

BEPS Action Plan & Japan Tax Reform 2014

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Background and Outline of BEPS Action Plan

Why BEPS? Why now?

- Focus has historically been on the development of common standards to eliminate double taxation for cross border investments
 - Model Tax Convention, which serves as the basis for over 3,000 bilateral tax treaties
 - Transfer Pricing Guidelines, which provide common standards for allocating income among members of a multinational group
- Prevention of double taxation remains core work but there is now recognition that the issue of double non-taxation due BEPS should also be tackled
- Unprecedented public attention on corporate tax affairs

Source: Presentation material in OECD Live Webcast (2nd April 2014)

Problems caused by BEPS

MNEs reduce their tax burden by aggressive tax planning using loopholes in the interaction of countries' domestic tax laws

Government

- Less revenue
- Undermine the integrity of tax system
- Under-fund of public investment in developing countries

Individual

- Individual taxpayers who cannot shift their income away from jurisdictions where income producing activities are conducted bear a greater share of the burden

Business

- Corporation that operate only in domestic markets have difficulty competing with MNEs that have the ability to shift their profits across borders to avoid or reduce tax.

How can the BEPS be addressed?

- Most BEPS planning is legal – if governments are unhappy with results, the rules should be changed
- Multinational enterprises often take advantage of loopholes in tax rules of different countries
- No single country acting unilaterally can effectively address the issue
- Uncoordinated actions by governments could produce the risk of double – and possibly multiple – taxation for businesses
- An internationally coordinated approach is needed that...
 - will not only facilitate and reinforce domestic actions to protect tax bases
 - but will also provide comprehensive international solutions

History of BEPS Project

June, 2012

- At the G20 Summit (Los Cabos, Mexico), “reiterate the need to prevent base erosion and profit shifting”
- At the plenary of the Committee of Fiscal Affairs (CFA), the BEPS Project was launched

latter half of 2012

- Criticism against tax avoidance by Starbucks, Google, Amazon, Apple heated up politically

November, 2012

- The UK and German Finance Minister issued joint statement concerning BEPS (French Finance Minister supported)

January ~ February, 2013

- CFA endorsed the BEPS report “Addressing BEPS”, which was submitted to G20

June, 2013

- At the G8 Summit (Lough Erne), G8 endorsed the BEPS Project
- CFA endorsed “BEPS Action Plan”

July 19, 2013

- Publicly released “BEPS Action Plan” and submitted to G20

September 5~6, 2013

- At the G20 Summit (St. Petersburg, Russia), BEPS Action Plan was fully supported

The BEPS Action Plan

- Published in July, 2013
- Consists of 15 action items organized 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
- Various types of deliverables
 - Recommendation on domestic policy
 - Revision of OECD's Model Tax Convention
 - Revision of OECD's Transfer Pricing Guideline
 - Analytical report on the issue

Timeline for BEPS deliverables

September 2014

- Digital Economy Report
- Hybrids
- Review of HTP Regimes
- Preventing Treaty Abuse
- Addressing TP aspects of Intangibles (Phase 1)
- Addressing TP documentation
- Multilateral Instrument Report

September 2015

- CFC Rules
- Interest Deductibility
- Strategy on expansion of FHTP
- Addressing avoidance of PE status
- Addressing TP aspects of Intangibles (Phase 2)
- Addressing TP aspects of risks and capital
- Addressing TP aspects of other high risk transactions
- Report on Data and Economic Analyses
- Mandatory Disclosure Rules
- Dispute Resolution

