

U.S. View on BEPS

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Michael Cadesky, FCPA, FCA, FTIHK, CTA, TEP

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Disclaimer

Views expressed are personal, not those of IRS, U.S. Government or any professional body.

Does the U.S. Support the 15 BEPS
Action Plans?

U.S. Support

U.S. support is very important to the success of the project.

Hard to judge because:

- What goes on in private is not known
- Project is evolving rapidly
- Many areas lack specific actions

U.S. Tax System in Context

1. Profit repatriation by foreign tax credit.

U.S. favours low foreign tax so it can tax more on dividend repatriation.

2. CFC and Anti-Deferral Rules

U.S. has most complex and far reaching rules of anyone.

3. Transfer Pricing

U.S. has most sophisticated and aggressive rules.

U.S. Tax System in Context

4. Anti-Treaty Shopping

U.S. Limitation of Benefits provisions in tax treaties are toughest in the world.

5. Digital Economy

Challenge to U.S. Corporations.

6. Substance over Form

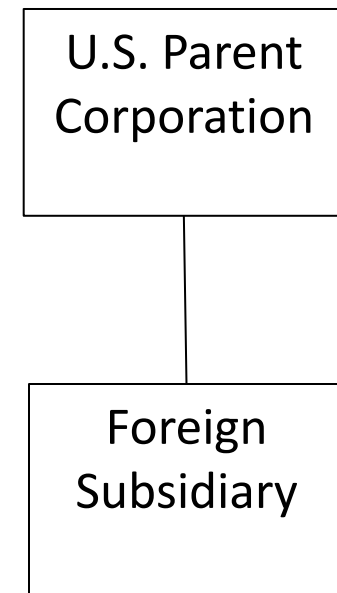
U.S. approach to use substance makes U.S. exposed to hybrid mis-match plans but has ways to correct within its own laws and treaties.

7. Sales Tax (VAT)

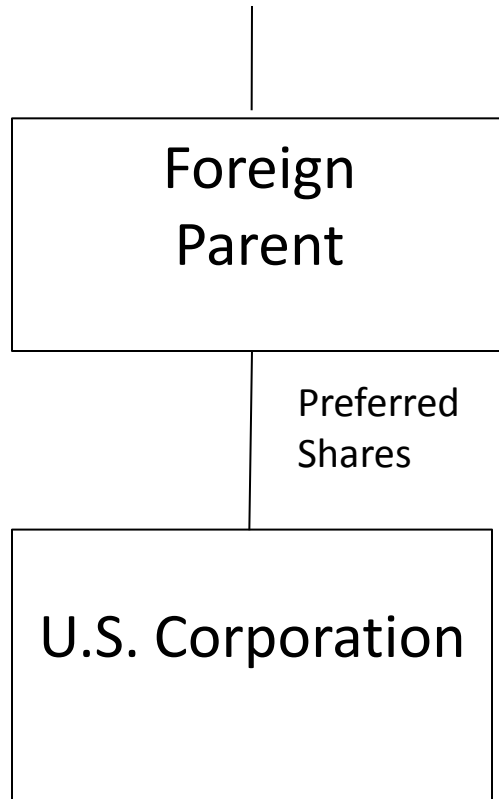
U.S. has no federal sales tax (VAT) so loss of revenue not a concern.

Profit Repatriation

	High Tax Country	Low Tax Country
U.S. Tax	\$5	\$28
FTC	(30)	(7)
Tax	35	35
Income (U.S.)	100	100
Dividend	70	93
Tax	(30)	(7)
Income	\$100	\$100



Hybrid Mismatch



Foreign

Dividend on preferred shares tax exempt under participation exemption

U.S.

Preferred shares deemed debt, dividend deemed interest expense, deduction given

Action	Main Ideas	U.S. Comments
Action 1 Digital Economy	1. Expand P.E. Definition	1. Possible support but could result in tax chaos
	2. Strengthen CFC rules	2. Already have
	3. Strengthen withholding taxes	3. Already have
	4. Strengthen transfer pricing	4. Already have
	5. New VAT rules	5. Not relevant
		U.S. may be defensive if U.S. corporations are main targets

Action	Main Ideas	U.S. Comments
Action 2 Hybrid Mismatch	1. Deny treaty benefits	1. U.S. already has anti-hybrid rules in some treaties
	2. Alter domestic rules to give symmetry	2. Real debate over who has right to tax, not easily solved

Action	Main Ideas	U.S. Comments
Action 3 Strengthen CFC Rules	1. Details not known so hard to comment	1. U.S. already has very strong CFC rules
		2. Could encourage inversions or ownership initially in more favourable country (e.g. Canada v. U.S.) if it goes too far
		3. Must not interfere with regular conduct of business

Action	Main Ideas	U.S. Comments
Action 4 Limit Base Erosion via Interest etc.	1. Details not known so hard to comment	1. U.S. already has limitations on deduction of interest
	2. Many countries already have limitations	
	3. Transfer pricing guidelines cover interest, etc.	

Action	Main Ideas	U.S. Comments
Action 5 Counter Harmful Tax Practice	1. Details not specific	1. U.S. may not favour higher foreign rates
	2. OECD member countries are among main culprits	2. Not a U.S. issue as such due to, CFC rules, anti-deferral and foreign tax credit rules on repatriation

Action	Main Ideas	U.S. Comments
Action 6 Prevent Treaty Abuse	1. Anti-avoidance rules built into treaties	1. U.S. likely neutral as already has these rules in its treaties
Action 7 Prevent Artificial Avoidance of P.E.	1. Expand P.E. Definition making it harder to avoid	1. U.S. position not known but will be sceptical of causing tax chaos

Action	Main Ideas	U.S. Comments
Action 8, 9, 10 and 13 Transfer Pricing	1. Special rules for intangibles (perhaps)	1. U.S. believes arm's length principle is the best.
	2. Use of fixed appointment methods	2. Need to be consistent on worldwide basis, or chaos could follow

Action	Main Ideas	U.S. Comments
Action 11 Methods to Collect Data on BEPS	1. Example is country by country reporting templates	1. U.S. has no view yet until it sees more specific proposals
Action 12 Require Disclosure of Aggressive Tax Plans	1. Aggressive plans to be disclosed and shared among OECD so they can be challenged	1. No U.S. position but U.S. already has a system like this

Action	Main Ideas	U.S. Comments
Action 14 Make Dispute Resolution More Effective	1. Plans not yet specific enough to comment	1. U.S. position not known
	2. Good news for corporations	

Action	Main Ideas	U.S. Comments
Action 15 Multilateral Instrument	1. Amend tax treaties across the world all at once	1. U.S. very pessimistic on this
	2. Avoids inconsistent tax treaty provisions	
	3. Can be done quickly	

Conclusions

Hard to determine U.S. view on many items.

U.S. benefits less than most countries from BEPS project.

May cost the U.S. tax revenue in some aspects.

U.S. can achieve most of the actions on its own if it wishes.

Real danger that if U.S. corporations continue to be targets, U.S. will defend them and not support BEPS.

Need to see more specific details