13. PE & CF Conference
Challenges of BEPS for PE Managers and Funds

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Agenda

1  International Trend: BEPS
2  What could this mean for PE Managers and PE Funds
Section 1

*International Trend: BEPS*
BEPS
How come?

- (Legal) tax planning practice seems more and more in conflict with changing public perception of tax fairness and morale (e.g. Google, Starbucks, HP, Apple).
- Increasingly interconnected world
- Outdated national tax laws not kept pace with globalization, fluid capital & digital economy
- Allocation of profits not appropriately in line with where value is created?
- Launch of Base Erosion & Profit Shifting (‘BEPS’) initiative by OECD at request of G20 Finance Ministers in February 2013
- Publication of BEPS Action Plan in July 2013
- 15 specific actions identified to address challenge of base erosion and profit shifting
**BEPS actions**
Overview and timing of impact

1. Digital economy
2. Hybrid mismatch arrangements
3. CFC rules
4. Interest deductions/other financial payments
5. Harmful tax practices/transparency & substance
6. Treaty abuse
7. Avoidance of PE status
8. TP: Intangibles
9. TP: Risks/Capital
10. TP: Other high-risk transactions
11. Collect and analyse data on BEPS
12. Aggressive tax planning
13. TP documentation & C-b-C reporting
14. Dispute resolution
15. Multilateral instrument

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<th>Action/Topic</th>
<th>Timeline</th>
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Conclusion

• Increasing international pressure regarding substance requirements and offshore locations

→ Route all offshore contracts / relations through Switzerland in order to centrally manage the offshore risks instead of dealing with various countries.

→ Consolidate offshore substance in one location instead of spread over Jersey, Curacao, Cayman)
Section 2

What could this mean for PE Managers and PE Funds
What could this mean for PE Managers

Area 1 – Financing

Summary
Current intercompany financing arrangements appear to be sustainable and relatively immaterial. However, expect further focus on deductibility of interest in certain jurisdictions.

Area 2 – Holding & Repatriation

Summary
Current holding structure should allow profits to be repatriated to head office without suffering WHT. However, give consideration to current ability to rely on treaty network.

Area 3 – Intellectual Property

Summary
Current assumptions surrounding economic ownership of key intellectual property (brand/customer relationships/trading systems) to lead manager are likely to be tested and challenged under new transfer pricing guidance on IP.

Area 4 – Risk and Capital

Summary
Current reward for lead manager and regulated AIFM, which is largely based on this entity’s assumption of contractual and operational risks, may be tested and challenged under new transfer pricing guidance on risk and capital.

Area 5 – Permanent Establishments

Summary
Potential changes to PE threshold definition and increased tax authority focus may lead to PE challenges due to sales and marketing activities undertaken by travelling business development executives operating on behalf of marketing hub.

Area 6 – Transparency & Disclosure

Summary
Introduction of country by country reporting ("CBCR") requirements likely to highlight sensitivities of existing structure, in particular significant profits located in off-shore jurisdiction relative to headcount.

Overall risk assessment

There are a number of areas where BEPS could lead to material adverse consequences for the group, including impacting the group effective tax rate. Some action is recommended.
### Overall risk assessment

There are a number of areas where BEPS could lead to material adverse consequences for the group, including impacting the group effective tax rate. Some action is recommended.

### Area 1 – Financing

**Summary**: Existing financing arrangements are at risk from a combination of anti-hybrid legislation and changes to international tax treaties. Real likelihood of impact to Fund effective tax rate.

### Area 2 – Holding & Repatriation

**Summary**: Ability to use fund treaty platform may be impacted resulting in negative impact to fund returns.

### Area 3 – Intellectual Property

**Summary**: No substantial intellectual property is held by the fund and as such the BEPS developments will have limited impact in this area.

### Area 4 – Risk and Capital

**Summary**: There are no substantial intercompany provisions of risk and capital within the Funds and as such the BEPS developments will have limited impact on within these areas.

### Area 5 – Permanent Establishments

**Summary**: Most jurisdictions of the manager have a form of trading safe harbour so expected to have limited impact. However, there is a need to consider the impact of potential changes to dependent agent threshold tests in non safe-harbour jurisdiction.

### Area 6 – Transparency & Disclosure

**Summary**: Current assumption is CBCR template will apply to funds which operate across borders, therefore it is necessary to consider implications of additional disclosure and system capabilities related to this.