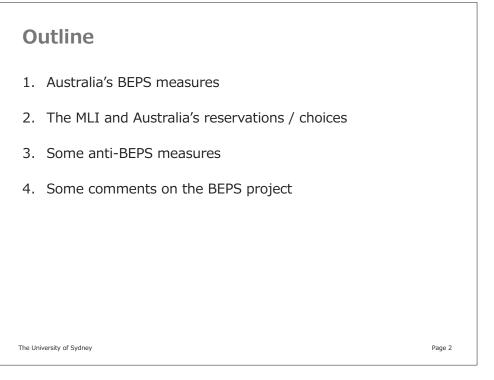
Australia's Progress Implementing the BEPS Action Plan

Presented by Professor Graeme S Cooper Sydney University Law School

12 July 2017



資料2



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1. BEPS: the acronym that conquered Australia

Action	Торіс	Response
1	Addressing the Tax Challenges of the Digital Economy	Indirect tax: GST to be applied to import of digital products by consumers. To start from 1 July 2018 Direct tax: 'Google tax' mk I
2	Neutralising the Effects of Hybrid Mismatch Arrangements	Domestic law: May 2015: Government announces will implement the OECD rules to eliminate hybrid mismatch arrangements' with effect from 1 Jan 2018 May 2017: no tax credit on AT1 instruments which are deductible offshore (and credits wasted if funds not used wholly offshore) Treaty changes: Australia signs MLI
3	Designing Effective CFC Rules	'Australia's CFC rules meet OECD best practice guidance'
4	Limiting Base Erosion Involving Interest Deductions and Other Financial Payments	'Australia has already tightened its thin capitalisation rules'
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Action	Торіс	Response
5	Countering Harmful Tax Practices	'OECD has found Australia does not engage in any harmful tax practices' 'ATO [has] already implemented exchange of rulings'
6	Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	'Australia will act now to incorporate the OECD's recommendations into our treaty practice' November 2015 . Australia-Germany treaty signed June 2017 . MLI signed
7	Preventing the Artificial Avoidance of Permanent Establishment Status	November 2015: Australia-Germany treaty June 2017: Australia signs MLI but reserves on art 12
8-10	Aligning Transfer Pricing Outcomes with Value Creation	April 2017 : Amendment to domestic TP legislation so that it refers to Guidelines as revised in light of 2015 report.
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Action	Торіс	Response
11	Measuring and Monitoring BEPS	[No reaction]
12	Mandatory Disclosure Rules	May 2016: Australia will implement Action 12 May 2016: Treasury, <i>OECD Proposals for Mandatory</i> <i>Disclosure of Tax Information – Discussion Paper</i> (2016) October 2016: Board of Taxation announces it is discussing issue
13	Transfer Pricing Documentation and Country-by-Country Reporting	 December 2015: Div 815-E Tax Administration Act inserted by Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 January 2016: Australia signs Multilateral Competent Authority Agreement for automatic exchange of CbC reports 2016-17: ATO issues draft CbC forms and administrative guidance

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Action	Торіс	Response
14	Making Dispute Resolution Mechanisms More Effective	November 2015: Australia-Germany treaty includes arbitration clause June 2017: Australia signs MLI
15	Developing a Multilateral Instrument to Modify Bilateral Tax Treaties	'Australia [is] working on an instrument to quickly update bilateral treaties with BEPS outcomes' December 2016 : Treasury Consultation Paper June 2017 : Australia signs MLI
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Article	Торіс	Australia's position
3	Income derived through transparent entities	Australia will adopt Reserves to retain current provisions in 2 existing treaties Notifies provisions in 3 other treaties
4	Treatment of dual resident (artificial) entities	Australia will adopt Reserves on last sentence (ie, no treaty benefits at all unless competent authorities agree) Notifies current tie-breaker provisions in all covered treaties
5	Methods for relieving double tax	[Nothing in list of reservations and notifications but Treasury says will <i>not</i> adopt]
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Article	Торіс	Australia's position
6	Preamble (minimum standard)	Notifies Preamble of all treaties Chooses clause referring to developing economic ties and tax co-operation
7	PPT (minimum standard) and S-LOB	Chooses to adopt PPT (and not S-LOB) Also chooses to apply competent authority relief. Notifies 11 treaties
8	Dividend transfer transactions	Notifies provisions of 20 treaties
9	Gains on shares in land- rich entities	Reserves for articles in 19 treaties already dealing with interests other than shares Notifies all treaties re holding period
10	PEs in third countries	Australia reserves for entire article – will <i>not</i> adopt
11	Saving clause	Australia will adopt Notifies 9 treaties
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Article	Торіс	Australia's position
12	Artificial avoidance of PE	Australia reserves for entire article – will <i>not</i> adopt
13	Specific activity / preliminary activity exception	Australia will adopt Reserves for 3 treaties where existing article Choose to apply Option A Notifies all treaties
14	Contract splitting	Australia will adopt But reserves for Norway treaty which has provisions about natural resources Notifies 10 treaties
15	Definition of 'closely- related'	[No mention in list of reservations and notifications but Treasury says <i>will</i> adopt]

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Article	Торіс	Australia's position
16	Mutual agreement (minimum standard)	Adopts No reservations Notifies all treaties
17	Corresponding adjustments	Adopts No reservations Notifies all treaties
18 - 26	Mandatory binding arbitration	Elects to apply Part VI Reservation to exclude cases before a Court Chooses to trigger confidentiality clause Reservation to GAAR cases from arbitration Notifies arbitration articles in Swiss and NZ treaties

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資料12

Google tax mk I – announced May 2015	
 inbound issue Reflects 	
 another approach to PE avoidance problem OR 	
 dissatisfaction with the whole TP nonsense 	
Google tax mk II – announced May 2016	
 inbound and outbound 	
 partly about transfer pricing 	
 partly about jurisdiction / funding / structure choices Reflects 	
 – Reflects – a response to administrative frustration OR 	
 dissatisfaction with the whole TP nonsense OR 	
 a new definition of the tax base 	
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