The latest on BEPS – 2014 in review
A review of OECD and country actions in 2014
The global focus on base erosion and profit shifting (BEPS) continued and intensified in 2014.

The Organisation for Economic Co-operation and Development (OECD) met the first deadlines set in its 2013 BEPS Action Plan by delivering reports on seven of the fifteen Actions on 16 September 2014. The G20 leaders welcomed this progress and reiterated their commitment to finalizing work on the BEPS project in 2015. Given the combination of very ambitious scope and extremely tight deadlines, the OECD turned its attention to the remaining work, issuing nine discussion drafts on eight Actions during the fourth quarter of 2014.

Countries around the world were focused on BEPS as well in 2014, with some choosing not to wait for final outcomes from the OECD project before taking action. 2014 saw BEPS-driven legislation and regulation in a wide range of countries. At the same time, BEPS concerns inspired changes in the administrative and enforcement practices of many countries’ tax authorities.

This special edition of EY’s bi-weekly Alert, The Latest on BEPS, provides highlights of the OECD and country activity related to the fifteen BEPS Actions during 2014 and a look ahead to BEPS developments expected in 2015. An appendix provides links to EY Global Tax Alerts for further information on the highlighted country activity.

Action 1 – Tax challenges of the digital economy

OECD activity
During 2014, the OECD issued a discussion draft on the digital economy, received extensive comments and held a public consultation, culminating in the issuance of a report by the target date of September 2014. The OECD concluded that “it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy for tax purposes.” The Action 1 report describes how BEPS challenges in the digital economy are to be addressed in the work under the other Actions. It also identifies what are described as broader tax challenges of the digital economy and outlines options for addressing these challenges that are the subject of ongoing work by the OECD.

As part of its work on the International VAT/GST Guidelines, the OECD in December 2014 released a discussion draft focused on the place of taxation for business-to-consumer supplies of services and intangibles, which recommends requirements for registration and remittance of indirect taxes by nonresident suppliers in the country of consumption. The Action 1 report had identified a need for improved VAT collection mechanisms with respect to such transactions in the digital economy.

Country activity
Registration of foreign providers of digital services. While Italy reversed its introduction of a VAT registration requirement for providers of online advertising services (the law enacted in late December 2013 was repealed in March 2014), India used its new Companies Act to require registration of foreign persons conducting a business in India through an “electronic mode.” Japan’s tax reform proposals for 2015 include application of consumption tax to digitally provided services to Japanese customers, with a registration requirement for the foreign provider in business-to-consumer transactions consistent with global indirect tax trends in recent years. Israeli tax authorities have been requiring, in certain cases, foreign providers of digital services to register and charge VAT in Israel, with this new practice expected to be reflected in new guidance soon.

Specific tax rules for digital services. There were discussions in several European countries on specific forms of web taxation, but generally this has not advanced beyond the idea stage. However, in Italy a new law denying use of a cost-plus method for transfer pricing for entities involved in the sale of online advertisement services has entered into force. In Argentina, the city of Buenos Aires introduced a 3% turnover tax levied through withholding on payments to foreign providers of digital media (access to movies, TV, gaming, etc., via the internet). Brazilian tax authorities issued guidance classifying the provision of data processing and storage infrastructure (servers)
as a service rather than an asset rental, which triggers domestic indirect tax liability. The US Administration's annual budget proposals, which have not been acted upon, included a new category of income under the controlled foreign corporation (CFC) rules for “foreign base company digital income.”

**Digital economy focus.** The European Union (EU) High Level Expert Group on Taxation of the Digital Economy issued a report listing several possible options for taxation of digital economy activities but recommending that no separate tax regime be put in place for such activities. The Spanish tax authorities announced they would specifically audit website owners receiving revenue from online advertising in Spain as well as manufacturers and service providers marketing their goods and services over the internet in Spain.

