

BEPS – Where is BEPS today?

May 20, 2015

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I. BEPS – Wider context

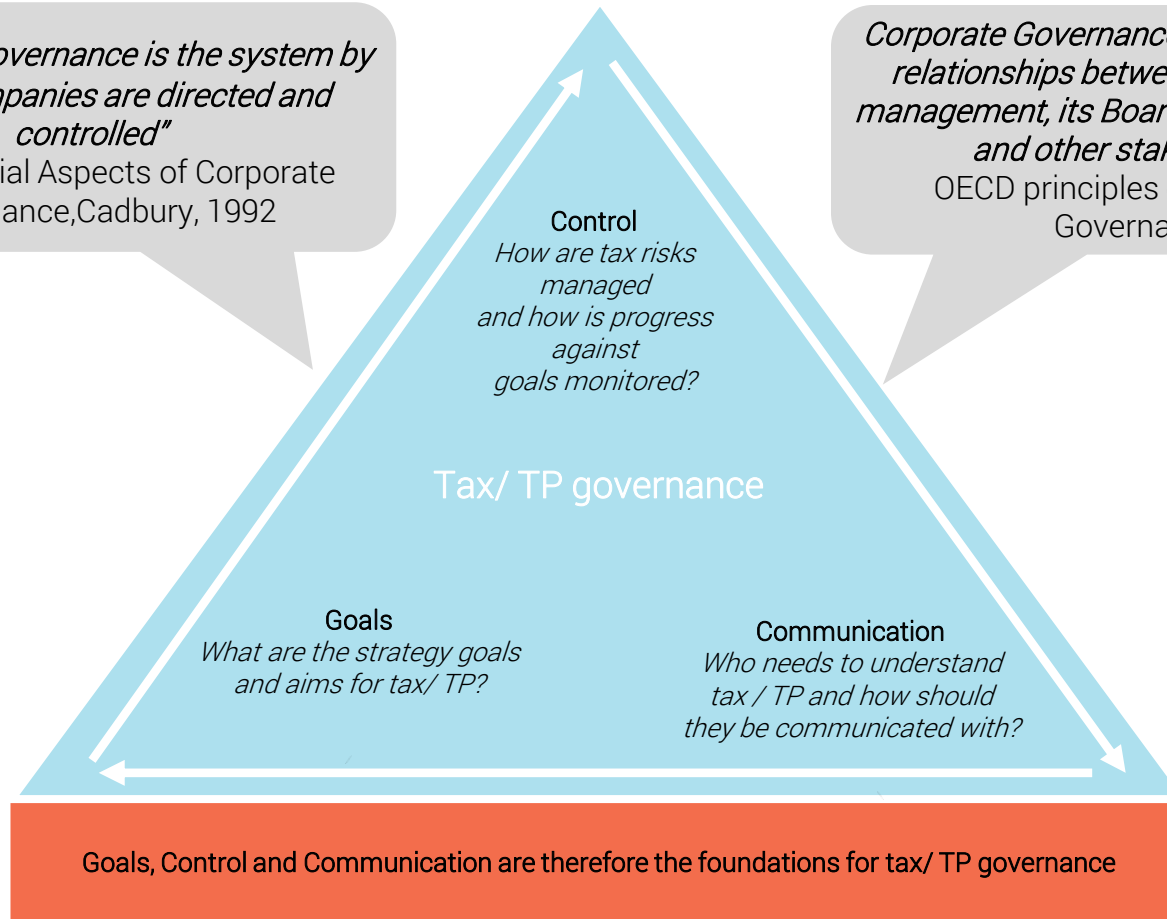
Tax/ transfer pricing governance

“Corporate Governance is the system by which companies are directed and controlled”

The Financial Aspects of Corporate Governance, Cadbury, 1992

Corporate Governance involves a set of relationships between a company’s management, its Board, its shareholders and other stakeholders”

