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**2015 IFA International Tax Conference**  
**Thursday May 28-Friday May 29, 2015**

TELUS Convention Centre  
Calgary, AB

**Global Tax Developments**

Moderator: Jim Samuel

Panelists: Albert Baker, Marja de Best, Darice Henritze

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# Global Overview



# Global Tax Reset

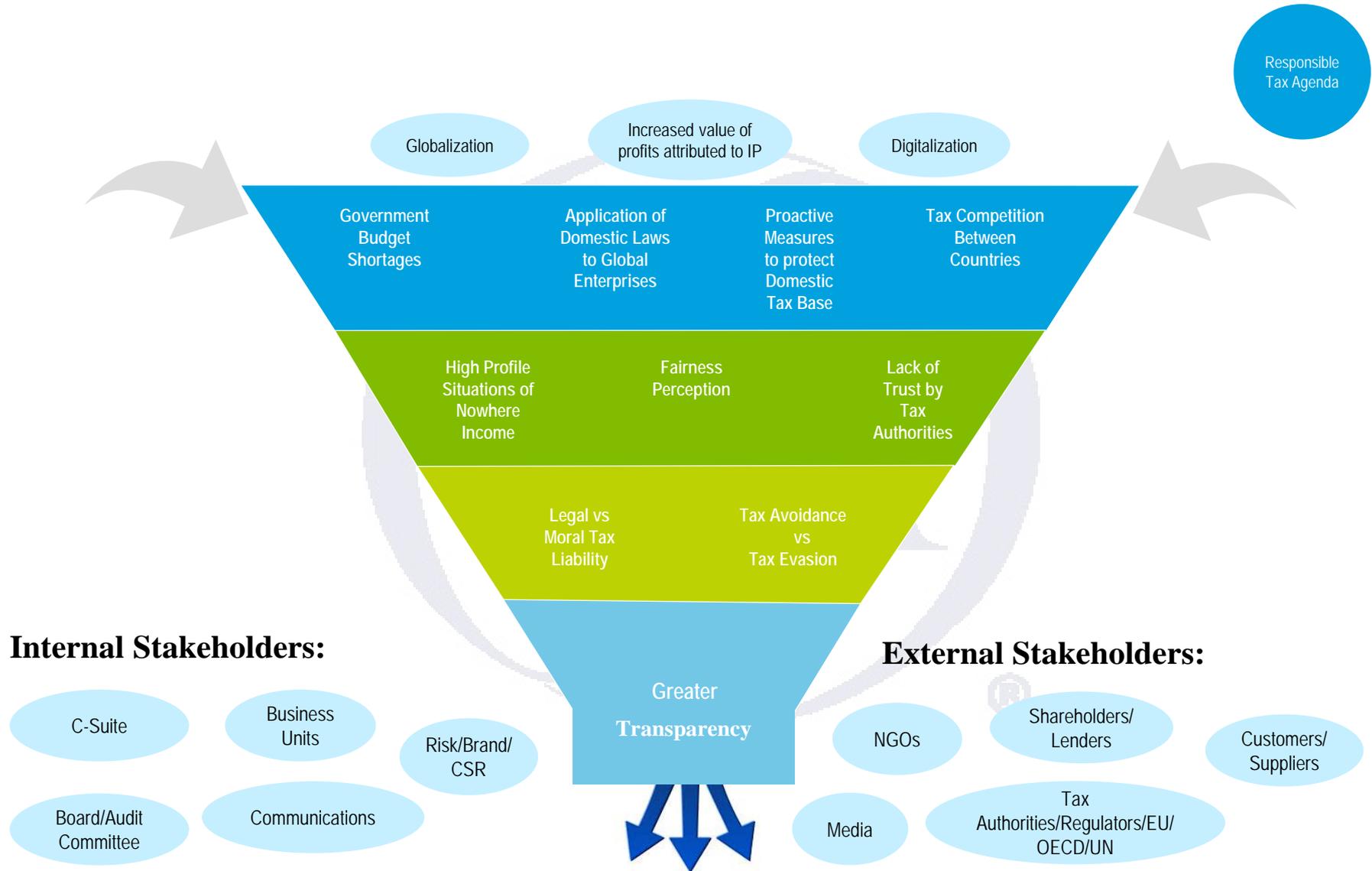
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This new global tax environment has resulted in the following actions –