**Looking ahead to 2015**
In 2015, the OECD will focus on ensuring that the recommendations under the other BEPS Actions appropriately address the BEPS issues in the digital economy and will further develop options to address the broader tax challenges of the digital economy. The OECD is holding a public consultation on the VAT discussion draft and the comments received. The OECD is expected to finalize the VAT guidelines on business-to-consumer supplies of services and intangibles before year-end 2015. The new EU-wide rule requiring registration for and remittance of VAT by foreign providers of certain digital services in the country of consumption for business-to-consumer transactions took effect in January 2015. More countries are expected to follow this trend by adopting VAT registration requirements for foreign persons involved in the digital economy.

**Action 2 – Neutralizing hybrid mismatch arrangements**

**OECD activity**
During 2014, the OECD issued discussion drafts on hybrid mismatch arrangements, received extensive comments and held two consultations, culminating in the issuance of a report by the target date of September 2014. The focus of the OECD's work in this area is on arrangements that involve multiple deductions for a single expense, deductions in one country without corresponding income inclusions in another country, or generation of multiple foreign tax credits for one amount of tax paid. The Action 2 report recommends a system of “linking rules” that relate the tax treatment of a payment with respect to a hybrid entity or arrangement in one jurisdiction to the tax treatment of such payment in the counter-party jurisdiction. The proposed system of interconnected domestic law rules generally would provide for the denial of deductions by the payer country as the primary response to hybrid arrangements, with the denial of exemption by the payee country as the secondary response in situations where the payer country does not deny the deduction.

**Country activity**

**Anti-hybrid rules on inbound payments.** In July 2014, the European Union adopted an amendment to the Parent Subsidiary Directive (which is the directive that provides for an exemption from taxation and withholding on qualifying dividends within the European Union) to deny the participation exemption on distributions of profits that are deductible by the subsidiary. In the last few months of 2014, France, Poland and Spain enacted legislation to implement this amendment effective January 2015, one year ahead of the deadline mandated by the European Union. Japan announced it is considering a similar denial of the participation exemption on dividends deducted by a foreign subsidiary as part of its 2015 tax reform. Australia enacted legislation in September 2014 denying the exemption for foreign source dividends on instruments that are classified as debt under Australia's debt-equity rules; such denial applies without regard to the foreign tax treatment of such payments.

**Anti-hybrid rules on outbound payments.** Following the trend in late 2013 led by France and Mexico, Austria and Spain adopted rules denying the deduction of certain related party payments that are subject to no or low taxation (both Austria and Spain use a 10% minimum taxation threshold). In Germany, a similar rule (applicable to related and third-party payments)
was discussed before the Parliament but ultimately was removed from the Finance Bill to await final OECD recommendations on Action 2 in 2015. The US Administration’s annual budget proposals, which have not been acted upon, included an anti-hybrid rule on interest or royalty payments to related parties and an amendment to the CFC rules in the context of reverse hybrid entities. In December 2014, the United Kingdom released a consultation document on implementation of the recommendations in the OECD’s September Action 2 report, proposing an anti-hybrid rule similar to the existing UK anti-arbitrage rules but without a motive test.

Dual resident and “state-less” entities. Having introduced its “state-less” company rules in 2013, Ireland announced in October 2014 that it would phase out the “Double Irish” structure starting in January 2015 (with a grandfathering period until 2020).

Looking ahead to 2015
In 2015, the OECD intends to develop agreed guidance and coordinate the implementation of the recommended system of primary and secondary rules. While the OECD indicates that this coordination will include the timing of implementation, countries will continue to have their own timetables. Many EU countries will have to change their legislation to implement the new EU linking rule on inbound payments by year-end 2015. In addition, some countries are expected to enact new deduction denials on outbound payments that involve a mismatch and/or low taxation, including Germany and the United Kingdom. While the OECD’s work on Action 2 has influenced some countries’ reforms, no country has yet implemented rules that fully follow the OECD’s recommended approach.

