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Int'l Tax Considerations in Connection with Base Erosion Profit Shifting (BEPS)



Jurjen Bevers
Amsterdam



Susan Stone
Houston



Impact of BEPS on the O&G industry

Is BEPS a “game-changer” for the O&G industry?

OECD BEPS Action Plan Items

Action 1 – **Address tax challenges of the digital economy**

Action 2 – **Neutralize effects of hybrid mismatch arrangements**

Action 3 – **Strengthen controlled foreign company 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 artificial avoidance of permanent establishment status**

Actions 8, 9, 10 – **Assure transfer pricing outcomes are in line with value creation**

Action 8 – intangibles

Action 9 – risks and capital

Action 10 – other high-risk transactions

Action 11 – **Establish methodologies to collect and analyze data on BEPS and the actions to address it**

Action 12 – **Require taxpayers to disclose their aggressive tax planning arrangements**

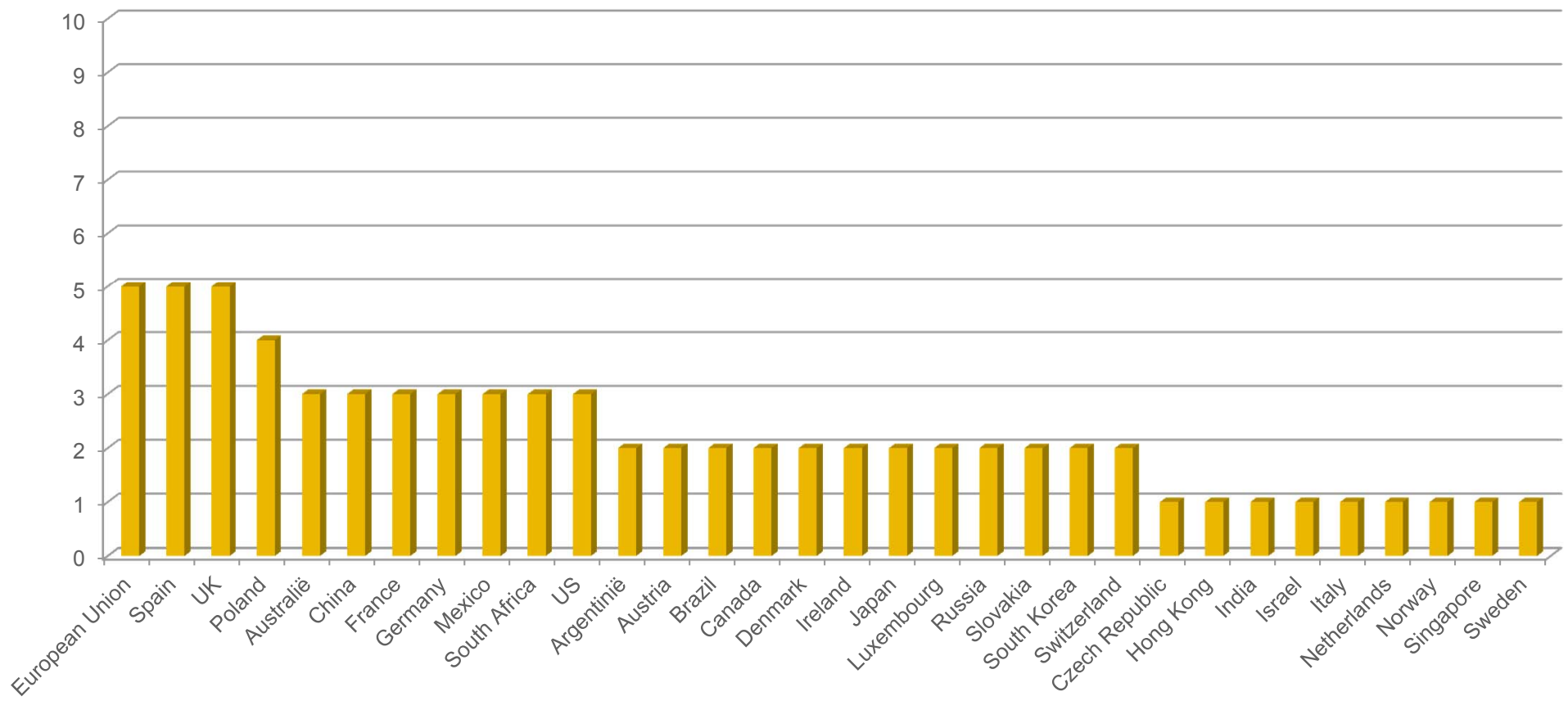
Action 13 – **Re-examine transfer pricing documentation**