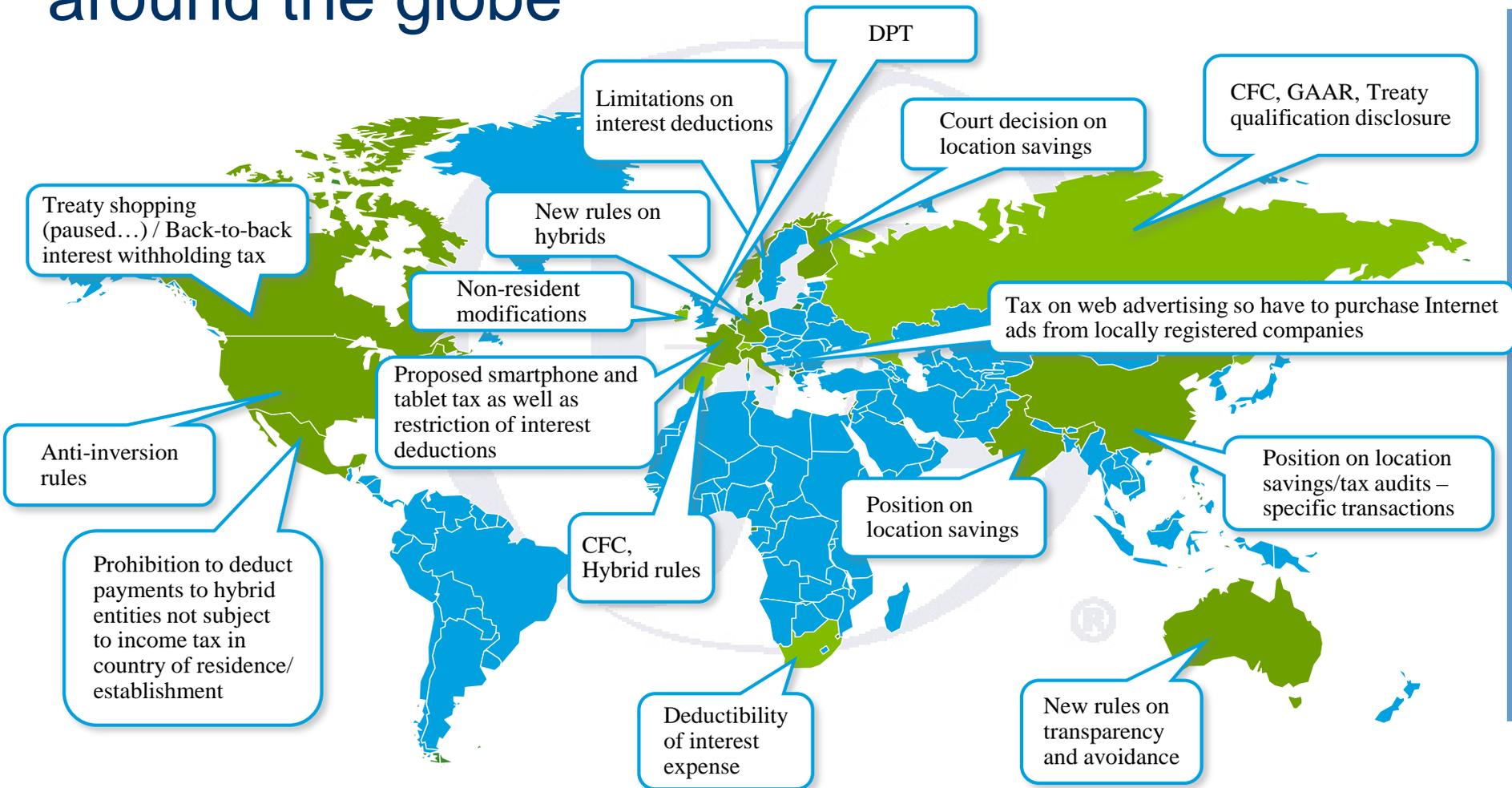
BEPS is part of the bigger picture

# Key elements of the responsible tax agenda



# Visibility from the BEPS debate is driving unilateral tax law proposals/changes around the globe

Unilateral  
Tax Law  
Changes



# Global Tax Reset

## OECD's BEPS project



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# EU Overview



# EU is 'overtaking' the OECD

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EU

State Aid investigations

Anti-abuse provisions P/S Directive (intra group dividends)

IP Regimes: "Modified Nexus"

Transparency package

CCCTB (harmonising corporate taxable basis)