Action 3 – Strengthening CFC rules

OECD activity
CFC rules are a domestic law area where the OECD has not historically focused significant attention. There was little activity on this Action in 2014 because it has a 2015 target date. However, the interconnected role of CFC rules was highlighted in the OECD’s 2014 work on several other Actions, including in particular the work on the digital economy (Action 1), hybrid mismatch arrangements (Action 2) and treaty abuse (Action 6).

Country activity
Introduction of new CFC legislation. In the second half of 2014, Chile, Poland and Russia all introduced their first CFC legislation - with different combinations of ownership thresholds and active/passive income, tax rate and business activity tests. The new rules in Poland and Russia rules are entity-based, targeting certain types of entities rather than certain types of income. The Polish rules target entities with passive income taxed at a low rate that are owned at 25% or more by the resident taxpayer but exclude entities with substantive business activity. The Russian rules target all entities that are owned at (generally) 50% or more but exclude entities that meet either an active income test or a high-tax-rate test. In contrast, the Chilean rules tax only passive income of a CFC that is domiciled in a country with low or no taxation and is owned at 50% or more. In addition, India’s draft tax reform included an introduction of CFC rules but lapsed in the course of 2014 with the change in Indian Parliament.

Modifications to existing CFC regimes. Several countries made or proposed modifications to their CFC regimes, in some cases tightening the rules and in other cases providing more exemptions. South Africa introduced an exemption for CFCs that have substantive business operations (in addition to the existing high-tax exemption). Brazil amended its CFC legislation in May 2014, with the changes including a temporary option to consolidate the results of certain foreign subsidiaries and branches for Brazilian tax purposes and allowing tax deferral for profits earned through affiliates (generally, minority interests). However, no changes were made to take into account the decision in April 2014 by the Brazilian Superior Court of Justice finding Brazil’s CFC legislation to be incompatible with the business profits articles of Brazil’s tax treaties with Belgium, Denmark and Luxembourg. Spain enacted additional substance requirements for exclusion from its CFC rules. The US Administration’s annual budget proposals, which have not been acted upon, included various modifications that would tighten the CFC rules.
Looking ahead to 2015
The OECD intends to issue a discussion draft on Action 3 and CFC rules in April 2015, with a public consultation to follow in May. The CFC rules will continue to be a focus in the debate over international tax reform in the United States, with policymakers’ views regarding the appropriate reach and focus of such rules differing widely.

Action 4 – Limiting interest deductibility

OECD activity
In December 2014, the OECD issued a discussion draft on interest deductions and other financial payments. The draft sets out several approaches for limiting interest deductions, with the intention of developing best practices recommendations. The draft leads off with a group-wide approach that would cap deductions based on the group’s third-party interest expense and allocate that cap to entities in the group based on a measure of relative economic activity. The draft also describes a fixed ratio approach that would cap deductions based on a specified proportion of the entity’s earnings, assets or equity. In addition, the draft suggests the potential for combining these two approaches.

Country activity
Tightening of thin capitalization rules. 2014 saw a continuation of the trend of countries that use a traditional thin capitalization approach tightening those rules by reducing the allowable debt to equity ratio and broadening the scope of the rules. Australia reduced its general thin capitalization ratio from 3:1 to 1.5:1 and reduced its worldwide gearing test from 120% to 100%. Poland reduced its thin capitalization ratio from 3:1 to 1:1 and extended the scope to loans from qualifying indirect shareholders (or companies with the same qualifying indirect shareholder). Chile extended the scope of its thin capitalization rules (which provide for a 3:1 debt-to-equity ratio) to loans from unrelated parties. Korea reduced its thin capitalization ratio from 3:1 to 2:1. Canada proposed extending its thin capitalization rules to certain back-to-back lending arrangements.