OECD principles of Corporate Governance



The boards challenge: Aligning stakeholders' expectations

Nr	Stakeholder	Expectations	Tax responsibility
1	Shareholders/investors	Net profit	Optimize tax position
2	Analysts, Banks	Transparency	ETR/Tax cash/Risk
3	Tax Authorities/ Politicians	Cost reduction audits "Location savings" and "market premium" Fair share	Enhanced relationship Compliance with tax laws
4	Supervisory Authorities	Solvency 2 / Basel 3 (Financial institutions)	Equity forecasting (deferred tax assets/liabilities)
5	Audit Committee	No (tax) surprises	Tax reporting/Communication
6	Supervisory and Management Board	Reputation Solid tax position	Tax strategy / Tax risk management
7	External Auditor / Internal Audit	Reasonable tax assurance (no claims)	Monitoring effectiveness Tax Governance Framework
8	Public society	Fair/balanced tax system Fair share of taxes	Tax communication

I. BEPS Project – Key themes and timelines

The main goals of a BEPS initiative

- Enhances transparency to governments
- Use “Economic substance” embodied in “people functions” to drive taxation
- Eliminate “tax leakages” through enhanced co-operation between governments and through introduction of anti-avoidance measures
- Promotes the “broadening of taxable base”
- Captures all of these changes into a multilateral instrument to effectively implement these initiatives within a 1 to 2 years window

BEPS Action Plan: What is happening? (1/3)

BEPS action description	Status & Purpose	Key points
1. Address tax challenges of the digital company	<ul style="list-style-type: none"> Discussion draft released on 16 September 2014 Comments received and published. Identifying issues raised by the digital economy and possible actions to address them. 	<ul style="list-style-type: none"> Secondary functions – functionality local hubs in relation to profit split method 'Significant digital presence' vs. existing tax rules in relation to PE / interaction with BEPS action 7 – Prevent artificial avoidance of PE status What about 'economic substance' reflected by 'people functions'?
2. Hybrid mismatch arrangements	<ul style="list-style-type: none"> Discussion draft released on 16 September 2014. Comments received and published. Changes to the Model Tax Convention and recommendations regarding the design of domestic rules to neutralize the effect of hybrid instruments and entities. 	<p>Mismatch arrangements with hybrid effects that results in:</p> <ul style="list-style-type: none"> Deductions / No Inclusion (D/NI) or Double Deductions (DD) Indirect Deduction / No Inclusion (Indirect D/NI) <p>Interaction with BEPS Action 15 - Multilateral instrument</p>
3. Strengthen CFC rules	<ul style="list-style-type: none"> Discussion draft published on 3 April 2015, comments due by May 1, 2015, public consultation on May 12, 2015. Recommendations regarding the design of domestic rules. 	<ul style="list-style-type: none"> Primary CFC rule, further secondary form of taxation Cadbury Schweppes case, wholly artificial arrangements Extending CFC rules – potential EU conflict <p>Interaction with BEPS actions 1, 2, 4, 5 and 8-10</p>
4. Limit interest deductions and other financial payments	<ul style="list-style-type: none"> Discussion draft released on 18 December 2014. Comments received and published. Recommendations regarding the design of domestic rules. Changes to the Transfer Pricing Guidelines. 	<p>Apportionment / limitation of interest deductibility based on:</p> <ul style="list-style-type: none"> Formula driven approach Economic approach <p>Working party no 11 on aggressive tax planning vs. working party no 6 on taxation of MNEs</p>
5. Counter harmful tax practices - taking into account transparency and substance	<ul style="list-style-type: none"> Interim report issued on 16 September 2014; deadline 2nd output September 2015. Review of member country regimes. Strategy to expand participation to non-OECD members. Revision of existing criteria for harmful tax regimes. 	<ul style="list-style-type: none"> Substantial activity Modified nexus approach IP ownership, residual profit and allocation of value chain List of 30 beneficial tax regimes

BEPS Action Plan: What is happening? (2/3)

