



***TAX ANNEX TO THE ST. PETERSBURG G20
LEADERS' DECLARATION***

September, 2013



TAX ANNEX TO THE SAINT PETERSBURG G20 LEADERS DECLARATION

1. **The G20 has been at the forefront of efforts to establish a more effective, efficient and fair international tax system since they declared the era of bank secrecy over at the G20 London Summit in April 2009.** In an increasingly borderless world, strengthening international cooperation in tax matters is essential to ensuring the integrity of national tax systems and maintaining trust in governments.

2. **The Global Forum on Transparency and Exchange of Information for Tax Purposes has played a critical role in ensuring that the international standard of exchange of information on request endorsed by the G20 is implemented effectively around the world.** Since the Global Forum responded in 2009 to the G20's call to ensure rapid implementation of its standards of transparency and exchange of information, the Global Forum has completed 113 peer review reports and has issued over 600 recommendations for improvement, with more than 300 of those recommendations having been acted upon to date. The number of jurisdictions that have committed to implement the standards and have joined the Global Forum has increased to 120. All but 14 of the jurisdictions reviewed have advanced to Phase 2 reviews, thus demonstrating the effectiveness of the peer review process in achieving the implementation of the standards. Those 14 jurisdictions are urged to implement the Global Forum's recommendations without further delay. In July 2013, G20 Finance Ministers and Central Bank Governors asked the Global Forum to give overall ratings of exchange of information on request at its meeting in November 2013. The Global forum will draw on the work of FATF on beneficial ownership and ensure that all countries have information regarding the beneficial ownership of entities operating in their jurisdictions.

3. **The G20 has now endorsed the development of a new global tax standard: to automatic exchange of information.** At the Cannes Summit in 2011, the G20 agreed to consider exchanging information automatically for tax purposes on a voluntary basis. In 2012, the Los Cabos Summit welcomed the OECD report on automatic exchange and encouraged all countries to join this practice. Given the developments in the Global Forum and other recent advances, it is now time to migrate to a more ambitious, more efficient and higher standard, which is automatic exchange of information. Recent developments involving undisclosed foreign bank accounts have also highlighted the urgent need to move to this new standard which the Global Forum will monitor to ensure its effective implementation. In July 2013, G20 Finance Ministers and Central Bank Governors fully endorsed the ambitious OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information for tax purposes and declared their commitment to automatic exchange of information as the new global standard. The OECD has initiated work with G20 countries to develop the new single global standard for automatic exchange of information. G20 Finance Ministers and Central Bank Governors have mandated the OECD to provide a progress report at the October Finance Ministers' meeting, including a timeline for completing this work in 2014. The new standard (included in a Model Competent Authority Agreement) will be presented at G20 Finance Ministers and Central Bank Governors' meeting in February 2014. There is a clear need for the practical and full implementation of this new tax standard on a global scale. The Global Forum will establish a mechanism to monitor and review the implementation of the new standard on automatic exchange of information and will be working with the OECD Task Force on Tax and

Development, the World Bank Group and others to help developing countries identify their need for technical assistance and capacity building.

4. **The next challenge regarding automatic exchange of information is now to get all jurisdictions to commit to this standard and put it into practice.** Calling on all other jurisdictions to join us by the earliest possible date, we are committed to automatic exchange of information as the new global standard, which must ensure confidentiality and the proper use of information exchanged, and we fully support the OECD work with G20 countries aimed at presenting such a new single global standard for automatic exchange of information by February 2014 and to finalizing technical modalities of effective automatic exchange by mid-2014. In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. **The multilateral Convention is key to ensuring rapid implementation of the new standard and to enabling developing countries to benefit from the new more transparent environment.** In 2009 the OECD and the Council of Europe swiftly responded to the G20's call for a multilateral instrument by amending the Convention on Mutual Administrative Assistance in Tax Matters in 2010 to meet international standards and to allow all countries with domestic laws that are sufficient to uphold the confidentiality of tax information to join. All G20 countries have led by example in signing this Convention and to date more than 70 countries and jurisdictions are covered or are likely to be covered by the Convention, including significant financial centres. The Convention is a powerful tool in the fight against tax evasion and allows for all forms of cooperation in tax matters, including automatic exchange of information. We expect all jurisdictions to join the Convention without further delay.