Interest cap rules. Continuing previous years’ trends, several countries introduced interest cap rules based on a ratio of earnings before interest, taxes, depreciation and amortization (EBITDA) or a similar measure of earnings, with variations in the scope of the rules or the ratio used. Slovakia introduced a 25% of EBITDA cap applicable to related party loans, and Spain introduced a 30% of operating profit cap applicable to related and non-related party loans used to finance an acquisition of shares. However, EBITDA-based caps have also been challenged, from both a tax policy and legal standpoint. South Africa increased its recently enacted cap from 40% to 60% of adjusted taxable income. The German Tax Court suggested that the country’s 30% of EBITDA cap violates the constitutional principles of equality and taxation based on financial ability. The Norwegian interest cap rules have been challenged under the Agreement on the European Economic Area.

Other limitation approaches. The US Administration’s annual budget proposals, which have not been acted upon, included a limitation on net interest expense deductions based on the US members’ proportionate share of the worldwide group’s earnings. A Swedish committee on corporate taxation put forward a
proposal to deny the deduction of actual net financial costs and replace it instead with a “financial allowance” amounting to 25% of the taxable income.

Looking ahead to 2015
The OECD is holding consultations on the Action 4 discussion draft and the comments received and is expected to issue a revised discussion draft for further comment in advance of issuing its final report by year-end 2015. While it is not clear whether the proposal in Sweden to replace interest deductions with a notional allowance amount will be advanced further, changes in the Swedish interest limitation rules are expected. More generally, country action with respect to interest limitations is expected to continue and may be influenced by the concepts being considered in the OECD.

Action 5 - Harmful tax practices

OECD activity
In September 2014, the OECD issued its progress report with respect to the work on Action 5. The report focuses in particular on the development of a new substantial activity requirement for preferential regimes involving intangible property (IP) and on the improvement of transparency through the compulsory spontaneous exchange of information on rulings related to preferential regimes. The report also provides an update on the review of preferential regimes in OECD member countries and the other G20 countries participating in the BEPS project, with no regimes yet found to be harmful but many regimes still under review, including all IP regimes in these countries. The work on Action 5 was specifically referenced in the September and November 2014 G20 communiques.

Country activity
Patent boxes. In November 2014, Germany and the United Kingdom announced a joint proposal on the treatment of preferential IP regimes within the context BEPS project, which involves a modified nexus approach for determining substantial activity and grandfathering and transition rules. Countries reacted differently in 2014 to the discussion regarding patent box regimes. Ireland and Switzerland announced their intentions to implement new patent box regimes that would be in line with international standards. The Netherlands expressed the view that its regime already has significant substance requirements, suggesting that no major changes should be expected at this time. The United Kingdom committed to maintaining its patent box regime with some changes to bring it in line with the modified nexus approach. Italy enacted a patent box regime at year-end that pursues to follow the nexus approach. As regards source country rules, Austria’s 10% minimum taxation requirement enacted in February 2014 applies to royalty payments, which may cause a denial of deduction when royalties benefit from a foreign patent box regime. Similar rules were considered in Germany but were not ultimately enacted.

Tax ruling practices. As a result of the inquiries into the ruling practices of seven EU Member States that were launched in 2013, the European Commission opened four formal investigations in the course of 2014 to examine whether specific corporate income tax rulings granted by the Dutch, Irish and Luxembourg tax authorities comply with EU rules on state aid. In December 2014, the European Commission announced the extension of its inquiries to all EU Member States, requesting confirmation whether they provide tax rulings and, if they do, requesting submission of a list of all companies that have received a tax ruling. Luxembourg enacted new law, effective January 2015, to provide a more solid framework for its tax ruling practice and for the arm’s-length principle in related party transactions.

Looking ahead to 2015
The OECD will continue its work on Action 5, further developing the substantial activity requirement and applying the framework for exchange of rulings. The OECD also is expected to begin to engage with other countries on how to address their harmful preferential regimes. The OECD and G20 agreement on the modified nexus approach for IP regimes developed by Germany and the United Kingdom is likely to trigger significant local country activity in the area of patent boxes. The European Commission has announced its intention to unveil a new directive on the automatic
exchange of information on tax rulings during the first quarter of 2015. State aid activity will continue in the European Union, including the new investigation into the Belgian excess profit ruling system.