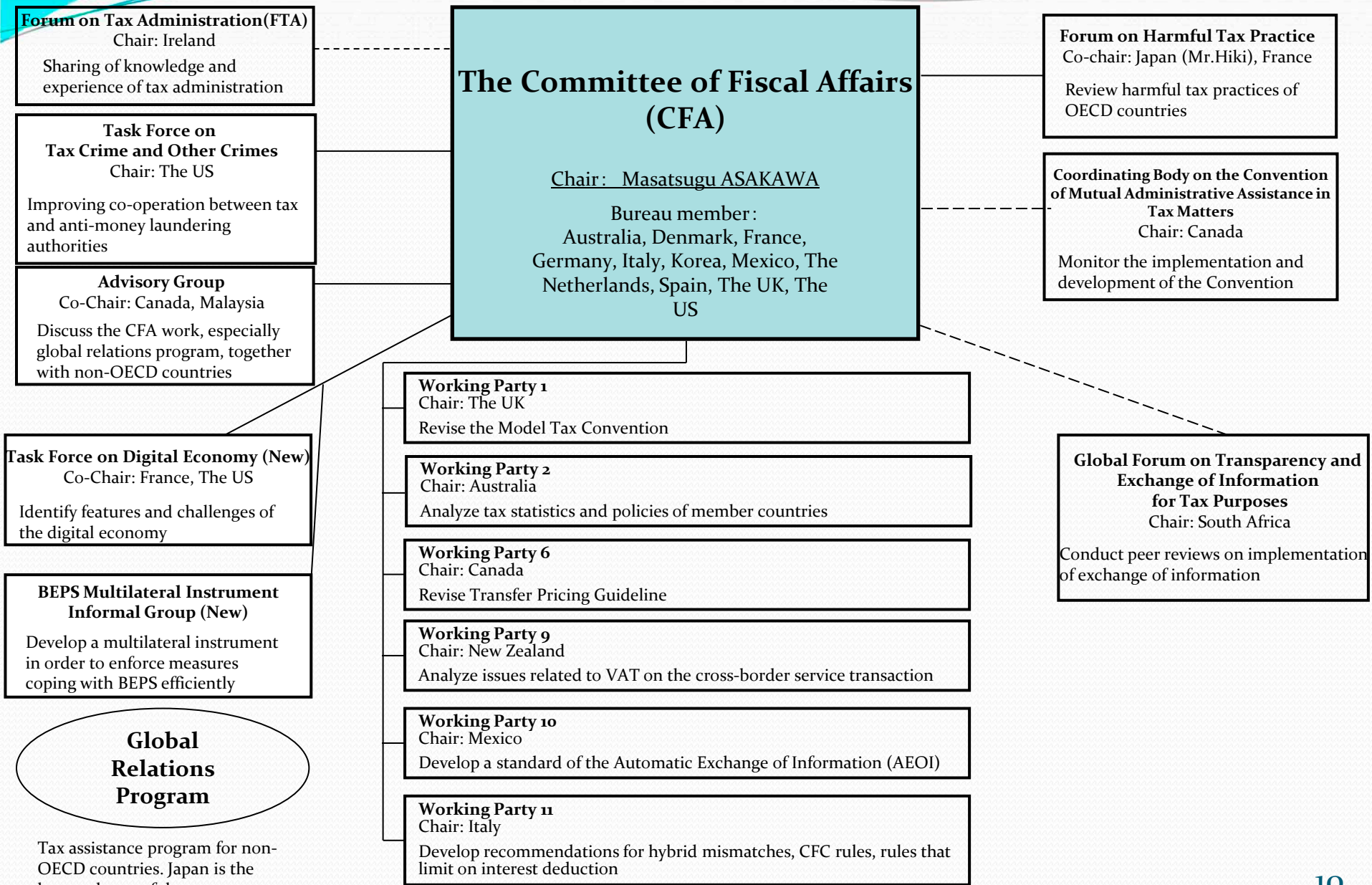
December 2015

- Addressing TP Interest Deductions
- Revision of HTP Criteria
- Multilateral Instrument

Organization of work

- Work being carried out by the Committee on Fiscal Affairs (CFA) via its subsidiary bodies
- OECD and non-OECD G20 Countries are Associates in the Project on an equal footing
- Colombia and Latvia have also joined on an equal footing as OECD Accession countries