**HARD LAW**

# Main Developments EU

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## Exchange of Information on Tax Rulings

- European Commission proposal for mandatory automatic exchange of information on cross border tax rulings / APAs with all other MS and the EC
- Quarterly, standard format (a.o. name taxpayer and group, issues addressed, MS most likely effected). Full disclosure upon request
- Also includes rulings and other arrangements issued less than 10 years ago and still valid when proposal enters into force (mid 2015?)
- Transactions / activities involving only individuals are excluded
- MS feed back a.o.: proposal goes beyond necessary, limit exchange to relevant MS only, dislike of central database with access for EC

January 2016

Exchange existing rulings prior to Dec 31, 2016

## Tax Committee on Tax Rulings and other Measures / TAXE

- European Parliament Committee to review e.g.: tax ruling practices back to 1991, the way the EC treats State Aid in MS, transparency of MS on their tax rulings, impact aggressive planning on public finances. Recommendations to be made.
- Initial mandate for 6 months, 45 members
- Hearings with e.g.: Commissioners, Big 4, multinationals. Visits to governments of Benelux countries, Ireland, UK, Switzerland

February 2015

# Main Developments EU

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<b>UBO Registers</b>	<ul style="list-style-type: none"><li>• Register in each MS on UBO's of corporate entities/other legal entities incorporated within their territory. Access for the public if "legitimate interest" is demonstrated - MS may lower threshold or deny access in certain cases. In due course linking of registers at European level</li><li>• UBO for corporate entities: shareholding, controlling interest or ownership interest of at least 25% plus one share Trusts: Non-public register for trusts that generate tax consequences</li></ul>	Approval 2015 Registers 2017
<b>CRS</b>	<ul style="list-style-type: none"><li>• Administrative Cooperation Directive amended to include the OECD's CRS: all MS must now implement CRS and exchange financial information</li></ul>	January 2016
<b>EU/Swiss AEOI</b>	<ul style="list-style-type: none"><li>• Agreement on automatic exchange of financial account information in tax matters. Includes CRS. Does not include tax ruling information</li></ul>	January 2017 Exchange 2018

# Main Developments EU

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## CBC Reporting

- Capital requirements Directive IV: Credit institutions and investment firms  
First limited report July 2014. Audit requirement  
First full report December 2015
- EU accounting Directive / Chapter 10: public-interest and non-public large companies, incorporated in the EU, active in extractive and logging industry.  
Part of annual financial reporting obligations. MS determine audit requirements  
January 2016
- Draft shareholder rights directive May 7, 2015: large undertakings and public-interest entities in all sectors. Above a certain threshold (a.o. net turnover 100 mio) reporting must include information on tax rulings  
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## EC Action Plan / CCCTB

- Action Plan on corporate taxation: Debate on CCCTB , integrating OECD/G20 Beps action at EU level  
June 2015
- CCCTB as key building block: one common set of rules for a company, consolidation of profits and losses throughout EU  
Draft CCCTB Directive contains anti-BEPS provisions: PE, Interest Deduction, GAAR, CFC, Hybrid Mismatches

# Main Developments EU

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## State Aid Investigations

- Current focus on tax avoidance structures, esp. TP issues. Rulings confirming mismatches between tax systems likely to be next
- Recent: Belgian excess profit rulings. McDonalds to follow?
- All MS have been requested to submit information on tax rulings

Current cases not done by June 2015

## IP regimes: modified nexus approach

- Qualifying expenses for the MNA formula increased by expenses for acquired IP and R&D outsourced to related parties, up to at max. 30%
- MS must adjust their IP regimes to the modified nexus approach, ultimately by June 30, 2016. Grandfathering of existing regimes up to 5 years after adjustment

July 2016

## Anti-abuse rules in Directives

- P/S Directive: Anti-hybrid rule and de-minimus anti-abuse rule adopted
- I/R Directive: de-minimus anti-abuse rule to be discussed, also e.g. subject to tax criteria, list of entities, threshold shareholding

January 2016

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# Resource Sector Overview



# The Headlines

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“Tax cuts will not save Peru’s mining sector from falling prices”