**Action 6 – Preventing treaty abuse**

**OECD activity**
During 2014, the OECD issued a discussion draft on preventing treaty abuse, received extensive comments and held a public consultation, culminating in the issuance of a report by the target date of September 2014. The Action 6 report provides for what the OECD describes as a minimum standard for protection against the inappropriate granting of treaty benefits, recommending the inclusion of both a US-style limitation on benefits provision and a UK-style general anti-abuse rule in the form of a principal purpose test provision but allowing flexibility to use one or the other provision. In November 2014, the OECD issued a discussion draft on follow up work with respect to Action 6, focusing in particular on issues related to the treaty qualification of collective investment vehicles and other investment funds and on development of further guidance regarding the implementation of the limitation on benefits provision. In addition, in July 2014, the OECD released the 2014 update to the Model Tax Convention and related Commentary, which includes the incorporation of revisions to the beneficial ownership concept that had been proposed in discussion drafts in 2011 and 2012.

**Country activity**

**Anti-abuse rules.** In 2014, China, Russia, and Vietnam all introduced anti-abuse rules and beneficial ownership rules, or guidance on such rules, for the purpose of restricting treaty benefits in conduit situations. Spain strengthened its specific anti-abuse rule for withholding tax exemptions on EU-bound interest and royalties. In December 2014, the European Union agreed on an amended “de minimis” anti-abuse rule to be incorporated into the Parent Subsidiary Directive. On the other hand, Canada, after having launched a consultation on a domestic anti-treaty shopping rule in February 2014, later announced that it would defer any such measure until completion of the OECD work.

**Treaty clearances.** Following the trend begun with the treaty clearance requirements included in Mexico’s 2013 tax reform that entered into force in January 2014, Russia increased its formal requirements for access to treaty benefits. Certain tax authorities increased scrutiny of substance and beneficial ownership when asked to issue a certificate of residency (Hong Kong) or to grant treaty benefits to foreign parent companies (Switzerland).

**Enforcement.** China launched a data collection process to identify dividend payments made to foreign agent or conduit companies. The Danish Government proposed the introduction of a register identifying owners of certain companies, funds and partnerships, followed by the call of the French, German and Italian Finance Ministers for adoption of such a register at an EU-wide level (along with other anti-abuse measures). Russia issued a model agreement on exchange of information, which would allow tax authorities to request information on the ultimate (or beneficial) owners of companies, partnerships and trusts.

**Looking ahead to 2015**
The OECD is holding a public consultation on the discussion draft on Action 6 follow up work and the comments received. The OECD is expected to issue a revised discussion draft for further comment in advance of finalizing its work by year-end 2015. The EU Commission will be working on new anti-abuse measures, such as a register of trusts and “shell companies.” Further changes to domestic anti-abuse measures can be expected, including activity in Denmark with respect to introduction of a “main purpose test” for both tax treaties and EU directives. A continued focus on anti-abuse measures in bilateral tax treaties is expected, with several countries already having launched treaty renegotiations and putting a greater emphasis on preventing treaty shopping.
Action 7 – Permanent establishment

OECD activity
In October 2014, the OECD issued a discussion draft that contains fourteen alternative options for modifying the permanent establishment (PE) rules in Article 5 of the OECD model tax convention, which focus in particular on the PE treatment of commissioner and similar arrangements and on the qualification of certain activities as “preparatory or auxiliary” and which also include a proposal for a special PE rule for insurance businesses. The options generally would lower the threshold for finding a PE and would carve back the exemptions from PE status.