Organizational Chart of CFA



Engagement with Stakeholders

BEPS Action Plan Item	Public Comment On Discussion Draft	Public Consultation	Deadline
Action 1 Address the Tax Challenges of the Digital Economy	24 March 2014~ 14 April 2014	23 April 2014	September 2014
Action 2 Neutralize the Effect of Hybrid Mismatch Arrangements	19 March 2014~ 2 May 2014	15-16 May 2014	September 2014
Action 6 Prevent Treat Abuse	17 March 2014~ 11 April 2014	14-15 April 2014	September 2014
Action 13 Re-examine Transfer Pricing Documentation	30 January 2014~ 23 February 2014	19 May 2014	September 2014

Engagement with developing countries

- Developing countries' input obtained through several mechanisms:
 - Task Force on Tax and Development (28 March 2014)
 - OECD Global Relations Program
 - Global Fora
 - on Tax Treaties (26-27 September 2013)
 - on Transfer Pricing (26-28 March 2014)
 - on VAT (17-18 April 2014)
 - The UN (21-25 October 2013)
 - Regional Consultations (South Korea (20-21 February 2014) etc...)
 - Australia G20 Tax Symposium (9-10 May 2014)
- The input received will also be fed into the report for the G20 Development Working Group

BEPS Action Plans

Action 1: The digital economy

- Objectives:
 - Identify the main difficulties that the digital economy poses for the application of existing international tax rules
 - Develop detailed options to address these difficulties
- Expected Output and Deadline:
 - A report identifying issues raised by the digital economy and possible actions to address them (September 2014)
- Further detail will be presented by Piet Battiau later

Action 5: Harmful Tax Practices

- Objectives:
 - Revamp the work on harmful tax practices with a priority on...
 - Improving transparency
 - Requiring substantial activity for any preferential regime
 - Engage with non-OECD members on the basis of the existing framework
 - Consider revision or additions to the existing framework
- Expected Output and Deadline:
 - Finalise review of member country regimes (September 2014)
 - Expand participation to non-OECD members (September 2015)
 - Consider revisions or additions to existing framework (December 2015)

Action 5: Issues under Discussion

- Review of preferential regimes in member countries and BEPS Associates
- Develop criteria for substantial activity in any preferential regimes
- Improve transparency, including compulsory spontaneous exchange on rulings related to preferential regimes

Action 6: Treaty Abuse

- Objectives:
 - Prevent the granting of treaty benefits in inappropriate circumstances
 - Circumventing the limitations of the treaty itself
 - Circumventing application of domestic tax law by using treaties
 - Clarify that tax treaties are not intended to be used to generate double non-taxation
 - Identify the tax policy considerations that countries should consider before deciding to enter into a tax treaty with another country
- Expected Output and Deadline:
 - Change to the Model Tax Convention (September 2014)
 - Recommendations regarding the design of domestic rules (September 2014)

Action 6: Issues under Discussion

- How to prevent the granting of treaty benefits in inappropriate circumstances
 - Limitation-on-benefits (LOB)
 - Main purpose test
- Saving clause for treaty abuse targeted at circumventing domestic tax law
- Other specific anti abuse rules:
 - Minimum holding period dividend transfer transactions
 - Tie breaker rule dual residence entities: MAP

Action 8: Transfer Pricing of Intangibles

- Objectives:
 - Adopt a broad and clearly delineated definition of intangibles
 - Ensure that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with value creation
 - Develop transfer pricing (TP) rules or special measures for transfers of hard-to-value intangibles
 - Update the guidance on cost contribution arrangements
- Expected Output and Deadline:
 - Revision of the TP Guidelines concerning transfers of intangibles (September 2014 and 2015)

Action 8: Issues under Discussion

- WP6 had productive meetings in the end of March
- Tentative agreements were reached on most aspects of the 30 July 2013 Revised Discussion Draft
- Issue to be further discussed at the next WP6 meetings in May: Integration and correlation of Section B of Chapter VI with 2015 BEPS work on risk, re-characterization and capital (funding)

Action 13: TP Documentation

- Objectives:
 - Develop rules regarding transfer pricing documentations (including master/local master, Country-by-Country (C-by-C) reporting template) to enhance transparency for tax administration
- Expected Output and Deadline:
 - Revision of the TP Guidelines concerning transfer pricing documentation (September 2014)