BEPS action description	Status & Purpose	Key points
6. Prevent treaty abuse	<ul style="list-style-type: none"> • Discussion draft released on 16 September 2014. • Comments received and published. • Anti-treaty shopping measures being proposed. Changes to the Model Tax Convention. • Recommendations regarding the design of domestic rules. 	<p>Alternative model provisions:</p> <ul style="list-style-type: none"> • Limitation on Benefits rule (LOB) • Principal Purpose Test (PPT) <p>Interaction with BEPS action 15 - Multilateral instrument</p>
7. Prevent artificial avoidance of PE status	<ul style="list-style-type: none"> • Discussion draft released on 31 October 2014. Comments received and published. • Changes to the Model Tax Convention. 	<ul style="list-style-type: none"> • Commissionaire arrangements & similar strategies • Diverted Profit Tax (DPT), UK & Australia • Look at profit attribution is key
8. Transfer pricing outcomes: intangibles	<ul style="list-style-type: none"> • Discussion draft released on 16 September 2014 and updated on 19 December 2014. • Comments received and published. • More detailed discussion draft on CCAs and hard to value intangibles released in April 2015. • Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention. 	<ul style="list-style-type: none"> • Alignment of economic, legal and accounting reality • Lack of economic substance vs. risk management • Legal agreements vs. conduct of parties • At arm's length behavior: audit trails / fair balance
9. Transfer pricing outcomes: risks and capital	<ul style="list-style-type: none"> • Discussion draft released on 19 December 2014. Comments received and published. • Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention. 	<ul style="list-style-type: none"> • Allocation of risks and profit at each step along the supply chain, i.e. allocation of risk driven by "control over risk" concept and "people functions"
10. Transfer pricing outcomes: other high-risk transactions	<ul style="list-style-type: none"> • Discussion draft released on 19 December 2014. Comments received and published. • Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention. 	<ul style="list-style-type: none"> • The concept of industry dynamics and bargaining concepts could be added as a further reference on how to apply these comparability adjustments in practice • Adoption of 'deemed pricing date' as delivery date for commodities transactions

BEPS Action Plan: What is happening? (3/3)

BEPS action description	Status & Purpose	Key points
11. Improving the analysis of BEPS	<ul style="list-style-type: none"> • Discussion draft released on 16 April 2015. • Comments received and published. • Recommendations regarding data to be collected and methodologies to analyze them. 	<ul style="list-style-type: none"> • Accurate evaluation of BEPS • Relevant for policy makers
12. Mandatory Disclosure	<ul style="list-style-type: none"> • Discussion draft released on 31 March 2015. • Comments received and published. • Recommendations regarding the design of the design of domestic rules. 	<ul style="list-style-type: none"> • Balance costs/compliance burden for the taxpayer vs tax benefits/additional ATAs reported in case of development of (new) MDRs • Hallmarks to be applied to (try to) distinguish between legitimate and abusive transactions
13. Re-examine transfer pricing documentation and CbC	<ul style="list-style-type: none"> • Discussion draft released on 16 September 2014. • Comments received and published. • Development of implementing arrangements for automatic exchange of CbC reports under international agreements. • Changes to Transfer Pricing Guidelines and recommendations regarding the design of domestic rules. 	<ul style="list-style-type: none"> • Revised standards for TP documentation: three-tiered structure / model template for CbC Report • UK & Spain national initiatives <p><i>Next steps:</i></p> <ul style="list-style-type: none"> • Jurisdictions to provide and enforce legal protections of the confidentiality of the information reported in CbC • Development of implementing arrangements for automatic exchange of CbC reports under international agreements
14. Make dispute resolution mechanisms more effective	<ul style="list-style-type: none"> • Discussion draft released on 18 December 2014. • Comments received and published. • Changes to the Model Tax Convention. 	<ul style="list-style-type: none"> • Disputes resolved in a 'principled, fair and objective manner' • Mutual Agreement Procedure (MAP) • No arbitration solution
15. Multilateral instrument	<ul style="list-style-type: none"> • Final report released on 16 September 2014. • Comments received and published. • Develop a multilateral instrument for amending bilateral tax treaties. 	<ul style="list-style-type: none"> • Ad-hoc group hosted at the OECD, open to participation from all States, will undertake this work, and will hold their first meeting by July 2015, aiming to conclude the drafting of the instrument by 31 December 2016. • Input stakeholders?

