

# Base Erosion & Profit Shifting (BEPS) & the Investment Management Industry



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## ***What are we covering today?***

1. What is BEPS?
2. How does BEPS affect your business?
3. Singapore and the Region

# ***BEPS – Quick 101***

# ***1***

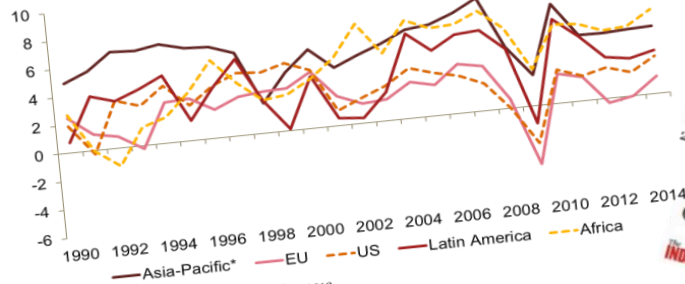
# Global Environment – Why is Tax Relevant today?

## The tax debate - the campaigners



## The tax debate - the impact of the global downturn

% per annum change in GDP

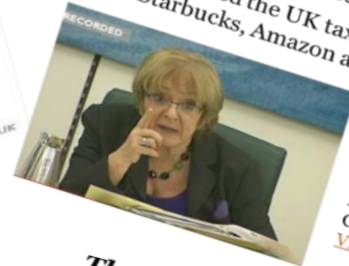


Source: IMF World Economic Outlook, October 2013  
\* Major 6 economies

## The tax debate - the political interest

### UK Public Accounts Committee

- UK parliamentary committee charged with examining government spending to ensure it meets value for money objectives.
- Has questioned the UK tax authority (HMRC), heads of tax of the Big 4 and Starbucks, Amazon and Google executives on tax avoidance.



"We are not accusing you of being illegal, we are accusing you of being immoral"  
Margaret Hodge MP  
Chair of UK Public Accounts Committee

### In the past, tax was:

- A private financial matter
- A cost to be managed
- Regulatory compliance
- Interpretation of the law

## The tax debate in the media

MPs attack Amazon, Google and Starbucks over tax avoidance  
Report also criticises HM Revenue & Customs for leniency in dealing with corporations that pay little or no corporation tax  
the guardian 3 December 2012

EU banks face strict transparency rules  
FINANCIAL TIMES 19 February 2013  
Prince Charles's duchy taxes questioned by MPs  
The Telegraph 28 June 2013

Corporate avoidance 'undermining' tax system  
FINANCIAL TIMES 16 June 2013  
Havens crackdown: Momentum builds for tax transparency  
By Vanessa Houlder

Watt? No tax?  
Npower avoids paying £100m to HMRC by funneling massive sum to German owners via Malta  
Surrey City 30 April 2013

### Now, tax is also:

- A reputational issue
- An investment in society
- Corporate responsibility
- Risk management

# ***BEPS in one slide***



## **What is BEPS?**

- Base Erosion – exploiting gaps and mismatches in tax laws to create competitive advantages
- Profit Shifting – moving profits from high tax jurisdictions to lower tax jurisdictions
- Not illegal



## **3 primary themes**

Transparency, substance and coherence

- Transparency actions (significant additional disclosure)
- Substance actions (aligning taxing rights with value-adding activity)
- Coherence actions (removing gaps, black holes)

