



# TRANSFER PRICING CASE STUDIES WORKSHOP MALAYSIA

2-6 December 2013

## 2. Recent OECD developments in transfer pricing



# Inclusive dialogue

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- Participation of 8 non-OECD countries in WP6 deliberations
- Global Forum on Transfer Pricing
  - 90 jurisdictions/ international organisations and about 300 participants attended the 2<sup>nd</sup> Global Forum in March 2013
  - 13 non-OECD countries and 11 OECD countries in the Global Forum Steering Committee
  - Practical and administrative topics
- UN, World Bank, IMF observers to CFA and OECD participates in UN work



# TRANSFER PRICING SIMPLIFICATION



# Transfer pricing simplification

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- Safe harbours
  - New Section E of Chapter IV approved 16 May 2013
  - Revises negative tone of 1995 TPG
  - Encourages adoption of bi- or multilateral agreements on use of safe harbours (sample MoUs)



# BASE EROSION AND PROFIT SHIFTING (BEPS)



# Base Erosion and Profit Shifting (BEPS)

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February 12, 2013 10:42 am

## OECD presents plan to close tax loopholes

By Vanessa Houlder

A plan to close international tax loopholes was outlined on Tuesday by the Paris-based Organisation for Economic Co-operation and Development, which warned that a failure to take action against profit shifting by multinationals would put "the integrity of the corporate income tax" at stake.

In a report on "base erosion and profit shifting" issued ahead of Friday's G20 finance ministers' meeting, the OECD, which draws up global tax standards, said accusations of tax-dodging by multinationals had fuelled a perception that "taxes are only paid by the naive".

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## A third of UK's 700 biggest businesses pay no corporation tax

By GWYNETH REES  
Last updated at 08:21 28 August 2007

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Nearly a third of the UK's 700 biggest businesses paid no corporation tax in the 2005-2006 financial year, an official study has revealed.

A further 30 per cent paid less than £10 million each in tax.

And of the tax paid by these businesses, two-thirds came from just three industries - banking, insurance and oil and gas - while the alcohol, tobacco, car and real estate sectors paid only a few hundred million pounds.



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## U.S. Companies Dodge \$60 Billion In Taxes With Global Odyssey

By Jesse Drucker - May 13, 2010 9:00 PM GMT+0200

f t in g+ 0 COMMENTS QUEUE

Tyler Hurst swiped his debit card at a Walgreens pharmacy in central Phoenix and kicked off an international odyssey of corporate tax avoidance.

Hurst went home with an amber bottle of Lexapro, the world's third-best selling antidepressant. The profits from his \$99 purchase began a 9,400-mile journey that would lead across the Atlantic Ocean and more than halfway back again, to a grassy industrial park in Dublin, a glass skyscraper in Amsterdam and a law office in Bermuda surrounded by palm trees.

The study, which follows of corporate tax practice in German, UK and France, called for coordinated action to strengthen standards.

It urged governments to range from the tax treaty transactions to structure asymmetries in domestic tax law. The OECD plans to draft the next six months.

ON THIS STORY  
Q&A International tax loopholes  
John Gapper Corporate tax posturing  
In depth Tax  
Analysis Global taxation, fiscal frustrations  
US Democrats target corporate tax breaks

The New York Times | International Herald Tribune

## BUT NOBODY PAYS THAT G.E.'s Strategies Let It Avoid Taxes Altogether

By DAVID KOCIENIEWSKI  
Published: March 24, 2011

General Electric, the nation's largest corporation, had a very good year in 2010.

Neue Zürcher Zeitung

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## OECD nimmt Konzerne ins Visier

Wirtschaftsnachrichten Dossier: Durchlöcherter Bankgeheimnis Mittwoch, 13. Februar

Kurz vor dem G-20-Gipfel zeigt die OECD auf, wie sie sogenannte Steuervermeidung von internationalen Grosskonzernen bekämpfen will. Damit steigt auch der Druck auf den Steuerstandort Schweiz.

