解释性声明
Explanatory Statement

G20侵蚀侵蚀和利润转移（BEPS）项目
2015年成果

OECD/G20 Base Erosion and Profit Shifting Project

本书基于OECD, 2015 BEPS Deliverables
OECD），2015年巴黎
本书根据OECD的协议出版，非正式OECD的官方译本。

www.oecdbookshop.org
www.oecd-ilibrary.org
www.oecd.org/oecdirect

OECD 会员
OECD 会员国
OECD 会员国
解释性说明

英文原作由 OECD 出版，标题如下；
Explanatory Statement, 2015 BEPS Deliverables
©国家税务总局2015中文版
中文译文的质量及其与原文的一致性由译者负责。原文和译文如有分歧，以原文为准。
本文件由黎丽莲，蔡伟，邱辉，王思敏，崔茜，李嘉俊，杜秀兰，周薇，田一鸣，黄莉峰，杨欣娜，吴恒植，许特昂，赵玲，姜晓涵，赵琳，李庭，李少文，刘学仁，郑宇，许鹤杰，祖睿，柳燕芬，龙怡，吴怡，刘岩，张燕晨，陈银旺翻译，金方剑审校。
EXPLANATORY STATEMENT - BEPS

Fourth Revised Version

This note contains the fourth revised version of the draft Explanatory Statement, which was approved by the Committee on Fiscal Affairs at its meeting on 21 September 2015.

Compared to the version contained in CTPA/CFA/NOE2(2015)68/REV3/CONF, changes appear in track fashion to reflect the changes agreed by the Committee on Fiscal Affairs.

Please note that this report remains CONFIDENTIAL until 5th October, which is the date agreed by the CFA for its declassification.

Grace Perez-Navarro, Deputy Director, CTPA (Tel: +33 1 45 24 18 80; Fax: +33 1 44 30 63; Email: grace.perez-navarro@oecd.org)
解释性声明——税基侵蚀和利润转移（BEPS）
第四次修订版

Grace Perez-Navarro, Deputy Director, CTPA. 电话: +33 1 45 24 18 80; 传真: +33 1 44 30 63 12 电邮: grace.perez-navarro@oecd.org

JT03381989

本文件仅用于OILIS使用。
本文件及其中所包含的任何地图均不影响任何领土的状态或主权，国际边界或界限的划定以及任何领土、城市或地区的名称。
FOURTH REVISED DRAFT EXPLANATORY STATEMENT

BEPS

1. Introduction

1. International tax issues have never been as high on the political agenda as they are today. The integration of national economies and markets has increased substantially in recent years. This has put a strain on the international tax framework, which was designed more than a century ago. The current rules have revealed weaknesses that create opportunities for Base Erosion and Profit Shifting (BEPS), thus requiring a bold move by policymakers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created. In September 2013, G20 Leaders endorsed the ambitious and comprehensive Action Plan on BEPS. This package of 13 reports, delivered just 2 years later, includes new or reinforced international standards as well as concrete measures to help countries tackle BEPS. It represents the results of a major and unparalleled effort by OECD and G20 countries working together on an equal footing with the participation of an increasing number of developing countries.

2. The stakes are high. Although measuring the scope of BEPS proves challenging, the findings of the work performed since 2013 confirm the potential magnitude of the issue, with estimates indicating that the global corporate income tax (CIT) revenue losses could be between 4% to 10% of global CIT revenues, i.e. USD 100 to 240 billion annually. The losses arise from a variety of causes, including aggressive tax planning by some Multi-National Enterprises (MNEs), the interaction of domestic tax rules, lack of transparency and coordination between tax administrations, limited country enforcement resources and harmful tax practices. The affiliates of MNEs in low tax countries report almost twice the profit rate (relative to assets) of their global group, showing how BEPS can cause economic distortions. Estimates of the impact of BEPS on developing countries, as a percentage of tax revenues, are higher than in developed countries given developing countries’ greater reliance on CIT revenues. In a globalised economy, governments need to cooperate and refrain from harmful tax practices, to address tax avoidance effectively, and provide a more certain international environment to attract and sustain investment. Failure to achieve such cooperation would reduce the effectiveness of CIT as a tool for resource mobilisation, which would have a disproportionately harmful impact on developing countries.