BEPS timelines

- 2014 deliverables: Actions 1, 2, 5, 6, 8, 13 & 15
- 2015 deliverables: Actions 3, 4, 7, 9, 10, 11, 12 & 14
- In February 2015, OECD and G20 countries agreed three key elements that will enable implementation of the BEPS Project:
 - A mandate to launch negotiations on a multilateral instrument to streamline implementation of tax treaty-related BEPS measures (*Action 15*);
 - An implementation package for country-by-country reporting in 2016 and a related government-to-government exchange mechanism to start in 2017 (*Action 13*);
 - Criteria to assess whether preferential treatment regimes for intellectual property (patent boxes) are harmful or not (*Action 5*).

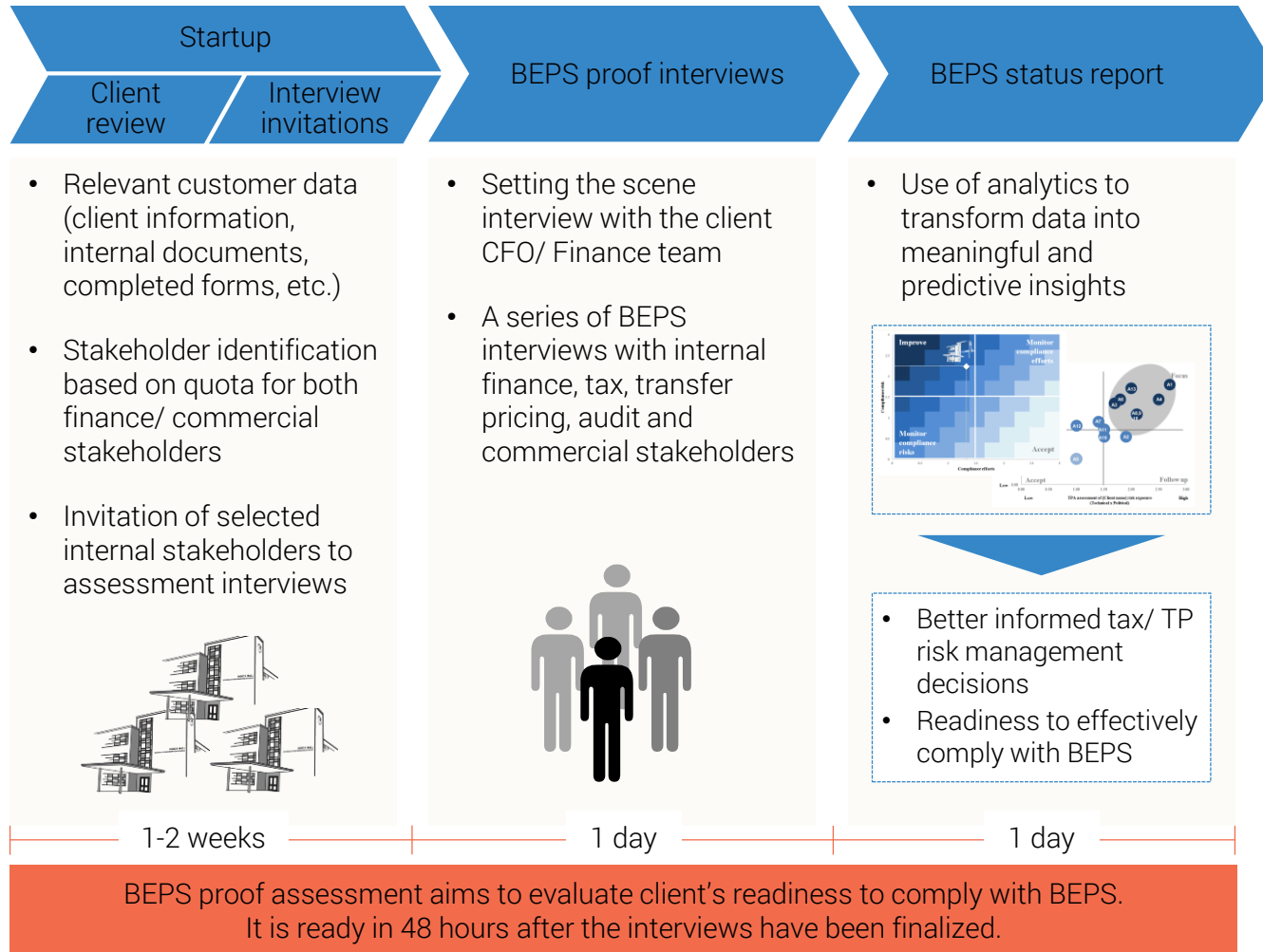
II. BEPS Readiness Test – Are you ready to comply with BEPS?

