



# CURRENT TP LANDSCAPE AND DEVELOPMENTS IN TRANSFER PRICING

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# BEPS FOLLOW UP WORK



# Overview

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- **BEPS Follow up work**
  - BEPS Action 7 – Additional Guidance on Attribution of Profits to PEs
  - BEPS Actions 8-10 Update
    - Revised Guidance on Profit Splits
    - Hard-to-value intangibles – Application guidance
    - Guidance on Financial Transactions
- **Scoping of future work**
  - Chapter IV – Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes
  - Chapter VII – Special Considerations for Intragroup Services
- **Other Projects**
  - Dialogue with jurisdictions (Brazil)
  - Tax Certainty work-stream
- **ICAP**



# Attribution of Profits to PEs

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- This guidance was published on 22 March 2018 as a supplementary report to the BEPS Action 7 Report
  - <http://www.oecd.org/ctp/beps/additional-guidance-attribution-of-profits-to-a-permanent-establishment-under-beps-action7.htm>
- In sum, the agreed guidance:
  - Clarifies that BEPS Action 8-10 changes do not change the PE profit attribution analysis, which continues to depend on Article 7 of the applicable treaty
  - Preserves existing treaty-based methods of attributing profits to PEs
  - Prevents double taxation of profits in the source country under Articles 7 and 9
  - Allows for administrative measures to reduce compliance/administrative burdens



# Revised Guidance on Profit Splits

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- Goals, per Actions 8-10 Final Report:
  - Clarify when profit split is the most appropriate method
  - Describe approaches to splitting profits reliably
- The final guidance was agreed by IF on 4 June 2018:
  - <http://www.oecd.org/tax/beps/revised-guidance-on-the-application-of-the-transactional-profit-split-method-beps-action-10.htm>
  - Profit Split is appropriate method if:
    - Unique and valuable contributions are made by both parties; highly integrated transactions; shared assumption of risk
  - Where Profit Split is the most appropriate method:
    - Split actual profits where risk assumption is shared (otherwise, split anticipated profits)
  - Revised guidance on profit-splitting factors (proxies for value creation) with examples



# Hard-to-value intangibles (HTVI) application guidance

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- HTVI approach was **adopted as part of the 2015 BEPS Report on Actions 8-10 and incorporated into the revised Chapter VI TPG**
  - Recognizes that after-the-fact results **may be** relevant in pricing an HTVI transfer
    - If **actual** financial results **differ from the ex ante pricing**
- **New guidance for tax administrations on application** of approach to HTVI was approved by IF on 4 June 2018.
  - <http://www.oecd.org/tax/beps/guidance-for-tax-administrations-on-the-application-of-the-approach-to-hard-to-value-intangibles-beps-action-8.htm>
    - Guidance to become Annex to **Chapter VI of the TPG.**
- Further work:
  - monitoring the application of the approach to transfers of HTVI, for purposes of 2020 review



# Financial Transactions (1)

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- Work mandated under BEPS Action 4 and to be carried out in close coordination with Action 9
  - Scoping paper agreed May 2016
- Based on this scoping, a draft guidance was discussed, amended, and discussed again by WP6 in June 2017 and November 2017
- Substantially re-drafted reflecting WP6 feedback but some significant differences between countries' positions remained
- Progress made but difficult to reach consensus on some key issues (e.g., debt versus equity)



## Financial Transactions (2)

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- Countries still have some differing positions on financial transactions
- Further efforts to advance the work:
  - Focus group activated to advance specific issues
  - Road-plan agreed at WP6 meeting in April 2018
    - Plan to issue “non-consensus” public discussion draft – Summer 2018
    - Continued discussion in November 2018 meeting with an aim to agree “consensus” discussion draft – early 2019
    - Aim to agree on the final guidance in 2019





## Financial transactions (3)

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- Discussion draft published in July 2018 (open for comments until 7<sup>th</sup> September 2018)
  - <http://www.oecd.org/tax/oecd-releases-beps-discussion-draft-on-the-transfer-pricing-aspects-of-financial-transactions.htm>
- Non-consensus document
- Issues where lack of consensus exists, framed as questions to commentators
  - Almost 1.000 pages of comments received
- Content
  - Delineation of financial transactions, including guidance on capital structure
  - Pricing of specific issues: loans, cash pools, hedging, guarantees and captives.
- Inputs from the public are useful to advance the discussions on certain controversial issues during WP6 in November



# SCOPING OF FUTURE WORK



# Planned update of guidance on Administrative Measures to prevent and resolve double taxation (Chapter IV TPG)

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- WP6 is in the process of scoping the future revision of Chapter IV
- Initial draft on the scope → discussed at WP6 meeting in April 2018
- Main areas/issues that may be addressed:
  - Aspects or mechanisms to minimise the risk of transfer pricing disputes (e.g. co-operative compliance, risk assessment tax examination practices);
  - Corresponding and secondary adjustments and the risk of double taxation;
  - Advance pricing agreements;
- Invitation for public comments (deadline: 20 June 2018);
  - More than 130 pages of comments received
- Scoping to be finalized in 2018; project to continue in 2019.



# Planned update of guidance on Services (Chapter VII TPG)

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- Scoping work underway
  - Discussed at WP6 November 2017 and April 2018 meetings
- Suggested direction
  - Revise and modernise the language and the structure of the chapter;
  - To clarify some areas that could lead to misapplication; and
  - To ensure consistency with changes to other chapters of the TPG
- Invitation for public comments (deadline: 20 June 2018);
  - More than 270 pages of comments received
- Scoping to be finalized in 2018; project to continue in 2019



# OTHER PROJECTS



# Tax Certainty Work-stream

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- Identifying the key areas of tax uncertainty in the area of Transfer Pricing
  - e.g. divergent interpretation or application of TPG
  - Different approaches to attribution of profits to PEs
- Identifying other opportunities for increasing tax certainty
  - e.g. simplification measures
- Identifying possible improvements and include into existing work-streams or start separate projects



# Transfer Pricing Work Program with Brazil

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- Objective
  - Dialogue between RFB and OECD
    - Identifying strengths and weaknesses of Brazilian TP regime and options for convergence
- Outline
  - Launch Event (28 February– 1 March 2018)
  - Assessment of effectiveness of the Brazilian TP rules (including gap effectiveness)
    - April – December 2018
      - Inputs from MNEs via BIAC/CNI
  - Identifying options for Convergence
    - Jan- March 2019



## CbCR 2020 review

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- Joint session between WP6 and WP10 on the review of the BEPS Action 13 minimum standard
- Current environment of CbC Reporting
- A number of issues previously identified by participants at OECD events, meetings and workshops will be discussed by the joint Group. Under this process, inputs from stakeholders will be invited:
  - Scope
  - Content
  - Surrogate parent entity filing and local filing
  - Exchange of CbCR
  - Other





# Q&A