

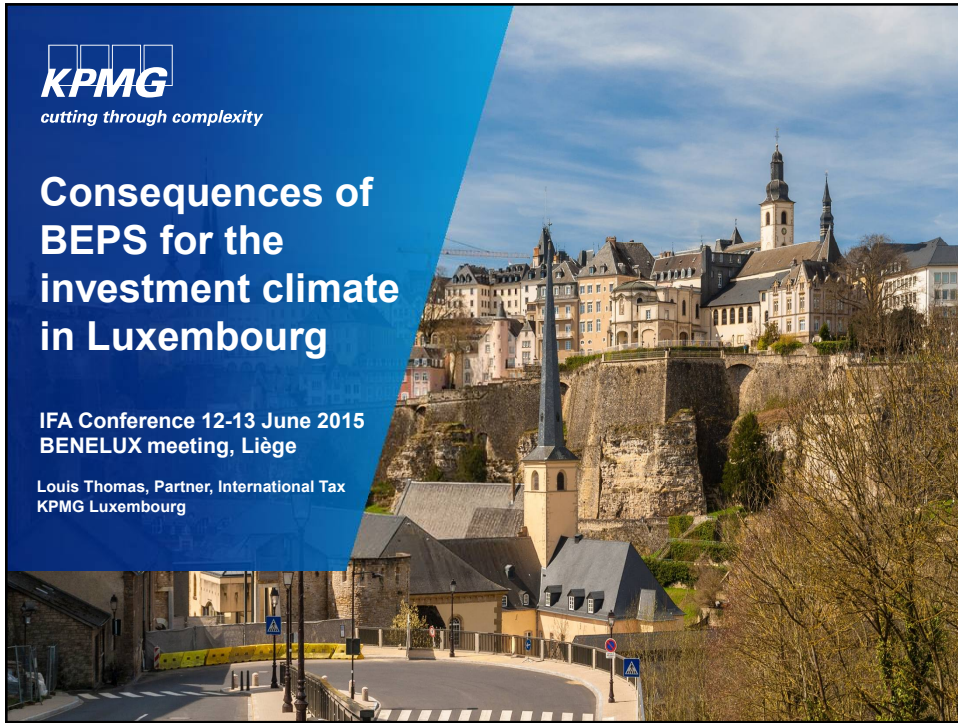


cutting through complexity

Consequences of BEPS for the investment climate in Luxembourg

IFA Conference 12-13 June 2015
BENELUX meeting, Liège

Louis Thomas, Partner, International Tax
KPMG Luxembourg



Agenda

1. Introduction
2. BEPS 2 (Hybrid mismatches)
3. BEPS 6 (Treaty abuse)
4. BEPS 5 (Harmful tax practices) and the draft EU directive on automatic exchange of tax rulings
5. Conclusion



cutting through complexity

Introduction

BEPS – 3 main actions

Coherence

Hybrid Mismatch Arrangements (2)

Interest Deductions (4)

CFC Rules (3)

Harmful Tax Practices (5)

Substance

Preventing Tax Treaty Abuse (6)

Avoidance of PE Status (7)

TP Aspects of Intangible (8)

TP/Risk and Capital (9)

TP/High Risk Transactions (10)

Transparency

Methodologies and Data Analysis (11)

Disclosure Rules (12)

TP Documentation (13)

Dispute Resolution (14)

Digital Economy (1)

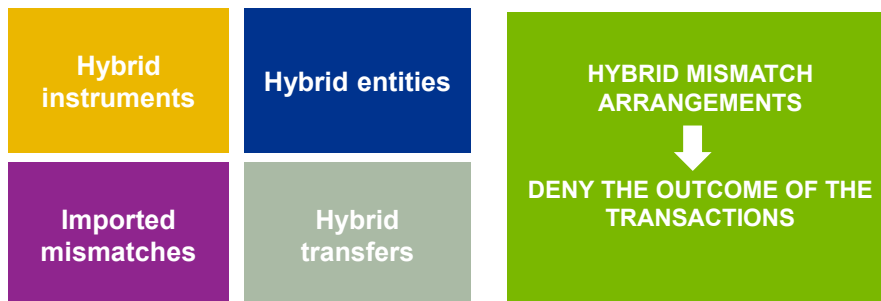
Multilateral Instrument (15)



cutting through complexity

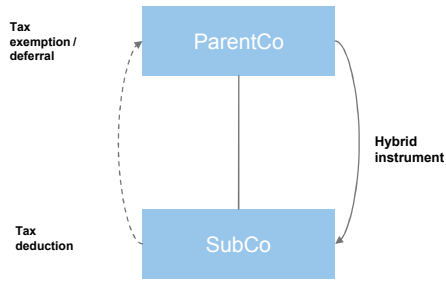
BEPS 2 (Hybrid mismatches)