3. This BEPS package, which includes and consolidates the first seven Reports presented to and welcomed by the G20 Leaders at the Brisbane Summit in 2014, has been developed and agreed in just two years. This is chiefly because there is an urgent need to restore the trust of ordinary people in the fairness of their tax systems, to level the playing field among businesses, and to provide governments with more efficient tools to ensure the effectiveness of their sovereign tax policies. It was also imperative to move quickly to try to limit the risks of countries taking uncoordinated unilateral measures which might weaken key international tax principles which form a stable framework for cross-border investments. BEPS can result in double non-taxation but addressing BEPS should not result in double taxation. Double taxation would harm MNEs which have contributed to boosting trade and investment around the world, supporting growth, creating jobs, fostering innovation and providing pathways out of poverty. Double taxation would also increase the cost of capital and could deter investment in the economies concerned.

4. The level of interest and participation in the work has been unprecedented with more than 60 countries directly involved in the technical groups and many more participating in shaping the outcomes

1 Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, People’s Republic of China, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany,
解释性声明（第四次修订稿）
税基侵蚀与利润转移（BEPS）

1. 介绍

BEPS的显著影响不言而喻。纵使BEPS的规模难以准确衡量，然而自2013年以来的调查工作却确定了BEPS影响的潜在规模。据统计，BEPS导致的全球企业所得税（CT）流失可能占到全球企业所得税总额的4%至10%，即每年达到1,000亿美元至2,400亿美元。导致税收流失的个中原因众多，其中包括跨国企业（MNEs）的避税行为和洗钱、不同国内税收法律和法规的相互作用，各国税制之间缺乏透明度和合作，以及国内税收法律和法规的相互作用，各国税制之间缺乏透明度和合作。在各国企业所申报的利润表（相对于实际利润表），几乎占全球总利润的10%，雷同BEPS已经造成经济扭曲。就税收收入占整体收入的比重来看，发展中国家对企业所得税收入的依赖性更甚，因BEPS对发展中国家的影响比发达国家更为深远。在经济全球化大背景下，各国政府应关注海外企业、抑制有害税收实践，有效打击避税行为，为吸引并维持投资提供一个更确定性的国际税收环境。否则，国际企业所得税作为调整资源配置工具的有效性，也将为发展中国家带来严重损失的负面影响。

2. 此次BEPS—报告背景

此次BEPS—报告背景并结合了2014年在布里斯班峰会上提交并获得G20成员国领导人支持的第一批发布的7项成果报告。这一切之所以能够在短短两年内完成并且达成共识，主要是因为各国政府和国际组织对其本国税收制度公平性的信心，创造企业间公平的竞争环境，并让各国政府更有效地执行其税收政策。而另一方面则是因为要防止各国各自利益从互不协调的单方面措施而弱化国际税收政策，动摇跨境投资赖以发展的税收框架。尽管BEPS会导致双重征税，但与此同时也应对BEPS的措施也应该导致双重征税。跨国企业在促进跨国贸易和投资、创造就业机会、培育初创企业、探索创新等方面具有重要作用，而双重征税则会阻碍其发展，同时，双重征税也会导致资本成本上升，从而可能阻碍相关国家的发展。

各国对于BEPS项目相关工作的关注和积极参与前所未见，有超过60个国家1直接参与了技术小组，而更多国家则通过区域双边对参与对所报告的评论。各个区域性税收组织，比如

1 阿尔巴尼亚、阿根廷、澳大利亚、奥地利、白俄罗斯、保加利亚、比利时、巴西、加拿大、智利、哥伦比亚、哥斯达黎加、中华民国、克罗地亚、捷克、丹麦、爱沙尼亚、芬兰、法国、德国、格鲁吉亚、匈牙利、印度、爱尔兰、以色列、意大利、日本、肯尼亚、韩国、拉脱维亚、立陶宛、卢森堡、马尔他、墨西哥、摩洛哥、荷兰、新西兰、尼日利亚、挪威、菲律宾、波兰、葡萄牙、俄罗斯、沙特阿拉伯、塞内加尔、新加坡、斯洛伐克、斯洛文尼亚、南非、西班牙、瑞典、瑞士、突尼斯、土耳其、英国、美国、越南。
through regional structured dialogues. Regional tax organisations such as the African Tax Administration Forum (ATAF), Centre de rencontre des administrations fiscales (CREDAF) and the Centro Interamericano de Administraciones Tributarias (CIAT) joined international organisations like the International Monetary Fund (IMF), the World Bank (WB) and the United Nations (UN), in contributing to the work. Stakeholder interest including invaluable interactions with business and civil society saw more than 12,000 pages of comments received on the 23 discussion drafts published and discussed at 11 public consultations, as well as more than 40,000 views of the OECD webcasts on BEPS.