Country activity
Pressure on the definition of PE. In April 2014, the Chinese State Administration of Taxation in the Jiangsu Province issued its 2014-2015 Administration Plan on International Tax Compliance, which states the intention to address disguised PE issues in artificially segmented business operation models. In June 2014, the Spanish Supreme Court issued a decision finding that a Spanish entity constituted a PE of its foreign principal under a functional approach (the entity had been a full-fledged manufacturer, importer and seller and then converted into a sales agent also providing logistics, administration and packaging services), which followed similar decisions in 2012 cases. A decision of the Court of Justice of the European Union interpreting the European VAT Directive appears to broaden the scope of the fixed establishment concept for VAT purposes by taking into account the human and technical resources of a third party.

Diverted profits tax. In December 2014, the United Kingdom announced its intention to introduce a diverted profits tax of 25%, to apply from April 2015 to multinationals with business activities in the United Kingdom that are considered to have diverted profits from the United Kingdom by avoiding a taxable UK PE or through some other “contrived” arrangement between related parties.

Looking ahead to 2015
The OECD is holding a public consultation on the Action 7 discussion draft and the comments received. The OECD is expected to issue a revised discussion draft for further comment in advance of issuing its final report by year-end 2015. At the same time, country focus on PE matters is expected to continue. In addition it is expected that the UK diverted profits tax will become law in March 2015 as part of the Finance Bill.

Actions 8, 9 and 10 – Transfer pricing

OECD activity
In September 2014, the OECD issued a report under Action 8 containing amendments to the OECD Transfer Pricing Guidelines reflecting revised standards for transfer pricing for intangibles, which is the culmination of work that began in earnest in 2011 and that included the issuance of a discussion draft in 2012 and a revised discussion draft in 2013 just after the issuance of the BEPS Action Plan. The Action 8 report includes guidance on the definition of intangibles, the identification and characterization of specific controlled transactions involving the use or transfer of intangibles, and the determination of arm’s-length conditions with respect to intangibles. The Action 8 report also includes guidance on the ownership of intangibles and transactions involving the development, enhancement, maintenance, protection and exploitation of intangibles; the application of profit split methods; and the determination of arm’s-length pricing when valuation is highly uncertain. However, this latter part of the report is described by the OECD as not yet final because of the interaction between this work and the ongoing work on the other transfer pricing elements of the BEPS project.

In November and December 2014, the OECD issued four discussion drafts on other aspects of the transfer pricing elements of the BEPS project: a broad discussion draft under Actions 8-10 on risk, recharacterization and special measures and three separate discussion drafts under Action 10 on transfer pricing for low-value-adding intragroup services, transfer pricing aspects of cross-border commodity transactions, and the use of profit splits in the context of global value chains.
Country activity

**Business restructurings/transfers of IP.** During 2014, several countries further focused particular attention on outbound transfers of functions and/or IP in business restructurings. In China, the Administration Plan issued by the Jiangsu Province reflects a clear focus on transfer pricing arrangements, including detailed discussion of potential deemed income arising from an outbound transfer of functions. In September 2014, Chile amended its tax regulations, including making changes to the transfer pricing rules related to business restructurings. In November 2014, the Danish Government presented a proposal (which could be enacted effective May 2015) that would allow the Danish tax authorities to ignore binding rulings that were granted on the valuation of assets to be transferred out of Denmark if the value of the assets significantly exceeds the value reflected in the binding ruling; the proposal also would clarify that the validity of such rulings is limited to no more than six months.

**Remuneration of value creation/substance requirements.** In 2014, countries further examined transactions involving intangibles, with a focus on substance requirements and value creation. The Argentinian tax authorities announced that they are investigating several foreign trade transactions involving the overpricing of imports and underpricing of exports, especially in the context of transactions involving the importation of goods from a principal located in a jurisdiction different from where the goods were manufactured. In China, the Administration Plan issued by the Jiangsu Province states the intention to address artificially segmented business operating models.

