working groups to carry out further work.

In practice, this means that **the decision making process has a two-layer structure**. At the first level, countries’ technical experts participate in the decision-making at the level of the working groups and work closely with their respective CFA delegates in order to make them fully aware of the technicalities discussed at the subsidiary levels. On the second level, countries’ **senior officials participate in the CFA decision process by ensuring a political commitment to the CFA outcomes**.

**Decision-making by consensus offers each participating government great opportunities as well as responsibilities.** Objection from one member can halt the entire process, which requires all countries and jurisdictions to find solutions that work for all. Agreement by consensus therefore

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4 International organisations and regional tax organisations will play an important role in the inclusive framework, in particular to support the implementation of the BEPS Package in developing countries. The *African Tax Administration Forum (ATAF)*, the *Centre de rencontres et d'études des administrations fiscales (CREDAF)*, the *Centro Interamericano de Administraciones Tributarias (CIAT)* together with other international organisations such as the *International Monetary Fund (IMF)*, the *World Bank (WB)* and the *United Nations (UN)*, will continue to participate in the BEPS work.
respects the sovereignty of each government. As the outcome is morally binding to all parties in the process, agreement by consensus provides a solid basis for consistent and broad implementation of the agreements reached.

Embodied in the CFA, the inclusive framework for BEPS implementation will make use of this consensus-based mechanism with all members participating in the inclusive framework on an equal footing.

In practice, all members of the inclusive framework will have the opportunity to participate on an equal footing in all the meetings of the CFA and its working groups that relate to BEPS. The meetings usually take place in Paris, France, with the CFA meeting at least twice a year and the working groups' meeting from two to four times per year. In addition, the Ad Hoc group on the Multilateral Instrument working on the implementation of Action 15 remains outside the scope of the inclusive framework, and is already open to participation on an equal footing by all interested countries and jurisdictions.

3. PROGRAMME OF WORK

The members of the inclusive framework will determine the governance, structure and the programme of work for the inclusive framework, together with the subsidiary bodies that will carry out the work. The work programme will focus on the implementation of the BEPS Package and developing standards on remaining BEPS issues, as was established in the Explanatory Statement of the BEPS Package. This work can be categorised in five strands of work.

3.1. Standard setting in respect of remaining BEPS issues

The countries and jurisdictions joining the framework as members/associates will join the activities related to the standard setting on remaining BEPS issues, for example, in the area of tax treaties and transfer pricing. This includes the work on the development of transfer pricing guidance on the application of profit split methods and on financial transactions.

3.2. Reviewing the implementation of the 4 minimum standards

Under the second strand of work, the members will develop a monitoring process for the four minimum standards as well as put in place the review mechanisms for other elements of the BEPS Package. The review mechanisms may differ depending on the Actions, and will take into account countries’ specific circumstances. All countries and jurisdictions joining the framework will participate in this review process, which allows members to review their own tax systems and to identify and remove elements raising BEPS risks. Moreover, the monitoring of the four minimum standards will ensure that all members, as well as jurisdictions of relevance, will comply with the standards in order to ensure a level playing field. In particular a monitoring and review mechanism covering preferential regimes (including IP regimes) and the transparency framework has been agreed and will need to be implemented. As for transparency, adopting the Country-by-Country reporting will require jurisdictions to introduce, as necessary, domestic legislation in a timely manner as well as to expand the coverage of their international agreements for exchange of information. Monitoring mechanisms are going to be developed in order to monitor jurisdictions’ compliance with
their commitments and to ensure the effectiveness of the filing and dissemination mechanisms of the Country-by-Country reports, as provided for by the review of the Country-by-Country standard by 2020.

3.3. Implementing decisions in terms of monitoring

Under the third strand of work, the monitoring process is being developed on the following areas: the digital economy (Action 1) and the economic impact of BEPS (Action 11). The Action 1 Report considered several options to address the broader tax challenges raised by the digital economy but none of these options were recommended. This was mainly due to the fact that measures developed in the BEPS Project may have a substantial impact on BEPS issues raised by the digital economy. In this respect, OECD and G20 countries will monitor developments and analyse data that will become available over time. Based on the monitoring process, further work on the options considered to address the challenges posed by the digital economy may be carried out and decisions will be taken on a consensus-based approach.

Under the Action 11 Report the monitoring process will require governments to make better use of the data collected (or to be collected as part of the BEPS project). Additional and more in-depth analysis of BEPS and the publication of statistical results and aggregate tabulations of MNE taxes and activities by individual countries will also be important to evaluating the effectiveness of BEPS countermeasures.

3.4 Gathering data on other aspects of implementation

Under the fourth strand of work, additional data gathering on the implementation of the BEPS Package will be undertaken, other than data collection under Actions 1 and 11. This could include collection of feedback through self-assessments.

