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Implementation Guidance Action Plan on BEPS (Minimum Standards)

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ABBREVIATIONS AND ACRONYMS

BEPS	Base erosion and profit shifting
BIAC	Business and Industry Advisory Committee to the OECD
CFA	Committee on Fiscal Affairs
CFC	Controlled foreign company
FDI	Foreign direct investment
FHTP	Forum on Harmful Tax Practices
GDP	Gross domestic product
MAP	Mutual agreement procedure
MNE	Multinational enterprise
OECD	Organisation for Economic Co-operation and Development
PE	Permanent establishment
TFTD	Task Force on Tax and Development
AOA	Authorised OECD approach
APA	Advance pricing arrangement
ATR	Advance tax ruling
CRS	Common Reporting Standard (Standard for Automatic Exchange of Financial Account Information)
IP	Intellectual property
EOI	Exchange of information
MAC	Convention on Mutual Administrative Assistance in Tax Matters MNE Multinational enterprise
R&D	Research and development
TP	Transfer pricing
CIV	Collective investment vehicles
GAAR	General anti-avoidance rule EU European Union
LOB	Limitation-on-benefits
PPT	Principal purposes test
REIT	Real Estate Investment Trust
RIC	Regulated Investment Company
VCLT	Vienna Convention on the Law of Treaties
MNE	Multinational enterprise
SME	Small and medium enterprise

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FOREWORD

International tax issues have never been as high on the political agenda as they are today. The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

Since then, all G20 and OECD countries have worked on an equal footing and the European Commission also provided its views throughout the BEPS project. Developing countries have been engaged extensively via a number of different mechanisms, including direct participation in the Committee on Fiscal Affairs. In addition, regional tax organisations such as the African Tax Administration Forum, the *Centre de rencontre des administrations fiscales* and the *Centro Interamericano de Administraciones Tributarias*, joined international organisations such as the International Monetary Fund, the World Bank and the United Nations, in contributing to the work. Stakeholders have been consulted at length: in total, the BEPS project received more than 1 400 submissions from industry, advisers, NGOs and academics. Fourteen public consultations were held, streamed live on line, as were webcasts where the OECD Secretariat periodically updated the public and answered questions.

After two years of work, the 15 actions have now been completed. All the different outputs, including those delivered in an interim form in 2014, have been consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation therefore becomes key at this stage. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions, with negotiations for a multilateral instrument under way and expected to be finalised in 2016. OECD and G20 countries have also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations. Globalization requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries. To further this objective, in 2016 OECD and G20 countries will conceive an inclusive framework for monitoring, with all interested countries participating on an equal footing.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

ABOUT BEPS

Base erosion and profit shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in national and international tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. This results in the reduction or the elimination of corporate tax payable. BEPS affects all countries, but it is particularly significant for developing economies due to their heavy reliance on corporate income tax, particularly from multinational enterprises (MNEs).

In an increasingly interconnected world, national tax laws have not always kept pace with global corporations, fluid movement of capital, and the rise of the digital economy: all this contributed to allow MNEs to exploit the rules so to generate double non-taxation, with negative effects on the fairness and integrity of tax systems.

The international community has taken joint action and the G20 Leaders endorsed an ambitious and comprehensive plan, developed with OECD members, to restore confidence in the international tax system and to ensure that profits are taxed where economic activities take place and value is created. On the basis of this BEPS Action Plan, a comprehensive package of measures was developed and agreed in just two years.

The BEPS Package consists of reports on 15 actions that set out **measures ranging from new minimum standards, revision of existing standards, as well as common approaches which will facilitate the convergence of national practices, and guidance drawing on best practices.**

These measures are designed to be implemented domestically and through tax treaty provisions in a co-ordinated manner, supported by targeted monitoring and strengthened transparency. The package represents the results of a major and unparalleled effort by OECD and G20 countries working together on an equal footing, with the participation of an increasing number of developing countries.

The BEPS Package consists in **five types of outcomes** with different status:

1. The **minimum standards** (harmful tax practices, treaty abuse, Country-by-Country reporting and dispute resolution mechanism) were agreed in particular to tackle issues in cases where no action by some countries would have created negative spillovers on other countries. These constitute the core of the BEPS implementation. The monitoring will consist of an assessment of the compliance with the minimum standards in the form of a periodic and public report on what countries have done to implement these BEPS outcomes.
2. **Common approaches** (hybrid mismatch arrangements and interest deductibility) will facilitate the convergence of national practices. Countries' views are expected to get closer over time through the implementation of these actions. Recommendations for the design of domestic rules and model treaty provisions have been agreed together with detailed commentary for their implementation. Common approaches could become minimum standards in the future.
3. With **reinforced international standards** (permanent establishment and transfer pricing), existing standards have been updated to be more effective in order to eliminate double taxation and stop abuses. This translates into a set of agreed guidance, which reflects the common understanding and interpretation of provisions based on the OECD and the United Nations (UN) Model Tax Conventions. Follow-up work is needed in these areas and will allow the CFA, where necessary, to provide additional clarification on the new treaty wording and guidance introduced by the reports on Action 7 and Actions 8 to 10. This will lead to the update of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
4. **Best practices** (controlled foreign company rules and mandatory disclosure rules) have been designed to support countries intending to strengthen their domestic legislation in specific areas. Best practice approach is not binding, even for the OECD member countries, but reflects an agreement between participating countries that is expected to be followed in practice. A country may supplement this approach with other rules.
5. **Analytical reports** (tax challenges of the digital economy, economic analysis of BEPS and development of a multilateral instrument) have also been released, leading to further monitoring and implementation work. The evolutions of the work streams on Action 1 and Action 11 will need to be monitored, while the negotiations on the development of a multilateral instrument (under Action 15).

The **programme of work** of the CFA and the inclusive framework will incorporate the additional work and

monitoring needed to implement the BEPS Package.

Overview – BEPS Actions by theme

Coherence	Substance	Transparency	Analysis
Action 2 Neutralising the Effects of Hybrid Mismatch Arrangements	**Action 6** Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	**Action 11** Measuring and Monitoring BEPS	**Action 1** Addressing the Tax Challenges of the Digital Economy
Action 3 Designing Effective Controlled Foreign Company (CFC) Rules	**Action 7** Preventing the Artificial Avoidance of Permanent Establishment Status	**Action 12** Mandatory Disclosure Rules	**Action 15** Developing a Multilateral Instrument to Modify Bilateral Tax Treaties
Action 4 Limiting Base Erosion Involving Interest Deductions and Other Financial Payments	**Actions 8 – 10** Aligning Transfer Pricing Outcomes with Value Creation: Intangibles Risks & Capital High-Risk Transactions	**Action 13** Transfer Pricing Documentation and Country-by-Country Reporting	
Action 5 Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance		**Action 14** Making Dispute Resolution Mechanisms More Effective	

INCLUSIVE FRAMEWORK ON BEPS / MINIMUM STANDARDS

In response to the call of the G20 Leaders, the **OECD has developed an Inclusive Framework,** which allows interested countries and jurisdictions to work with OECD and G20 members on developing standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package.

To join the framework, interested countries and jurisdictions are required to **commit to the comprehensive BEPS Package and its consistent implementation** and to pay an annual **BEPS Associate fee**. It is recognised that interested non-G20 developing countries' timing of implementation may differ from that of other jurisdictions, and that their circumstances should be appropriately addressed in the framework.

The inclusive framework for BEPS implementation follows the increased engagement with interested countries in the project: 17 countries joined the Committee on Fiscal Affairs as Invitees and Participants, and many other countries were involved indirectly in the BEPS Project, through a series or **regional meetings (**Africa, Asia-Pacific, Eastern Europe-Central Asia and in Latin America). These consultations helped to obtain feedback and input from countries, as well as to understand the specific needs, priorities and concerns of developing countries.

Countries and jurisdictions joining the framework as Associates will join the activities related to the standard setting on the remaining BEPS issues that require a technical follow-up work, for example, in the area of tax treaties and transfer pricing. This includes the work on the development of transfer pricing guidance on the application of profit split methods and on financial transactions.

All new countries and jurisdictions part of the inclusive framework will shape the implementation phase of the BEPS Project including its four **minimum standards** (Action 5 on harmful tax practices, Action 6 on treaty abuse, Action 13 on country-by-country reporting and Action 14 on dispute resolution mechanisms). They will also be able to monitor the evolution of the tax raised by the digital economy challenges (Action 1) and by the economic analysis of BEPS (Action 11).

Overview – Minimum standards

Coherence	Substance	Transparency	Analysis
Action 2 Neutralising the Effects of Hybrid Mismatch Arrangements	**Action 6** Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	**Action 11** Measuring and Monitoring BEPS	**Action 1** Addressing the Tax Challenges of the Digital Economy
Action 3 Designing Effective Controlled Foreign Company (CFC) Rules	**Action 7** Preventing the Artificial Avoidance of Permanent Establishment Status	**Action 12** Mandatory Disclosure Rules	**Action 15** Developing a Multilateral Instrument to Modify Bilateral Tax Treaties
Action 4 Limiting Base Erosion Involving Interest Deductions and Other Financial Payments	**Actions 8 – 10** Aligning Transfer Pricing Outcomes with Value Creation: Intangibles Risks & Capital High-Risk Transactions	**Action 13** Transfer Pricing Documentation and Country-by-Country Reporting	
Action 5 Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance		**Action 14** Making Dispute Resolution Mechanisms More Effective	

ACTION 5 "COUNTERING HARMFUL TAX PRACTICES MORE EFFECTIVELY, TAKING INTO ACCOUNT TRANSPARENCY AND SUBSTANCE"

GENERAL INFORMATION

The 2015 Action 5 Report (OECD, 2015) is one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS **commit to implementing the Action 5 minimum standard**, and **commit to participating in the peer review**. The peer review of the Action 5 minimum standard will be undertaken by the FHTP.

