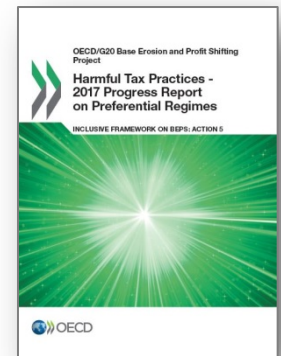


Background: Progress Report on BEPS Action 5 – Minimum standard to combat harmful tax practices

INCLUSIVE FRAMEWORK ON BEPS: ACTION 5

Available from 16 October 2017, 11:00AM (CEST)

www.oecd.org/tax/beps/harmful-tax-practices-2017-progress-report-on-preferential-regimes-9789264283954-en.htm



Key messages

Important progress is being made toward the elimination of harmful tax practices pursuant to the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.

The OECD/G20 BEPS Project delivers solutions for governments to close the gaps in existing international rules that allow corporate profits to “disappear” or be artificially shifted to low or no tax environments, where companies have little or no economic activity. Revenue losses from BEPS are conservatively estimated at USD 100-240 billion annually, or the equivalent of 4-10% of global corporate income tax revenues.

A peer review process on harmful tax practices has been conducted by the Inclusive Framework on BEPS, which brings together more than 100 jurisdictions committed to improving the international tax framework and implementing the minimum standards of the BEPS Project.

The process included peer reviews of 164 tax incentives (“preferential tax regimes”) that apply to mobile business income, such as financial and services income and income from intellectual property, which multinationals can shift with relative ease. About 100 of these regimes required action to conform to the new BEPS standards, and countries have already changed or begun changing almost 95% of these.

This is one of several important and tangible results since the BEPS Project outputs were approved by the OECD and endorsed by the G20 in late 2015. Countries are changing their laws and ending their harmful tax practices. The changes being undertaken will ensure that targeted tax preferences will no longer be used to encourage multinational enterprises (MNEs) to shift income away from where the value is added.

The speed of these changes is unprecedented. The Inclusive Framework was only launched in June 2016. It demonstrates the commitment of members of the Inclusive Framework to work collectively to prevent tax avoidance by MNEs.

The Action 5 minimum standard to combat harmful tax practices

The BEPS Action 5 Report contains a minimum standard on combatting harmful tax practices. The peer review of this minimum standard is the subject of this progress report. This is a continuation of the work in the 2015 BEPS Action 5 Report which contained the results of the review of OECD and G20 countries.

The Action 5 review of harmful tax practices focuses on preferential tax regimes for mobile business income - such as income from financial and other services, or from intellectual property. Many jurisdictions offer preferential tax regimes to stimulate certain sectors of the economy and attract foreign investment, and these are not harmful per se. However, Action 5 reviews the way the incentive is designed to assess whether it contains “harmful features”. These are features that allow the regime to be used for base erosion and profit shifting.

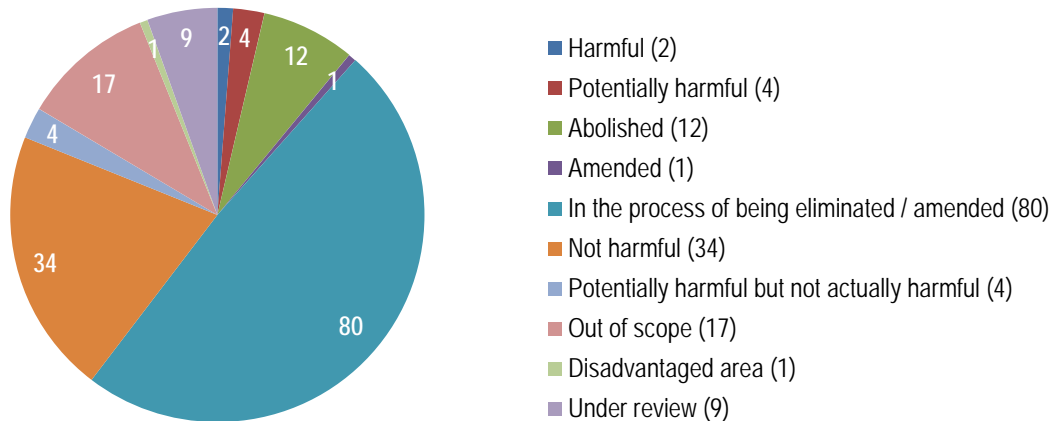
- For example, the regime can be ring-fenced to protect the domestic tax base from its effects, such as by providing benefits only for transactions with non-residents.
- Another harmful feature is a lack of any requirement that the taxpayer benefitting from the regime engage in substantial activities - in the context of mobile income, this feature can encourage MNEs to shift income away from where the economic activity creating the income is located, into the jurisdiction with the preferential regime. This requirement was elevated in importance in the Action 5 Report and all regimes are now assessed against this requirement.

Results

Of the 164 regime reviews:

- 99 require action, of which 93 have already seen the changes completed or initiated;
- 56 regimes do not pose a BEPS risk;
- 9 regimes are still under review, due to extenuating circumstances such as the impact of the recent hurricanes on certain Caribbean jurisdictions.

Results as at 4 October 2017



Regimes such as patent boxes which allow benefits for income from intellectual property (“IP regimes”) are the subject of special attention in the Action 5 Report. These are assessed against the “nexus approach” which is the specific “substantial activities” requirement for IP regimes. Jurisdictions have made a tremendous effort and as a result of legislative changes many IP regimes now comply with the “nexus approach”. Others are being abolished or amended, or meet the condition for treatment as a low risk “disadvantaged areas regime” and one IP regime remains under review. Only one IP regime across the whole membership of the BEPS inclusive Framework has remained unreformed and was found to be actually harmful.

The peer reviews were conducted using the framework set out in the 2015 Report on BEPS Action 5 and approved by the Inclusive Framework on BEPS. Jurisdictions whose regimes have harmful features are generally expected to adjust their regimes as soon as possible and no later than one year from now. The FHTP will monitor their compliance and act if the changes are not made.

The report also contains guidance on preferential tax regimes, including:

- Timelines for amending regimes;
- How certain features of preferential regimes will be monitored; and
- Guidance on the obligation that jurisdictions offering non-IP preferential regimes must require substantial activities to be undertaken in the regime.