OECD
BETTER POLICIES FOR BETTER LIVES

Top 10 FAQs about BEPS

1 What is BEPS?

BEPS refers to the tax base erosion and profit shifting resulting from unintended gaps and mismatches between different countries' tax systems that can be used by multinational enterprises (MNEs) to make profits 'disappear' for tax purposes, or to shift profits to locations where there is no or very limited real activity, but where taxes are low, resulting in little or no overall corporate tax being paid. With increasing mobility of capital and assets such as intellectual property, and new business models in the 21st century, BEPS has become a serious problem.

2 How does BEPS happen?

Corporate tax is levied at the domestic level. When business activities cross borders, the interaction of domestic tax systems can mean that income is taxed by more than one jurisdiction, resulting in double taxation. That is what the current international tax rules were designed to prevent. However, the same rules have in some instances facilitated the opposite, i.e. double non-taxation. Further, the interaction between domestic tax systems can also leave gaps which result in income not being taxed anywhere (stateless income).

3 How big is the BEPS problem?

BEPS is an issue that affects everyone, developed and developing countries alike: based on current data, BEPS is conservatively estimated at anywhere between 4% and 10% of global corporate income tax (CIT) revenues, representing USD 100 to 240 billion annually. Developing countries have a greater reliance on CIT revenues from MNEs as a percentage of tax revenue, while the impact on developed countries in absolute terms is significantly higher.

4 Is BEPS illegal?

Some BEPS tax planning strategies may be illegal, but most are not. BEPS arrangements typically take advantage of outdated rules that are grounded in a bricks-and-mortar economic model, rather than the globalised economy of the 21st century, which is characterised by the increasing importance of intangibles like Intellectual property. That is why G20 and OECD countries, joined by a wide range of other countries – developed, emerging and developing – decided to work together to modernise international tax rules to curtail BEPS.

5 Why worry about BEPS now?

The global economic crisis squeezed public finances, forcing many governments to cut spending and services or raise taxes to boost revenues. In this climate, BEPS has a particularly negative impact on the overall fairness of the tax system. Individual taxpayers and domestic businesses may shoulder a greater share of the tax burden when international corporate taxpayers are able to pay no or low tax. MNEs themselves face significant reputational risk, given the attention paid to their tax affairs, while domestic companies face unfair competition when their MNE competitors use BEPS to tilt the playing field in their direction. Governments receive lower revenues.

6 What are the solutions?

The OECD/G20 BEPS package published in October 2015 contains measures to improve the coherence of international tax rules, to reinforce their focus on economic substance and to ensure a more transparent tax environment. These include changes relating to bilateral tax treaties, including a minimum standard to prevent treaty shopping; revisions to the transfer pricing rules, which determine the tax treatment of intra-group transactions, to focus on the substance of the transactions rather than their legal form; an update of the framework for evaluating the potential harmful effects of preferential regimes introduced by governments, with a specific focus on patent boxes and tax rulings; model domestic law measures to counter BEPS.

7 What about BEPS risks attributed to technology companies?

The BEPS package provides a detailed analysis of the digital economy, including its business models and key features. While the Digital Economy does not create unique BEPS issues, some of its features exacerbate existing ones. These have been addressed via the modifications to the definition of permanent establishment, the new transfer pricing rules, in particular regarding hard-to-value intangibles and recommendations on how to strengthen so-called "Controlled Foreign Corporation" rules. Building on the OECD International VAT/GST Guidelines, the BEPS package also recommends that VAT on digital transactions be collected in the country where the customer is located and provides agreed mechanisms to do so in an efficient manner.

8 What about BEPS and developing countries?

BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises (MNEs). Over 80 developing countries and other non-OECD/non-G20 economies have been consulted with more than a dozen of them participating directly in the Committee on Fiscal Affairs, along with regional tax organisations such as the Africa Tax Administration Forum (ATAF). Specific challenges faced by developing countries and identified by them are addressed in the course of the BEPS work. There is also a dedicated work stream to develop practical guidance on the top priority BEPS-related issues identified by developing countries, including toolkits to support implementation. A new joint initiative between OECD and the UN Development Programme called Tax Inspectors Without Borders will also see experienced tax auditors work with tax officials in developing countries on real tax audit cases, to improve actual results and build tax audit capacity.

9 Were other stakeholders involved in the BEPS Project?

During the course of the work, businesses, civil society and other stakeholders have been consulted frequently and at length. Discussion drafts released during the course of the work generated more than 12,000 pages of comments, a total of about 1,400 contributions on 23 discussion drafts and working documents. These comments were discussed with stakeholders at 11 public consultations with government representatives and the OECD Secretariat and during the regional network meetings held regularly across the world.

10 What's next?

The focus now shifts towards swift implementation of the measures. Work to develop a new multilateral instrument for the implementation of the treaty-related BEPS measures into the existing network of bilateral tax treaties has already started with around 90 countries negotiating on an equal footing, and the instrument will be open for signature to all interested countries in 2016. The BEPS implementation phase will focus on designing and putting in place a new inclusive framework, open to all countries on an equal footing, for supporting implementation of the different measures, as well as monitoring their impact over time.