Current concerns are primarily about preferential regimes that risk being used for artificial profit shifting and about a lack of transparency in connection with certain rulings. The continued importance of the work on harmful tax practices was highlighted by the inclusion of this work in the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD, 2013), whose Action 5 committed the Forum on Harmful Tax Practices (FHTP) to:

> *Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.*

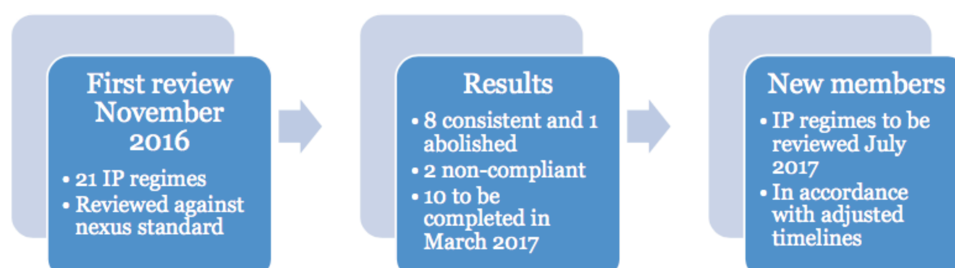
Agenda includes:

- Review of IP regimes
- Exchange of information on rulings
- Review process – preferential regimes
- Jurisdictions of relevance

IP Regimes. Requiring substantial activity for preferential regimes

Countries agreed that the substantial activity requirement used to assess preferential regimes should be strengthened in order to realign taxation of profits with the substantial activities that generate them. Several approaches were considered and consensus was reached on the "nexus approach". This approach was developed in the context of IP regimes, and it allows a taxpayer to benefit from an IP regime only to the extent that the taxpayer itself incurred qualifying research and development (R&D) expenditures that gave rise to the IP income. The nexus approach uses expenditure as a proxy for activity and builds on the principle that, because IP regimes are designed to encourage R&D activities and to foster growth and employment, a substantial activity requirement should ensure that taxpayers benefiting from these regimes did in fact engage in such activities and did incur actual expenditures on such activities. This same principle can also be applied to other preferential regimes so that such regimes would be found to require substantial activities where they grant benefits to a taxpayer to the extent that the taxpayer undertook the core income-generating activities required to produce the type of income covered by the preferential regime.

Review of IP regimes



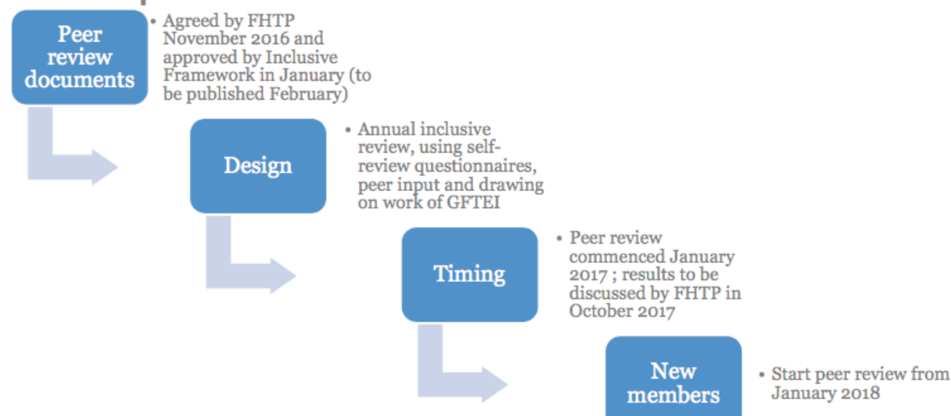
Exchange of information on rulings

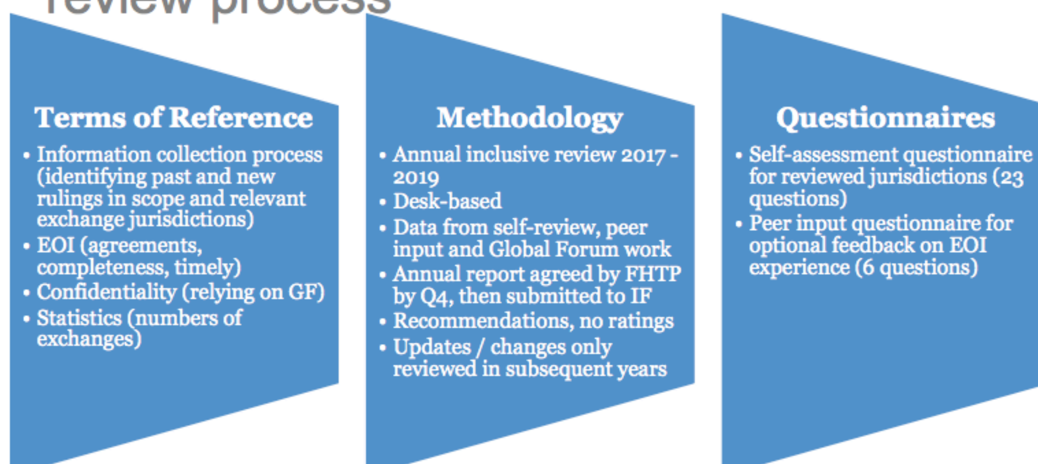
Rulings are "any advice, information or undertaking provided by a tax authority to a specific taxpayer or group of taxpayers concerning their tax situation and on which they are entitled to rely."

In the area of transparency, a framework covering all rulings that could give rise to BEPS concerns in the absence of compulsory spontaneous exchange has been agreed.

The framework covers six categories of rulings:

i. rulings related to preferential regimes;
ii. cross border unilateral advance pricing arrangements (APAs) or other unilateral transfer pricing rulings;
iii. rulings giving a downward adjustment to profits;
iv. permanent establishment (PE) rulings;
v. conduit rulings;
vi. any other type of ruling where the FHTP agrees in the future that the absence of exchange would give rise to BEPS concerns.





Review process – preferential regimes

A total of 43 preferential regimes have been reviewed, out of which 16 are IP regimes. The Report contains

the results of the application of the existing factors in the 1998 Report, as well as the elaborated substantial activity and transparency factors, to the preferential regimes of members and associates. However, the elaborated substantial activity factor has so far only been applied to IP regimes. In respect of substantial activity the IP regimes reviewed were all considered inconsistent, either in whole or in part, with the nexus approach as described in this report. This reflects the fact that, unlike other aspects of the work on harmful tax practices, the details of this approach were only finalised during the BEPS Project while the regimes had been designed at an earlier point in time. Countries with such regimes will now proceed with a review of possible amendments of the relevant features of their regimes. The FHTP's work on reviewing preferential regimes will continue, recognising also that regimes that were assessed before the substantial activity requirement was elaborated may need to be reassessed, if the FHTP decides to apply the elaborated substantial activity factor to preferential regimes other than IP regimes.

Historically, the types of preferential regimes that have been reviewed have fallen into the following categories: headquarters regimes, service centre regimes, distribution centre regimes, financing and leasing regimes, fund management regimes, banking and insurance regimes, shipping regimes, holding company regimes, IP regimes and any other miscellaneous categories as needed.

Four key factors and eight other factors are used to determine whether a preferential regime within the scope of the FHTP's work is potentially harmful.

The four key factors are:

1. The regime imposes no or low effective tax rates on income from geographically mobile financial and other service activities.
2. The regime is ring-fenced from the domestic economy.
3. The regime lacks transparency (for example, the details of the regime or its application are not apparent, or there is inadequate regulatory supervision or financial disclosure).
4. There is no effective exchange of information with respect to the regime.

The eight other factors are:

1. An artificial definition of the tax base.
2. Failure to adhere to international transfer pricing principles.
3. Foreign source income exempt from residence country taxation.
4. Negotiable tax rate or tax base.
5. Existence of secrecy provisions.
6. Access to a wide network of tax treaties.
7. The regime is promoted as a tax minimisation vehicle.
8. The regime encourages operations or arrangements that are purely tax-driven and involve no substantial activities. (This is the "substantial activity" factor, which has been elaborated for IP regimes through the development of the nexus approach.)

Consideration of the economic effects of a regime to determine whether a potentially harmful regime is actually harmful.

A regime that has been identified as being potentially harmful based on the above factor analysis may be considered not to be actually harmful if it does not appear to have created harmful economic effects.

The following three questions can be helpful in making this assessment:

(1.) Does the tax regime shift activity from one country to the country providing the preferential tax regime, rather than generate significant new activity?
(2.) Is the presence and level of activities in the host country commensurate with the amount of investment or income?
(3.) Is the preferential regime the primary motivation for the location of an activity?

Following consideration of its economic effects, a regime that has created harmful effects will be categorised as a harmful preferential regime. Where a preferential regime has been found to be actually harmful, the relevant country is given the opportunity to abolish the regime or remove the features that create the harmful effect. Other countries may take defensive measures to counter the effects of the harmful regime, while at the same time continuing to encourage the country applying the regime to modify or remove it.

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NEXT STEPS FOR UKRAINE

➔ Step No 1 "Self-identification review"

The FHTP will review all described in the Report "Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance" potential harmful tax regimes introduced by FHTP members, which are notified to the FHTP through the **self-identification process**. In other words all country – members of the Inclusive Framework on BEPS should fill in a self-assessment Questionnaire "Template for High-Level Information on Preferential Regimes" (Annex 1) and send to the Secretariat of the FHTP, the FHTP will advise which category of regimes they are. Ukraine will then fill in the **"**Country Self-Review of regimes" (Annex 2) using the instructions provided in the Report mentioned below and the Approach to reviewing preferential regimes of member jurisdictions of the inclusive framework on BEPS (CTPA/CFA/NOE2(2016)73/FINAL as of January 16, 2017), the review should be provided by itself, completed forms should be submitted to the FHTP in defined time.

Where a preferential regime has been found to be actually harmful, the relevant country is given the opportunity to abolish the regime or remove the features that create the harmful effect.

The work on reviewing regimes will be completed in the following timeline:

FHTP Meeting	Regimes to be reviewed
Q1 2017 (March)	• Headquarters regimes • Financing and leasing regimes

Explanations:

Headquarters regimes	Headquarters regimes grant preferential tax treatment to taxpayers that provide certain services such as managing, co-ordinating or controlling business activities for a group as a whole or for group members in a specific geographical area. These regimes may raise concerns about ring-fencing or because they provide for an artificial definition of the tax base where the profits of an entity are determined based on a "cost-plus" basis but certain costs are excluded from the basis or particular circumstances are not taken into account.
Financing or leasing regimes	Financing and leasing regimes are regimes, which provide a preferential tax treatment to financing and leasing activities. The main concerns underlying these regimes include, among others, ring-fencing considerations and an artificial definition of the tax base.