Action 13: Tentative decisions taken by WP6

- Eliminate transactional reporting in C-by-C template – limit transactional reporting to local file
- Retain reporting of activity measures on a country basis – number of employees, tangible assets, capital and retained earnings
- Require country level financial data for all countries but not entity-by-entity reporting
- Include a list of entities and PE's included in each country with numbers / activity codes for each
- Provide flexibility regarding sources financial data provided a consistent approach followed for entire group and from year to year
- C-by-C template a separate document / not part of master file
- Clarify that the master file is supposed to be a high level overview
- Flexibility as to whether master file should be prepared on a group – wide basis or by line of business

Action 13: Issues under Discussion

- Filing and sharing process for C-by-C template and for master file
 - By exchange of information
 - By domestic law
- Guidance on languages used in documents
- The tentative decisions by WP6 would be further discussed

Action 15: Multilateral Instrument

- Objectives:
 - Analyze the tax and public international law issues related to the development of a multilateral instrument
 - Develop a multilateral instrument designed to provide an innovative approach to international tax matters
- Expected Output and Deadline:
 - Report identifying relevant public international law and tax issues (September 2014)
 - Develop a multilateral instrument (September 2015)

Action 15: Issues under Discussion

- The scope of the multilateral instrument
- The flexibility of the multilateral instrument to modulate Parties' commitment (Combination of core provisions and opting-in/opting-out provisions)
- The mandate of an International Conference
 - Scope (Implementing the BEPS Action Plan)
 - Time (No more than 2 years)
- The longer term perspective

Japan Tax Reform 2014

Changes in domestic taxation rules on the profits of a foreign enterprise

- Main aspects;
 - “the force of attraction principle” to “attributable income principle”
 - Adoption of the Authorised OECD Approach (AOA)
⇒Accordingly, Japanese tax treaty policy has changed: Adoption of the new Article 7 of OECD Model Tax Convention reflecting the AOA

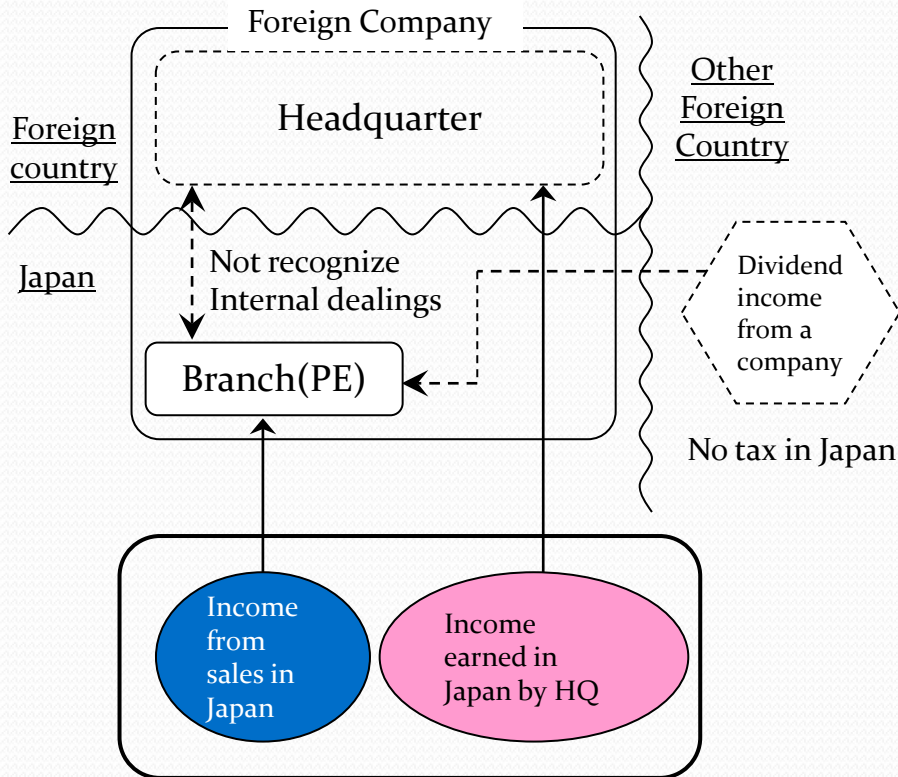
From “the force of attraction principle” to “attributable income principle”