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## G-20 'Determined' to Fight Profit-Shifting, Secure Revenue Base

By Rainer Buergin & Gonzalo Vina - 2013-02-16T16:43:09Z

f t in g+ COMMENTS QUEUE

Finance chiefs from the Group of 20 pledged to work together to curb multinational companies' leeway to shift profits to low-tax countries, endorsing an initiative spearheaded by Europe's biggest economies.

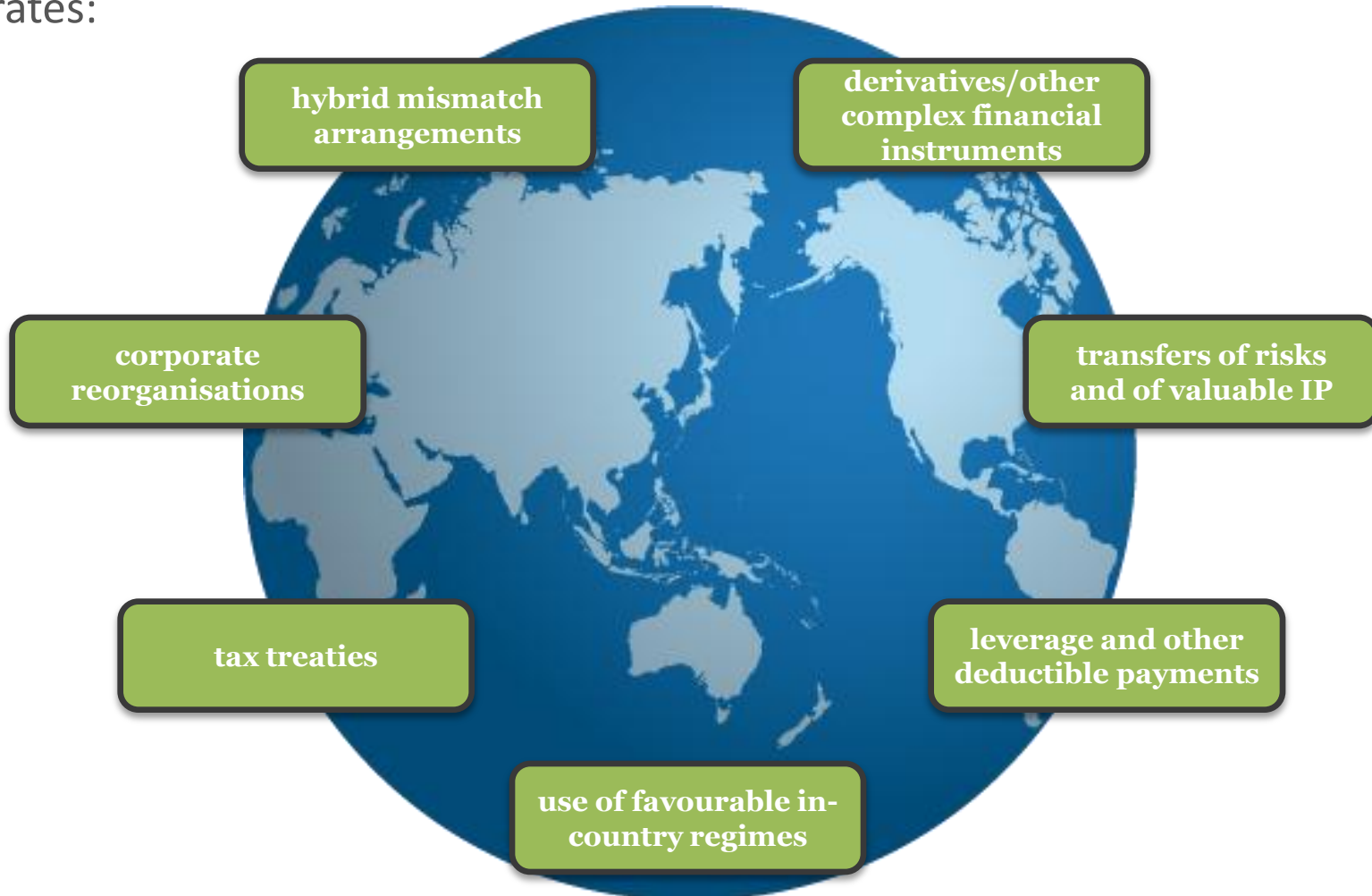
The company reported worldwide profits of \$14.2 billion, and said \$5.1 billion of the total came from its operations in the United States.