FHTP Meeting	Regimes to be reviewed
Q2 2017 (May)	• Service centre and distribution centre regimes • Banking and insurance regimes

Explanations:

Distribution and service centre regimes	Distribution centre regimes provide preferential tax treatment to entities whose main or only activity is to purchase raw materials and finished products from other group members and re-sell them for a small percentage of profits. Service centre regimes provide preferential tax treatment to entities whose main or only activity is to provide services to other entities of the same group. A concern with such regimes is that they may have ring-fencing features. In addition, they may raise concerns that they permit an artificial definition of the tax base.
Banking and insurance regimes	Banking and insurance regimes provide preferential tax treatment to banking and insurance activities. The main concern is linked to the benefits that they provide to income from foreign activities. If benefits are only provided to foreign income, then this could be addressed through the existing ring-fencing factor.

FHTP Meeting	Regimes to be reviewed

Q3 2017 (July)	• IP regimes

FHTP Meeting	Regimes to be reviewed
Q1 2018 (March)	• Pure equity holding company regimes (if requested) • Fund management (if requested) • Shipping regimes (if requested)

FHTP Meeting	Regimes to be reviewed
Q2 2018 (March)	• Miscellaneous

➔ Step No 2 "FHTP Review"

All members of the Inclusive Framework on BEPS commit to implementing the Action 5 minimum standard, and commit to participating in the peer review. The peer review of the Action 5 minimum standard will be undertaken by the FHTP.

The purpose of a peer review is to ensure the **effective implementation of an agreed standard**. Peer reviews should be conducted in a manner that is clear; targets the areas of risk; ensures that jurisdictions are treated fairly and equally; and is resource efficient.

As soon as Ukraine will send a completed self-assessment Questionnaire "Country Self-Review of regimes" to the Secretariat of the FHTP, the Secretariat can provide guidance on any changes that could be made to the questionnaire to prepare for the FHTP review. FHTP will review the regime along with the other regimes in that category at the meeting dates listed above in 2017 and 2018.

➔ Step No 3 "Tax ruling and EOI"

The peer review will evaluate the implementation of the standard against an agreed set of criteria. These criteria are set out in terms of reference, which include each of the elements that a jurisdiction needs to demonstrate it has fulfilled in order to show proper implementation of the standard.

The manner in which the peer review is undertaken is set out in an agreed methodology. The methodology sets out the procedural mechanics by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow up process. The methodology contemplates collecting the data points relevant to the peer review by using standardised questionnaires, sent to the reviewed jurisdiction as well as the peers (i.e. the other members of the Inclusive Framework on BEPS).

The same methodology as for preferential regimes will be used:

- Self-assessment peer review using a template of Questionnaire
- FHTP Review

The timeline for the work on reviewing regimes does not change for developing countries. If Ukraine has preferential regimes in the above categories, Ukraine will be reviewed at the same time as other countries, in 2017 and 2018. If Ukraine has an IP regime and needs more time to implement the "nexus approach," we should inform the FHTP about this wish. It will allow an extra six months to implement. If Ukraine needs more time to implement the framework for exchange of information on rulings, we should inform the FHTP about this wish. It will allow an extra one year to implement, meaning that implementation would start for Ukraine in 2018 and be reviewed in 2019.

Annex 1

Template for High-Level Information on Preferential Regimes

This template is designed to collect high-level information on preferential regimes within the scope of the FHTP's work. Historically, the preferential regimes that have been reviewed by the FHTP have fallen into the following categories: headquarters regimes, service centre regimes, distribution centre regimes, financing and leasing regimes, fund management regimes, banking and insurance regimes, shipping regimes, holding company regimes, IP regimes and any other miscellaneous categories as needed.

Please provide information on all of your country's preferential tax regimes which (i) are within scope of the FHTP work, and (ii) provide preferential tax treatment. For explanation of these two conditions, paragraphs 11 – 13 of the Action 5 Report are cited below. Where it is not clear if a regime satisfies these conditions, please include the regime in the template and an explanation can be provided in the comment section. Examples are provided at the end of the template.

This information is not intended to start the review process; it is only to inform the work going forward.

Excerpt from the Action 5 Report (pp. 19-20)

Scope of work of the FHTP

11. To be within the scope of the 1998 Report, the regime must, firstly, apply to income from geographically mobile activities, such as financial and other service activities, including the provision of intangibles. Preferential regimes designed to attract investment in plant, building and equipment are outside the scope of the 1998 Report.

12. Secondly, the regime must relate to the taxation of the relevant income from geographically mobile activities. Hence, the work is mainly concerned with business taxation. Consumption taxes are explicitly excluded. Business taxes may be levied at national, federal or central government level ("national taxes") and/or at sub-national, sub-federal or decentralised level ("sub-national taxes"). Sub-national taxes include taxes levied at state, regional, provincial or local level. In the course of the current review, the question arose as to whether regimes offering tax benefits at sub-national level alone ("sub-national regimes") are within the scope of the FHTP's work. This is discussed in Chapter 6.[1]

Preferential tax treatment

13. In order for a regime to be considered preferential, it must offer some form of tax preference in comparison with the general principles of taxation in the relevant country. A preference offered by a regime may take a wide range of forms, including a reduction in the tax rate or tax base or preferential terms for the payment or repayment of taxes. Even a small amount of preference is sufficient for the regime to be considered preferential. The key point is that the regime must be preferential *in comparison with the general principles of taxation in the relevant country*, and not in comparison with principles applied in other countries. For example, where the rate of corporate tax applied to all income in a particular country is 10%, the taxation of income from mobile activities at 10% is not preferential, even though it may be lower than the rate applied in other countries.

[1] Chapter 6 of the Action 5 Report provides the criteria for when sub-national regimes are within the scope of the FHTP's work. See paragraphs 145-146 of the Action 5 Report.

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Template for High-Level Information on Preferential Regimes

Country	Contact Name	Organisation	Email address

Name of regime	Benefits to be granted under the regime	Taxpayers that can qualify for the benefits	Whether IP income can qualify for the benefits Please answer "Yes" as long as the regime can grant benefits to IP income, regardless of the main purpose or design of the regime	Additional comments (optional)
			Yes / No	
			Yes / No	
			Yes / No	
			Yes / No	
			Yes / No	
			Yes / No	
			Yes / No	
			Yes / No	
			Yes / No	
			Yes / No	

Example of Completed Template

Country	Contact Name	Organisation	Email address
Country A	John Smith	Ministry of Finance of Country A	John.Smith@CountryA.com

Name of regime	Benefits to be granted under the regime	Taxpayers that can qualify for the benefits	Whether IP income can qualify for the benefits Please answer "Yes" as long as the regime can grant benefits to IP income, regardless of the main purpose or design of the regime	Additional comments (optional)
[Example 1] Patent Box	Taxpayers are entitled to special deduction equivalent to 50% of the amount of income derived from IP assets	Resident companies and PEs of foreign companies that conduct R&D activities in Country A.	Yes	The government has started the process to amend this IP regime.
[Example 2] Holding Company Regime	Qualifying taxpayers (as described in the next column) are entitled to exemption from corporate tax.	Resident companies established for the purpose of holding assets, including in particular shares of foreign subsidiaries.	Yes	A qualifying taxpayer can potentially hold IP assets, and thus, IP income can be exempt from tax under this regime.
[Example 3] Strategic Industries Incentive	Reduced tax rate of 10% (as opposed to the regular tax rate of 30%) applies to the income derived by qualifying taxpayers (as described in the next column)	Resident companies that conduct business in the following industries in Country A: Telecommunication industry Services industry	No	

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Annex 2

Country Self-Review of regimes

Country:	
Regime:	
Description of regime:	
Part A: Preliminary factors	
A1: The regime has been previously reviewed and there have been no subsequent changes to the regime.	*Yes/No*
Comments:	
A2: The regime has been abolished. *(Where a regime has been abolished and replaced by a new regime, the new regime should be considered on a separate Template)*	*Yes/No*
Comments:	
A3: The regime falls outside the scope of the work of the Forum on Harmful Tax Practices. *(The scope of this work focuses on geographically mobile activities, such as financial and service activities, including the provision of intangibles. It excludes regimes designed to attract investment in plant, building and equipment)*	*Yes/No*
Where a regime falls outside the scope of the work of the Forum, please provide a full and detailed explanation as to why this is the case*:*	
If the response to any of A1-A3 is 'Yes', there is no requirement to complete Parts B-D	
Part B: Key factors in identifying harmful preferential tax regimes	
B1: No or low effective tax rates	*Yes/No*
Comments:	
B2: Ring-fencing of regime	*Yes/No*
Comments:	
B3: Lack of transparency	*Yes/No*
Comments:	
B4: Lack of effective exchange of information	*Yes/No*
Comments:	
Part C: Other factors in identifying harmful preferential tax regimes	
C1: An artificial definition of the tax base	*Yes/No*
Comments:	
C2: Failure to adhere to international transfer pricing principles	*Yes/No*
Comments:	
C3: Foreign source income is exempt from residence country taxation	*Yes/No*
Comments:	
C4: Negotiable tax rate or tax base	*Yes/No*
Comments:	
C5: Existence of secrecy provisions	*Yes/No*
Comments:	

C6: Access to a wide network	*Yes/No*
Comments:	
C7: The regime is promoted as a tax minimisation vehicle	*Yes/No*
Comments:	
C8: The regime encourages purely tax-driven operations or arrangements	*Yes/No*
Comments:	
Part D: Conclusion of self-review	
D1: In light of the above and other factors, does your country believe the tax regime may be potentially harmful?	*Yes/No*
Comments: (Include any assessment of the likely impact of the regime on other countries)	
D2: What measures are proposed to remove any features considered harmful?	
Comments:	
D3: Further observations or comments	
Comments:	

ACTION 6 "PREVENTING THE GRANTING OF TREATY BENEFITS IN INAPPROPRIATE CIRCUMSTANCES"

GENERAL INFORMATION

The 2015 Action 6 Report (OECD, 2015) is one of the four BEPS minimum standards.

The BEPS Action Plan identifies treaty abuse, and in particular treaty shopping, as one of the most important sources of BEPS concerns. Action 6 (Prevent Treaty Abuse) describes the work to be undertaken in this area.