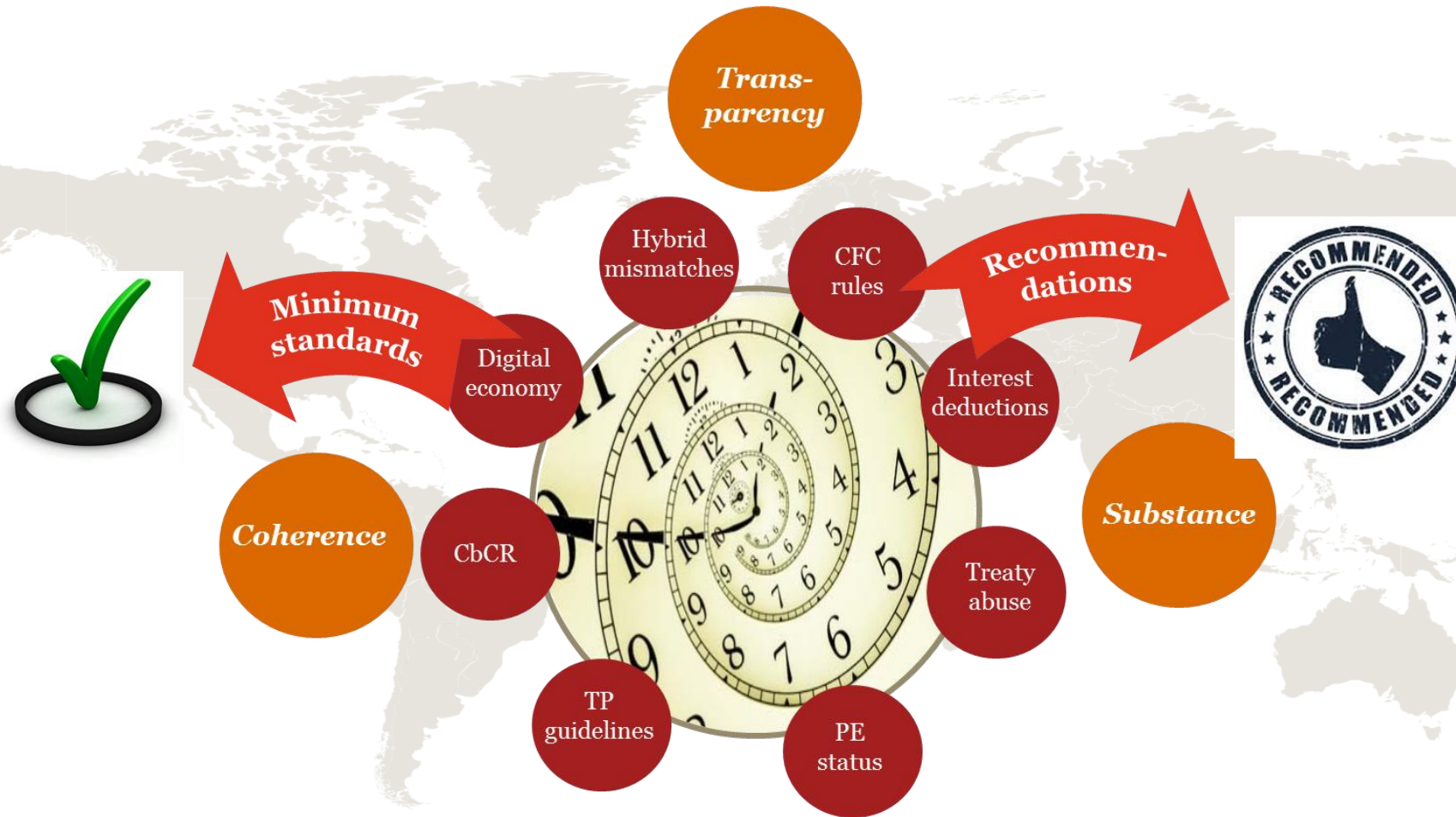


## **3 other/related issues**

Digital, dispute resolution, multilateral instrument

# OECD BEPS

*Where do we stand now?*



# Multilateral Instrument to Implement BEPS

## OECD/G20 BEPS Project – Multilateral Instrument

- The Multilateral Instrument (“MLI”) allows countries to transpose the BEPs Actions into existing bilateral treaties worldwide. As of January 2018 , 78 countries have signed the MLI and an additional 6 countries have expressed their intent to sign the MLI.
- Includes provisions for adoption into bilateral treaties worldwide, aimed at combating:
  - Hybrid mismatch arrangements
  - Permanent establishment avoidance
  - Treaty abuse

MLI has effect if treaty partners makes the same choices regarding the various options.

Minimum Standards	Options
Preamble	PE Changes
LOB/PPT	Dividend holding period
TP – 9(2) (to an extent)	Capital gains changes
MAP Changes	Switchovers/Hybrids
	Dual Residence
	Savings clause
	Arbitration

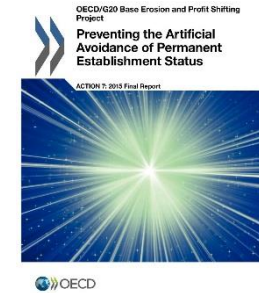
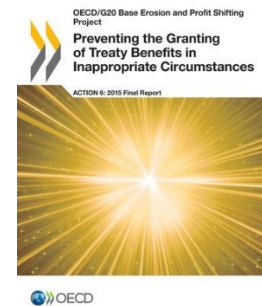
# ***BEPS - Implications for Investment Management Sector***