**Looking ahead to 2015**

The OECD is holding a public consultation on the four 2014 discussion drafts with respect to Actions 8-10 and the comments received. The OECD also intends to issue two additional discussion drafts under the transfer pricing Actions, one focusing on cost contribution arrangements and one focusing on hard-to-value intangibles. The OECD is expected to issue final reports with revisions to the Transfer Pricing Guidelines by year-end 2015. The increased audit activity in countries is expected to continue, particularly with respect to substance and alignment of value drivers and profitability. Tax authorities may well begin to draw on some of the guidelines and proposals with respect to transfer pricing that were released by the OECD in 2014.
Action 11 – Economic analysis of BEPS activity and BEPS measures

OECD activity
In August 2014, the OECD issued a request for input from stakeholders regarding the work on Action 11, including suggestions for possible indicators of the scale and impact of BEPS activity, potential methodologies for estimating such scale and impact, available data and methodologies for economic analysis of the impact and effectiveness of measures to address BEPS, and new types of data that could be collected for use in monitoring such effectiveness.

Looking ahead to 2015
The OECD intends to issue a discussion draft under Action 11 in March 2015 and to hold a public consultation on the draft and the comments received in May 2015. It is expected that the OECD will issue a final report by year-end 2015.

Action 12 – Disclosure of aggressive tax planning arrangements

OECD activity
There was little activity on this Action in 2014 because it has a 2015 target date.

Country activity
Concerns around constitutionality. In France, an attempt to introduce a mandatory disclosure regime for “aggressive tax planning” failed again in 2014 due to concerns about its constitutionality related to the difficulty in defining aggressive tax planning in a predictable manner; such a regime had been approved by the Parliament but then struck down by the Constitutional Court in December 2013, and a parliamentary amendment in the 2015 Finance Bill was rejected for lack of government support.

Other related developments. In 2014, the Mexican tax authorities issued a list of “significant transactions,” including certain reorganizations and restructurings, to be reported monthly under a provision enacted in the previous year’s tax reform. Countries more generally seemed to focus in 2014 on obtaining information on cross-border transactions through increased transfer pricing documentation requirements.

Looking ahead to 2015
The OECD intends to issue a discussion draft under Action 12 in March 2015 and to hold a public consultation on the draft and the comments received in April 2015. It is expected that the OECD will issue a final report by year-end 2015.

Action 13 – Transfer pricing documentation and country-by-country reporting

OECD activity
During 2014, the OECD issued a discussion draft on transfer pricing documentation and country-by-country reporting, received extensive comments, and held two consultations, culminating in the issuance of a report by the target date of September 2014. The report sets forth a three-tier approach to documentation, which includes a master file, local files and a country-by-country report. Annexes to the report lay out the content of each of the three documentation tiers, including a model template for the country-by-country report that is scaled back from the version included in the discussion draft.

Country activity
Extended transfer pricing documentation requirements. A great number of countries discussed, adopted or amended their local transfer pricing documentation requirements in 2014 (e.g., Albania, Australia, Czech Republic, France, Iceland, Korea, Luxembourg, Malaysia, Mexico, Poland, Singapore and Slovakia). The Czech Republic introduced an attachment to the corporate income tax return that includes mandatory reporting of intra-group transactions effective for 2014. In Mexico, guidance was issued providing a list of transactions to be reported on a monthly basis includes items such as changes in transfer pricing and transfers of IP or financial assets. With the release of two transfer pricing Taxation Rulings and Practice
Statements in December 2014, the compliance activities of the Australian Tax Office are expected to be heavily focused on transfer pricing compliance for the foreseeable future, consistent with global trends and the broader BEPS debate.

**Increase in penalties.** In order to enforce their transfer pricing rules, countries continued in 2014 to implement or modify their penalty regimes. France introduced a modified penalty for lack of transfer pricing documentation, in the amount of 0.5% of transaction volumes related to the documents that are not provided. Korea’s new tax law stipulates an administrative penalty for the failure to report cross-border transactions with foreign related parties and imposes a new 60% penalty on non-filing or underreporting of income.

