



EBF TAX CONFERENCE 2017

Achieving Tax Certainty in a World of Uncertainty

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David Ledure
Partner PwC

Anuschka Bakker
TP Specialist IBFD



IBFD, Your Portal to Cross-Border Tax Expertise



Agenda

BEPS, ATAD, ...
From theory to practice

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Unilateral measures
The box of Pandora?

2

Control-over-risk
The monster

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HQ / support services
Simple but complex

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PE's
All over the place?

5

TP Compliance
Many many challenges

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BEPS, ATAD, ... *From theory to practice*

BEPS overview per theme

Coherence

Action 2	
ATAD I & II	MLI

Action 3	
ATAD I	

Action 4	
ATAD I	

Action 5	
Code of Conduct	

Substance

Action 6	
ATAD I	MLI

Action 7	
MLI	

Actions 8 – 10	
2107 Update OECD TP Guidance	

Transparency

Action 11	
Measuring and Monitoring BEPS	

Action 12	
DAC VI	

Action 13	
2017 Update OECD TP Guidance	DAC IV

Action 14	
MLI	Dir. Tax Dispute Resolution

Analysis

Action 1	
Addressing the Tax Challenges of the Digital Economy	

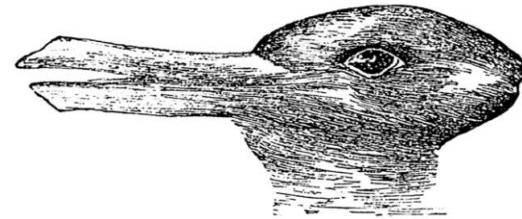
Action 15	
MLI	

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Unilateral measures *The box of Pandora?*

Unilateral interpretation of value creation ?

- TP outcome should be in line with value creation, but what defines value creation?
Depends on (what happens in the backyard of) whom you ask:
 - OECD
 - UN
 - EU
 - Country-level
- Diverted Profits Tax: Australia, United Kingdom
- Italian Web Tax
- Practical Compliance Guideline PCG 2017/8 in May 2017: Australia
- Countries started to implement rules along the same lines as Action 4: United Kingdom
- Cost charges