# 2

# ***BEPS Implications***

## ***The big picture***

***Why is BEPS important for the AWM industry?***

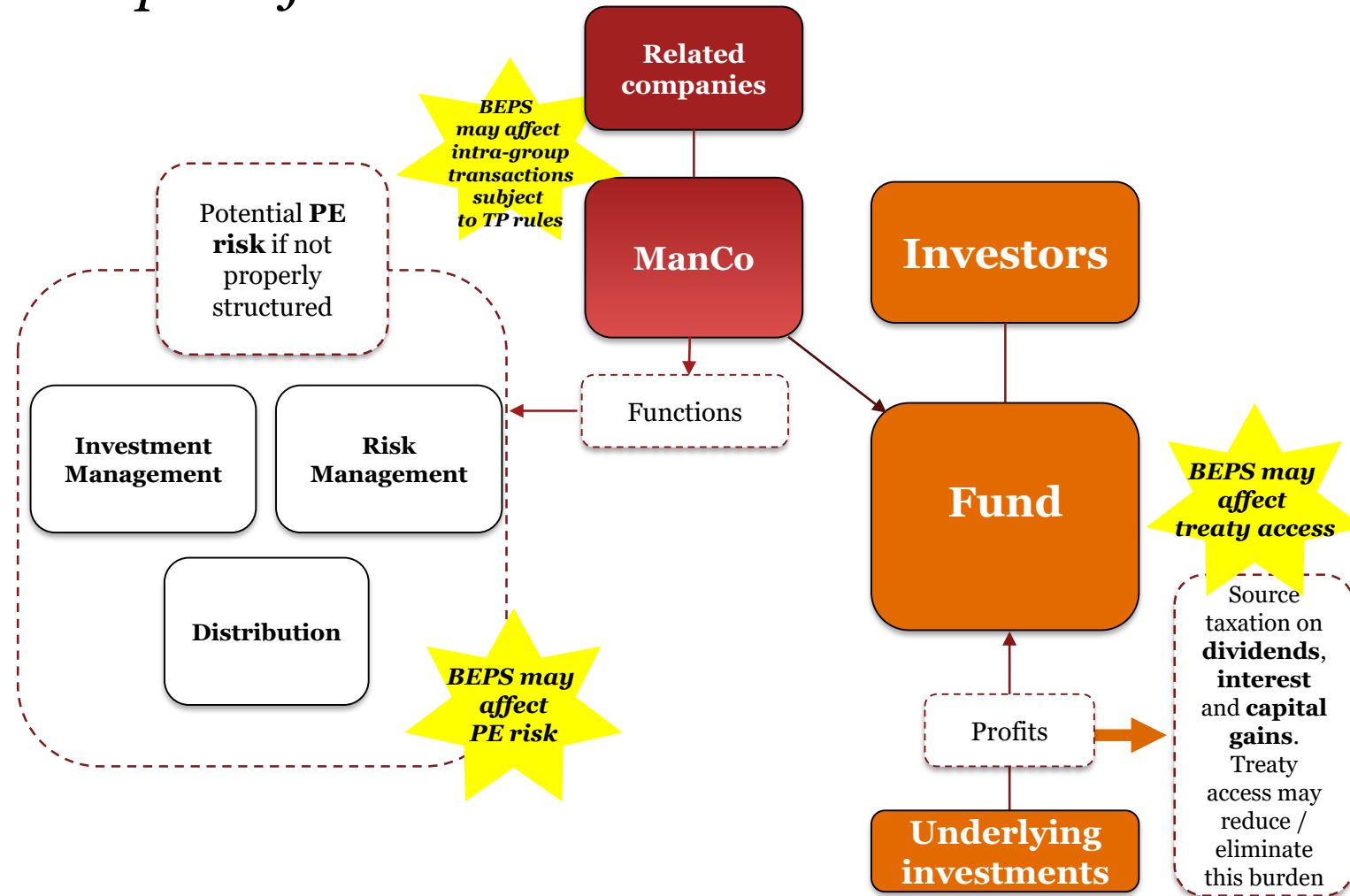


- The members of the G20 and the OECD agreed to implement a number of measures in order to address opportunities of base erosion and profit shifting of the current international tax system (the “BEPS” Project). BEPS has an impact on:
  - Tax treaty access for Funds (BEPS Action Plan 6)
  - Risk of a taxable presence in other countries (PE) for Funds (BEPS Action Plan 7)
  - Transfer pricing reporting (BEPS Action Plan 13)



