

MEGA CONCLAVE FOR NEW HORIZONS FOR THE PROFESSION



International Taxation

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AGENDA

× POEM

× BEPS

× FATCA

× Automatic Exchange of Information

× India-Mauritius DTAA

× Section 195(6)

POEM

POEM - Corporate Residency Amendment by Finance Act (FA) 2015

The Explanatory memorandum (EM) explains the amendment:

- × Present condition of 'whole' C&M in India is too strict and practically inapplicable
- × Facilitates creation of shell companies outside India;
- × POEM is internationally accepted principle;
- × POEM is also an accepted concept by OECD for tie-break (Article 4(3))
- × Set guidelines to be rolled out for determination of POEM

The EM clarifies that a set of guiding principles will be issued by the Government for the benefit of taxpayers and the Tax Authority for determination of POEM

POEM - Corporate Residency Amendment by Finance Act (FA) 2015

× **POEM as introduced vide FA2015**

- × There is a 'place of **effective** management' in India
- × Key management and commercial decisions are made in India
- × Such decisions are necessary for the conduct of the business of the entity
- × Such decisions are, in substance, made in India
- × All above conditions are satisfied during the relevant year

Corporate Residency

Different Scenarios and its consequences

Particulars	Status	Tax Rate	DDT?
Indian Company	Resident	30% + SC	Yes
Foreign Company			
▶ POEM at any time during the financial year in India	Resident	40% + SC	No
▶ POEM outside India	NR	40% + SC	No

Some Consequences...

Consequences of POEM in India

Taxation on global income at the higher tax rate of 40%+SC

Withholding of taxes continue under s.195 as a foreign company, w.r.t. chargeable amount

Trigger of TP provisions

Likely issues on tax credit in India, as also credit in the country of incorporation of Indian taxes paid

No treaty entitlement in case of certain countries, e.g. USA

Benefit of presumptive taxation (a. 44BB, 44BBA) only applicable to non-resident companies;

Denial of carry forward past losses due to non-filing of ROI

Risk of interest and penalty

Black Money Act applicable

What is BEPS ?

**What is Base
Erosion?**

**What is Profit
Shifting?**

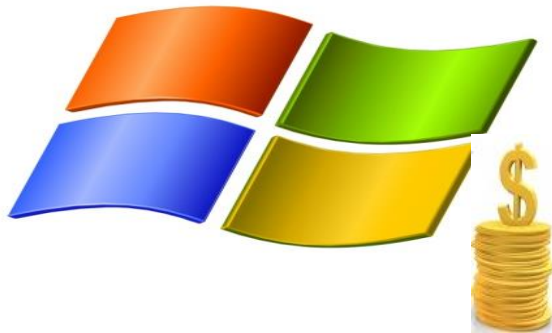
ANATOMY OF INCOME SHIFTING

(BASE EROSION)

Think Different



Apple Computer, Inc.



Tax
Havens



facebook

Google



accenture

High performance. Delivered.



amazon.com

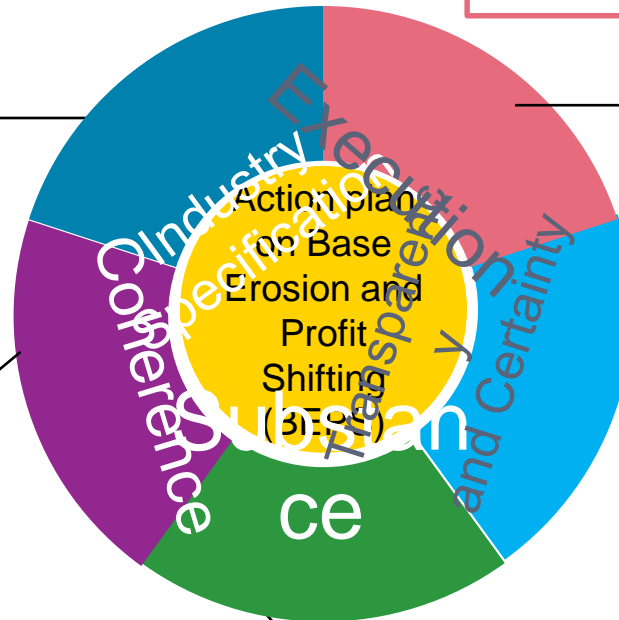


& many
more

BEPS – 15 ACTION PLANS

► **Action 1** : Address the tax challenges of the digital economy

► **Action 15**: Development of a multilateral instrument for amending bilateral treaties