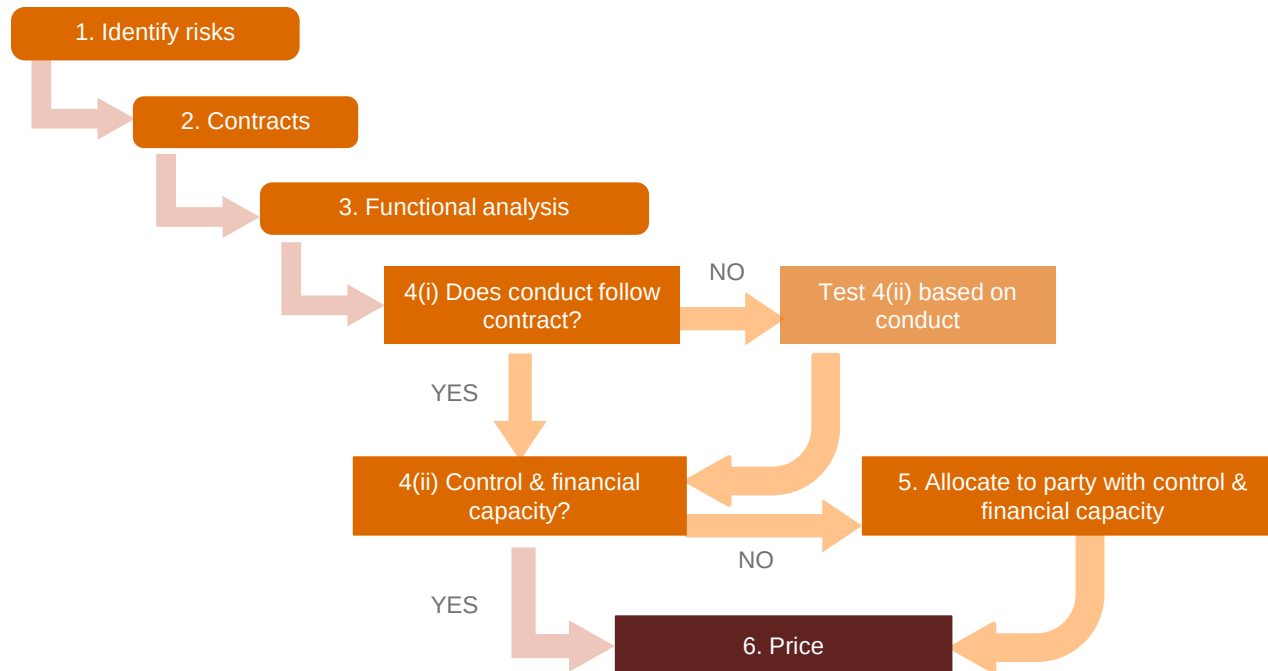


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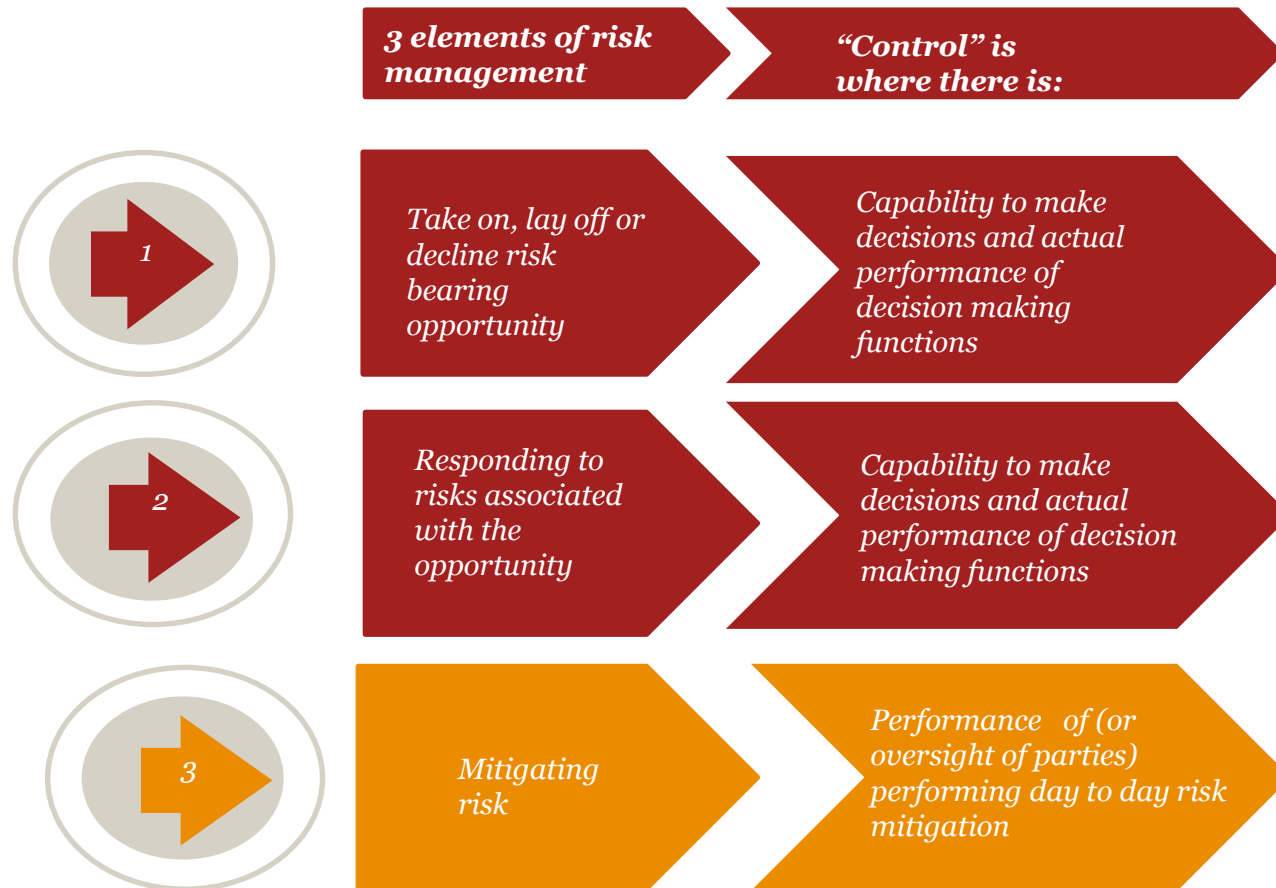
Control over risk