BEPS 2 / General background



BEPS 2 / Hybrid instruments (example)

Hybrid instrument

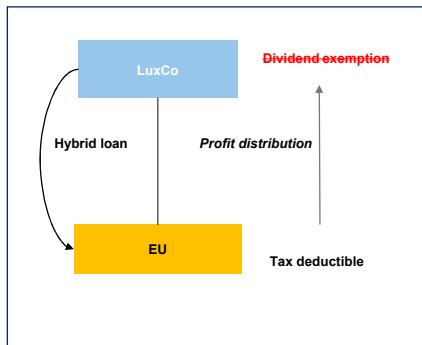


OECD response (recommendation)

Taxpayer	Before	After
		<i>Primary rule</i>
		<i>Defensive rule</i>
SubCo	(D)	(ND)
ParentCo	(NI)	(I)
Final Result	D/NI	ND/NI

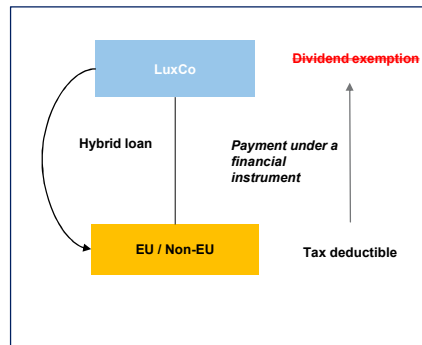
BEPS 2 / Comparison with amended EU PS Directive

Parent-Subsidiary Directive



LuxCo shall tax the profits if deductible in EU Co

BEPS 2 – Recommendation 2



Specific recommendation: LuxCo shall tax the dividend payment if deductible in EU / Non-EU Co

BEPS 6 (Treaty abuse)

BEPS 6 / General background

Main points

- ❖ Tax treaty policy considerations
- ❖ Clarification of tax treaty purposes
- ❖ Anti-treaty shopping recommendations:
 - ❖ LOB clause
 - ❖ Principal Purpose Test (PPT)
 - ❖ Or both
- ❖ Targeted rules for other specific transactions

Revised draft of May 2015

- ❖ Alternative “simplified” LOB rule
- ❖ Situation of CIVs and Non-CIVs
- ❖ New treaty provisions (“special tax regimes” and “subsequent changes in domestic law”)
- ❖ Amendments to PPT rule

BEPS 6 / Main impact

CIVs

Non-CIVs

Intermediate
holding
companies

PE in third
states

Treaty policy

And more...

Treaty benefit?



© 2015 KPMG Luxembourg, Société coopérative, a Luxembourg entity and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

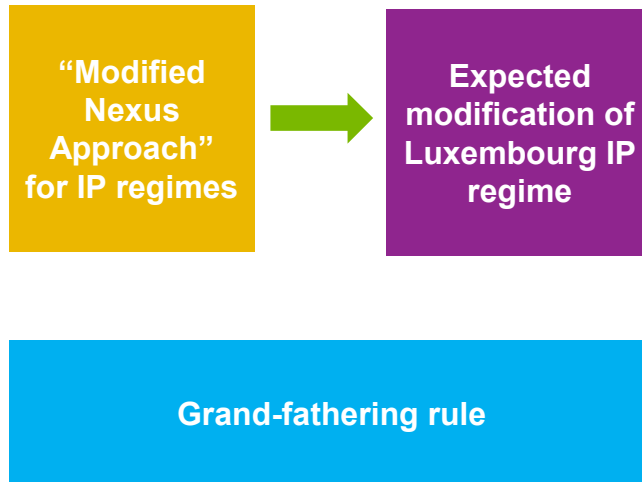
10



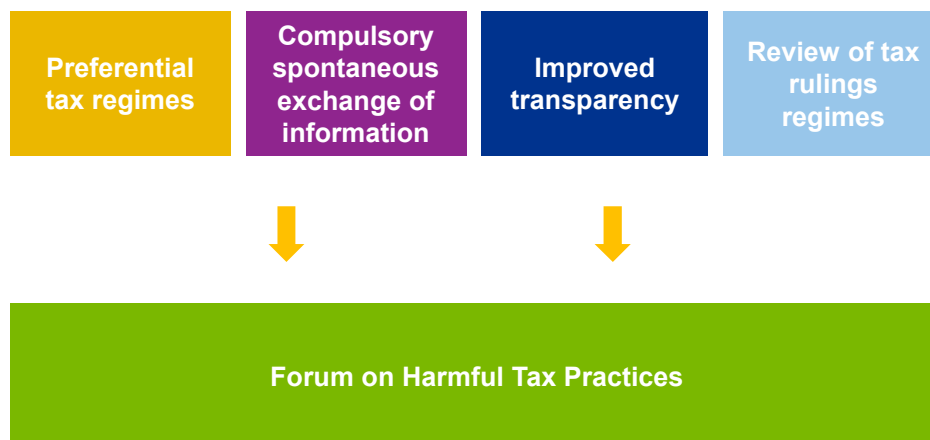
cutting through complexity

BEPS 5 (Harmful tax practices) and EU draft Directive on automatic exchange of tax rulings