- **Action 2**: Neutralise the effects of hybrid mismatch arrangements
- **Action 3**: Strengthen CFC rules
- **Action 4**: Limit base erosion via interest deductions and other financial payments
- **Action 5**: Counter harmful tax practices more effectively, taking into account transparency and substance

- **Action 6**: Prevent treaty abuse
- **Action 7**: Prevent the artificial avoidance of permanent establishment status
- **Action 8**: Consider transfer pricing for intangibles
- **Action 9**: Consider transfer pricing for risks & capital
- **Action 10**: Consider transfer pricing for other high-risk transactions

- **Action 11**: Establish methodologies to collect and analyse data on BEPS and actions addressing it
- **Action 12**: Require taxpayers to disclose their aggressive tax planning arrangements
- **Action 13**: Re-examine transfer pricing documentation
- **Action 14**: Making dispute resolutions more effective

BEPS – Where are we now?

2014 Reports	Discussion Drafts Post 2014	Feb 2015 Reports to G-20	Still to come
Action 1 : Digital Economy	Action 3 : CFCs	Action 13 : Implementation TP Documentation	Action 8-10 : Risk and Intangibles
Action 2 : Hybrid Mismatches	Action 4 : Interest Deductibility	Action 5 : Harmful Tax (Knowledge Boxes)	Action 13 : Implementation Mechanisms TP document
Action 5 : Harmful Practices	Action 6 : Follow-up Treaty Abuse	Action 15 : Mandate for Multilateral Convention	Action 1-15 : Final Reports
Action 6 : Tax Treaty Abuse	Action 7 : Avoidance of PE		
Action 8 : TP Intangibles	Action 9-10 : TP Risk and Capital, High Risk Transactions		
Action 13 : TP Documentation	Action 10 : TP Profit-Splits		
Action 15 : Multilateral	Action 10 : Commodity Transaction		

FATCA

FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

- The Foreign Account Tax Compliance Act (FATCA) is a new US law aimed at Foreign Financial Institutions (FFIs) and other financial intermediaries to prevent tax evasion by US citizens and residents through use of offshore accounts.
- FATCA, as it is colloquially known as, refers to Chapter 4 of the US Internal Revenue Code, which was enacted by the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010.
- It is **Effective from January 1 2013** (although, withholding would not start at the earliest until January 1, 2014)

FATCA

- WHY WAS FATCA ENACTED?
- WHAT IS THE PURPOSE OF FATCA?
- WHO WILL BE AFFECTED BY FATCA?
- REQUIREMENTS UNDER FATCA?
- HOW DOES THIS AFFECTS INDIA?

WE HAVE FATCA BECAUSE...



U.S. taxes on a worldwide basis for resident and non-residents



IRS demands names of more than 10,000 U.S. citizens alleged to be tax evaders. Follow up request for 52,000 more names.