The monster

Risk analysis framework

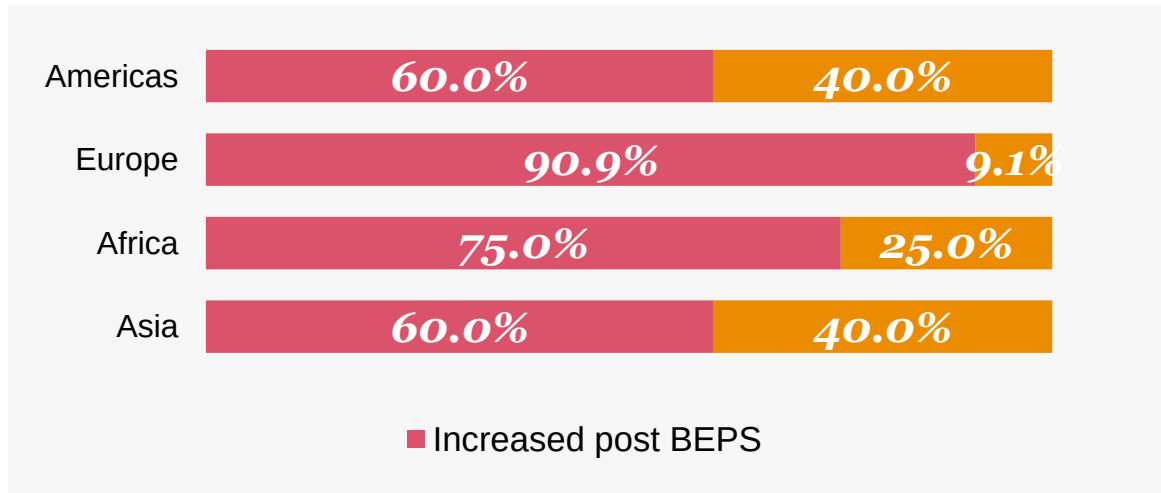


Meaning of “control” over risks



Increasing focus on risk

Percentage of tax authorities indicating whether they will increasingly focus on risk analysis post BEPS



The challenges for traditional banks

- *Symmetrical* application whether the risk crystallises or not?
- The varying importance of *policies* (e.g. consumer finance VS project finance)
- The role of credit committees with *international dimension*
- The role of *escalation* procedures
- The role of exceeding *thresholds*
- The *thin line* between “formal approval of decisions made elsewhere” and “have ultimate decision power”

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HQ / Support services

Simple but complex

Intra-Group Services

- Bank A, HQ in Country X. Co. Bank A has subsidiaries in Africa, Asia Pacific, Europe, North Americas and South Americas. Regulatory expenses amount to EUR 300-400 mln. The costs relate to:
 - Basel III modeling
 - Board
 - IT Internal
 - Support
- Can the 300-400 million be deducted at HQ?
- IT? Massive expense. Cost-plus method
- Building Basel IT framework/software. Allocate it to all branches. Small entity in AP region get charged EUR 10 million
- VAT?
- Solution: cost sharing arrangement?

