

ORGANISED BY



PREMIER TAX EVENT OF THE YEAR
NATIONAL TAX CONFERENCE
2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

PREMIER TAX EVENT OF THE YEAR
NATIONAL TAX CONFERENCE
2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

DAY 2 : Wednesday 13 August 2014

BASE EROSION & PROFIT SHIFTING

Noor Azian Abdul Hamid
Director
Multinational Tax Department
IRB Malaysia

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Malaysian context :

- Involvement
- Views – with focus on transfer pricing aspects
- Concerns

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

The BEPS Project

Our Involvement

- **Status (in OECD/G20 BEPS Project): invitee**
- **OECD**
 - Working Parties
 - WP1 – Action 6, 7, 12, 14, 15
 - WP6 – Action 8, 9, 10, 13
 - WP11- Action 2, 3, 4, 12
 - Regional Consultation – Seoul 2013
- Internal committee - IRBM

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

The BEPS Project – United Nations' Role

- UN – observer to OECD CFA
- **UN Committee of Experts**
 - **Subcommittee on BEPS for Developing Countries (Oct 2013)**
 - Impact of BEPS on developing countries
 - Modalities to support developing countries in addressing BEPS
 - Key role of capacity development
 - **Other sub-committees**
 - Transfer Pricing
 - Extractive Industries Taxation Issues for Developing Countries
 - Tax Treatment of Services
 - Exchange of Information

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

The BEPS Project – United Nations' Role

- **Subcommittee on BEPS for Developing Countries**
- Monitor developments on BEPS
- Communicate on BEPS issues:
 - Inform developing countries especially less developed
 - Facilitate input and views into on-going UN work as well as OECD/G20 Action Plan

PREMIER TAX EVENT OF THE YEAR
NATIONAL TAX CONFERENCE
2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

THE BEPS ACTION PLAN

Topic : BASE EROSION & PROFIT SHIFTING

Speaker : Noor Azian Abdul Hamid



PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

Relevance of Action Items on Developing Countries	Relevance
4 Limit base erosion via interest deductions 6 Prevent treaty abuse 7 Prevent artificial avoidance of PE 10 Assure TP outcomes are in line with value creation - Other high risk transactions 11 Establish methodologies to collect & analyse data on BEPS, actions to address it 13 Re-examine TP documentation	High
1 Address tax challenges in digital economy 5 Counter harmful tax practices more effectively 8 Assure TP outcomes are in line with value creation - Intangibles 9 Assure TP outcomes are in line with value creation - Risks & capital 12 Require disclosure of aggressive tax planning arrangements 14 Make dispute resolution mechanisms more effective	Medium
2 Neutralise effects of hybrid mismatch arrangements 3 Strengthen CFC rules 15 Develop multilateral instrument	Low

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Transfer Pricing Aspects of the BEPS Action Plan

Action 8	Develop rules to prevent BEPS by moving intangibles among group members
Action 9	Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members
Action 10	Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties.
Action 13	Develop rules regarding transfer pricing documentation (two tiered approach, country-by-country reporting)
Action 4	Develop transfer pricing guidance regarding the pricing of related party financial transactions.

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Other BEPS Actions with a Transfer Pricing Component

Action 1	Work on the digital economy.
Action 7	Work on permanent establishments including the attribution of income to permanent establishments.
Action 11	Establish methodologies to collect and analyse data on BEPS and the actions to address it.
Action 14	Make dispute resolution more effective.

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Highlights

Action 8 – Intangibles	Relevant action
<ul style="list-style-type: none">• Revisions to OECD TPG• Work started in 2010• Definition of intangibles<ul style="list-style-type: none">▪ Local market features, group synergies• How to ensure intangibles are aligned with economic activity	<ul style="list-style-type: none">• TP Rules: Rule 11 – definition• UN Practical Manual on TP
<p>Common practice: Sell intangible asset to low or no-tax jurisdiction & strip profits out of higher tax jurisdiction by charging royalty/license fees</p>	Royalty payments, WHT

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Highlights

Action 9 – Risks & Capital - Align transactions to MNEs economic activity	Relevant action
<p>Common practice:</p> <ul style="list-style-type: none">• Provide capital from or assign risk to low tax jurisdiction – profits shifted through interest payments, guarantee fees• No change in MNEs overall capital position but substantial change in tax position	<ul style="list-style-type: none">• ITA Provisions related to interest expense deductions• Pending outcome of Action 13 – indicators of income vs economic activity

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Highlights

Action 10 Other high-risk transactions	Relevant action
Develop rules to prevent BEPS by engaging in transactions which would not or would only very rarely occur between 3 rd parties	
<ul style="list-style-type: none">• Clarify circumstances where transactions can be recharacterised• Application of TP methods – clarify profit split• Provide protection against common types of base eroding payments such as management fees, head-office expenses	<ul style="list-style-type: none">• TP Rules – Rule 8• Documentation – enforcement• TP Rules – Rule 5 on methods• TPG - methods

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Malaysia

Types of base eroding payments	Enforcement issues
Management services	<ul style="list-style-type: none">• Benchmarking• Comparables• Documentation
Routine low-value added HQ costs	<ul style="list-style-type: none">• Allocation key• Indirect-charge methods• Is safe-harbour an option?
Related party financial assistance	Guidance
Use of intangibles	<ul style="list-style-type: none">• Comparables• Valuation
Technical services	<ul style="list-style-type: none">• Types• WHT?

PREMIER TAX EVENT OF THE YEAR
NATIONAL TAX CONFERENCE
2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Highlights

Action 13 TP Documentation

Challenges

- Access to full group or even single related party information
 - transactions, financial
- Local entity has to be the tested party due to inaccessibility

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Highlights

- **Action 13 TP Documentation**, country-by-country documentation
 - To enhance transparency: providing tax administrations with adequate information to conduct TP risk assessments and audits
 - Revised standards for TP Documentation
 - 3 tiered approach:
 - master-file – standardised information relevant for all MNE gp members
 - local file – specific transactions of local taxpayer
 - c-b-c report (template) – info relating to global allocation of MNE's income, taxes paid, certain indicators of location of economic activity
- How to implement?
- Relevant action: Changes in domestic law, TPG

PREMIER TAX EVENT OF THE YEAR
NATIONAL TAX CONFERENCE
2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

Existing domestic legislation for countering BEPS

- S 140A ITA 1967
- Malaysian Transfer Pricing Rules 2012
- Malaysian Transfer Pricing Guidelines (2012)
- S 140 (General anti-avoidance)
- S 140A (4) for Thin Capitalisation (after Dec 2015)
- MAPS with treaty partners

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

- Are existing anti-avoidance measures adequate?
- S140, 140A?
- Early detection: audits take place after the fact, mandatory disclosure rules?
 - Related work on co-operative compliance
- Treatment of intra-group financial transactions
- Other anti-avoidance measures?
 - Royalties paid to entities in low-tax jurisdictions
- Business restructuring issues
- Digital economy, PE
- Implementation – success depends on consensus, multilateralism, local awareness, decision by policy makers