



The Director

CENTRE FOR TAX POLICY AND ADMINISTRATION

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Dear Dr. Dermody,

Thank you very much for your invitation to contribute to the enquiry being conducted by the Australian Senate's Standing Committee on Economics into corporate tax avoidance and minimisation. Our submission is set out below.

The OECD has led the development of the international tax standards for more than 50 years. This includes the elaboration of the rules guiding the international tax system, namely the OECD Model Tax Convention and the Transfer Pricing Guidelines; supporting cross-border cooperation through the development of instruments such as the Model Tax Information Exchange Agreement and the multilateral Convention on Mutual Administrative Assistance in Tax Matters; and fighting tax evasion by establishing and promoting the international standards on Exchange of Information "on request" (EOI) and more recently the Standard on automatic exchange of information (AEOI).

In recent years, the onset of the global financial crisis and slowing economic growth was coupled with perceptions of rising inequality and a lack of fairness. Society was asked to bear the burdens of higher taxes and reduced public spending, while there was a growing awareness that some multinational businesses paid very low levels of taxation on their global profits, including some that received taxpayer-funded bailouts. In this environment, the demand to reform the international tax system and the importance of the OECD's work on tax has reached the top of the international political agenda.

In the fallout from the economic crisis and to address the issue of corporate tax avoidance, the OECD-G20 Base Erosion and Profit Shifting (BEPS) Project was launched in 2013 after the OECD identified in a report published in February 2013 an overview of global developments that have an impact on corporate tax matters and identifies the key principles that underlie the taxation of cross-border activities, as well as the BEPS opportunities these principles may create: *Addressing Base Erosion and Profit Shifting* (<http://www.oecd.org/tax/addressing-base-erosion-and-profit-shifting-9789264192744-en.htm>).

The BEPS Project is aimed at reforming the international tax rules to realign taxation of profits with the underlying economic activities and value creation. This means addressing the loopholes and mismatches in the rules and between domestic tax systems which allow multinationals, legally in most cases, to move profits to low or no tax jurisdictions where little real economic activity takes place.

To tackle BEPS issues effectively, we must adopt a coherent global approach and improve cross-border cooperation. If countries take measures in isolation, the most likely outcome is a multitude of unilateral measures which differ, duplicate or even contradict one another. The significant increase in compliance costs that will result for businesses as well as governments is clear. In turn, the uncertainty will have a dampening



effect on trade and investment. Moreover, unilateral measures are likely to be ineffective in preventing base erosion and profit shifting in the medium to long term, as other countries around the globe put in place their own unilateral BEPS countermeasures.

Australia is a key participant in shaping the BEPS outcomes and has championed the BEPS Project during its Presidency of the G20 in 2014. Given Australia's ongoing contribution to global efforts to ensure that the international tax system keeps pace with a globalised economy and 21st century business models, the Australian Senate's inquiry into corporate tax avoidance and minimisation is welcomed.

Base Erosion and Profit Shifting Project

From the outset, the BEPS Project brought together 44 countries - all 34 OECD members and the 10 BEPS Associates: the non-OECD G20 countries, and Columbia and Latvia (OECD accession countries). All 44 countries participate on an equal footing in the development of the BEPS measures, and together represent 90% of the world's economy.

Since January 2015, a further group of countries, including a regional balance of low and middle income economies, have also been integrated into the Project and participate in the BEPS meetings. This brings to 62 the number of countries who are involved in the meetings of the decision-making body or the technical working groups.

Broad stakeholder engagement has also been an important factor guiding the BEPS work since the beginning, through the release of discussion drafts, public consultations, and regular live webcasts watched by more than 26 000 people to date. Business, civil society, trade unions and academics have all made significant contributions to the Project and are shaping the solutions to ensure they are appropriately nuanced – striking a balance that addresses the need for effective measures and the risk of excessive compliance burdens.

The two-year BEPS Project is based on a 15-point Action Plan (<http://www.oecd.org/tax/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm>) designed to ensure the *coherence* of corporate tax systems in a cross-border environment, introduce *substance* requirements in the area of tax treaties and transfer pricing, and ensure *transparency* while promoting certainty and predictability. The 15 Action areas cover:

- Action 1:** Address the tax challenges of the digital economy;
- Action 2:** Neutralise the effects of hybrid mismatch arrangements;
- Action 3:** Strengthen rules on Controlled Foreign Companies (CFCs)
- Action 4:** Limited base erosion via interest deductions and other financial payments
- Action 5:** Counter harmful tax practice more effectively, taking into account transparency and substance
- Action 6:** Prevent tax treaty abuse
- Action 7:** Prevent the artificial avoidance of PE status
- Action 8:** Assure that transfer pricing outcomes are in line with value creation intangibles
- Action 9:** Assure that transfer pricing outcomes are in line with value creation: risks and capital
- Action 10:** Assure that transfer pricing outcomes are in line with value creation: other high-risk transactions
- Action 11:** Establish methodologies to collect and analyse data on BEPS and the actions to address BEPS.
- Action 12:** Require taxpayers to disclose their aggressive tax planning arrangements
- Action 13:** Re-examine transfer pricing documentation
- Action 14:** Make dispute resolution mechanisms more effective
- Action 15:** Develop a multilateral instrument capable of implementing the tax treaty-related BEPS measures.