UBS paid \$780m in 2009

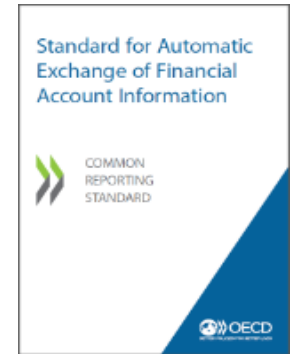


US\$100bn lost tax revenue according to Dept of Treasury

OECD Automatic Exchange of Information (AEOI)

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION

- Released on 13th February 2014 by “Global Forum on Exchange of Information and Transparency for Tax Purposes-OECD”
- The New Standard sets out –
 - i. Financial account information to be exchanged
 - ii. Financial institutions that need to report
 - iii. Different types of accounts and taxpayers covered
 - iv. Common due diligence procedures to be followed by financial institutions
- The Standard consists of two components
 - i. Common Reporting System (CRS);
 - ii. Model Competing Authority Agreement (CAA)
- More than 60 countries and jurisdictions are already committed to early adoption of this standard.



AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION

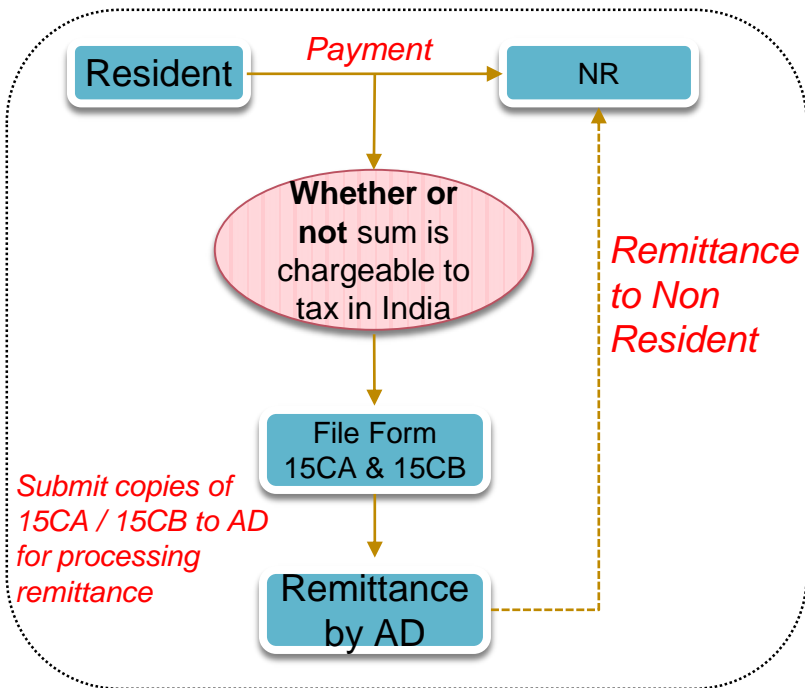
- What is automatic exchange of information for tax purposes?
- What are the main differences between the 'standard for automatic exchange of financial account information' and 'FATCA'?
- What are the implications for developing countries?
- How is the confidentiality of the information exchanged ensured?
- What are the main benefits of automatic exchange?

Revision to India – Mauritius DTAA

- ✗ Favoured jurisdiction due to favourable CG Article
- ✗ India – Mau DTAA has been under negotiations to prohibit treaty abuse and round tripping of funds
- ✗ News Reports suggest ‘tentative deal’ on India – Mauritius DTAA LOB clause likely?
 - ✗ Wild guess on likely coverage on immovable property companies?
- ✗ Change in CG Article: Impact on Singapore DTAA in view of Art. 6 of Protocol to Singapore DTAA
 - ✗ Art 6: Protocol to remain in force so long as Mauritius DTAA provides that any gains from the alienation of shares shall be taxable only in the alienator’s state of residence

Reporting requirement under the amended s.195(6)

Post budget 2015



- ▶ S.195(6) amended by FA 2015 w.e.f 1st June 2015 to require reporting of all payments ***whether or not chargeable to tax***
- ▶ Penalty of Rs 1L for default
- ▶ ***Existing Rule 37BB*** based on pre-amended Sec. 195(6) continues to require compliance where the payment is ***chargeable to tax in India***
- ▶ CBDT yet to notify new Rule 37BB at par with Sec.195(6)
- ▶ ***Compliance may be made only when sum chargeable to tax in India?***

THANK YOU