BEPS

Base Erosion and Profit Shifting (BEPS). The principles that shaped the international tax regime can be traced back to the 1920s, when a set of rules was created to govern cross-border operations and provide relief for double taxation. The framework remained largely untouched, while the economy developed and became globalised. Following a G20 mandate, the OECD presented a comprehensive project intended to combat perceived tax avoidance by multinational enterprises (MNEs), and create a single set of new international tax principles to end the erosion of corporate tax bases (Base Erosion) and shift of profits to low-tax jurisdictions (Profit Shifting).

Who is this relevant for?

Investment management firms and their fund entities will be affected in different degrees, depending on their size, the countries in which they operate and their structure.

A key BEPS measure is Action 6, on preventing tax treaty abuse in inappropriate circumstances, which will have a significant effect on fund structures where tax treaty benefits are intended to be gained. The OECD is proposing to a introduce general anti abuse rule (principal purpose test - PPT) and/or a limitation on benefits (LOB) clause, to restrict the ability of entities to access double tax conventions. These proposed rules, as the OECD has acknowledged, do not properly address the position of alternative funds, which may add significant complexities for funds that should be entitled to treaty access.

Any investment manager – regardless of location - may be impacted by BEPS. For instance, the changes made to the definition of permanent establishment (Action 7) may be relevant to marketing and fund distribution activities, and could potentially create for some managers a taxable presence where currently they would not have one.

What does it cover?

The BEPS deliverables cover a broad range of issues, which are set out as recommendations, best practices and minimum standards. These principles are incorporated in the 15 deliverables presented in 2015. Among others, these are topics of particular interest to AIMA members:

- A framework to tackle **hybrid mismatch arrangements** between jurisdictions;
- Controlled foreign company (**CFC**) rules;
- Updated rules on **transfer pricing**;
- Framework to limit **interest deductibility** for companies;
- **Harmful tax practices**;
- Rules to prevent double **tax treaty abuse**;
- Updated definition of **Permanent Establishment**;
- Tax transparency initiatives such as **country-by-country reporting**;
- **Multilateral instrument** to amend tax treaties

Implementation

The real impact of the OECD BEPS project on alternative investment funds will become apparent as the initiatives progress (e.g. EU anti-tax avoidance directive), final recommendations are agreed in tax treaties and measures are enacted into domestic laws. The investment fund industry should work to ensure that, as measures are adopted, the approach taken by governments and tax authorities is consistent with commercial purposes and fund structures are preserved.

Where can I find more information?

- OECD final reports
- OECD website (BEPS section)

Please contact AIMA's Tax Affairs team for more detail on any aspect of the new rules.