# BEPS Implications

## Main impacts for AWM



# BEPS Implications

## Treaty access

### Why treaty access is important for corporate Funds?

*AWM vehicles are often subject to taxation in the countries where their underlying investments are located (the source countries):*

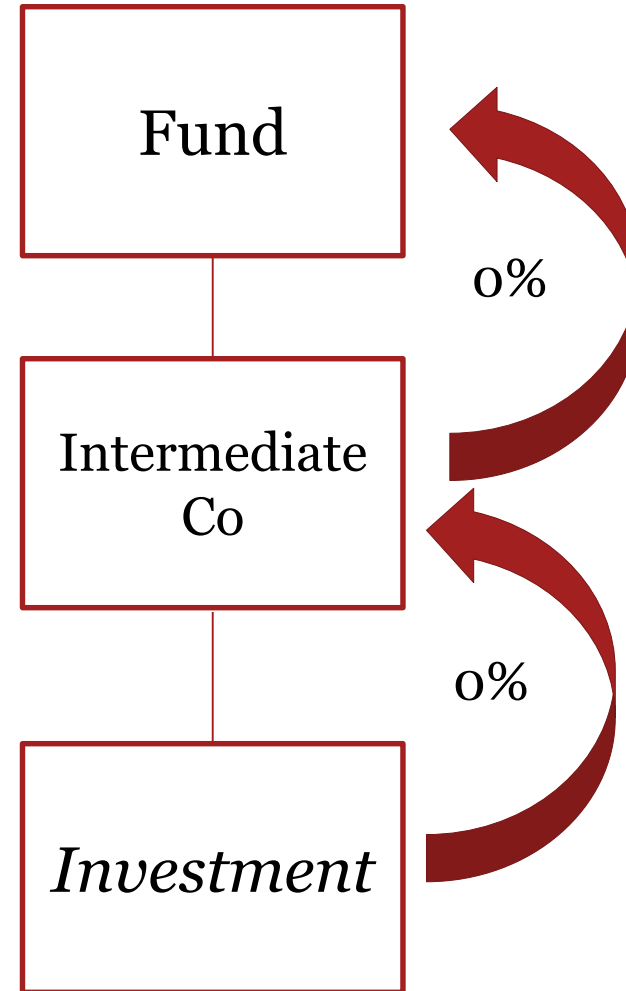
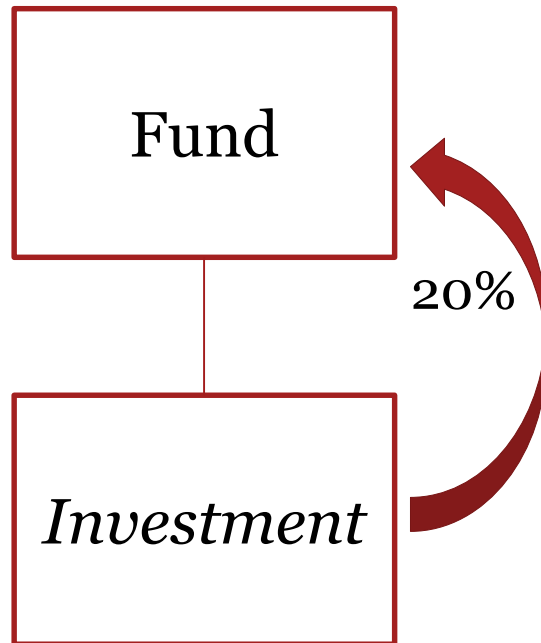
- Dividends and interest derived from the underlying investments can be subject withholding taxation under the domestic law of the country of source of such profits.
- Capital gains derived from the disposal of the underlying investments may also be subject to taxation in the source country.