TPA Global BEPS readiness test

- TPA Global has developed a BEPS proof assessment to help you identify, at a high level, your readiness to comply with new international tax standards that are encouraged by the G20/OECD BEPS Action Plan by following the 15 BEPS actions approach.
- BEPS Readiness Test:
 1. Helps answer if you are ready to comply with new regulations encouraged by BEPS
 2. Assists in prioritizing improvement initiatives
 3. Serves as a catalyst to develop actionable tax / transfer pricing risk management tactics, including remodeling your tax / TP scenarios

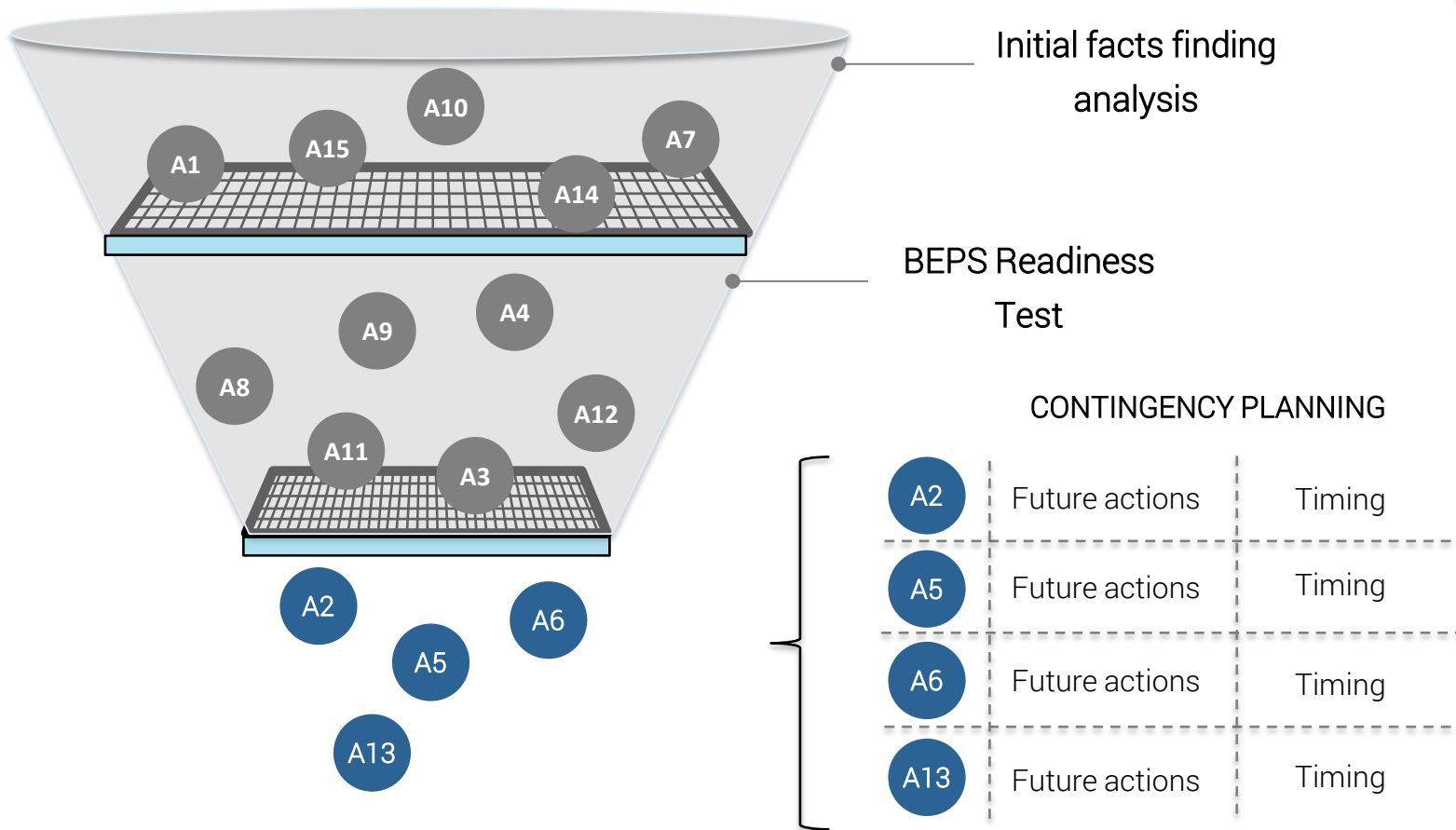
BEPS Readiness Test: Scope and timeline

BEPS readiness test is structured into three major stages



BEPS Readiness Test: Risk identifier

TPA's approach allows multinational companies to identify their BEPS risk exposures and creates a sense of urgency to revamp their tax / TP risk management tactics



BEPS Readiness Test: Initial facts finding analysis

At first, analysis of a general company's data is performed to obtain an initial view on its risk profile

1. Organizational chart
2. Code of conduct / Corporate Governance policy
3. Functional description of business units