5. **International collective efforts must also address the tax base erosion resulting from international tax planning.** Base erosion and profit shifting (BEPS) relates chiefly to instances where the interaction of different tax rules result in tax planning that may be used by multinational enterprises (MNEs) to artificially shift profits out of the countries where they are earned, resulting in very low taxes or even double non-taxation. These practices, if left unchecked, undermine the fairness and integrity of our tax systems. They fundamentally distort competition, because businesses that engage in cross-border BEPS strategies gain a competitive advantage compared with enterprises that operate mostly at the domestic level. Fair, transparent and efficient tax systems are not only key pillars for sound public finances, they also provide a sustainable framework for dynamic economies. For these reasons, G20 Leaders identified the need to address BEPS as a priority in their tax agenda at the Los Cabos Summit in June 2012. Additionally, we must achieve better international coordination on taxes. In this regard, we must move forward in fighting BEPS practices so that we ensure a fair contribution of all productive sectors to the financing of public spending in our countries.

6. **International tax rules, which date back to the 1920's, have not kept pace with the changing business environment, including the growing importance of intangibles and the digital economy.** In response to a G20 mandate, the OECD Secretary-General provided a report in February 2013 outlining the issues related to BEPS, and has now presented an ambitious and comprehensive Action Plan developed with G20 members aimed at addressing BEPS, with a mechanism to enrich the Plan as appropriate. Countries will need to examine how their domestic tax laws contribute to BEPS and to ensure that international and domestic tax rules do not allow or encourage multinational enterprises to reduce overall taxes paid by artificially



shifting profits to low-tax jurisdictions. A G20/OECD BEPS Project has been established through which all non OECD G20 countries will participate on an equal footing to develop proposals and recommendations to tackle the 15 issues identified in the Action Plan. G20 Leaders commit themselves to a swift implementation and they also have a vital role to play in urging other countries to join with us and to take the necessary individual and collective actions to implement these proposals and recommendations in a timely manner. G20 Leaders appreciate the swift and effective response by the OECD in advancing the BEPS agenda and urge the OECD to work closely with G20 countries for the proper implementation of this Project.

7. The Action Plan aimed at addressing BEPS sets forth an ambitious agenda to examine the following fundamental aspects of the international tax rules:

- **First, changes to international tax rules must be designed to address the gaps between different countries' tax systems, while still respecting the sovereignty of each country to design its own rules.** Instruments will be developed to neutralise hybrid mismatches and arbitrage; recommendations will be developed regarding best practices in the design of domestic legislation to protect the tax base of countries against shifting of profits to no or low taxation jurisdiction (through strengthening or introducing so called "CFC" rules – Controlled Foreign Companies); and recommendations will be developed regarding rules to prevent base erosion through interest deduction.
- **Second, the existing international tax rules on tax treaties, permanent establishment, and transfer pricing will be examined to ensure that profits are taxed where economic activities occur and value is created.** The action plan is designed to establish anti-treaty shopping provisions and develop changes to the definition of the permanent establishment (that is, whether there is sufficient nexus to allow a charge to tax) to prevent BEPS. Three actions are identified in the area of transfer pricing to put an end to the divorce between the location of profits and the location of real activities. Importantly, there is recognition that although the existing transfer pricing rules appropriately allocate income in many instances, special measures, either within or beyond the arm's length principle, may be required to address certain specific difficulties arising in the current system.
- **Third, more transparency will be established, including through a common template for companies to report to tax administrations on their worldwide allocation of profits and tax.** It also requires more transparency between governments, with the need for countries to disclose rulings and other tax benefits to their partners, and disclosure by taxpayers of aggressive tax planning arrangements. The Action Plan also provides mechanisms to collect better data so as to be able to measure BEPS and carry out the relevant economic analyses.
- **Fourth, all the actions are expected to be delivered in the coming 18 to 24 months.** To ensure that the recommendations may be implemented quickly, the OECD will be developing a multilateral instrument for interested countries to amend their existing network of bilateral treaties.