5. The 2013 Report Addressing Base Erosion and Profit Shifting concluded that no single tax rule on its own enables BEPS; it is rather the interplay among different issues that makes it possible. Domestic laws and rules that are not coordinated across borders, international tax standards that have not always kept pace with the changing global business environment and a pervasive lack of relevant information at the level of tax administrations and policy makers combine to provide opportunities for taxpayers to undertake BEPS strategies. The availability of harmful tax practices was also identified as a key pressure area.

6. Out of a shared desire to address BEPS concerns, there is agreement on a comprehensive package of measures which are designed to be implemented domestically and through treaty provisions in a coordinated manner, supported by targeted monitoring and strengthened transparency. The goal is to tackle BEPS structures by comprehensively addressing their root causes rather than merely the symptoms.

7. Once the measures are implemented, many schemes facilitating double non-taxation will be curtailed. The implementation of the BEPS package will better align the location of taxable profits with the location of economic activities and value creation, and improve the information available to tax authorities to apply their tax laws effectively. In order to minimise the incidence of double taxation, improving dispute resolution as well as establishing mechanisms to support and monitor the implementation of the measures are also a key part of the BEPS reforms.

8. The BEPS package represents the first substantial – and overdue - renovation of the international tax standards in almost a century. This renovation is necessary not only to tackle BEPS, but also to ensure the sustainability of the current international framework for the taxation of cross-border activities and the elimination of double taxation. The G20 and the OECD have recognised that BEPS by its very nature requires coordinated responses, which is why countries have invested the resources to participate in the development of shared solutions. After summarizing the achievements to date, this Explanatory Statement outlines the way forward to ensure an efficient implementation of the agreed measures and to follow up through an inclusive, targeted monitoring mechanism.

2. Achievements of the BEPS Project

9. For the first time all OECD and G20 countries have worked together on an equal footing to design common responses to international tax challenges. Further, there has been unprecedented participation by developing countries in the development of commonly-agreed international tax standards. The fact that so many countries have participated in the work and cooperated in the development of changes to the international tax environment is in itself a significant achievement of the Project.

10. Moreover, in addition to the work undertaken within the Project, parallel work has been undertaken that targets the priority BEPS challenges identified by low-income countries and spelled out in

Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Peru, Philippines, Poland, Portugal, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, the United States and Vietnam.
非洲税收管理局论坛（ATAF）、税务管理当局会报中心（CREDAF）及美洲税务管理局中心（CIAT）等与国际货币基金组织（IMF）、世界银行（WB）及联合国（UN）等国际性组织一道共同致力于应对BEPS的相关工作。包括企业和社会团体在内的其他所有方面亦纷纷提出宝贵意见，通过11次公开咨询和多次网络直播（超过40,000人次浏览），OECD就其25个讨论稿一共收集了超过12,000页的建议。

5. 2013年的《应对税收侵蚀与利润转移》报告得出了一个结论：BEPS问题不是由任何一个单一税收法规导致，而是由多种不同问题产生的后果相互作用而使然。缺乏跨境协调的国内税收法律法规，落后于全球商业环境变迁的国际标准，以及税收管理和政策制定机关缺乏相关信息等种种情况，都为纳税人制造了进行BEPS筹划的机会。同时，有害税收实践的存在也被界定为其中的一个核心压力区。

6. 基于解决BEPS问题的共同愿景，各方就此前全球的一揽子措施达成共识，将基于国内法和税收协定相互协调实施，并以具有针对性的监督实施以及提升信息透明度为支撑。这份一揽子措施的目的是全面地解决BEPS架构的根源问题，而并非仅仅解决表象问题。