The relevant part of the Action Plan reads as follows:

Existing domestic and international tax rules should be modified in order to more closely align the allocation of income with the economic activity that generates that income:

> *Treaty abuse is one of the most important sources of BEPS concerns. The Commentary on Article 1 of the OECD Model Tax Convention already includes a number of examples of provisions that could be used to address treaty-shopping situations as well as other cases of treaty abuse, which may give rise to double non- taxation. Tight treaty anti-abuse clauses coupled with the exercise of taxing rights under domestic laws will contribute to restore source taxation in a number of cases.*

Action 6 – Prevent treaty abuse

> *Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. Work will also be done to clarify that tax treaties are not intended to be used to generate double non-taxation and to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country. The work will be co-ordinated with the work on hybrids.*

The report "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" is the result of the work carried on in the three different areas identified by Action 6:

1. Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances.
2. Clarify that tax treaties are not intended to be used to generate double non-taxation.
3. Identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country.

Taxpayers engaged in treaty shopping and other treaty abuse strategies undermine tax sovereignty by claiming treaty benefits in situations where these benefits were not intended to be granted, thereby depriving countries of tax revenues. Countries have therefore agreed to include anti-abuse provisions in their tax treaties, including a minimum standard to counter treaty shopping. They also agree that some flexibility in the implementation of the minimum standard is required as these provisions need to be adapted to each country's specificities and to the circumstances of the negotiation of bilateral conventions.

The Report "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" includes new treaty anti-abuse rules that provide safeguards against the abuse of treaty provisions and offer a certain degree of flexibility regarding how to do so.

These new treaty anti-abuse rules address treaty shopping, which involves strategies through which a person who is not a resident of a State attempts to obtain benefits that a tax treaty concluded by that State grants to residents of that State, for example by establishing a letterbox company in that State.

The minimum standard on Action 6

Given the risk to revenues posed by treaty shopping, countries have committed to ensure a minimum level of protection against treaty shopping (the "minimum standard"). That commitment will require countries to include in their tax treaties an express statement that their common intention is to eliminate double taxation

without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements.

In addition, countries will implement this common intention by including in their treaties:

- the combined approach of a limitation on benefits (LOB) rule and a principal purposes test (PPT) rule, or
- the PPT rule alone, or
- a detailed LOB rule supplemented by a mechanism that would deal with conduit financing arrangements not already dealt with in tax treaties.

The Final Report on BEPS Action 6 describes the minimum standard on treaty abuse, which was agreed to as part of the BEPS package:

> *At a minimum ... countries should agree to include in their tax treaties an express statement that their common intention is to eliminate double taxation without creating opportunities for non- taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements ...; they should also implement that common intention through either the combined approach described in paragraph 19 [i.e. combination of the LOB and PPT rules] (subject to the necessary adaptations referred to in paragraph 6 above), the inclusion of the PPT rule or the inclusion of the LOB rule supplemented by a mechanism (such as a treaty rule that might take the form of a PPT rule restricted to conduit arrangements or domestic anti-abuse rules or judicial doctrines that would achieve a similar result) that would deal with conduit arrangements not already dealt with in tax treaties.*

Implementation of the minimum standard on Action 6

The report also includes the following description of how the implementation of the minimum standard on Action 6 could be reviewed:

> *Some form of monitoring of compliance with the minimum standard on Action 6 is probably required to ensure that countries abide by their commitment. Whether treaties comply with the minimum standard could be assessed relatively easily by looking at the wording of tax treaties, most of which are now available in English. The monitoring could therefore include an analysis of how many treaties concluded by participating countries comply with the minimum standard. Also, since the application of the minimum standard to an existing bilateral treaty would involve two States, it would be possible to envisage a process through which any country that would face difficulties in getting agreement from another country to amend an existing treaty in order to implement the minimum standard could raise the matter with a monitoring body that would include representatives of the countries that committed to the implementation of the minimum standard.*

Since the minimum standard on Action 6 deals with the inclusion in tax treaties of provisions dealing with treaty-shopping, the review should logically focus on what jurisdictions will include in their new treaties and on the changes they will make to their existing treaties, **through the Multilateral Instrument (MLI) or bilaterally**.

It is envisaged that the review will be carried out by Working Party 1 on Tax Conventions and Related Questions, which will report annually to the CFA.

Whether new treaties or changes to existing treaties comply with the minimum standard could be assessed relatively easily by looking at the wording of tax treaties, almost all of which are now available in English through commercial databases. It is therefore proposed that the contents of new treaties and protocols concluded by the Members of the BEPS project be subject to peer review to establish whether these new treaties and changes to existing treaties are in conformity with the Action 6 minimum standard.

As noted in paragraph 23 of the Final Report on Action 6, the inclusion of the minimum standard in the MLI will provide an effective way to quickly implement that minimum standard. Members of the BEPS project are therefore encouraged to use the MLI for that purpose. Review of bilateral treaties and protocols will be needed, however, for countries that will not sign the MLI or that disagree as to how the minimum standard should be met through the provisions of that instrument.

Whereas the MLI is not included to the BEPS minimum standards, its applying should be determined by the

countries on one's own authority.

The MLI was formally adopted by an ad hoc Group of 99 countries hosted by the OECD. The MLI will modify the network of existing bilateral tax agreements in a synchronised and efficient manner in order to swiftly implement the tax treaty-related measures developed during the OECD/G20 BEPS Project. These treaty-related measures are aimed at countering the abuse of bilateral tax treaties, improving dispute resolution and updating the global tax treaty network, which is composed of more than 3 000 bilateral treaties.

The MLI provides the opportunity to modify existing treaties without the need for costly and time-consuming bilateral renegotiations while providing flexibility to accommodate different tax policies.

NEXT STEPS FOR UKRAINE

➔ **Step No 1 "Review and amendment of the existing double-tax treaties"**

Countries commit to adopt in their bilateral treaties measures that implement the minimum standard if requested to do so by other countries that have made the same commitment and that will request the inclusion of these measures.

Whilst the way in which this minimum standard will be implemented in each bilateral treaty will need to be agreed to between the Contracting States, this commitment applies to existing and future treaties.

Since the conclusion of a new treaty and the modification of an existing treaty depend on the overall balance of the provisions of a treaty, however, this commitment should not be interpreted as a commitment to conclude new treaties or amend existing treaties within a specified period of time.

Also, if a country is not itself concerned by the effect of treaty-shopping on its own taxation rights as a State of source, it will not be obliged to apply provisions such as the LOB or the PPT as long as it agrees to include in a treaty provisions that its treaty partner will be able to use for that purpose.

The minimum standard is included in the MLI which will provide an effective way to implement it swiftly. We understand that at least 36 of Ukraine's treaty partners have chosen to cover their tax treaty with Ukraine as a Covered Tax Agreement under the MLI. However, this may not be sufficient to ensure its implementation for all tax treaties since participation in the MLI is not mandatory and two countries that are parties to an existing treaty may have different preferences as to how the minimum standard should be met; monitoring of the implementation of the minimum standard will therefore be necessary.

The MLI also facilitates the adoption of other recommended tax treaty measures outside the minimum standards. Therefore, an analysis of Ukraine's preferences in this respect is also recommended.

➔ **Step No 2 "Review of the implementation of the minimum standard"**

Since the minimum standard on Action 6 deals with the inclusion in tax treaties of provisions dealing with treaty-shopping, the review should logically focus on what jurisdictions will include in their new treaties and on the changes they will make to their existing treaties (through the MLI or bilaterally).

It is envisaged that the review will be carried out by Working Party 1 on Tax Conventions and Related Questions, which will report annually to the CFA.

Whether new treaties or changes to existing treaties comply with the minimum standard could be assessed relatively easily by looking at the wording of tax treaties, almost all of which are now available in English through commercial databases. It is therefore proposed that the contents of new treaties and protocols concluded by the Members of the BEPS project be subject to peer review to establish whether these new treaties and changes to existing treaties are in conformity with the Action 6 minimum standard.

A first report on the implementation of the minimum standard on Action 6 will be produced by Working Party 1 for the January 2019 meeting of the Members of the BEPS project. That report will reflect how the minimum standard has been incorporated in bilateral treaties through the decisions taken by jurisdictions when signing the MLI and through new treaties or protocols signed since October 2015; it would also describe any implementation issues on which guidance would be requested. Subsequent reports could be produced on a yearly basis.

ACTION 13 "GUIDANCE ON TRANSFER PRICING DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING"

GENERAL INFORMATION

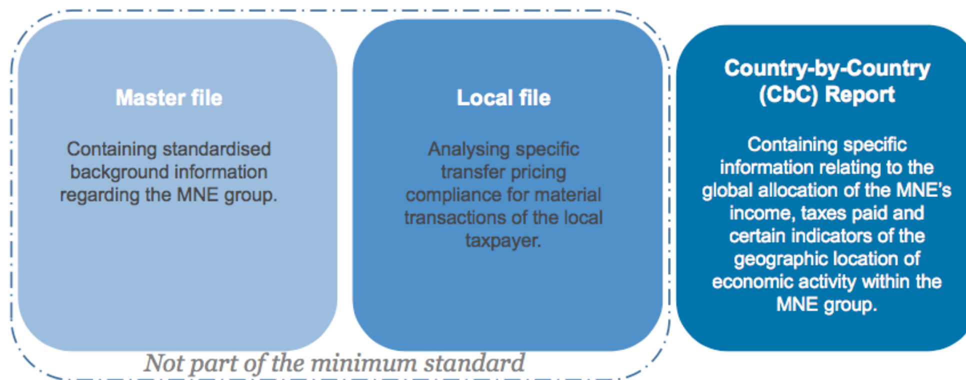
The 2015 Action 13 Report of the Action Plan on Base Erosion and Profit Shifting (OECD, 2015) contains revised standards for transfer pricing documentation and a template for Country-by-Country reporting of income, taxes paid and certain measures of economic activity. It recognises that enhancing transparency for tax administrations by providing them with adequate information to conduct transfer pricing risk assessments and examinations is an essential part of tackling the base erosion and profit shifting (BEPS) problem.