8. **Developing countries must reap the benefits of the G20 tax agenda.** The G20-led efforts can advance efforts to improve domestic resource mobilisation. The Global Forum on Transparency and Exchange of Information, the OECD Task Force on Tax and Development, the World Bank Group and other international organizations are key partners who can assist developing countries identify their needs for technical assistance and capacity building in implementing of the transparency and exchange of information standards, including through the multilateral Convention and automatic exchange of information. These efforts will help developing countries secure the corporate tax revenue they need to foster long-term development. The OECD's Tax Inspectors Without Borders initiative to assist tax administrations of developing countries plays a useful role in this regard. Finally, we are committed to continue to assist developing countries, including through the IOs, in identifying individual country needs and building capacity in the area of tax administration (in addition to automatic exchange of information) and encourage such support to be developing country led.

9. International taxation issues do not stop at addressing double non-taxation. We encourage continued discussion on other tax matters among tax administrators.

ANNEX - The 15 Actions to Address BEPS

ACTION 1 – Address the Tax Challenges of the Digital Economy. Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterisation of income derived from new business models, the application of related source rules, and how to ensure the effective collection of VAT/GST with respect to the cross-border supply of digital goods and services. Such work will require a thorough analysis of the various business models in this sector.

ACTION 2 – Neutralise the Effects of Hybrid Mismatch Arrangements. Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (e.g., double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. This may include: (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual resident entities) are not used to obtain the benefits of treaties unduly; (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payor; (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules); (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and (v) where necessary, guidance on co-ordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be co-ordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping.

ACTION 3 – Strengthen CFC Rules. Develop recommendations regarding the design of controlled foreign corporation rules. This work will be co-ordinated with other work as necessary.

ACTION 4 – Limit Base Erosion via Interest Deductions and Other Financial Payments. Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be co-ordinated with the work on hybrids and CFC rules.

ACTION 5 – Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance. Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.

ACTION 6 – Prevent Treaty Abuse. Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. Work will also be done to clarify that tax treaties are not intended to be used to generate double non-taxation and to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country. The work will be co-ordinated with the work on hybrids.

ACTION 7 – Prevent the Artificial Avoidance of PE Status. Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemptions. Work on these issues will also address related profit attribution issues.

ACTION 8, 9, 10 – Assure that Transfer Pricing Outcomes are in Line With Value Creation

Action 8 – Intangibles. Develop rules to prevent BEPS by moving intangibles among group members. This will involve: (i) adopting a broad and clearly delineated definition of intangibles; (ii) ensuring that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with (rather than divorced from) value creation; (iii) developing transfer pricing rules or special measures for transfers of hard-to-value intangibles; and (iv) updating the guidance on cost contribution arrangements.

Action 9 – Risks and Capital. Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members. This will involve adopting transfer pricing rules or special measures to ensure that inappropriate returns will not accrue to an entity solely because it has contractually assumed risks or has provided capital. The rules to be developed

will also require alignment of returns with value creation. This work will be co-ordinated with the work on interest expense deductions and other financial payments.

Action 10 – Other High-Risk Transactions. Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties. This will involve adopting transfer pricing rules or special measures to: (i) clarify the circumstances in which transactions can be recharacterised; (ii) clarify the application of transfer pricing methods, in particular profit splits, in the context of global value chains; and (iii) provide protection against common types of base eroding payments, such as management fees and head office expenses.

ACTION 11 – Establish Methodologies to Collect and Analyse Data on BEPS and the Actions to Address It. Develop recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis. This will involve developing an economic analysis of the scale and impact of BEPS (including spillover effects across countries) and actions to address it. The work will also involve assessing a range of existing data sources, identifying new types of data that should be collected, and developing methodologies based on both aggregate (e.g. FDI and balance of payments data) and micro-level data (e.g. from financial statements and tax returns), taking into consideration the need to respect taxpayer confidentiality and the administrative costs for tax administrations and businesses.

ACTION 12 – Require Taxpayers to Disclose Their Aggressive Tax Planning Arrangements. Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules. The work will use a modular design allowing for maximum consistency but allowing for country specific needs and risks. One focus will be international tax schemes, where the work will explore using a wide definition of “tax benefit” in order to capture such transactions. The work will be co-ordinated with the work on co-operative compliance. It will also involve designing and putting in place enhanced models of information sharing for international tax schemes between tax administrations.

ACTION 13 – Re-examine Transfer Pricing Documentation. Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNE’s provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.

ACTION 14 – Make Dispute Resolution Mechanisms More Effective. Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.

ACTION 15: Develop a Multilateral Instrument. Analyse the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish



to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, interested Parties will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this evolution.