Its American tax bill? None. In fact, G.E. claimed a tax benefit of \$3.2



# Key Tax Principles and Opportunities for BEPS

Tools to shift profits to locations where they are taxed at more favourable rates:





# The BEPS Action Plan

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- 15 actions
- The Action Plan is organised around three main pillars:
  - The *coherence* of corporate tax at the international level.
  - A realignment of taxation and *substance*
  - *Transparency*, coupled with certainty and predictability
- It also calls for targeted work in the area of the **digital economy**, which cuts across all three of the main pillars but also presents a number of specific features.
- The draft action plan also calls for the development of a **multilateral instrument** to implement the measures developed with the action plan.





# BEPS Actions on Transfer Pricing

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- **Action 4:** Limit base erosion via interest deductions and other financial payments
  - includes transfer pricing guidance regarding financial transactions
- **Action 8:** Assure that transfer pricing outcomes are in line with value creation – *Intangibles*
  - rules to prevent BEPS by moving intangibles among group members
- **Action 9:** Assure that ... value creation – *Risks and capital*
  - rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members
- **Action 10:** Assure that ... value creation – *Other high-risk transactions*
  - rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between parties at arm's length
- **Action 13:** Re-examine transfer pricing documentation
  - including a requirement to provide all relevant governments with necessary information on global allocation of the income, economic activity and taxes paid among countries according to a common template



# TRANSPARENCY AND TRANSFER PRICING DOCUMENTATION



## BEPS Action 13

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- Requires the OECD to re-examine transfer pricing documentation

*Develop rules regarding transfer pricing documentation to enhance transparency for tax administrations, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNEs 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.*



# OECD White paper on TP documentation (July 2013)

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## Context:

- Proliferation of TP documentation requirements around the world
- Dramatic increase in volume and complexity of intra-group trade
- Heightened scrutiny of TP issues by tax authorities



# OECD White paper on TP documentation (July 2013)

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- TP documentation is one of the top compliance priorities
- Streamline documentation: simplify and consolidate for business while ensuring tax administration have access to relevant information
- Part of the Simplification work programme of WP6



# Purposes of TP documentation requirements

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1. Risk assessment
  2. Ensure that taxpayers give sufficient consideration to setting the right transfer price
  3. All information necessary for audit
- Purpose impacts on when documentation needs to be prepared / provided to tax administration



# Two-tiered approach: Global Master File

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## Global Master File

- Information on the MNE group
- Description of MNE's business(es)
- Information on the MNE's intangibles
- Information on the MNE's inter-company financial activities
- Information on the MNE's financial and tax positions



## Two-tiered approach: Local File

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### Local file

- Relevant financial information in relation to material transactions taking place between local country affiliate and associated enterprises
- Comparability analysis
- Application of the most appropriate TP method





## Timeline and next steps

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- White Paper published July 2013 for comment
- Public consultation 12-13 November in Paris (together with Discussion Draft on Intangibles)
- Integrate White Paper with work to be undertaken on BEPS Action 13
- Targeted completion by September 2014 as part of the work on BEPS



# Questions or comments?



Thank you for your attention!

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<http://www.oecd.org/ctp/transfer-pricing/>

<http://www.oecd.org/tax/beps.htm>