



BEPS - ELEMENTS OF THE APPLICABLE REGULATIONS AND INITIAL REFLECTIONS OF ITS IMPACT IN BRAZIL

I) Background

- There was a perception in the international market that multinational groups were not cooperating with "fair share" in the so-called "Worldwide Tax Assurance".
- This practice has been carried out as follows: these groups were taking advantage of tax systems that, in addition to being outdated and not tailored to the digital age, also presented inconsistencies in inter-country scenarios.
- As a result, G20 invited the OECD to address the issue by developing a more extensive proposal.

Therefore, to tackle "Base Erosion and Profit Shifting - BEPS", 15 Action were defined. These 15 Action are divided into 3 fundamental pillars.

II) Pillars and Actions:

The BEPS system is divided into 3 Pillars and 15 Actions.

Action 1: concerns the digital economy.

Actions 2, 3, 4 and 5: are included in Pillar 1.

Actions 6, 7, 8, 9 and 10: are included in Pillar 2.

Actions 11, 12, 13 and 14: are included in Pillar 3.

Action 15: concerns the development of a multilateral instrument.

After 2021, Action 1 has been subdivided into two separate Pillars (sub-Pillars).

OECD has defined actions under 3 fundamental Pillars:

PILLAR 1: Establishing international consistency in corporate income taxation

Under this Pillar, the following Actions have been defined:

- Action 2: Neutralizing the effects of hybrid mismatch arrangements.
- Action 3: Strengthening “CFC” (Controlled Foreign Company) rules
- Action 4: Limiting Base Erosion through interest deductions and other financial payments.
- Action 5: Countering harmful tax practices more effectively, focusing on transparency and substance.

PILLAR 2: Restoring the full effects and benefits of international standards through realignment of taxation and relevant substance

Under this Pillar, the following Actions have been defined:

- Action 6: Prevention of tax treaty abuse.
- Action 7: Preventing artificial avoidance of "PE" (Permanent Establishment) status.
- Actions 8, 9, 10: Ensuring that transfer pricing results are in line with creation of value - focusing on intangibles (8), risks and capital (9) and aggressive and/or high-risk transactions (10).

PILLAR 3: Ensuring transparency, promoting greater certainty and predictability

Under this Pillar, the following Actions have been defined:

- Action 11: Establishing methodologies to collect and analyze data on BEPS and the actions to address it.
- Action 12: Requiring taxpayers to disclose their aggressive tax planning arrangements.
- Action 13: Re-examining transfer pricing documentation.
- Action 14: Making dispute resolution mechanisms more effective.

In addition to the 3 fundamental Pillars, two other Actions address general conceptual aspects:

- Action 1: Addressing tax challenges arising from the digital economy
- Action 15: Developing a multilateral instrument

III) BEPS 2.0

BEPS 2.0 is an extension of the original BEPS project led by OECD. The term "BEPS 2.0" refers to a more recent initiative designed to address tax issues related specifically to digital businesses and the digital economy.

While the original BEPS (Base Erosion and Profit Shifting) project aims to tackle tax avoidance and profit shifting through various actions and recommendations, BEPS 2.0 focuses on the tax implications of the digital economy and the taxation of multinational companies operating in digital activities.

BEPS 2.0 introduced 2 new concepts (Pillar one and Pillar two) within Action 1:

- Action 1: Addressing tax challenges arising from the digital economy

Pillar One: on new nexus and profit allocation rules, which aims to allocate a greater portion of taxing rights on global business income to market countries.

Pillar Two: on new global minimum tax rules to ensure that all global business income is subject to at least an agreed minimum tax rate. All multinational companies are going to be affected by the fundamental changes to long-standing international tax rules contemplated in Pillar One and Pillar Two or Subpillares One and Two.

IV) Implementation Agenda

- The final reports were issued on October 5, 2015 by the OECD
- G20 Finance Ministers endorsed the project at their meeting on October 8, 2015. OECD Secretary-General Angel Gurría stated:
 - "Base erosion and profit shifting are draining our economies of the resources needed to boost growth, tackle the effects of the global economic crisis and create better opportunities for all"

- "G20 recognized that BEPS is also eroding citizens' confidence in the fairness of tax systems around the world, which is why we were called upon to prepare the most fundamental changes to international tax rules in nearly a century. Our challenge going forward is to implement the measures in this plan, rendering BEPS-inspired tax planning structures ineffective and creating a better environment for businesses and citizens alike"
- OECD and G20 countries will scale up their cooperation on BEPS by 2020 to complete outstanding work and ensure efficient and effective follow-up of agreed measures.
- Implementation is already ongoing in several countries worldwide.



**THANK YOU - GRACIAS
OBRIGADO**