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Permanent establishments *All over the place*

The changes that BEPS recommends

What's new / what has changed?

Dependent Agent PE
(DAPE)

- Principal role - conclusion of contracts

Preparatory / auxiliary
activities

- Consider cohesive business

Anti-fragmentation /
splitting contracts

- Prevent fragmenting into several small operations or splitting-up contracts

Impact on distribution networks

- Expansion of Dependent Agent PE criteria is likely to impact *distribution/broker* structures
- *Marketing activities performed by rep offices and sales teams* on behalf of an offshore entity may be considered to be taking a principal role which leads to conclusion of contracts
- The *narrowing of the independent agent exemption* would impact brokers or sales offices which were relying on independent agent exemption
- Could result in numerous PEs and increase compliance burden with *arguably limited or no extra profit attributable* to the PE (on basis transfer pricing is arm's length)

Impact of mobile employees

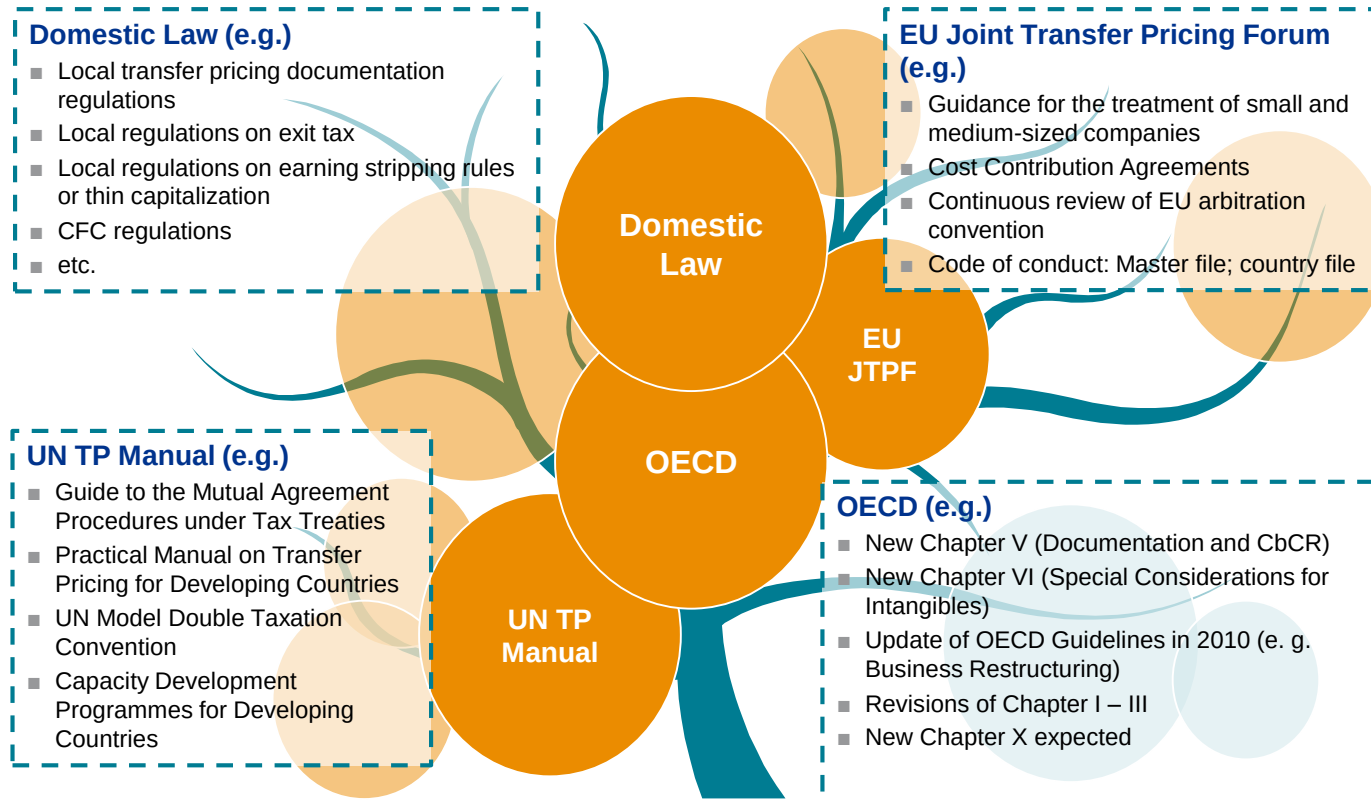
- Instances of Tax Authorities already using *broader information* to build PE case
- Awareness in relation to mobile employees that are performing “principal role” which leads to *conclusion of contracts* without material modification
- Impact of fragmentation rule – complementary functions and cohesive business operations – *monitoring possible?*