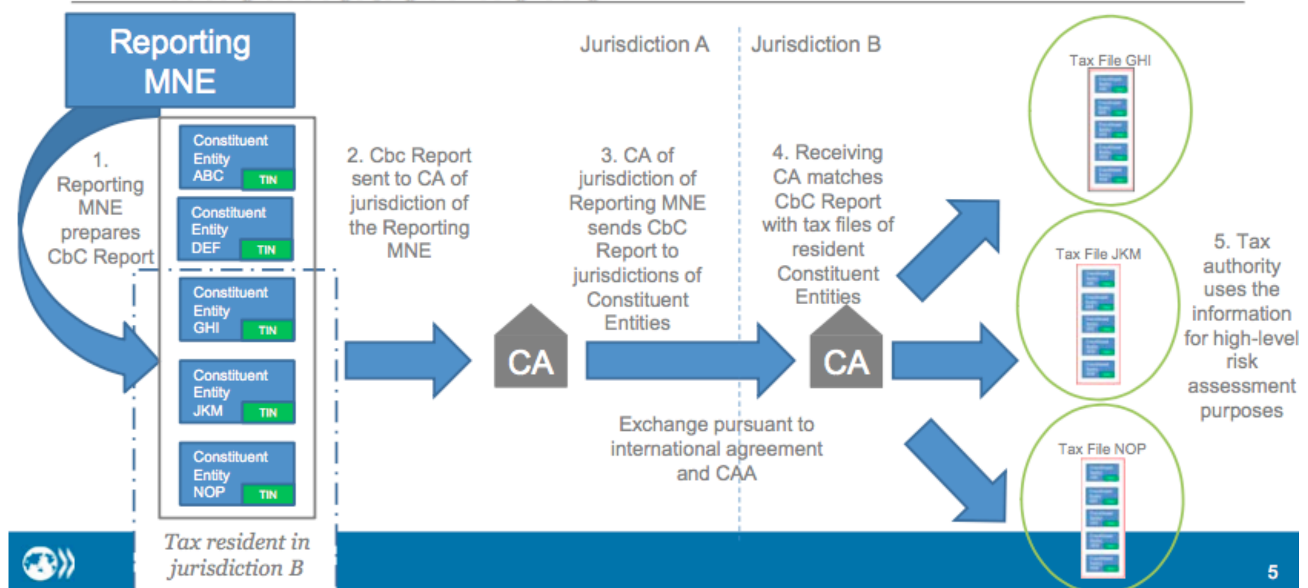
The Country-by-Country (CbC) requirements contained in the Action 13 Report form one of the four BEPS minimum standards. The Country-by-country report requires multinational enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.

The Action 13 Report guidance on transfer pricing documentation also requires MNEs to provide tax administrations high-level global information regarding their global business operations and transfer pricing policies in a "master file" that would be available to all relevant country tax administrations. It also requires that more transactional transfer pricing documentation be provided in a local file in each country, identifying relevant related party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regard to those transactions. The guidance on master file and local file is not part of the minimum standard.

Taken together, these three documents (country-by-country report, master file and local file) provide a standardised approach to transfer pricing documentation and will require taxpayers to articulate consistent transfer pricing positions, will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries. This information should make it easier for tax administrations to identify whether companies have engaged in transfer pricing and other practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged environments. The countries participating in the BEPS Project agree that these new reporting provisions, and the transparency they will encourage, will contribute to the objective of understanding, controlling, and tackling BEPS behaviours.

Effective implementation of the new reporting standards and reporting rules will be essential. Additional work will be undertaken over the next several months to identify the most appropriate means of filing the required information with and disseminating it to tax administrations. In that work, due regard will be given to considerations related to protection of the confidentiality of the information required by the reporting standards in particular for the CbC report, the need for making the information available on a timely basis to all relevant countries, and other relevant factors.





Specific aspects relating to the CbC report

The country-by-country report requires aggregate tax jurisdiction- wide information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates. The report also requires a listing of all the Constituent Entities for which financial information is reported, including the tax jurisdiction of incorporation, where different from the tax jurisdiction of residence, as well as the nature of the main business activities carried out by that Constituent Entity.

This Annex III to Chapter V of the **Guidance on Transfer Pricing Documentation and Country-by-Country Reporting** contains a model template for reporting a multinational enterprise's (MNE) allocation of income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis. The instructions in this Annex form an integral part of the model template for the country-by- country report.

A Reporting Entity is generally the **Ultimate Parent Entity of an MNE Group** (but there may be situations

where another Constituent Entity of the MNE Group may be the Reporting Entity, eg. where the Ultimate Parent Entity is not required to file a CbC report under the laws of its jurisdiction of tax residence).

For purposes of completing the template, a Constituent Entity of the MNE group is any separate business unit of the MNE group (company, corporation, trust, partnership etc.) that is included in the consolidated group for financial reporting purposes. Entities excluded from consolidated financial statements only on size or materiality grounds should be included in the country-by- country report as Constituent Entities.

The Country-by-Country (CbC) reporting requirements, which are contained in the 2015 Action 13 Report form one of the BEPS minimum standards for which there will be a peer review of country implementation.

NEXT STEPS FOR UKRAINE

There are no approved steps on Action 13 for developing countries yet; more detailed information is here http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf

➔ **Step No 1 "Domestic legal and administrative framework"**

The objective of the CbC report is to provide tax administrations with a high level overview of the operations and tax risk profile of the largest multinational enterprise groups ("MNE" Groups). CbC reporting applies to MNE Groups with annual consolidated group revenue of EUR 750 million or more (or near equivalent in local currency as of January 2015) in the immediately preceding fiscal year.

The CbC report is prepared on an annual basis, and includes information broken down for each jurisdiction in which the MNE Group operates. This includes the amount of revenue from unrelated parties and related parties, profit or loss before income tax, income tax paid and accrued, stated capital, accumulated earnings, number of employees and tangible assets, as well as a list of every Constituent Entity in the group, its jurisdiction of tax residence and the nature of its business, and a section for additional explanatory information. In order to ensure consistency in the implementation of CbC reporting across a large number of jurisdictions, the Action 13 Report contains a standard template in accordance with which the CbC report must be prepared.

Jurisdictions should put in place the domestic legal and administrative framework to ensure CbC reporting by the relevant taxpayers to the tax administration. This requires the following:

Parent Entity Filing obligation. Introducing a CbC filing obligation on Ultimate Parent Entities:	▪ which applies to an entity which is resident in its jurisdiction and which is the Ultimate Parent Entity of an MNE Group; ▪ which applies to MNE Groups with annual consolidated group revenue in the immediately preceding fiscal year of 750 million Euro or more (or a near equivalent amount in domestic currency as of January 2015); ▪ whereby the Ultimate Parent Entity is required to include in the CbC report any Constituent Entity that is (i) any separate business unit of the MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE Group were traded on a public securities exchange, (ii) any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds, and (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes; ▪ which would not exclude an entity from CbC reporting other than as permitted by the Action 13 Report.
Scope and timing of Parent entity filing. Providing that the filing of a CbC report by an Ultimate Parent Entity (or, if	▪ reporting commences from a specific fiscal year; ▪ the CbC report includes all of, and only, the information as contained in the CbC report template in the Action 13 Report with regard to each jurisdiction in which the MNE Group

applicable, by a Surrogate Parent Entity) must be in accordance with the following:	operates; ▪ the CbC report is required to be filed no later than 12 months after the last day of the reporting Fiscal Year of the MNE Group; ▪ where rules or guidance are issued on other aspects of filing requirements (e.g. details on source of data, currency issues, definitions of information to be reported), ensuring that they are not inconsistent with, and do not circumvent, the minimum standard.
Limitation on local filing obligation If local filing requirements have been introduced, that such requirements apply only as follows	▪ whereby local filing applies to a Constituent Entity resident for tax purposes in the given jurisdiction; ▪ that the content of the CbC report is not required to contain more than that required of an Ultimate Parent Entity; ▪ that even if the conditions below for local filing have otherwise been met, no local filing of a CbC report can be required by the jurisdiction unless it has met the requirements of confidentiality, consistency and appropriate use; ▪ that no local filing of a CbC report relating to a particular fiscal year can be required unless one or more of the following conditions have been met with respect to that fiscal year: a. the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-by- Country Report in its jurisdiction of tax residence; or b. b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a party by the time for filing the Country-by-Country Report; or c. c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified to the Constituent Entity by its tax administration; ▪ if there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in the jurisdiction, an MNE Group is allowed to designate one Constituent Entity to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the given jurisdiction.
Limitation on local filing in case of surrogate filing. If local filing requirements have been introduced, local filing will not be required when there is surrogate filing in another jurisdiction by an MNE Group, to the extent that the following conditions are met with respect to that fiscal year	▪ the jurisdiction of the Surrogate Parent Entity requires filing of CbC reports that include all of, and only the information as contained in the CbC report template in the Action 13 Report; ▪ there is a Qualifying Competent Authority Agreement in effect with the jurisdiction of tax residence of the Surrogate Parent Entity by the filing deadline of the CbC report; ▪ the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the jurisdiction otherwise imposing local filing of any Systemic Failure; ▪ the CbC report is exchanged by the jurisdiction of the Surrogate Parent Entity; ▪ the jurisdiction of the Surrogate Parent Entity has been notified by the Constituent Entity resident for tax purposes that it is the Surrogate Parent Entity, by a certain date (if such notifications are required); ▪ a notification is received from the Constituent Entity resident for tax purposes in the jurisdiction indicating the identity and tax residence of the Reporting Entity, by a certain date (if such notifications are required).
Effective Implementation. Providing for enforcement provisions and monitoring relating to CbC reporting's	▪ having mechanisms (such as notifications and penalties) to enforce compliance by all Ultimate Parent Entities and Surrogate Parent Entities with their filing obligations; ▪ applying the above mechanisms effectively;

effective implementation	▪ determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed a CbC report, and in the case of local filing, determining the number of Constituent Entities filing CbC reports.

Jurisdictions are encouraged to implement their domestic legal and administrative framework as soon as possible (in general with a view to cover 2016 as the first year for imposing CbC requirements on MNE Groups).