**Tax treaties signed by country of domicile of the Fund with some source countries can reduce, or even exempt from, source taxation in the countries of the underlying investments**

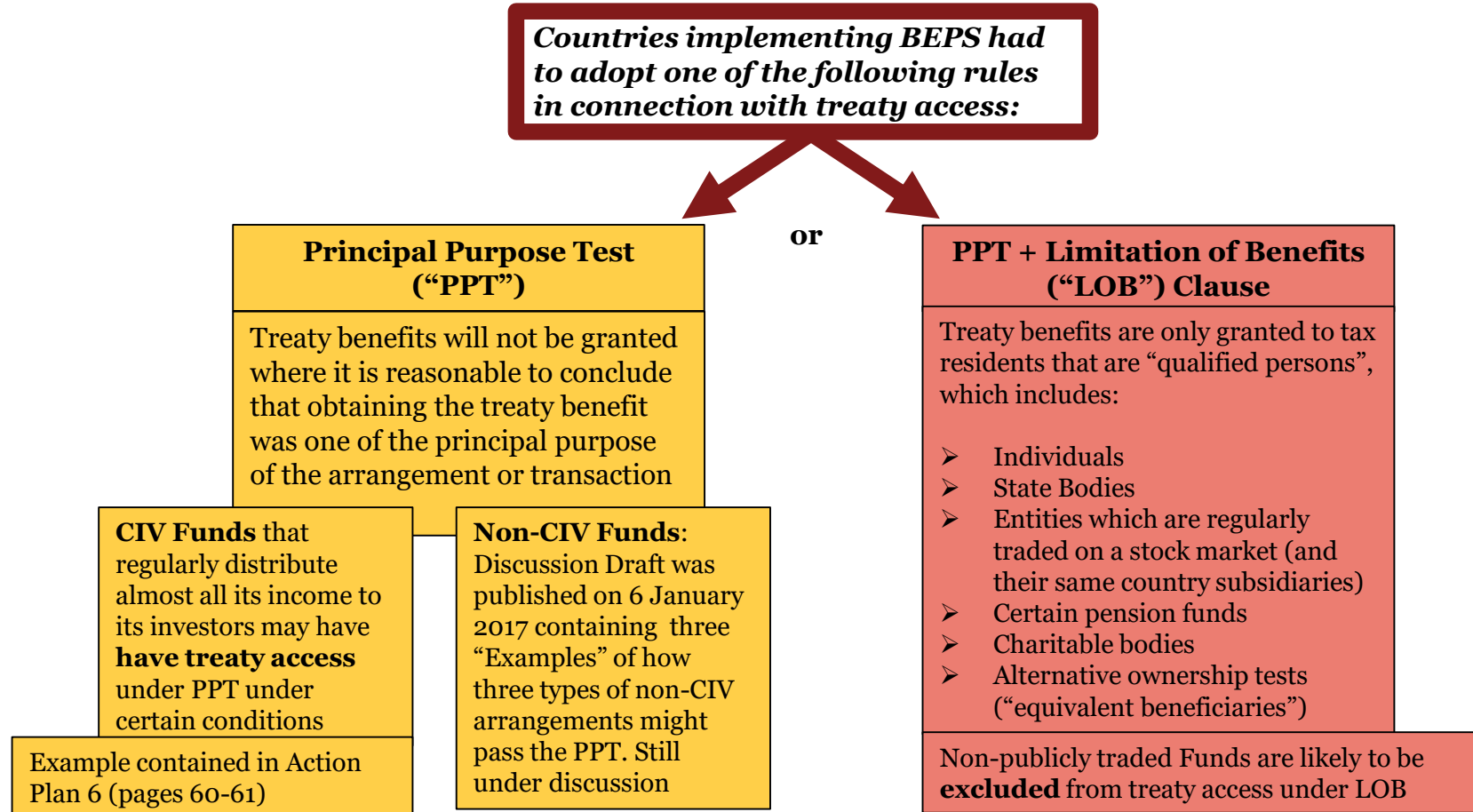
## ***BEPS Implications***

*Treaty access*



# BEPS Implications

## Treaty access



# ***BEPS Implications***

## *Treaty access*



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## ***BEPS Implications***

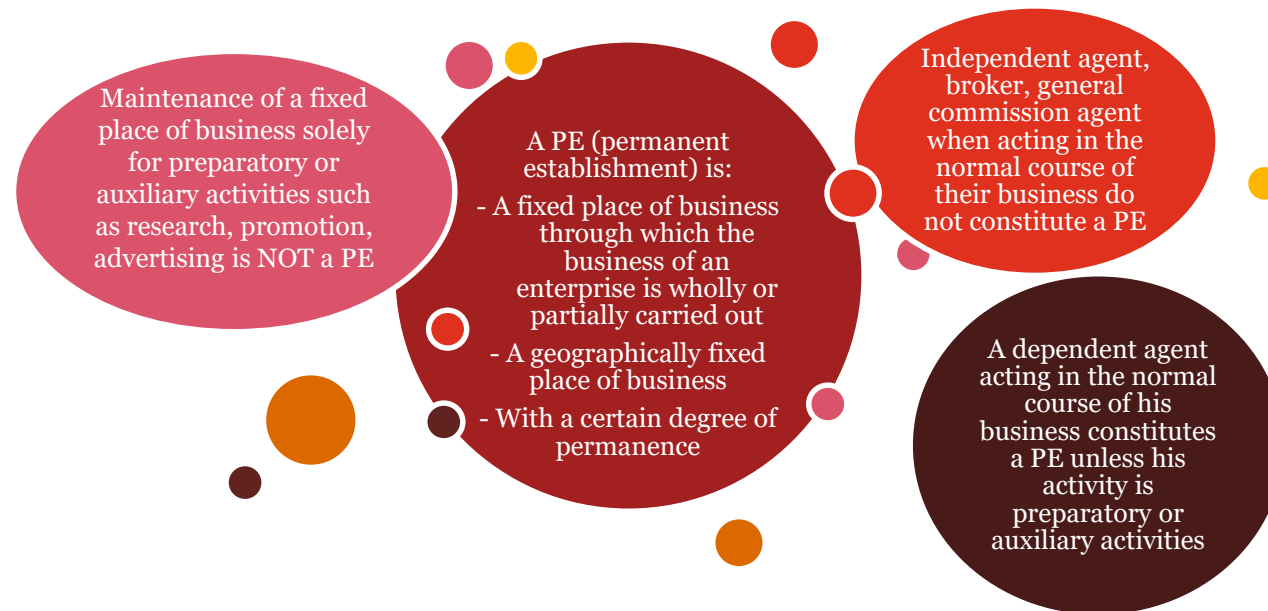
### *Treaty access – Possible Impact*

- Lower risk of double taxation for local investments – leading to more domestic investments by onshore funds as opposed to making cross-border investments.
- Global focused funds – increased in tax costs and impacting NAV?
- Change in focus to debt investments since equity investments may be hit with double taxation?

# BEPS Implications

## Extension of scope of PE

### *The standard concept of Permanent Establishment (“PE”)*



*An enterprise who carries on business in another country through a PE in such jurisdiction **may be subject to taxation in such country**. In other words, if another country concludes that a Fund has a PE in its territory, it may apply taxation in connection with the profits of such Fund therein.*

# ***BEPS Implications***

## ***Extension of scope of PE***

The report on Action 7 broadens the scope of the PE definitions under article 5 of the OECD Model Tax Convention, upon which most Double Tax Treaties between Contracting States have been based.

### ***So what's new?***

➤ Broader definition of “**dependent agent**” – new wording is:

*“Where a person acts ... on behalf of the enterprise, and in doing so, habitually concludes contracts, or habitually **plays the principal role** leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are in the name of the enterprise”*

➤ Harder for related parties to be “independent agents” – new wording is

*“where a person **acts exclusively or almost exclusively** on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent”*

➤ Specific activity get-outs – each listed activity in article 5.4 must now only be “preparatory and ancillary” to allow non-PE status

### **Likely Consequences:**

- Rules concerning creating a PE are being expanded (i.e. it is likely for businesses to be more exposed to PE risks) and this has potential impact on marketing, fund raising and sub-advisory agreements.
- Tax authorities are becoming more aware of the issue and starting to act

# ***BEPS Implications***

## ***Transfer Pricing***

### ***Pre-BEPS TP Documentation Requirements***

- Organization chart
- Support for TP used for controlled transactions
- Support profit attribution permanent establishments