4. Description of tax policy objectives
5. Description (Manual) of Treasury / Finance / Tax department (size, functions and responsibilities, etc.)
6. Description / visualization of finance (including tax / transfer pricing) processes and reporting lines
7. Finance / Tax / Transfer pricing software configuration
8. Financial statements of last 2 years / Forecast current year per business units/ lines or divisions
9. The nominal tax rates in the major countries of operations and average effective tax rate(s) on a group and country wide basis
10. The number of substantial tax / TP disputes over the last 3 years with a short description and status including a list of current APAs and MAPs

BEPS Readiness Test: Potential list of Interviewees

Interviewees	Interview type	Interview length
1. CFO/ Finance team	Setting the scene	1 hour
	BEPS interview	1 hour
2. Head of Tax	BEPS interview	1 hour
3. Head of TP	BEPS interview	1 hour
4. Internal audit	BEPS interview	1 hour
5. Business unit leaders	BEPS interview	1-2 hours
6. Management board	BEPS, including decision on final position	1 hour

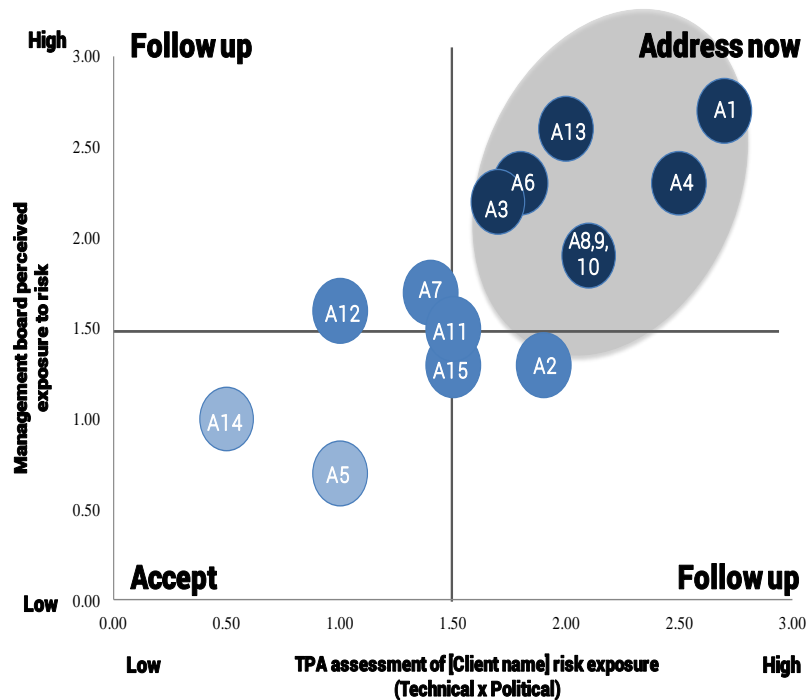
Example – Action 1. Digital economy questions and rankings