➔ Step No 2 “Exchange of information framework”

Jurisdictions are expected to have international exchange of information agreements that allow automatic exchange of information. Jurisdictions should exchange the CbC reports submitted to them by the Ultimate Parent Entity or Surrogate Parent Entity with certain other tax administrations. Jurisdictions should:

(1.) Within the context of the international exchange of information agreements that allow automatic exchange of information, have Qualifying Competent Authority Agreements that are in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use prerequisites that underpin the Action 13 minimum standard;
(2.) Ensure that each of the mandatory fields of information required in the template contained in Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report as contained in the 2015 Action 13 Report are present in the information exchanged;
(3.) With respect to each CbC report, ensure that the CbC reports are exchanged with all tax jurisdictions listed in Table 1 of the CbC reporting template, provided there is an International Agreement and Qualifying Competent Authority Agreement in place with such jurisdictions;
(4.) Ensure that the information to be exchanged is transmitted to the relevant jurisdictions on an annual basis in accordance with the timelines provided for in the relevant Qualifying Competent Authority Agreements;
(5.) Ensure that a temporary suspension of exchange of information or termination of a Qualifying Competent Authority Agreement would be carried out only as per the conditions set out in such agreement;
(6.) Ensure that their Competent Authority consults with the other Competent Authority before making a determination of Systemic Failure or significant non-compliance by that other Competent Authority;
(7.) Ensure that the format used for the information to be exchanged complies with the OECD XML Schema and the information is provided in accordance with the OECD XML Schema User Guide;
(8.) Ensure that an appropriate encryption method and method for electronic data transmission are in place.

This step is connected with the Agreement for the purposes of MCAA CRS. This agreement was not signed for now.

➔ Step No 3 “Confidentiality and the appropriate use of CbC reports”

Jurisdictions should ensure that CbC reports are kept confidential and used appropriately. This requires the following:

With respect to confidentiality, jurisdictions should:

(1.) Have international exchange of information mechanisms which provide that any information received shall be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;
(2.) Have the necessary domestic rules or procedures to give effect to the restrictions contained in the International Agreement and related Qualifying Competent Authority Agreement;
(3.) Have in place and enforce legal protections of the confidentiality of the information contained in CbC reports which are received by way of local filing, which preserve the confidentiality of the CbC report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a Tax Information Exchange Agreement or a tax treaty that meets the

internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes;

(4.) Have effective penalties for unauthorised disclosures or unauthorised use of confidential information;

(5.) Ensure confidentiality in practice, for instance having in place a review and supervision mechanism to identify and resolve any breach of confidentiality;

(6.) Respect the terms of the International Agreement and related Qualifying Competent Authority Agreement, including the limitation on use of information received for taxable periods covered by the agreement.

These steps are similar to those that jurisdictions should take with respect to the CRS MCAA.

This step is connected with the Agreement for the purposes of MCAA CRS. This Agreements was not signed for now.

With respect to appropriate use:

(1.) Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing:

i. can be used only to assess high-level transfer pricing risks and other BEPS-related risks and, where appropriate, for economic and statistical analysis;

ii. cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis;

iii. are not used on their own as conclusive evidence that transfer prices are or are not appropriate;

iv. are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income).

(2.) Where an adjustment is made in contravention of the above conditions, that jurisdiction making such an adjustment will promptly concede such adjustment in any competent authority proceedings.

In addition, jurisdictions should have in place procedures or mechanisms to ensure that a consultation process takes place between Competent Authorities in cases where an adjustment of the taxable income of a Constituent Entity, as a result of further enquiries based on the data in the CbC report, leads to undesirable economic outcomes.

➔ Step No 4 “Review of the implementation of the minimum standard”

The Country-by-Country (CbC) reporting requirements contained in the 2015 Action 13 Report form one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the CFA Inclusive Framework on BEPS commit to implementing the Action 13 minimum standard and to participating in the peer review, on an equal footing.

The purpose of a peer review is to ensure the effective and consistent implementation of an agreed standard and to recognise progress made by jurisdictions in this regard. Peer reviews should be conducted in a manner that is clear; targets the core elements of the standard and areas of risk; ensures that jurisdictions are treated fairly and equally; and is resource efficient.

The peer review is a review of the legal and administrative framework put in place by a jurisdiction to implement the CbC reporting standard. This peer review is a separate exercise to the 2020 review to evaluate whether modifications to the CbC reporting standard should be made.

The Action 13 Report recommended that the first CbC Reports be required to be filed for fiscal years beginning on or after 1 January 2016. It was however acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. In this respect, the peer review will take account of the specific timeline followed by certain jurisdictions, and the review will focus on the efforts taken by these jurisdictions in order to meet their commitment to implement the minimum standard.

The peer review will be undertaken by the Ad Hoc Joint Working Party 6 – Working Party 10 sub-group (hereafter referred to as the “CbC Reporting Group”). On matters related to peer reviews, the CbC Reporting Group will report directly to the CFA Inclusive Framework on BEPS.

The terms of reference that were developed by the CbC Reporting Group at the end of 2016 focus on the following three key aspects of the CbC reporting standard (detailed above) that a jurisdiction must meet:

- **The domestic legal and administrative framework**
- **The exchange of information framework;**
- **The confidentiality and appropriate use of CbC reports.**

The methodology (that was developed together with the terms of reference) recognises that these three key aspects of CbC reporting will be implemented and become operational over the coming years, starting with the domestic legal and administrative framework being put in place generally in 2016, followed by the international exchanges of CbC reports to occur for the first time by mid-2018, and the work to ensure that CbC reports are kept confidential and used appropriately in any subsequent tax compliance actions. Given the fact not all of these three key aspects can be implemented at the same time, these three key aspects will be reviewed according to a staged approach. A staged review enables the review of aspects of CbC reporting to occur as they are implemented, starting in 2017 and allowing for the early detection of inconsistencies in implementing the minimum standard as well as providing an opportunity for early remedial action to be taken by jurisdictions, if necessary.

Given the fact that implementation of CbC reporting occurs in phases (generally starting with legislating the obligation for MNE Groups to file CbC reports, followed later by the international exchange of such reports and finally the use of those reports in tax compliance activity), the review of the three key aspects above will be structured in phases over the coming three years (2017, 2018, 2019), with each annual review focusing on different areas of country implementation.

Such an approach would allow starting the peer reviews to identify any issues requiring improvement at an early phase rather than scheduling each jurisdiction for one full review only after CbC reporting has become fully operational. Accordingly, all members of the Inclusive Framework will be included in the peer review for its three phases, in 2017, 2018 and 2019, allowing the Inclusive Framework to obtain a clear picture of the progress made by members in implementing this minimum standard. As far as possible, the peer review process has been designed to be resource efficient, with short reports on each jurisdiction to be produced which are targeted to key risk areas and where possible drawing on work already undertaken by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The first phase of the peer review will be launched in mid-February 2017, when countries will be asked to complete a self-review questionnaire.

ACTION 14 "MAKING DISPUTE RESOLUTION MECHANISMS MORE EFFECTIVE"

GENERAL INFORMATION

The 2015 Action 14 Report (OECD, 2015) is one of the four BEPS minimum standards.

Eliminating opportunities for cross-border tax avoidance and evasion and the effective and efficient prevention of double taxation are critical to building an international tax system that supports economic growth and a resilient global economy. Countries agree that the introduction of the measures developed to address base erosion and profit shifting pursuant to the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD, 2013) should not lead to unnecessary uncertainty for compliant taxpayers and to unintended double taxation. Improving dispute resolution mechanisms is therefore an integral component of the work on BEPS issues.

Article 25 of the OECD Model Tax Convention (OECD, 2014) provides a mechanism, independent from the ordinary legal remedies available under domestic law, through which the competent authorities of the Contracting States may resolve differences or difficulties regarding the interpretation or application of the Convention on a mutually-agreed basis. This mechanism – the mutual agreement procedure (MAP) – is of fundamental importance to the proper application and interpretation of tax treaties, notably to ensure that taxpayers entitled to the benefits of the treaty are not subject to taxation by either of the Contracting States which is not in accordance with the terms of the treaty.

The measures developed under Action 14 of the BEPS Action Plan aim to strengthen the effectiveness and efficiency of the MAP process. They aim to minimise the risks of uncertainty and unintended double taxation by ensuring the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the mutual agreement procedure. These measures are underpinned by a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure and to further progress to rapidly resolve disputes.

Countries have agreed to important changes in their approach to dispute resolution, in particular by having developed a minimum standard with respect to the resolution of treaty-related disputes, committed to its rapid implementation and agreed to ensure its effective implementation through the establishment of a robust peer-based monitoring mechanism that will report regularly through the Committee on Fiscal Affairs to the G20.

The minimum standard will:

- Ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner;
- Ensure the implementation of administrative processes that promote the prevention and timely resolution of treaty-related disputes; and
- Ensure that taxpayers can access the MAP when eligible.

The BEPS Action Plan recognises that the actions to counter BEPS must be complemented with actions that ensure certainty and predictability for business. The work on Action 14, which seeks to improve the effectiveness of the mutual agreement procedure (MAP) in resolving treaty-related disputes, is thus an integral component of the work on BEPS issues and reflects the comprehensive and holistic approach of the BEPS Action Plan.

The relevant part of the Action Plan reads as follows:

> *The actions to counter BEPS must be complemented with actions that ensure certainty and predictability for business. Work to improve the effectiveness of the mutual agreement procedure (MAP) will be an important complement to the work on BEPS issues. The interpretation and application of novel rules resulting from the work described above could introduce elements of uncertainty that should be minimised as much as possible. Work will therefore be undertaken in order to examine and address obstacles that prevent countries from [re]solving treaty-related disputes under the MAP. Consideration will also be given to supplementing the existing MAP provisions in tax treaties with a mandatory and binding arbitration provision.*

The Report “Making Dispute Resolution Mechanisms More Effective” reflects a commitment by countries to **implement a minimum standard on dispute resolution, consisting of specific measures to remove obstacles to an effective and efficient mutual agreement procedure**. The Report also reflects agreement by countries to establish a **monitoring mechanism** to ensure that the commitments contained in the minimum standard are effectively satisfied.

The minimum standard is constituted by specific measures that countries will take to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner. The elements of the minimum standard are set out below in relation to the following three general objectives:

- Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner;
- Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes; and
- Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure.