7. 措施一旦实施，众多助长双重征税的架构会随之不攻而破。BEPS一揽子报告的实施将会让应税利润产生地与经济活动发生地和价值创造地相匹配，并提高税务机关获取信息的能力，从而使更有效地执行各个相应的税收法规。为了尽量减少双重征税发生，完善争端解决机制以及建立相关的监督实施机制也是BEPS改革的关键部分。

8. 本次BEPS一揽子报告是近一个世纪以来首次——也是第一次的——对国际税收标准进行的重大变革。这次变革不仅应对BEPS问题，同时也确保现行跨境交易的国际税收框架和消除双重征税的可持续性。G20和OECD早就认识到，解决BEPS问题需要各国协同应对。这也是为什么各国内部的税收资源来研究制定解决方案。通过总结至目前为止取得的成果，本解释性声明概列出发展方向，以更有效地实施各项措施，同时点面结合地推动跟进和监督工作。

2. BEPS项目的目标

9. OECD和G20所有成员国首次在合作的基础上共同构思设计应对国际税收所面临的挑战。值得一提的是，发展中国家前所未有的参与到此次广泛认可的国际税收标准制定工作当中。众多国家能够一同参与此次工作，并就改善国际税收环境达成合作，这本身就是BEPS项目的一个重大成果。

10. 除了行动计划内工作以外，针对那些低收入国家认为需要优先应对的BEPS领域的工也同时展开。2014年，低收入国家所面临的工作挑战已经被制作成一份含两个部分的报告提交给
a 2-part report to the G20 Development Working Group in 2014. These include issues relating to the availability of transfer pricing comparables including challenges in the commodities sector, transparent and effective tax incentives, and indirect transfers of assets. The development of toolkits to help developing countries address these issues will continue through 2016 and 2017, working with countries in partnership with regional tax organisations and the IMF, World Bank, and UN.

11. A comprehensive package of measures has been agreed upon. Countries are committed to this comprehensive package and to its consistent implementation. These measures range from new minimum standards to revision of existing standards, common approaches which will facilitate the convergence of national practices and guidance drawing on best practices. Minimum standards were agreed in particular to tackle issues in cases where no action by some countries would have created negative spill overs (including adverse impacts of competitiveness) on other countries. Recognising the need to level the playing field, all OECD and G20 countries commit to consistent implementation in the areas of preventing treaty shopping, Country-by-Country Reporting, fighting harmful tax practices and improving dispute resolution. Existing standards have been updated and will be implemented, noting however that not all BEPS participants have endorsed the underlying standards on tax treaties or transfer pricing. In other areas, such as recommendations on hybrid mismatch arrangements and best practices on interest deductibility, countries have agreed a general tax policy direction. In these areas, they are expected to converge over time through the implementation of the agreed common approaches, thus enabling further consideration of whether such measures should become minimum standards in the future. Guidance based on best practices will also support countries intending to act in the areas of mandatory disclosure initiatives or CFC legislation. There is agreement for countries to be subject to targeted monitoring, in particular for the implementation of the minimum standards. Moreover, it is expected that countries beyond the OECD and G20 will join them to protect their own tax bases and level the playing field.

12. Model provisions to prevent treaty abuse, including through treaty shopping, have been developed and will be included in the multilateral instrument that countries may use to implement the results of the work on tax treaty issues into bilateral tax treaties. This will impede the use of conduit companies in countries with favourable tax treaties to channel investments and obtain reduced rates of taxation. Some of these provisions require additional technical work, which will be finalised in 2016.

13. Standardised Country-by-Country Reporting and other documentation requirements will give tax administrations a global picture of where MNE profits, tax and economic activities are reported, and the ability to use this information to assess transfer pricing and other BEPS risks, so they can focus audit resources where they will be most effective. MNEs will report their revenues, pre-tax profits, income tax paid and accrued, number of employees, stated capital, retained earnings, and tangible assets in each jurisdiction where they operate. The implementation package provides guidance to ensure that information is provided to the tax administration in a timely manner, that confidentiality is preserved and that the information is used appropriately. It is recommended that the first Country-by-Country Reports be required to be filed for MNEs' fiscal years starting from 1 January 2016. It is acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. The filing requirement will be on MNEs with annual consolidated group revenue equal to or exceeding EUR 750 million (or a near equivalent in domestic currency). Anticipation of this reporting system has already begun to discourage aggressive tax planning.

