

Transfer Pricing, BEPS and Brexit Explained



BEPS (Base erosion and profit shifting) = the global trend of maximizing net profits of corporations. Used levers: transfer pricing, treaties for the avoidance of double taxation which may generate double non-taxation!!!

The measures for BEPS avoidance which will be implemented in OECD member states, as well as in states which complete their local legislation with the provisions of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and with OECD recommendations (such as Romania) have in view:

- **Action 1:** The identification of challenges in applying the international tax rules regarding the digital economy (such as: online sale, where is the income subject to tax?). **Outcome: modification of the international and local tax legislation.**
- **Action 2:** The neutralization of the hybrid mismatch arrangements which generate the double non-taxation. **Outcome: update of the Model Tax Convention on Income and on Capital.**
- **Action 3:** Strengthen 'CFC' ('controlled foreign company') rules, so as to eliminate the double non-taxation or to limit the excessive deductibility of interests, financial payments. **Outcome: recommendations regarding the drafting and / or change of the local tax legislation.**

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- **Action 4:** Limit base erosion via interest deductions and other financial payments. **Outcome: recommendations regarding the drafting / change of the local tax legislation / update of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.**
- **Action 5:** Counter harmful tax practices taking into account transparency and economic substance. **Outcome: engage with non-OECD states for discussions and recommendations / revision of the existing criteria.**
- **Action 6:** Prevent treaty abuse. **Outcome: update of the Model Tax Convention on Income and on Capital / recommendations regarding the drafting and / or change of the local tax legislation.**
- **Action 7:** Prevent artificial avoidance of permanent establishment status. **Outcome: update the Model Tax Convention on Income and on Capital.**
- **Actions 8, 9 and 10:** Assure transfer pricing outcomes are in line with value creation. **Outcome: update of the Model Tax Convention on Income and on Capital / update OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.**
- **Action 11:** Establish methodologies to collect and analyze data on BEPS. **Outcome: recommendations on how to collect data and on analysis methodologies.**
- **Action 12:** Recommendations regarding the compulsory disclosure of aggressive tax planning arrangements. **Outcome: recommendations regarding the drafting / change of the local tax legislation.**
- **Action 13:** Re-examine transfer pricing documentation. **Outcome: recommendations regarding the drafting / change of the local tax legislation / update OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.**
- **Action 14:** Make dispute resolution mechanisms more effective. **Outcome: update the Model Tax Convention on Income and on Capital.**
- **Action 15:** The development of multilateral instruments (to allow the automatic modification of the currently existing bilateral double tax treaties). **Outcome: Development of reports / publications which identify international tax and legal issues / Development of a multilateral approach instrument.**

Such measures will be adopted in the next period, part of them being already implemented. The results of such actions will materialize in legislative modifications in the OECD member states, as well as in non-member states which participate to work sessions (such as Romania).

Source:

[OECD \(2013\). Action Plan on Base Erosion and Profit Shifting. OECD Publishing.](#)

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BEPS Measures in Romania

Romania is a BEPS associate, following the invitation of the OECD Center for Tax Policy and Administration Manager from 15 March 2016.

Being a BEPS associate involves the following:

- All countries and jurisdictions will work with OECD and G20 members to develop the standards related thereto and to monitor the implementation of the entire BEPS package,
- The evaluation of the 4 BEPS minimum standards in the areas of harmful tax practices, tax treaty abuse, Country by Country Reporting requirements, improvements in cross-border tax dispute resolution;
- The commitment to introduce the BEPS package and to apply it, taking into consideration that the implementation deadlines may differ from country to country, depending on the level of development,
- The participation of a country to the accomplishment of the BEPS framework will allow the projection of the implementation of the BEPS project in such country and will offer the certainty that BEPS solutions may apply for all the countries and jurisdictions involved.

In lay terms, Romania's capacity of BEPS associate means that our country will implement in the local legislation the OECD recommendations for the 15 work directions / actions mentioned above. So far, according to the Tax Code, Romania applied the OECD Transfer Pricing Guidelines. Such Guidelines will be complemented by other OECD measures / recommendations in order to avoid the erosion of the taxable base and the transfer of profits.

The most affected by the new legislative package will be the multinational groups which conclude intra-group transactions and the Romanian companies with online operations (such as online trade) outside the country.

Source:

Memorandum of the Minister of Public Finance no. 400 391 /24.05.2016

Brexit Implications on Transfer Pricing

The multinational groups with operations in Great Britain and Romania will not be affected immediately, since the OECD principles regarding transfer pricing apply irrespective of the membership to the European Union (Great Britain is an OECD member, and Romania, although not member, has provisions in the local legislation according to which it complies with the OECD Transfer Pricing Guidelines).

Therefore, on the short term, there will be no new obligations of compliance.

Nevertheless, on the medium and long term, we will assist to the reconfiguration of the tax maps of Great Britain in relation to UE and vice versa, due to the following possible events:

- Restructuring, reorganizations of groups caused by the new VAT system (the British companies will no longer apply the same VAT system; the European Directives will no longer be applicable).
- The migration of British companies to other destinations in the European Union.

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About us

Biris Goran extended its tax practice by providing transfer pricing services in collaboration with Cabot Transfer Pricing.

Cabot Transfer Pricing is active on the market of transfer pricing consultancy since 2011 and assisted around 60 subsidiaries of large multinational and local groups in the preparation of transfer pricing files, the preparation of transfer pricing policies, the preparation of the Master File at the group level.

The collaboration between Biris Goran and Cabot Transfer Pricing is aimed at providing comprehensive transfer pricing services from preparation of the transfer pricing file to the assistance during the tax inspection and fiscal and legal assistance services in the preparation of appeals regarding transfer pricing and sustaining them in court.

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