PART A – OECD RELEASES FIRST PROPOSALS FOR FIGHT AGAINST TAX AVOIDANCE BY MULTINATIONALS

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The Base Erosion and Profit Shifting (‘BEPS’) Action Plan originated from a need to address aggressive tax planning. The release by the OECD of the first 7 proposals of the 15-point Action Plan on 16 September 2014 is considered to be a milestone in the attempts to prevent the artificial shifting of profits through inter-company charges, the transfer of patent licensing rights and similar practices.

BEPS refers to tax planning strategies to artificially exploit gaps and mismatches in tax rules to shift profits to tax jurisdictions where there is little or no real business activity. Typically, the tax rates in these tax jurisdictions are either much reduced or no corporate tax is payable. BEPS strategies are often not illegal but rather an exploitation of gaps and mismatches in the tax rules of different tax jurisdictions. BEPS distorts competition, since it creates tax opportunities for multinational enterprises which are not available to domestic enterprises.

The OECD in collaboration with the G20 published a 15-point action plan to address BEPS in July 2013. The recent proposals released by the OECD followed extensive consultation with OECD members, OECD accession countries, G20 countries, developing countries, businesses, NGOs and other stakeholders and address 7 of the 15 points of the BEPS Action Plan. These proposals will remain in draft form until the finalisation of the remaining 8 action points in 2015. The purpose of the BEPS

Action Plan is to avoid base erosion and profit shifting in order to ensure that profits are taxed where the economic activities generating the profits are performed and where value is created.

The 7 action points which were released on 16 September 2014 with an official explanatory statement to address BEPS are as follows:

- Action 1: The Tax Challenges of the Digital Economy
- Action 2: Hybrid Mismatch Arrangements
- Action 5: Harmful Tax Practices
- Action 6: Tax Treaty Abuse
- Action 8: Transfer Pricing & Intangibles
- Action 13: Transfer Pricing Documentation and Country-by-Country Reporting
- Action 15: The Feasibility of Developing a Multilateral Instrument on BEPS

South Africa is likely to be impacted by the proposals which are expected to be widely implemented by various national governments. The impact of the proposals will be felt in South Africa particularly because many multinational enterprises operate here and also since South Africa has an extensive network of tax treaties that will be affected. The proposals and information that will become available subsequent to the implementation thereof will assist the South African Government to develop the necessary domestic legislation and amend tax treaties in order to successfully address BEPS in South Africa.

In addition to potentially creating additional tax revenue, the BEPS Action Plan will restore the credibility of tax systems by preventing the avoidance of tax liabilities by high-profile taxpayers and by levelling the playing field between multinational and domestic enterprises.

This article is the first of a two-part article on the recent developments of the BEPS Action Plan. In the second article an overview will be provided on the above-mentioned 7 action points.