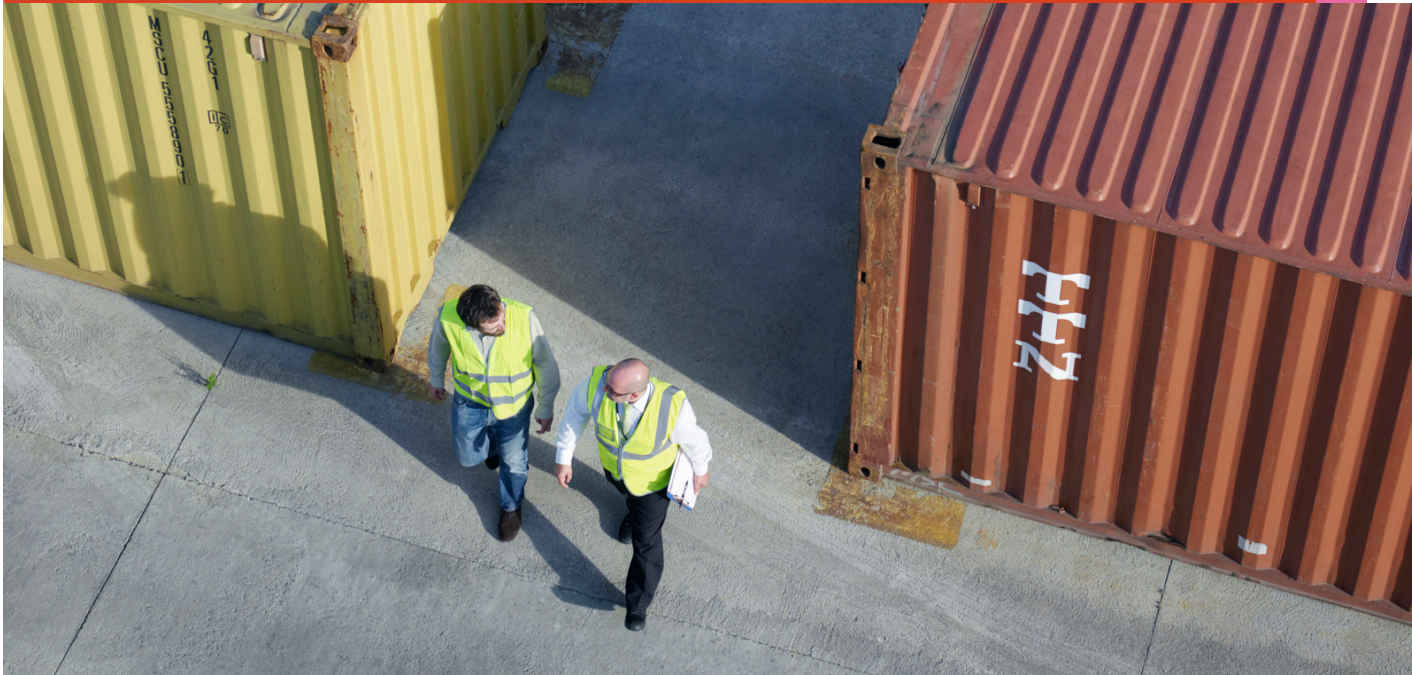


Financial Services Tax

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

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# ***Agenda***

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# Section 1

## ***International Trend: BEPS***

# ***BEPS***

## How come?



### ***BEPS***

- (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- **Outdated national tax laws** not kept pace with globalization, fluid capital & digital economy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	<b>Digital economy</b>	Sep. 14
2	<b>Hybrid mismatch arrangements</b>	Sep. 14
3	<b>CFC rules</b>	Sep. 15
4	<b>Interest deductions/other financial payments</b>	Sep. 15/Dec. 15
5	<b>Harmful tax practices/transparency &amp; substance</b>	Sep. 14/Sep. 15/Dec. 15
6	<b>Treaty abuse</b>	Sep. 14
7	<b>Avoidance of PE status</b>	Sep. 15
8	<b>TP: Intangibles</b>	Sep. 14/Sep. 15
9	<b>TP: Risks/Capital</b>	Sep. 15
10	<b>TP: Other high-risk transactions</b>	Sep. 15
11	<b>Collect and analyse data on BEPS</b>	Sep. 15
12	<b>Aggressive tax planning</b>	Sep. 15
13	<b>TP documentation &amp; C-b-C reporting</b>	Sep. 14
14	<b>Dispute resolution</b>	Sep. 15
15	<b>Multilateral instrument</b>	Sep. 14/Dec. 15

## ***Conclusion***



***BEPS***

- 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, Curaçao, Cayman)

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## Section 2

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

# What could this mean for PE Managers

## 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

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 travel 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 earned in off-shore jurisdiction relative to headcount.





# What could this mean for PE Funds

## 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 on 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 system capabilities related to this.

