JURISTCONSULT

International Legal Services

What the BEPS is going on?

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What is BEPS?

- 3 YEARS *in the making…*
- 15 *action plans…*
- *Over* 1,600 *pages of reports…*
- ONE *global alignment of international taxation.*

The Base Erosion Profit Shifting (BEPS) action plan is a colossal project spear-headed by the OECD and endorsed by the G20, culminating in October 2015, in 15 action plans aimed at reorganising how global businesses are taxed.

The primary objective of BEPS is to ensure that multinational corporates **are paying their "fair share of taxes"**, in particular in the context of a global economy where **profits are not always reflected where value is being created**. BEPS is about preventing double non-taxation but its implications are more far-reaching than tax. It also raises political, macro-economic, social and technological challenges, to name a few.

Zoom on...

ACTION 6
PREVENTING THE GRANTING OF TREATY BENEFITS IN INAPPROPRIATE CIRCUMSTANCES

Mauritius has been historically used as a platform by investors to access African and Indian markets. The OECD alleges that those investors deprive countries of tax revenues by claiming treaty benefits in situations where these benefits were not intended to be granted. Action 6 recommends:

- amendments made to a multilateral tax treaty: a Limitation of Benefits (LOB) clause or the Principal Purpose test (PPT) or a combination of both;
- amendment to the title and preamble of double tax treaties;
- outline certain tax policy considerations for countries to consider before entering into double tax treaties.

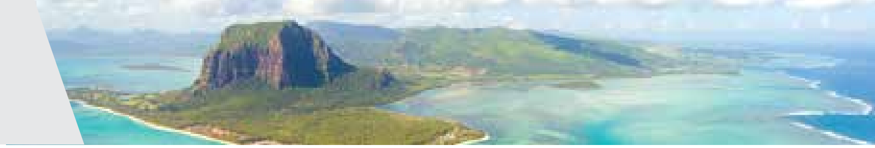
The negotiation of anti-treaty abuse provisions will be negotiated in 2016. **Mauritius is participating in the negotiations**.

ACTION 2
NEUTRALISE THE EFFECTS OF HYBRID MISMATCHES

Some cross-border arrangements take advantage of differences in the tax treatment of financial instruments **to achieve double non-taxation which may not have been intended by either country**.

A common example is an instrument which would be considered a debt in one country (where payments are deductible) and equity in another (where dividends are exempt).

Action 2 recommends neutralising the mismatch in tax outcomes. The implementation of Action 2 may have consequential effects on **cross-border financing arrangements involving Mauritius entities**.



BEPS in Mauritius

Although not designed primarily with offshore financial centres in mind, the BEPS project will undoubtedly have a significant impact on the global business industry in Mauritius. **The extent of the collateral damage** will depend on the implementation in practice of the action plans.

Key areas of concern include:

- the ability of investors to rely on double taxation treaties to **access markets in Africa and India may be severely curtailed**;
- the negotiation of a multilateral instrument will effectively **affect the entire tax treaty network of Mauritius**;
- the **survival of the deemed tax credit rules** for global business companies;
- the impact of BEPS on the relationship of Mauritius with **India**.

ACTION 3
STRENGTHEN CONTROLLED FOREIGN COMPANIES RULES

Controlled foreign company (CFC) rules enable jurisdictions to tax income earned by foreign subsidiaries located in low tax jurisdictions even before an actual distribution is made by those subsidiaries. Implementation of CFC rules by other jurisdictions may have consequential impact on Mauritius, **in particular given the deemed foreign tax credit rules for global business companies**.

ACTION 15
DEVELOP A MULTILATERAL INSTRUMENT

The objective of this action is to amend the network of bilateral treaties via a single multilateral instrument. This is **unprecedented in the international tax field**, but is deemed by the OECD to be **not only feasible but also necessary**.

Currently **90 countries,** including Mauritius, are participating in the development of a multilateral instrument. The aim is to have the instrument ready for signature by **31 December 2016**.