The 2014 BEPS Deliverables

With the strong support of Australia during its Presidency of the G20, the first BEPS Project outputs were delivered and presented to the G20 Finance Ministers at their meeting in Cairns in September 2014. Those first 7 reports, the accompanying explanatory statement setting out the interaction between the 2014 and the 2015 BEPS deliverables, as well as the original BEPS Action Plan can be found here: <http://www.oecd.org/tax/beps-reports.htm>

With implementation of the relevant measures by national governments, key elements of the BEPS package are tackled by the 2014 outputs: hybrid mismatches will be neutralised (**Action 2**); an agreed minimum standard to put an end to treaty shopping and other forms of treaty abuse was agreed (**Action 6**); abuse of transfer pricing rules in the key area of intangibles will be minimised (**Action 8**); and better transparency for tax administrations and more global consistency for taxpayers ensured through improved transfer pricing documentation and a template for country-by-country reporting (**Action 13**). In January 2015, guidance on the implementation of the country-by-country reports was outlined, applying to all multinationals with turnover of more than EUR 750 million. These country-by-country reporting requirements will be filed in the country of residence of the multinational's ultimate parent entity and will only be exchanged with countries fulfilling a number of conditions, in particular confidentiality and proper use of the information.

In addition, the OECD members and BEPS associates agreed in September 2014 on the feasibility of implementing the tax treaty-related BEPS measures through a multilateral instrument (**Action 15**). In January 2015, they agreed that negotiation of that instrument would be undertaken by an ad-hoc group open to participation by all States which would begin work by mid-2015. The 2014 deliverables also advanced the work to fight harmful tax practices, with final agreement on the approach to intellectual property regimes reached in January 2015 (**Action 5**). The 2014 deliverables also included a report setting out a common understanding of the tax challenges raised by the digital economy, which will form the basis for extending the work in this area of the economy where BEPS practices can be exacerbated (**Action 1**).

2015 Deliverables

The 2015 deliverables relate to strengthening the rules on controlled foreign corporations (**Action 3**); limiting base erosion from interest deductions and other financial payments (**Action 4**); the second phase of work on countering harmful tax practices (**Action 5**), preventing artificial avoidance of 'Permanent Establishment' status (**Action 7**), assuring transfer pricing outcomes in line with value creation (**Actions 8-10**), assessing currently available data, developing indicators and methodologies to analyse BEPS, and future tools to monitor BEPS and the actions to developed to address BEPS (**Action 11**), requiring taxpayers to disclose aggressive tax planning arrangements (**Action 12**); and making dispute resolution more effective (**Action 14**).

The work on these BEPS actions, as well as guidance on implementation aspects of the 2014 deliverables will be completed this year. The consideration and drafting of measures is already underway. The technical BEPS working groups have prepared eight discussion drafts which have now been issued for public comment. The first public consultations for 2015 on actions 6, 7 and 14 were held in January and attracted over 2 000 pages of comments from across G20 countries and beyond.

The full package of BEPS measures, agreed by consensus by the 44 OECD members and BEPS Associates, will be presented to the G20 Finance Ministers in October, and in turn to the G20 Leaders at their meeting in Turkey in November this year.



Tax Administration

While the Australian Senate's inquiry is focused on issues of tax policy, it would be remiss to conclude our submission without also recalling the critical role that tax administration will have to play in ensuring that the BEPS measures will be effective. The Forum on Tax Administration (FTA) brings together the heads of 46 tax administrations, including Australia's Commissioner of Taxation. The key aim of the FTA is to improve taxpayer services and tax compliance by helping tax administrations increase the efficiency, effectiveness and fairness of tax administration and reduce the costs of compliance.

At their most recent meeting in Dublin in October, the FTA recognised the important role that tax administrations will have to play to ensure that the measures being developed to address BEPS are implemented and administered effectively. This will require tax administrations to work ever more closely together to share knowledge and coordinate actions. To do this, the FTA agreed on a strategy for enhanced cooperation based on existing legal instruments which will allow them to respond quickly to identify and deal with global tax risks as they arise, and these efforts which are to be chaired by the Australian Commissioner of Taxation, Mr Chris Jordan AO, will include the Joint International Tax Shelter Information and Collaboration (JITSIC) Network. In October, the FTA also committed to improving the practical operation of the Mutual Agreement Procedure (MAP), which is a critical consideration for ensuring that cross-border disputes relating to tax treaties, and often instances of double taxation, can be quickly and efficiently resolved. Further information on the work of the FTA can be found here: <http://www.oecd.org/site/ctpfta/>

In concluding our submission, we thank the Australian Senate for this opportunity to make a submission on this area of critical importance and will follow the Inquiry's outcomes with interest.

Yours sincerely,

Pascal Saint-Amans
Director, CTPA