The specific measures that are pert of the minimum standard are accompanied by explanations and, in some cases, changes to the OECD Model Tax Convention. Other changes to the Commentary of the OECD Model Tax Convention will be drafted as part of the next update to the OECD Model Tax Convention in order to reflect the conclusions of the Report “Making Dispute Resolution Mechanisms More Effective”.

The elements of the minimum standard have been formulated to reflect clear, objective criteria that will be susceptible to assessment and review in the monitoring process. Future work to develop the monitoring mechanism will include elaboration of

(i) the Terms of Reference that will be used by peers to evaluate implementation of the minimum standard and

(ii) the Assessment Methodology that will be used for the purposes of such monitoring.

Finally, the agreement to a minimum standard that will make tax treaty dispute resolution mechanisms more effective is complemented by the commitment, by a number of countries, to adopt mandatory binding arbitration.

Elements of a minimum standard to ensure the timely, effective and efficient resolution of treaty-related disputes

I. Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner

(1.) Countries should include paragraphs 1 through 3 of Article 25 in their tax treaties, as interpreted in the Commentary and subject to the variations in these paragraphs provided for under elements 3.1 and 3.3 of the minimum standard; they should provide access to MAP in transfer pricing cases and should implement the resulting mutual agreements (e.g. by making appropriate adjustments to the tax assessed).

(2.) Countries should provide MAP access in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti- abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

(3.) Countries should commit to a timely resolution of MAP cases: Countries commit to seek to resolve MAP cases within an average timeframe of 24 months. Countries’ progress toward meeting that target will be periodically reviewed on the basis of the statistics prepared in accordance with the agreed reporting framework referred to in element 1.5.

(4.) Countries should enhance their competent authority relationships and work collectively to improve the effectiveness of the MAP by becoming members of the Forum on Tax Administration MAP Forum (FTA MAP Forum).

(5.) Countries should provide timely and complete reporting of MAP statistics, pursuant to an agreed

reporting framework to be developed in co-ordination with the FTA MAP Forum.

(6.) Countries should commit to have their compliance with the minimum standard reviewed by their peers in the context of the FTA MAP Forum.

(7.) Countries should provide transparency with respect to their positions on MAP arbitration.

II. Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes:

(1.) Countries should publish rules, guidelines and procedures to access and use the MAP and take appropriate measures to make such information available to taxpayers. Countries should ensure that their MAP guidance is clear and easily accessible to the public.

(2.) Countries should publish their country MAP profiles on a shared public platform (pursuant to an agreed template to be developed in co-ordination with the FTA MAP Forum).

(3.) Countries should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the country would like to see reflected in future amendments to the treaty.

(4.) Countries should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

(5.) Countries should ensure that adequate resources are provided to the MAP function.

(6.) Countries should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If countries have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, countries may limit access to the MAP with respect to the matters resolved through that process. Countries should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

(7.) Countries with bilateral advance pricing arrangement (APA) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

III. Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure

(1.) Both competent authorities should be made aware of MAP requests being submitted and should be able to give their views on whether the request is accepted or rejected. In order to achieve this, countries should either:

- amend paragraph 1 of Article 25 to permit a request for MAP assistance to be made to the competent authority of either Contracting State, or
- where a treaty does not permit a MAP request to be made to either Contracting State, implement a bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified (such consultation shall not be interpreted as consultation as to how to resolve the case).

(2.) Countries' published MAP guidance should identify the specific information and documentation that a taxpayer is required to submit with a request for MAP assistance. Countries should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information.

(3.) Countries should include in their tax treaties the second sentence of paragraph 2 of Article 25 ("Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States"). Countries that cannot include the second sentence of paragraph 2 of Article 25 in their tax treaties should be willing to accept alternative treaty provisions that limit the time during which a Contracting State may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

The conclusions of the work carried out on Action 14 of the BEPS Action Plan reflect the agreement that the implementation of the minimum standard **should be evaluated through a peer monitoring mechanism** in order to ensure that the commitments embodied in the minimum standard are effectively satisfied.

NEXT STEPS FOR UKRAINE

№	Action	Purpose	Name of the document	Deadline
1.	Send the contact details for the peer review process	Receiving logins for Clearspace on Action 14; Receiving requests for peer input, draft reports, and all relevant information.	Central Point of Contact and updated mailing list (Annex 1)	As soon as possible
2.	Send the information on treaty network and request for deferral if applicable	Scheduling (or **deferring**) Ukraine's peer review*	080916 Letter from Chair (FTA MAP Forum) (Annex 2)	As soon as possible
3.	Provide Ukraine's MAP Profile	Publishing basic information on how the MAP is implemented in Ukraine	CTPA-CFA-NOE2(2016)48 - Template for MAP profile	Within 3 months after joining the Inclusive Framework
4.	Provide Ukraine's MAP statistics for 2017	Publishing MAP statistics with a common template	CTPA-CFA-NOE2(2016)47-REV1 - MAP Statistics reporting framework	By 31 May 2018

** Recognising that in certain circumstances the peer review of developing countries may not be appropriate at this point in time, the assessment methodology contains a mechanism that allows deferral of a peer review provided that (i) the developing country has not yet encountered meaningful level of MAP requests; and (ii) there is no feedback from other members indicating that its MAP regime requires improvement. The FTA MAP Forum will discuss the applications for deferral and any feedback received from other members of the FTA MAP Forum and decide if the application shall be approved. If approved, the peer review shall be deferred until 2020 unless a member of the FTA MAP Forum subsequently requests that a particular peer review commences prior to 2020.*

Organisation of the peer review process

The Final report on Action 14 provides that each jurisdiction committing to the implementation of the Action 14 minimum standard accepts such implementation to be reviewed by its peers.

In practice, the assessment methodology provides that this consists in a 2-stage process:
- the first stage being a **peer review**
- the second stage being a **peer monitoring**.

Both stages' outputs come in the form of a report that is specific to the assessed jurisdiction, the second stage report being an update of the first stage report.

To complete the **first stage**, the assessed jurisdiction needs to fill in a questionnaire that captures the state of play of its tax treaties, of its law and of its administrative practice.

Still, this information is supplemented with:
(i) the information publicly available, e.g. in the MAP profile, the statistics, the MAP Guidance, etc;
(ii) the input that is received from the peers on the assessed jurisdiction;
(iii) the input that may be provided by taxpayers.

The FTA MAP Forum Secretariat drafts reports gathering all this information, describing the strengths and any shortcomings that exist and providing recommendations as to how the shortcomings might be addressed by the assessed jurisdiction. Then, the assessed jurisdictions and the peers that provided input can comment on a first draft, and a second draft (taking into account their comments) is then provided to all members of the FTA MAP Forum. Such reports are eventually discussed in the FTA MAP Forum meeting if not approved under the written procedure.

The **second stage** report is drafted one year after the first stage report is approved by the CFA and provides an update as to whether and how the shortcomings and recommendations were addressed by the assessed jurisdiction in the meantime as the case may be.

The Action 14 peer review includes a detailed review of all existing tax treaties to assess their compliance with Article 25, paragraphs 1 through 3, of the OECD Model Tax Convention (see element 1.1 of Final report on Action 14).

This does not include the arbitration provision, which is indeed not part of the minimum standard. Only transparency with respect to the position of jurisdictions on MAP arbitration is required (see element 1.7 of Final report on Action 14).

Review of the implementation of the minimum standard

The monitoring mechanism will have the following general features:

1. All OECD and G20 countries, as well as jurisdictions that commit to the minimum standard, will undergo reviews of their implementation of the minimum standard. The reviews will evaluate the legal framework provided by a jurisdiction’s tax treaties and domestic law and regulations, the jurisdiction’s MAP programme guidance and the implementation of the minimum standard in practice.
2. The core output of the peer monitoring process will come in the form of a report. The report will identify and describe the strengths and any shortcomings that exist and provide recommendations as to how the shortcomings might be addressed by the reviewed jurisdiction.
3. The core documents for the peer monitoring process will be the Terms of Reference and the Assessment Methodology. The Terms of Reference will be based on the elements of the minimum standard and will break down these elements into specific aspects against which jurisdictions’ legal frameworks, MAP programme guidance and actual implementation of the minimum standard are assessed. The Terms of Reference will provide a clear roadmap for the monitoring process and will thereby ensure that the assessment of all jurisdictions is consistent and complete. The Assessment Methodology will establish detailed procedures and guidelines for peer monitoring of OECD and G20 countries and other committed jurisdictions by the FTA MAP Forum (see element 1.6 of the minimum standard) and will include a system for assessing the implementation of the minimum standard.
4. The peer monitoring process conducted by the FTA MAP Forum, reporting to the G20 through the OECD Committee on Fiscal Affairs, will begin in 2016, with the objective of publishing the first reports by the end of 2017.

Annex 1

Central Point of Contact for Purpose of Peer Review and Updated Mailing List

In accordance with the Assessment Methodology (***CTPA/CFA/NOE2(2016)46/REV 1***), please designate a central point of contact for your jurisdiction's peer review. The Secretariat will thereafter liaise with your jurisdiction's designated central point of contact on all matters relating to your jurisdiction's peer review. In this regard, ***please complete PART I of this document***.

The Secretariat will also contact the designated central point of contact for peer inputs with regard to the review of another jurisdiction unless your jurisdiction has designated a different contact person for this purpose. In this regard, ***please complete PART II of this document***.

We would also like to request that you provide us with your latest mailing list for purposes of the work of the FTA MAP Forum. In this regard, ***please complete PART III of this document***.

Please return the duly completed document to fta.map@OECD.org.

PART I **CENTRAL POINT OF CONTACT FOR YOUR JURISDICTION'S PEER REVIEW**
Name of Jurisdiction:
My jurisdiction's designated central point of contact is as below: Name: Designation: Organization: Email: Telephone:
PART II **CENTRAL POINT OF CONTACT FOR PURPOSES OF OBTAINING PEER INPUTS FROM YOUR JURISDICTION**
☐ My jurisdiction's designated central point of contact is the same as in PART I. ☐ My jurisdiction's designated central point of contact is different from that in PART I and is: Name: Designation: Organization: Email: Telephone:
PART III **YOUR JURISDICTION'S UPDATED MAILING LIST FOR PURPOSE OF THE WORK OF THE FTA MAP FORUM**
Please include the following person(s) in the mailing list of the FTA MAP Forum:
Name: Designation: Organization: Email:

Annex 2

Forum on Tax Administration MAP Forum ("FTA MAP Forum")

Dear Colleagues,

I am writing to you regarding your participation in the new inclusive framework on BEPS and in particular, your participation in the Forum on Tax Administration MAP Forum ("FTA MAP Forum") regarding the work on the Action 14 minimum standard.