- Global Risk Insights, Daniel Lemaitre, November 2014

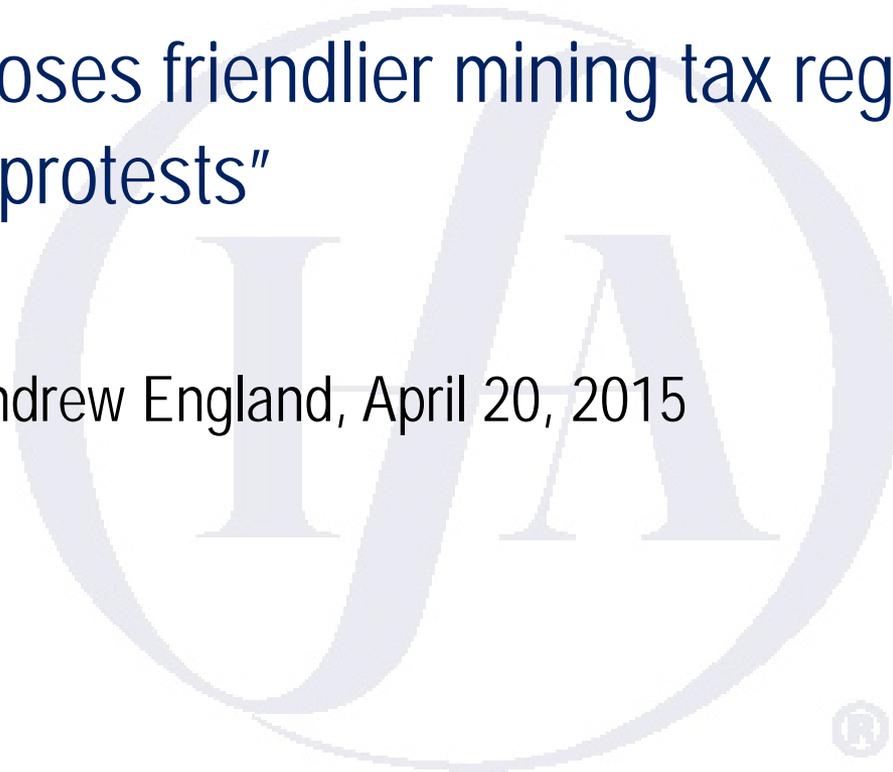


# The Headlines

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“Zambia proposes friendlier mining tax regime after protests”

- ft.com, Andrew England, April 20, 2015



# The Headlines

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“It was a tax that destroyed jobs and damaged investment...”

- “Quote,” Tony Abbott – Australian Prime Minister



# CIT and Mineral Royalty Comparison

## Corporate Income Tax ("CIT") and Mining Royalty Rate Comparison

Country	CIT	Mining Taxes & Royalties				
		Method	Coal	Gold	Copper	Iron Ore
Australia	30%	R	2.75% - 15%	2.5% - 5%	2.5% - 5%	5.35% - 7.5%
Brazil	25%	R	2%	1%	2%	2%
Canada	25% - 31%	P	2% - 16%	2% - 16%	2% - 16%	2% - 16%
Chile	20%	P	0% - 14%	0% - 14%	0% - 20%	0% - 14%
China	25%	R	0.5% - 4%	0.5% - 4%	0.5% - 4%	0.5% - 4%
Ghana	25%	R	5%	5%	5%	5%
Indonesia	25%	R	3% - 7%	3.75%	4%	3%
Mexico	30%	P	7.5%	8%	7.5%	7.5%
Mongolia	10% - 25%	R	2.5% - 7.5%	5% - 7.5%	5% - 30%	5% - 7.5%
Peru	30%	P	1% - 12%	6% - 21.5%	6% - 21.5%	6% - 21.5%
South Africa	25%	R	0.5% - 7%	0.5% - 7%	0.5% - 7%	0.5% - 7%
U.S.	40%	P/R	8% - 12.5%	4% - 10%	4% - 10%	4% - 10%

Key: R = Royalty Basis; P = Profit or Net Business

Source: Mining Tax Databook; KGS, August 2014

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# Canadian Developments



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# US Developments



# Tax reform – Likelihood of US Tax Reform

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“It [tax reform] shouldn’t be that hard, actually given the broad recognition in both parties that exchanging lower tax rates for a reduction in loopholes would be good for both fairness and efficiency.”

Washington Post editorial, May 17, 2014

“Blah, blah, blah, blah.”