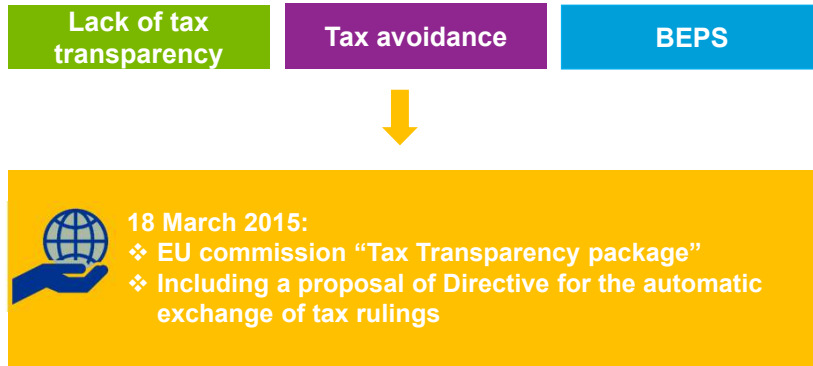
BEPS 5 / IP Box regimes



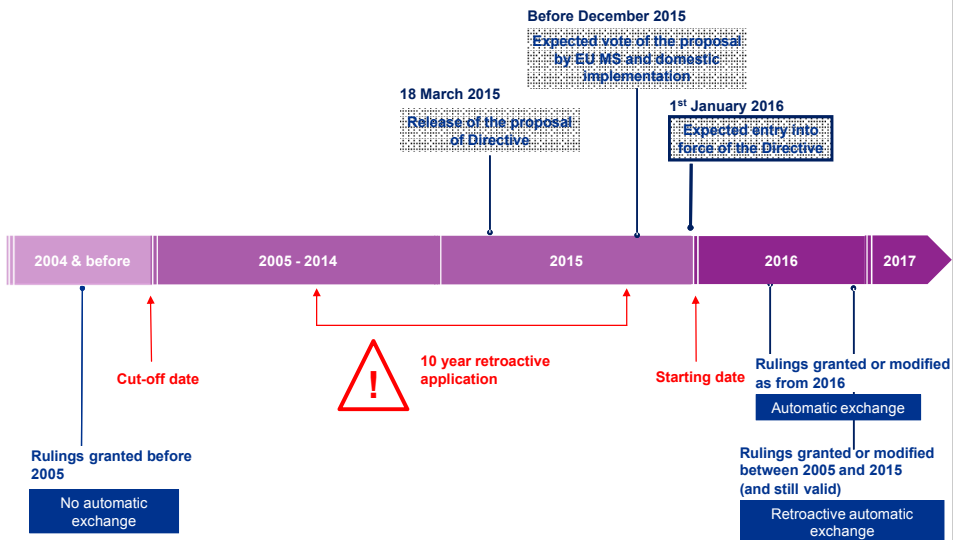
BEPS 5 / Tax rulings



EU / Draft Directive on automatic exchange of tax rulings



EU / Draft Directive on automatic exchange of tax rulings





cutting through complexity

Conclusion

Luxembourg perspective

“The Luxembourg government has taken a strong position in favor of transparency in fiscal matters”

Statement of the Luxembourg finance minister Mr. Gramegna on 7.11.2014

«One of the main challenges and, at the same time, opportunities for Luxembourg will be the design of a “BEPS compliant” tax policy for our country that will also ensure an attractive and competitive tax framework for international investors”

Statement of the Luxembourg finance minister Mr. Gramegna on 01.10.2014

“The Luxembourg government supports the BEPS project and is actively contributing to the OECD work. (...) Luxembourg has been stressing the importance to have an effective level playing field, ie. the need to have coherent rules applicable by all developed countries and by all significant financial centers”

Free translation of response made by the ministry of finance to Parliamentary question no. 470 (16 September 2014)

Luxembourg in post-BEPS era - Main expected trends

1/ Transparency and Exchange of information

2/ Substance

3/ Transfer pricing (including documentation)



© 2015 KPMG Luxembourg, Société coopérative, a Luxembourg entity and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

18

KPMG
cutting through complexity

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 KPMG Luxembourg, Société coopérative, a Luxembourg entity and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