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TP Compliance

Many many challenges

Documentation Guidelines: Which Guidelines?

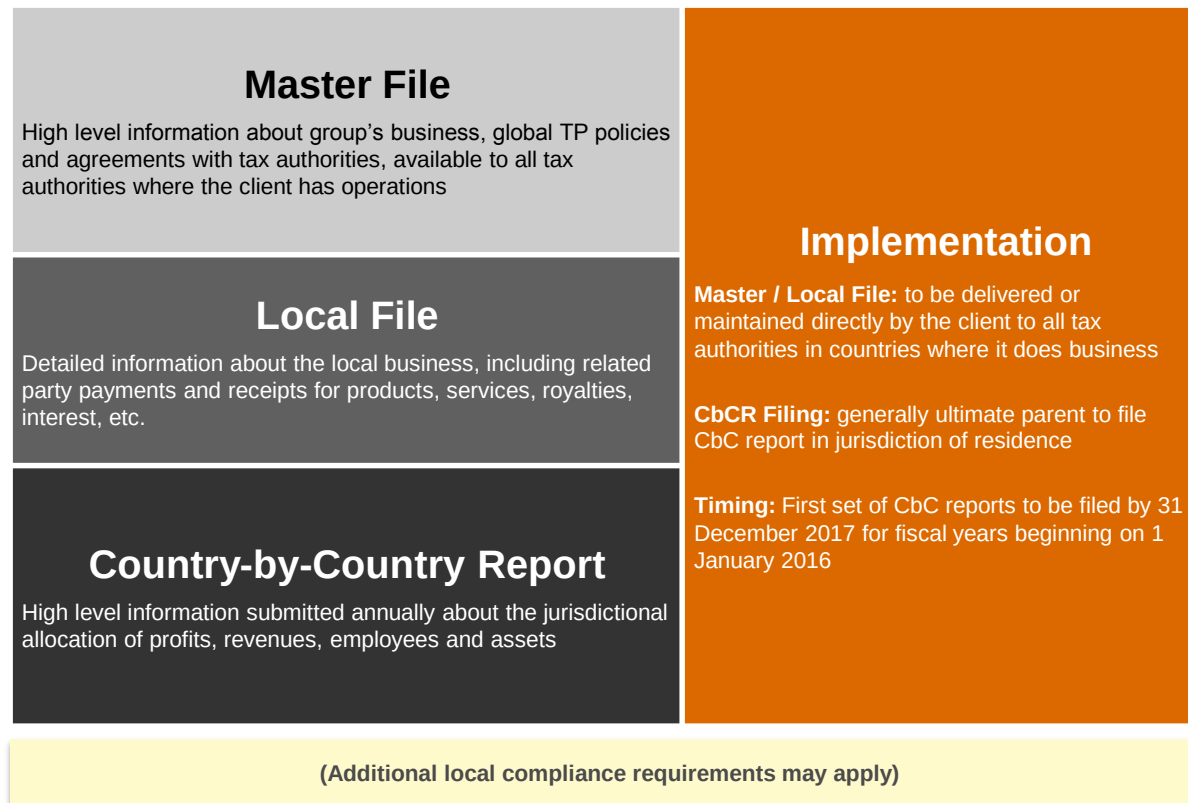


Key Takeaways OECD BEPS Actions 8-10

- 1 Shift from legal form to economic reality of transaction
- 2 Different type of functional analysis re. DEMPE
- 3 More focus on analysis of risk control and allocation of risk
- 4 Re-allocation of risk possible (actual conduct)