House Speaker John Boehner, Feb. 26, 2014

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# Selected European Developments



# Europe – selected local developments

Country	Developments
UK	<ul style="list-style-type: none"> <li data-bbox="401 358 1477 439">• Diverted profits tax in force. Issues that may play out: wider scope, breach of tax treaties/EU law, interaction BEPS <span style="float: right;">April 2015</span></li> <li data-bbox="401 462 1477 586">• Anti Hybrid rules: Consultation on proposed rules to give effect to OECD recommended approach. No purpose test. Carve out for e.g. regulatory capital of financial institutions. <span style="float: right;">(2017)</span></li> <li data-bbox="401 609 1477 733">• CBC reporting: enabling legislation in force, detailed regulations to follow in 2015/2016. UK MNE's to report information to HMRC. Information possibly public <span style="float: right;">(2016)</span></li> <li data-bbox="401 756 1477 881">• Patent Box: 2014 joint proposal with Germany for modified nexus approach; preferential regimes to be limited to patents and similar assets. Align with OECD/ EU</li> </ul>
Ireland	<ul style="list-style-type: none"> <li data-bbox="401 968 1477 1049">• Double Irish Structure: Irish incorporated is Irish tax resident. Grandfathering pre-2015 companies until end of 2020 <span style="float: right;">January 2015</span></li> <li data-bbox="401 1072 1477 1196">• Road Map for Irelands Tax Competitiveness: e.g. keep 12.5% rate, enhance R&amp;D tax credit regime, new IP Box ("best in class", 5% effective rate)</li> <li data-bbox="401 1219 1477 1300">• Irish Collective Asset Management Vehicle (ICAV): new corporate fund vehicle (can be partnership under US check the box) <span style="float: right;">March 2015</span></li> </ul>

# Europe – selected local developments

Country	Developments	
Luxembourg	• New framework APA/ATR practice (codification): procedural matters (e.g., rulings to pass by advisory body), maximum duration of 5 years, administrative fees.	January 2015
	• Ruling practice in transition (ruling topics, conditions)	
	• Codification of arm's length principle, documentation requirement	January 2015
	• Working on a 2016 proposal for a corporate tax reform: strategy for the future (technology, headquarters, funds)	(2016)
Netherlands	• Renewed APA/ATR decrees. Ruling practice continues	
	• Transparency: Reporting obligations & exchange of information for financial services companies with insufficient substance, CRS early adopter, MoU on spontaneous exchange of ruling information with Germany	
	• Renegotiation of treaties with developing countries to include anti-treaty shopping clauses	

# Europe – selected local developments

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Country	Developments
<b>Switzerland</b>	<ul style="list-style-type: none"><li data-bbox="413 344 1470 515">• Corporate Tax Reform III proposal adjusted. Main elements: (2018/2019) abolition of certain special regimes, introduction of license box at cantonal level; optional special deduction of R&amp;D expenses, reduction of cantonal CIT rates, no notional interest deduction</li><li data-bbox="413 536 1431 665">• Supreme Court denied beneficial ownership and WHT refund to Danish banks holding Swiss equities as hedge for short derivative positions, although share purchase legally unrelated to derivative positions</li></ul>



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# Asia Pacific Developments



# Further local developments

Country	Developments	
Australia	• Interest deductions limited by new thin cap rules	Taxable year beginning after July 1, 2014
	• GAAR and transfer pricing rules recently strengthened to prevent shifting of profits offshore	2013-14
	• Hybrid mismatches	
	• Transfer pricing revisions	
	• Public reporting by ATO for large companies (2015)	
	• Senate Inquiry	April 2015
	• Diverted Profits Tax? (Collaboration with UK announced)	April 2015
	• New multinational anti-avoidance law	May 2015
	• Expansion of GST to inbound digital sales and services	May 2015
China	• The SAT issued new administrative measures concerning the application of the GAAR in cross-border structures and transactions	
	• New rules on indirect transfers by non-residents (February 2015)	
India	• GAAR will apply prospectively to investments made after 1 April 2017. One of the reasons cited for deferral of the GAAR is because the Indian government wants to implement the GAAR provisions as part of a comprehensive regime to address the OECD's recommendations on BEPS and aggressive tax avoidance	

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# Business Reaction



# OECD's BEPS initiative—second annual survey

## Key findings

### Legislative and treaty changes

- 87% of respondents agree or strongly agree that the BEPS initiative will result in **significant legislative and treaty changes** in many countries.
- 2014 result to the same question was **81%**.

### Double taxation

- 75% of respondents agree or strongly agree that **double taxation will occur** as a result of unilateral tax law changes in anticipation of the OECD BEPS recommendations.
- 2014 result to the same question was **69%**.