#	Questions	Possible responses	Management board perception	TPA assessment (Political x Technical)
1	To what extent does your core business of the enterprise rely on digital goods or digital services?	<ul style="list-style-type: none"> 1 None 2 Some 3 Significant part 	<ul style="list-style-type: none"> Low Medium High 	<ul style="list-style-type: none"> Low Medium High
2	Do you use websites as the only means to enter into a relationship with the clients meaning that transactions are processed online and no physical stores or agencies exist for the performance of the core activities except offices located in the parent company or operating company countries?	<ul style="list-style-type: none"> 1 No 2 To some extent 3 On a highly basis 	<ul style="list-style-type: none"> Low Medium High 	<ul style="list-style-type: none"> Low Medium High
3	<p>Does a branch or subsidiary of the foreign enterprise in a given country offer secondary functions (e.g., marketing and consulting) to clients resident in that country, which are strongly related to the core business of the foreign enterprise?</p> <p>If yes, what functionality do these hubs represent? Does the profit split method applied to the global value chain of the digital enterprise include these branches or subsidiaries that are considered to be performing secondary functions?</p>	<ul style="list-style-type: none"> 1 There is no such practice 2 To some extent 3 Such platform is in place 	<ul style="list-style-type: none"> Low Medium High 	<ul style="list-style-type: none"> Low Medium High

1 Low risk 2 Medium risk 3 High risk

BEPS Readiness Test: Aggregated result of the interview series

High-Tech Company risk matrix:



Key insights:

- High-Tech Company is vulnerable to the risk of its high dependence on digital products / royalties from IP
- Tax techniques as Double Irish Dutch Sandwich are used on a highly frequent basis to save tax leakages
- High-Tech Company applies certain financial instruments / entities that are qualified as hybrid
- A great portion of the firm's income is subject to CFC regulations
- The firm is highly dependent on inter-company transactions
- High-Tech Company's has no tax / TP risk management framework
- High-Tech Company has no TP software solution in place / data requirements for TP purposes are designed locally on an ad-hoc

Example – Recommendation area's of attention (1/2)

#	BEPS Action	Comments
2	Hybrid mismatch arrangements	Hybrid investment structures at stake
4	Interest deductions and other financial payments	Restriction on tax deduction of intercompany interest charges under review
5	Harmful tax practices	Restriction on launching residual profit in preferential tax regimes (modified nexus approach)
6	Prevent treaty abuse	Structuring of certain arrangements or transactions, e.g. back-to-back

Example – Recommendation area's of attention (2/2)

#	BEPS Action	Comments
7	Permanent Establishment (PE) status	Current activities trigger substance challenges
9	Risks and capital	Allocation of risks and profit at each step along the supply chain, i.e. allocation of risk driven by “control over risk” concept and “people functions”
10	Cross-border transactions	CUP method vs. reference prices - Sixth method
13	CbC reporting	Annual consolidated group revenue exceeding €750 million (UK adopted for UK headquartered companies, Spain under conditions simplified content < €45 million)

BEPS Readiness Test: What's in it for you?

- You will get a comprehensive “dashboard style” status report of your readiness to comply with the new BEPS triggered regulations;
- You will have broader recognition and understanding of your key compliance risks;
- Based on the assessment, you will be able to proactively identify and develop actionable tax/ transfer pricing risk management tactics, including remodeling your tax/ TP scenarios;
- You will be able to avoid potential reputational damage by unveiling underlying issues and risks that you are not aware of;
- You can take immediate action, because the report is ready in 48 hours after the interviews have been finalized.

Attention. Remediation needed in 2015 for country-by-country (CbC) reports on issues per 1/1/2016

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TPA Global provides international businesses with integrated and value-added solutions in improving financial performance, operational efficiency, strategic development and talent coaching through a cross-border and cross-discipline team of professionals which identifies the right solutions for customers and targets; efficient and streamlined advisory and implementation processes which cut through operational complexities across functions and borders; and superior customer service and support which proactively anticipate the evolving needs of the clients.

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