**This will have to
be reflected in
the TP
documentation**

Three-tiered Approach Laid Down in OECD TP Guidelines Chapter V



TP Doc Strategy and Data: Common Questions and Issues

- Strategy
- Transparency management and consistency
- Implementation

1 What should be strategy for preparation of master file – global level, division level, business unit level or per region?

2 How to explain or improve CbCR outcome? E.g. data sources, interpretation and different GAAP reporting.

3 Are we able to register all PEs and branches for CbCR purposes and can we correctly prepare?

4 Software available on market – can we automate part of the local file / master file and CbCR requirements?

5 What would be the impact of CbCR / Action 13 from a VAT angle?

6 How can we retrieve the data necessary for master file / local file and CbCR and how should we report the data?

7 How can I ensure that my master file, CbCR and worldwide local files tell a consistent story?

8 What are my peers doing?

9 How to be compliant worldwide with TP doc requirements without spending too much resources on compliance?

10 How should I deal with differences in accounting standards?

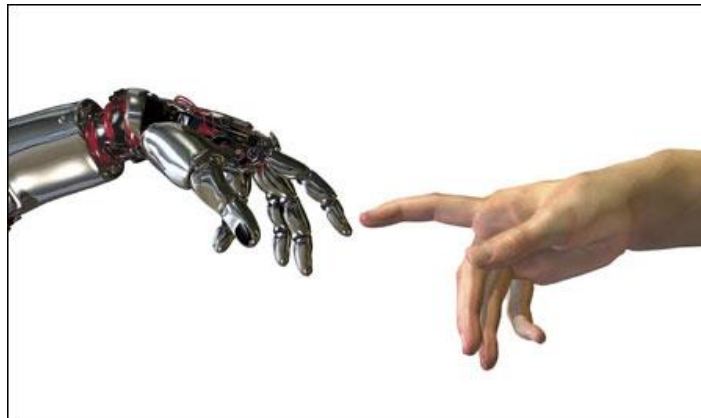
CbCR – Common Questions and Issues

1. Notification deadlines, process, per entity? – *prepare a TP compliance calendar*
2. Do personal holdings have to be included in the CbC Report? – *always check*
3. How to determine filing strategy? – *map the CbCR rules in your countries, the applicable exchange rules, and select the most efficient option. Consider other items such as penalty regimes, data security, reliability of tax authorities, etc.*
4. How do you fill and submit the CbC Report? – *determine mapping policy, retention period and audit trail, XML translation, submission channel*
5. What to do if countries do not exchange? – *back to local filing*
6. Are you obliged to amend the CbC Report with modified data at a latter stage?
Can you adjust mistakes? – *to be clarified in practice*
7. How to deal with joint ventures? Include or not? – *are they consolidated?*
8. How to determine revenue thresholds? – *prepare a TP compliance calendar*
9. How to deal with cooperations? – *review financial reporting and legal framework*
10. If I voluntarily submit a CbC report, am I done? – *check exchange arrangement*

How is Technology Changing the Game

How can technology help with preparation of Transfer Pricing documentation

How tax administrations use technology with processing the data received



David Ledure, PwC Belgium

Partner Transfer Pricing and International Tax

david.ledure@pwc.com

Tel: +32 (0) 2 710 73 26

Anuschka Bakker, IBFD The Netherlands

Manager Transfer Pricing and Specialist Knowledge Group

a.bakker@ibfd.org

Tel.: +31-20-554 0159