3.5. Implementation support, guidance and toolkits

Under the last strand of work, amongst other work, the framework will support the development of the toolkits for low-capacity developing countries. The G20 Development Working Group (G20 DWG) has requested the IMF, the OECD, the UN and the WBG to work together on the development of toolkits and guidance to support low-capacity developing countries to address BEPS issues. The toolkits are being prepared to help developing countries implementing measures to tackle BEPS as well as other issues that developing countries have identified as priorities during the regional consultations. Annex 3 provides an overview of the toolkits and reports. The inclusive framework will allow members to feed their views into the toolkit work, and likewise the latter might impact the BEPS remaining standard-setting work. The interaction between international organisations, although independent, will be connected with the inclusive framework, and will be based on a platform within which the international organisations will cooperate closely on a wide range of international tax issues, better leveraging on their respective strengths. The involvement of the international organisations as Observers in the inclusive framework will also facilitate their collaboration, and will offer participants the opportunity to receive coordinated and more targeted capacity building support in the implementation of the BEPS outcomes.
4. NEXT STEPS

The first meeting of the inclusive framework will take place on 30th June-1st July 2016 in Kyoto, Japan. In this meeting, senior level representatives of the members of the framework will take key decisions on the governance, structure and work programme of the framework, including the monitoring process of the four minimum standards and the timing of the implementation of the other elements of the BEPS Package.

All countries and jurisdictions are invited to contact the OECD Secretariat to express their willingness to join the new framework as BEPS Associates subject to the membership requirements set out above. A decision will be taken by the CFA and the OECD Council on the countries and jurisdictions to be formally invited as BEPS Associates in mid-May, after which formal invitations will be issued. Invited countries and jurisdictions will become BEPS Associates upon receipt of their positive response to the formal invitation.

OECD Secretariat stands ready to provide additional information on the inclusive framework and to assist potential members with any matters relating to the commitment process. Countries and jurisdictions can contact the OECD Secretariat by sending an email to CTP.BEPS@oecd.org.
ANNEX 1

OVERVIEW OF THE BEPS PACKAGE

- Action 1: Addresses the tax challenges of the digital economy and identifies the main difficulties that the digital economy poses for the application of existing international tax rules. The Report develops detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation.

- Action 2: The work on neutralising the effects of hybrid mismatch arrangements develops model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities.

- Action 3: Work to strengthen the rules for controlled foreign corporations develops recommendations regarding the design of controlled foreign company rules.

- Action 4: Work on limiting base erosion via interest deductions and other financial payments, develops recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments.

- Action 5: The work to counter harmful tax practices more effectively, taking into account transparency and substance, revamps the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime.

- Action 6: The work on preventing treaty abuse develops model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances.

- Action 7: The work on preventing the artificial avoidance of permanent establishment status develops changes to the definition of permanent establishment to prevent the artificial avoidance of permanent establishment status in relation to BEPS, including through the use of commissioner arrangements and the specific activity exemptions.

- Actions 8 – 10: Work to assure that transfer pricing outcomes are in line with value creation including work on (i) intangibles by developing rules to prevent BEPS by moving intangibles among group members, (ii) risks and capital by developing rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members, and (iii) other high-risk transactions develops rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties.

- Action 11: The work to establish methodologies to collect and analyse data on BEPS and the actions to address it, develops recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis.
• Action 12: The work on requiring taxpayers to disclose their aggressive tax planning arrangements develops recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and business and drawing on experiences of the increasing number of countries that have such rules.

• Action 13: The work to re-examine transfer pricing documentation develops rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business.

• Action 14: The work on making dispute resolution mechanisms more effective develops solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.

• Action 15: The work on developing a multilateral instrument to modify bilateral tax treaties provides an analysis of the tax and public international law issues related to the development of a multilateral instrument to enable countries to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties.

ANNEX 2

The following subsidiary bodies of the CFA have carried out the BEPS Action Plan:

• Working Party No. 1 (tax treaty issues) - Actions 6, 7, 14 and parts of Action 2.

• Working Party No. 2 (tax policy analysis and statistical work) - Action 11

• Working Party No. 6 (taxation of multinational enterprises, in particular transfer pricing) - Actions 8, 9, 10 and 13.

• Working Party No. 11 (aggressive tax planning) - Actions 2, 3, 4 and 12.

• Working Party No. 9 (consumption taxes) - contributed to the work of the Task Force on the Digital Economy

• The Forum on Harmful Tax Practices - Action 5

All members of the inclusive framework participate on an equal footing in the meetings of these and other groups on BEPS related issues. It is to be noted that the Ad Hoc group on the Multilateral Instrument in the context of Action 15 remains outside the scope of the inclusive framework, noting however that it is already open to equal-footing participation by all interested States.
ANNEX 3

DEVELOPMENT OF TOOLKITS AND REPORTS

At the end of 2014, the G20 Development Working Group (DWG) set a mandate for the International Organisations (the OECD, the IMF, the WBG and the UN) to deliver toolkits and guidance to support the implementation of measures addressing BEPS in lower capacity developing countries. This mandate builds on the recommendations set out in the two-part report to G20 Developing Working Group on the impact of BEPS in low income countries part 1 (July 2014) part 2 (August 2014). This Report\(^5\) identified areas of priorities for developing countries and calls for the development of the following toolkits and reports:

- Report on tax incentives (2015);
- Toolkit on lack of comparables for transfer pricing purposes (2016);
- Report on indirect transfers of assets (2016);
- Toolkit on Transfer Pricing Documentation requirements (2016);
- Toolkit on Tax Treaty Negotiation (2016);
- Toolkit on Base-Eroding Payments (2017);
- Toolkit on Supply Chain Restructuring (2017); and

The project started taking shape in February 2015, when the international organisations proposed to the DWG terms of reference for the first two outputs, i.e. an options report on tax incentives and a toolkit on transfer pricing comparability data. The report on tax incentives was finalised and submitted to the G20 Leaders at their summit in Antalya (Turkey) in November 2015.\(^6\)