Action 14 – **Make dispute resolution mechanisms more effective**

Action 15 – **Develop a multilateral instrument**

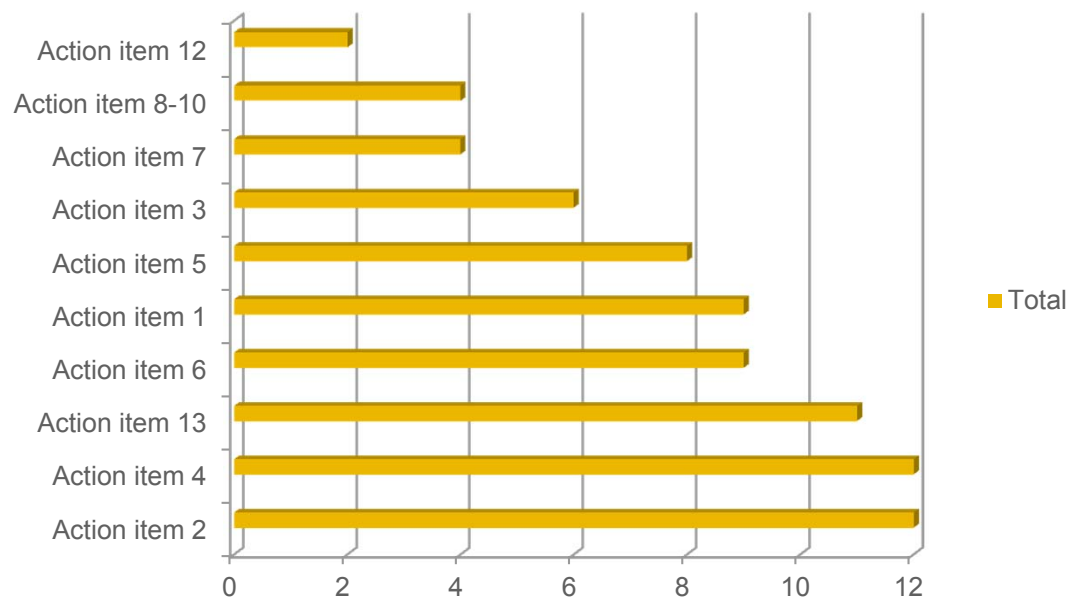
BEPS related unilateral measures in 2014/2015

Below, we have indicated how many action items are “followed-up” or “otherwise addressed” by unilateral “actions” by the listed countries, out of a total of 10. It concerns 10 action items due to the reason that action items 8-10 are recognized as one action item and that action items 11, 14 and 15 are not included in the analysis.



BEPS related unilateral measures in 2014/2015 (cont'd)

From a total of 32 countries, including the major part of the G20 countries, 77 “actions” were taken. The chart below reflects the “most popular” action items that were addressed unilaterally in 2014.



The table below reflects which percentage of the 32 selected countries have taken action unilaterally in 2014 with respect to the action items listed below.

1	2	3	4	5	6	7	8-10	12	13
28%	38%	19%	38%	25%	28%	13%	13%	6%	34%



Considerations

- Increase tax compliance
- Increase tax uncertainty
 - Change tax ruling practice (more difficult / full disclosure)
- Sustainability current internal tax policy?
 - Likely to increase tax cash expenditure and effective tax rate (ETR)
- Revisit tax clauses in third party agreements, esp. gross-up clauses
- Shift from profits tax to source tax



Implications for the O&G industry

- Concept of “Official Selling Prices” (OSP)
- General anti-abuse rule in tax treaties
- Specific focus on the relationship with Low Income Countries
- Ownership of assets versus lease
- Head office re-charges methodology and G&A expenses
- Increased scrutiny of existing Transfer Pricing Policies
- Potential for multilateral instrument and unilateral changes in treaty policy arising from BEPS