### ***Local File***

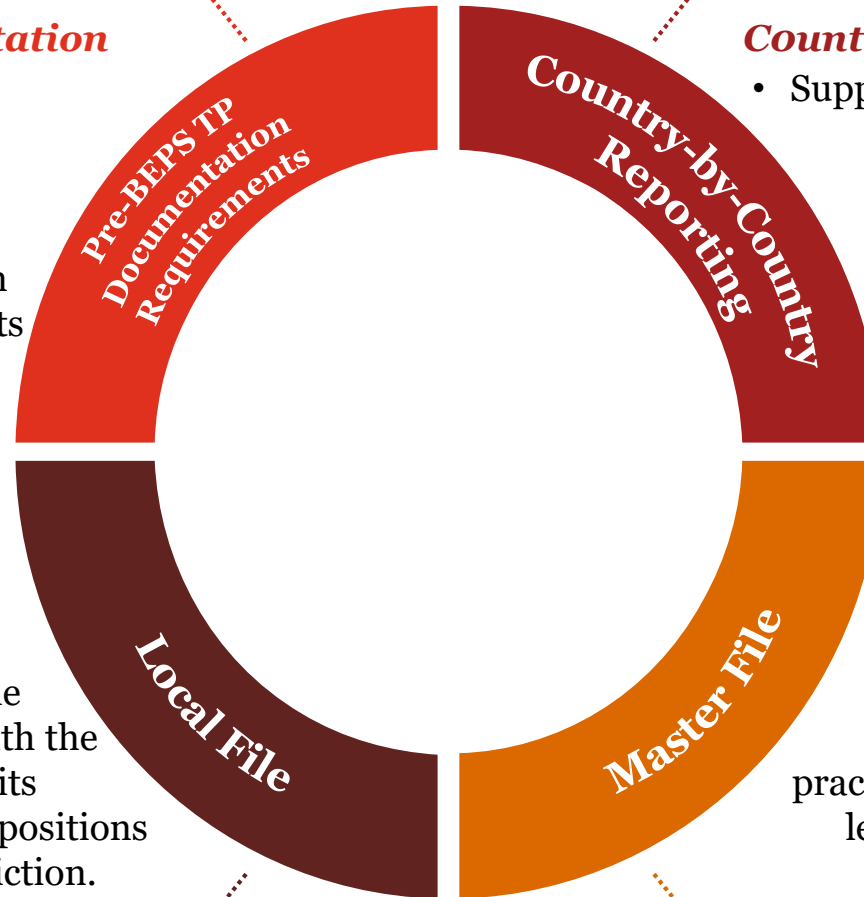
- Detailed information on specific intercompany transactions.
- Provide assurance that the taxpayer has complied with the arm's length principle in its material transfer pricing positions affecting a specific jurisdiction.

### ***Country-by-Country Reporting***

- Support high level transfer pricing risk assessment.
- Aggregated information on revenues, profits, taxes and indicators of economic activity.

### ***Master File***

- 'Blueprint' of MNE's business.
- Provide a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context.



# Country – by – Country Reporting and Transfer Pricing Documentation

**Who?** Any multinational enterprises (MNEs) operating in countries adopting OCED's CbCR guidance (G20, OECD, CIAT, ATAF and more) with revenue > 750M euros (\$860M)

**What?** County by country (CbC) report, master file and local file to be **submitted annually**

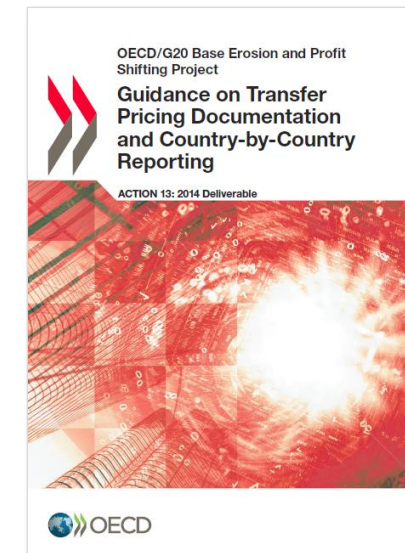
**Where?** CbC report to be filed with ultimate parent's home jurisdiction or lower-tier jurisdictions where the MNE operates (secondary mechanism); master file and local file to be filed directly with relevant local tax jurisdictions.

**When?** CbC report required for fiscal years starting on or after January 1, 2016 to be filed one year from the close of the related fiscal year (i.e., no later than December 31, 2017)

**How?** The tax authority with which the MNE's ultimate parent, surrogate parent, or lower-tier entity (subsidiary or PE) filed CbC report will share it via treaty-based exchange

**Why?** Enhanced transparency/risk assessments

*CbCR is an annual disclosure, targeted at large companies. The OECD recommends that information disclosed is not released to the public, but there are signs that this may change*



# *Singapore and the Region*

# *Key Take-Away*

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# ***Key Take Aways***

1. What is BEPS and what are its action plans affecting you?
2. How does it impact your business ?
  - tax costs impacting NAV of the fund (Business and Product Development)
  - PE thresholds for travelling employees (C-suite, Business Development, Compliance)
  - increased in tax reporting (Fund Operations/Finance/Tax)
3. How do you manage the tax changes and operational risks?

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***Questions?***

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# *Thank You*



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