### Tax authority scrutiny

- 96% of respondents agree or strongly agree that tax authorities will apply **greater scrutiny around the level of substantive business operations** conducted in low tax countries as a result of BEPS initiatives.
- 2014 result to the same question was **92%**.

# OECD's BEPS initiative—second annual survey

## Key findings

### Implementation of tax structures

- 91% agree or strongly agree that **tax structures implemented today are under greater scrutiny** by tax administrations now than they would have been a year ago.
- 2014 result to the same question was **69%**.

### Assessment of the impact of BEPS

- 69% of respondents said that their organizations have **assessed the potential impact** of tax law changes related to BEPS.
- 2014 result to the same question was **58%**

### Additional resources

- 18% of respondents are planning on **securing additional resource/headcount for their tax group** wholly or partly as a result of the anticipated changes arising due to the BEPS initiative.
- No comparative data as this was a new question for 2015.

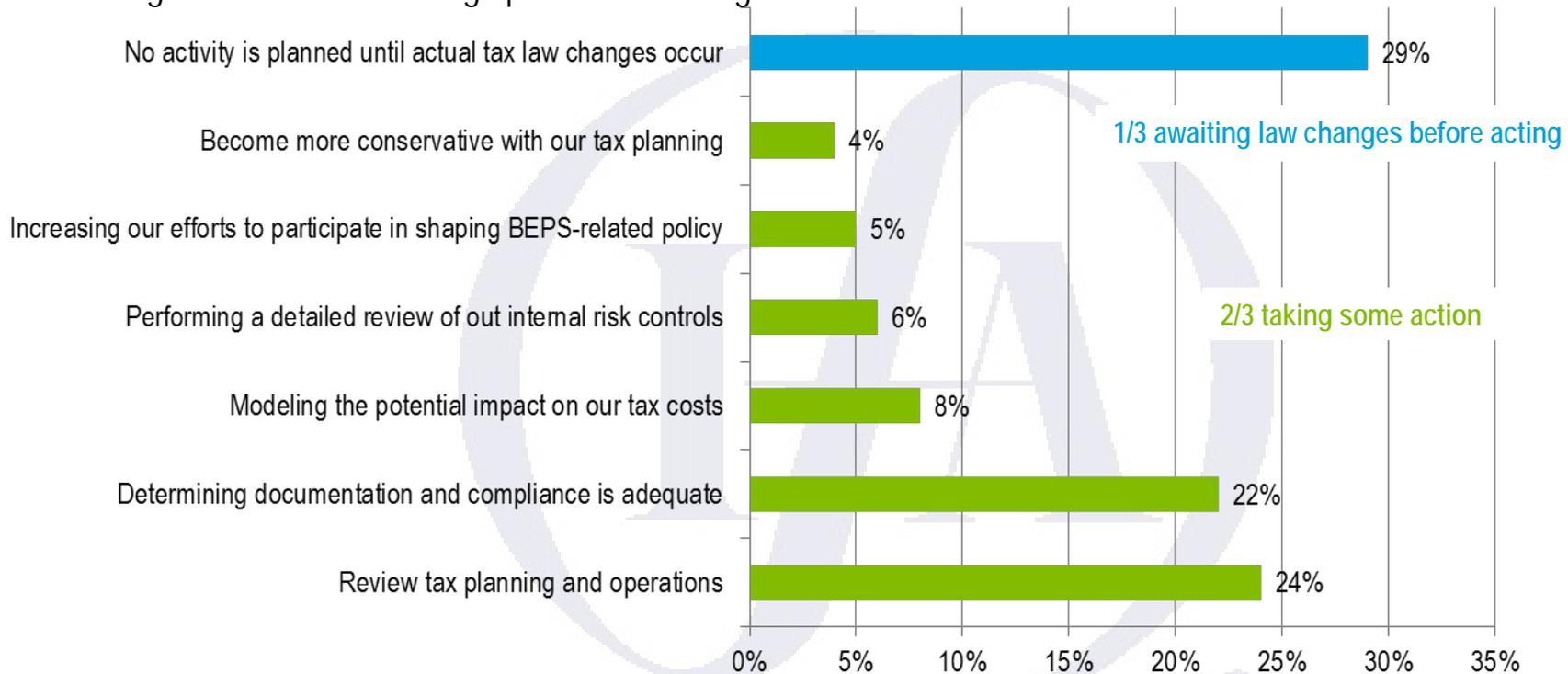
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# Business Reaction (Resource Sector)



# What are the most significant steps you expect your organization will take in response to the OECD BEPS Project?

Approximately two thirds of respondents expect their organization to respond to the OECD BEPS project. The remaining one third are awaiting specific law changes.