- Change from “the force of attraction principle” to “attributable income principle” based on the AOA
 - Adopting the internationally accepted principle
 - To ensure consistency with tax treaties concluded
 - For example:
 - Under “the force of attraction principle”, all Japanese source income is taxable regardless of whether such income is attributable to a PE in Japan or to a HQ in a foreign country.
 - Under “attributable income principle”, the business profits attributable to a PE in Japan will be taxable regardless of whether the profits arise in Japan or not.

“The force of attraction principle” & “attributable income principle”

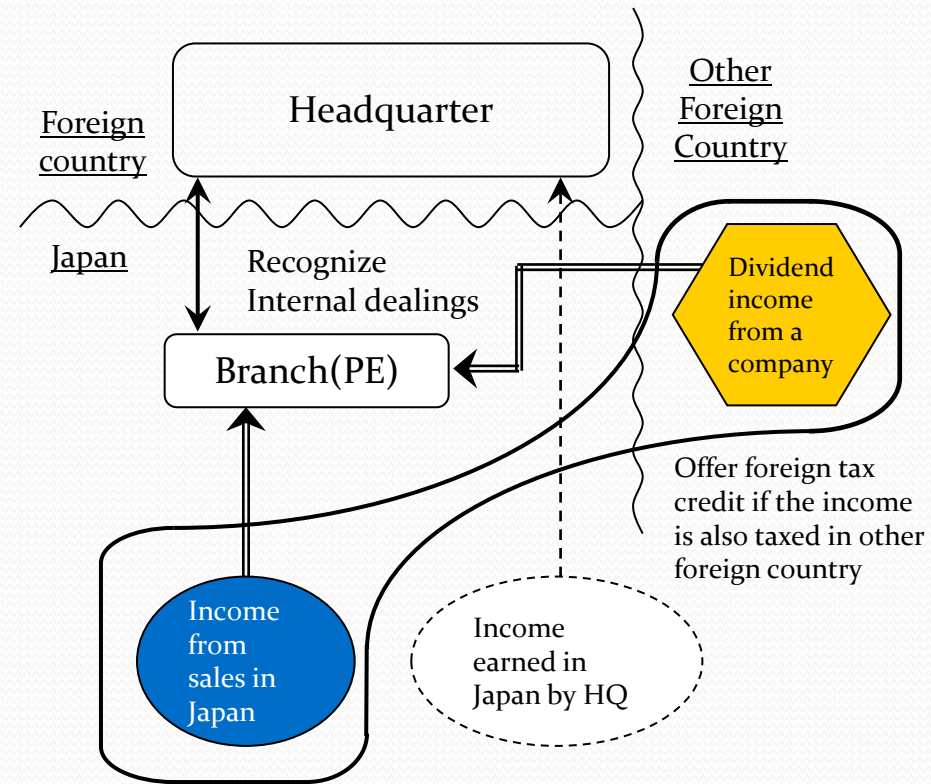
The force of attraction principle

All Japanese source income is taxable regardless of whether such income is attributable to a PE in Japan or to a HQ in a foreign country.



Attributable income principle

The business profits attributable to a PE in Japan will be taxable regardless of whether the profits arise in Japan or not.



Adoption of the AOA

- Attributable income principle
- Functionally separate entity approach
- Recognition of internal dealings
- Capital attributable to PE
- Foreign tax credit for PE
- Documentation

Other points to mention

- Similar rules for individual non-residents with a PE in Japan
- Applicable for;
 - in case of companies, business years beginning on or after 1st of April 2016
 - in case of individuals, taxable years beginning on or after 1st of January 2017

Thank you !
ありがとう。