As you know, the Base Erosion and Profit Shifting ("BEPS") package includes the Report on Action 14: Making Dispute Resolution Mechanisms More Effective ("the Action 14 Report") which is one of the four minimum standards. Members of the inclusive framework on BEPS have committed to resolve tax treaty-related disputes in a timely, effective and efficient manner and to have their implementation of the Action 14 minimum standard peer reviewed and monitored by the other members of the FTA MAP Forum. All members of the inclusive framework participate in the peer review and monitoring process on an equal footing.

The schedule of reviews of the 44 countries that committed to the implementation of the BEPS package in October 2015 is attached to this letter.

Recognising that in certain circumstances the peer review of developing countries may not be appropriate at this point in time, the assessment methodology contains a mechanism that allows deferral of a peer review provided that (i) the developing country has not yet encountered meaningful level of MAP requests; and (ii) there is no feedback from other members indicating that its MAP regime requires improvement.

As agreed at the last meeting of Working Party 1 and the FTA MAP Forum on 18-19 July 2016, I am now writing to all new members of the inclusive framework (i.e. those not already included in the attached review schedule) and would ask you to provide information relating to your treaty network and MAP experience and to indicate whether you wish to avail yourself of the deferral mechanism if you are a developing country.

In order to simplify the process we attach a form that you can use for your response. I would ask you to kindly return the completed form to the FTA MAP Forum Secretariat (fta.map@oecd.org). If you need any clarifications, please feel free to contact the Secretariat.

Best regards,

Douglas O'Donnell
Chair of the FTA MAP Forum

Please complete and submitted to the Secretariat (fta.map@oecd.org)

Name of Jurisdiction:

My jurisdiction has [***please indicate the number here***] tax treaties.

These tax treaties are available at [***please indicate the website (if available) here***].

Since 1 January 2014, my competent authority has received [***please indicate the number here***] MAP requests.

The number of outstanding MAP cases in my competent authority's inventory as of the date of submission of this form is [***please indicate the number here***].

My country is a developing country?

☐ No.

☐ Yes, and my country ***would like to apply*** for the deferral of its peer review.

☐ Yes, and my country ***does not want to apply*** for the deferral of its peer review.

Please contact the following person on this form:

Name:

Designation:

Organization:

Email:

Telephone:

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Assessment Schedule for Stage 1 Peer Reviews

(Source: Annex A of the Assessment Schedule for Peer Reviews (CTPA/CFA/NOE2(2016)59))

1st batch Launch by December 2016	2nd batch Launch by April 2017	3rd batch Launch by August 2017	4th batch Launch by December 2017	5th batch Launch by April 2018	6th batch Launch by August 2018	7th batch Launch by December 2018	8th batch Launch by April 2019
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	Aruba
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Brunei
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Curacao
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Guernsey
United Kingdom	Liechtenstein	Norway	Malta	Romania	India	Indonesia	Isle of Man
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Jersey
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	Monaco
		Spain	Portugal	Turkey	South Africa	Saudi Arabia	San Marino

http://www.oecd.org/tax/beps/beps-action-14-peer-review-assessment-schedule.pdf

ACTION 15 "DEVELOPING A MULTILATERAL INSTRUMENT TO MODIFY BILATERAL TAX TREATIES"

GENERAL INFORMATION

The **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS** (the Multilateral Instrument, MLI) is intended to transpose results from the OECD/G20 BEPS Project into more than 2 000 treaties worldwide. It will implement minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies. It will also allow governments to strengthen their tax treaties with the other tax treaty measures developed in the OECD/G20 BEPS Project.

"The multilateral instrument will save countries from multiple bilateral negotiations and renegotiations to implement the tax treaty changes in the BEPS project. It will help to ensure consistency in the implementation of the BEPS project"

Angel Gurría – OECD Secretary-General

Working together in the OECD/G20 BEPS Project, over 60 countries jointly developed 15 Actions to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment. Leaders of OECD and G20 countries, as well as other leaders, urged the timely implementation of this comprehensive BEPS package. The Multilateral Instrument responds to this call for swift action.

The MLI enables all Parties to meet the treaty-related minimum standards that were agreed as part of the BEPS package, which are the minimum standard for the prevention of treaty abuse under Action 6 of the BEPS package and the minimum standard for the improvement of dispute resolution under Action 14.

The Action 6 Report includes three alternative rules to address situations of treaty abuse. The first of these alternatives is a general anti-abuse rule based on the principal purpose of transactions or arrangements. In addition to this principal purpose test (PPT), the Action 6 Report provides two versions (a simplified and detailed version) of a specific anti-abuse rule, the limitation on benefits (LOB) provision, which limits the availability of treaty benefits to persons that meet certain conditions.

The minimum standard of Action 6 requires that countries, at a minimum, should implement: i) a PPT only; ii) a PPT and either a simplified or detailed LOB provision; or iii) a detailed LOB provision, supplemented by a mechanism that would deal with conduit arrangements not already dealt with in tax treaties.

In the context of Action 14, countries have agreed to important changes in their approach to dispute resolution, such as a minimum standard with respect to the resolution of treaty-related disputes. As part of this agreement, countries are committed to include paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention in their tax treaties, as interpreted in the Commentary, in their bilateral tax treaties. The MLI will facilitate the implementation of these provisions in existing bilateral tax treaties.

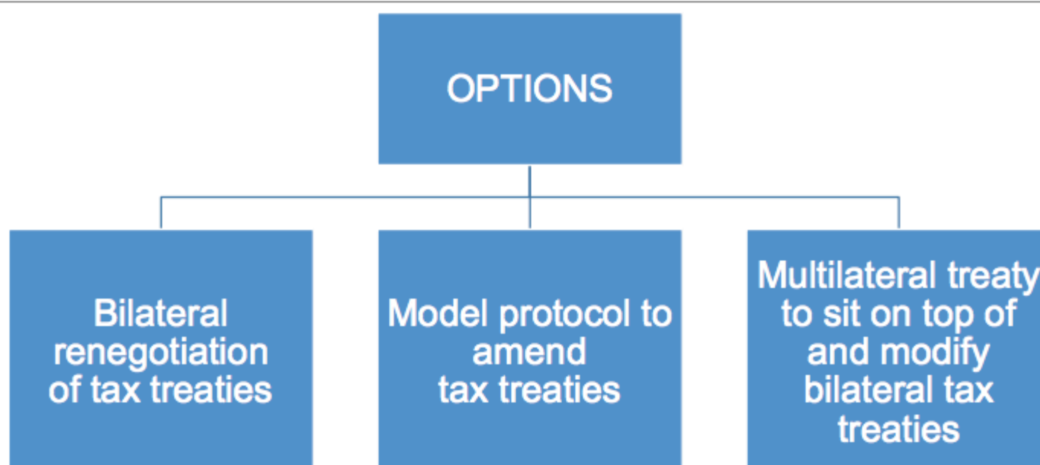
In addition to the commitment to implement the minimum standard by all countries adhering to the outcomes of the BEPS Project, the a number of countries have declared their commitment to provide for mandatory binding MAP arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe. Part VI of the Multilateral Instrument includes provides for an arbitration procedure for countries that made this additional commitment, and for any countries that also wish to allow for mandatory binding MAP arbitration.

BEPS Package – November 2015

Tax Treaty Related Measures

Action 2 – Hybrid Mismatches	Action 6 – Prevention of Treaty Abuse ***(Minimum Standard)***	Action 7 – Avoidance of Permanent Establishment Status	Action 14 – Improving Dispute Resolution ***(Minimum Standard)***

How to fix 3000+ bilateral tax treaties?



Developing countries are relatively dependent on foreign investments and on direct taxation of income derived from these investments. Developing countries that have concluded tax treaties may be exposed to treaty abuse that limits the possibilities for taxing such income. Such developing countries may have only limited resources to renegotiate their tax treaties on a bilateral basis. By signing up to the Multilateral Instrument, these countries will have the opportunity to strengthen their tax treaty network in a swift and efficient way.

On 24 November 2016, the members of the ad hoc Group on the Multilateral Instrument concluded the negotiations on the text of the Convention. A first high-level signing ceremony is expected to take place in early June 2017.

The Multilateral Instrument is open for signature for all countries as of 31 December 2016 and a signing ceremony is planned for early June 2017.

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Roadmap for Signature of the MLI:

(1.) Decide on tax treaties to be covered
(2.) Choose options and make reservations
(3.) Prepare notifications including of affected treaty provisions
(4.) Submit draft MLI position to Secretariat (by 7 April 2017)
(5.) Transmit full powers for Signatory (by 8 May 2017)
(6.) Signature ceremony in Paris (7 June 2017)

The Multilateral Instrument has already translated into Ukrainian language and submitted to the ministries for further approval.

The Roadmap to MLI signature is attached in the Annex 1.

Annex 1

ROADMAP TO MLI SIGNATURE

	STEP	WHEN
1	**MAKE POLICY CHOICES** on the options and reservations in the MLI including: • minimum standard on treaty abuse – select an option • minimum standard to improve dispute resolution – identify any reservations • other treaty related measures – identify any reservations/options → See the MLI Factsheet series	**ASAP**
2	**IDENTIFY LIST OF TAX TREATIES** to be covered by the MLI	**ASAP**
3	**COMPLETE TEMPLATE** with • list of Covered Tax Agreements • reservations • notifications: a) options chosen and b) affected treaty provisions	**ASAP**
4	**TALK TO TREATY PARTNERS** to resolve possible mismatches either through: • speed-matching event on 27 February-2 March • bilateral contacts	**February-March**
5	**SUBMIT DRAFT MLI POSITION** to Secretariat (the completed template) for review	**By 7 April 2017**
6	**TRANSMIT DRAFT FULL POWERS FOR SIGNATORY** to Secretariat for review (electronic version in line with template)	**By 8 May 2017**
7	**SIGN ATURE OF MLI IN PARIS** – MLI position as well as the full powers must be provided before/at time of signature.	**7 June 2017**