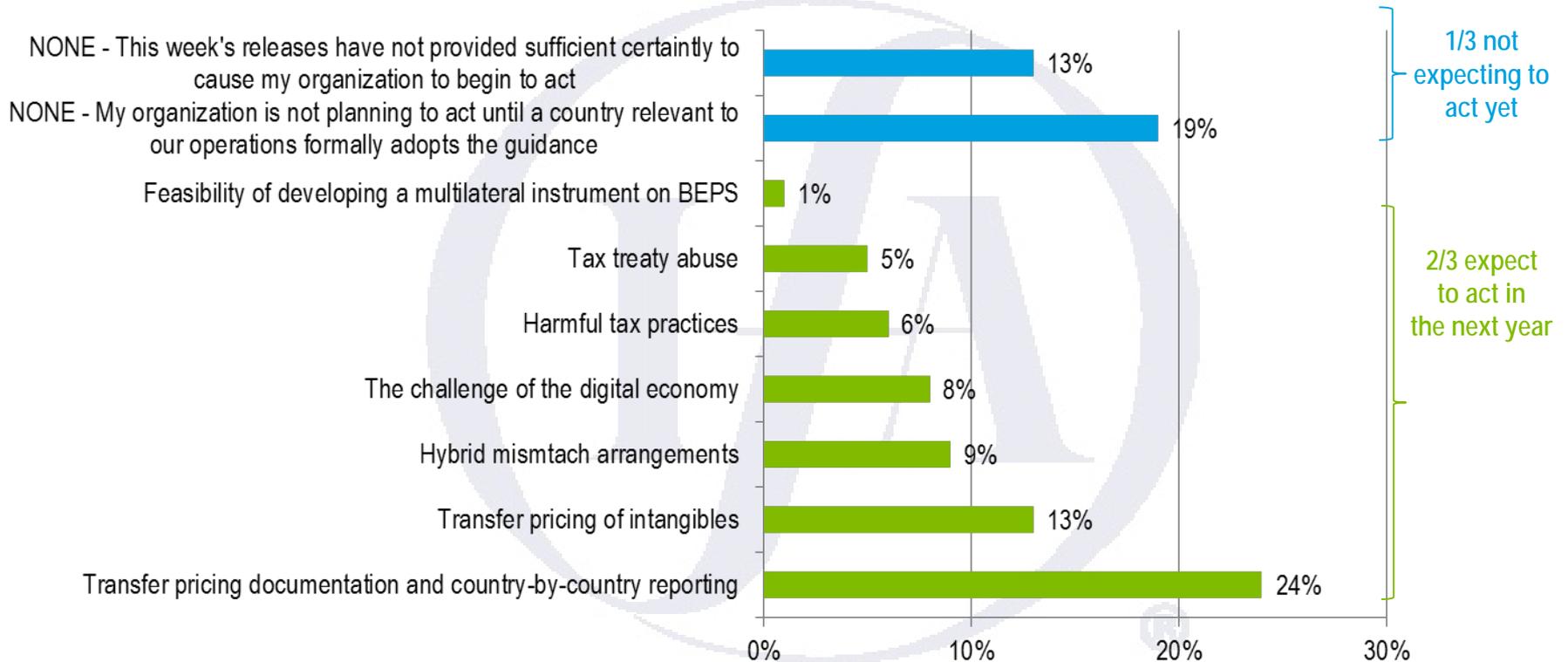
n=1037 business executives

Percentages do not total 100% due to rounding.

Source: KPMG LLP, KPMG Tax Governance Institute Webcast Polling Results, Sept. 19, 2014

# Which of the seven OECD action plan components do you currently believe are most likely to spur action by your organization in the next year?

Approximately two thirds of respondents believe that the BEPS-related releases by the OECD on September 16, 2014 will spur action by their organization in the next year.



n=1037 business executives

Percentages do not total 100% due to rounding.

Source: KPMG LLP, KPMG Tax Governance Institute Webcast Polling Results, Sept. 19, 2014

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# Closing Comments