**Country-by-country reporting.** As regards country-by-country reporting, the United Kingdom announced in September 2014, a few days after the release of the OECD model template, that it “formally committed” to implement such reporting mechanism. In December 2014, the UK Government published a draft clause related to country-by-country reporting for inclusion in the Finance Bills for 2015 (but indicated that regulations would be developed only once the OECD has completed further work). In France, implementation of country-by-country reporting was discussed but ultimately was not included in the 2015 Finance Bill adopted in December, instead awaiting further work of the OECD. Country-by-country reporting also was recommended by a South African tax reform committee (the Davis Committee) as part of a three-tier approach with a master file and local file, but no specific legislation has been tabled yet. Singapore released a consultation paper on transfer pricing documentation proposing a master file and local file approach that appears to be aligned with the OECD approach, but a country-by-country report was not included.

**Looking ahead to 2015**
The OECD is developing implementation plans with respect to country-by-country reporting, with a full implementation package expected to be completed in the first half of 2015. In the wake of the United Kingdom’s announcement regarding its commitment to implement country-by-country reporting, other countries are expected to join the move toward country-by-country reporting during 2015, including potentially Spain, which is expected to release a draft bill on country-by-country reporting, and South Africa, which would be consistent with the recommendations of the Davis Committee.

**Action 14 – Improving effectiveness of dispute resolution mechanisms**

**OECD activity**
In December 2014, the OECD issued a discussion draft on improving the effectiveness of dispute resolution mechanisms. The draft anticipates that as a result of the work on BEPS, treaty-based disputes will increase and identifies obstacles that prevent countries from settling such disputes. The discussion draft identifies a number of principles that guided the development of options for addressing those obstacles. The obstacles identified vary widely, as do the options, which include changes to the OECD Model Tax Convention and its Commentaries, recommendations for changes in domestic law and adoption of administrative guidelines at the domestic and international level. The discussion draft also contemplates establishment of a monitoring mechanism on the effectiveness of the Mutual Agreement Procedure (MAP). However, most striking is the discussion draft’s statement that there is no consensus on the appropriateness of mandatory binding arbitration as a tool for increasing the effectiveness of MAP.

**Looking ahead to 2015**
The OECD is holding a public consultation on the Action 14 discussion draft and the comments received. The OECD is expected to issue a revised discussion draft for comment in advance of issuing a final report by year-end 2015.
Action 15 - Development of a multilateral instrument

OECD activity
In September 2014, the OECD issued a report on the feasibility of developing a multilateral instrument to amend bilateral tax treaties. Such multilateral instrument would enable countries to implement measures developed in the course of the BEPS project in a swifter and more consistent way. The report concludes that a multilateral instrument is both feasible and desirable and proposes to convene an international conference in 2015. Such conference will be limited to two years and will be mandated to develop the content of the multilateral instrument.

Looking ahead to 2015
It is expected that an ad hoc group open to all interested countries will start working on the multilateral instrument in the first half of 2015, with a target for completion of year end 2016. It is not yet clear which countries intend to participate in the negotiations. It also is not yet clear which treaty-based BEPS measures will be included as part of the “minimum standard” of the instrument and which will be considered to be optional.
Appendix

Below is a table of BEPS related country activity in 2014 with links to the relevant EY Global Tax Alerts.

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Key

L Change in tax legislation
P Practice statement, case law, change in practice of tax authorities or tax courts
D Draft legislation or legislative projects or discussions

The latest on BEPS – 2014 in review
For additional information with respect to this Alert, please contact the following:

**Ernst & Young LLP, International Tax Services, Washington, DC**
- Barbara Angus  +1 202 327 5824  barbara.angus@ey.com
- Yuelin Lee  +1 202 327 6378  yuelin.lee@ey.com

**Ernst & Young LLP, Global Tax Desk Network, New York**
- Gerrit Groen  +1 212 773 8627  gerrit.groen@ey.com
- Daniel Brandstaetter  +1 212 773 9164  daniel.brandstaetter@ey.com
- Maren Holtz  +1 212 773 5820  maren.holtz@ey.com
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