14. A revitalised peer review process will address harmful tax practices, including patent boxes where they include harmful features, as well as a commitment to transparency through the mandatory spontaneous exchange of relevant information on taxpayer-specific rulings which, in the absence of information exchange, could give rise to BEPS concerns. Agreement on the nexus approach for preferential intellectual property (IP) regimes requires alignment of the benefits of these regimes with substantive research and development activity. The renewal of efforts to address harmful tax practices will
G20发展工作组，当中涵盖有关转让定价可比数据库（包括大宗商品领域）的可获取性问题、透明度和有效的税收优惠，以及间接转让资产等方面的挑战。为帮助发展中国家解决上述问题，相应的行动将持续至2016和2017年，并将与相关国家、区域和国际组织、国际货币基金组织、世界银行和国际组织紧密合作，以制定相应的国际工具。

11. 各国已就全面一揽子措施达成共识。各国承诺将根据这份一揽子措施并一致落实。这一揽子措施包括出台新的最低标准、评估现有标准、采取统一行动方案以缩小各国法规的差异，以及基于最佳实践制定的指南。最低标准尤其有助于解决某些国家因为不作为而获得其他国家带来的负面溢出效应问题（包括对于竞争的负面影响）。为了营造公平的竞争环境，OECD与G20成员国承诺在各相关领域采取一致的行动，包括防止协定滥用、实施分国别报告、打击有害税收实践以及竞争中立措施等。现有的标准已经过修订并得到实施，然而同时也须认识到，并不是所有BEPS参与国都认同税收协定或转让定价的基准文本。在其他领域，有关消除混合错配的建议措施或限制利益扣除的最佳实践指引，各国已同意采取具体一致的税收政策方向，预计其实施措施在此基础上将逐步趋同，届时再考虑是否在将来把此类措施改为最低标准。基于最佳实践的指南将为那些有意在强制披露措施或受控外国企业（CFC）监管领域采取行动的国家提供支持。各国同意采取针对性的监督，尤其是对最低标准的实施展开的监督。同时，预期OECD和G20成员国以外的国家也将加入此行列，以期保障其本国税基并促进公平的竞争环境。

12. OECD税收协定范本中的避免协定滥用条款已被制定，并被纳入多边工具中以便各国将协定相关工作成果用于各自的双边税收协定中。该条款的实施将防止那些通过在税收协定优惠国设立空壳公司作为投资渠道从而获得减低税率的行为。其中某些条款还需要额外的技术研究工作，最终将于2016年完成。

13. 标准化的跨国间报告（CbC）以及其他资料的报送要求让各国税务机关得以掌握跨国企业的全球利润，纳税和经济活动所在地的全貌，并基于这些信息来评估转让定价及其他BEPS的相关风险，从而使税务机关能够更有效地分配资源实施稽查。跨国企业将要向每一个运营所在国的税收管辖区报送收入、资产、利润、已减所得税和计算所得税、员工人数、注册资本、负债权益以及有形资产等信息。这份一揽子报告的指南将确保税务机关及时取得信息，并在保密的情况下合法使用相关信息。我们建议首批CbC报告由跨国企业从2016年1月1日开始的财政年度进行申报。一些税收管辖区需要时间来保持特定的国内立法程序以对现有法律做出必要的修改。CbC申报的要求将针对集团年收入在7.5亿欧元以上（或等值当地货币）的跨国企业，虽尚未实施，对CbC报告系统即将出台的预期已经开始对相关政府税收筹划产生抑制效应。

14. 一个业已更新修订的同行审议流程将应对有害税收实践行为，包括那些含有害特征的专利盒税收优惠制度（Patent box）。同时，由于跨境税收安排的缺乏往往导致BEPS问题，各国将被要求通过强制性的自发情报交换提供针对特定纳税人做出的税务规定信息，以实现增加透明度的承诺。各方同意在知识产权税收优惠制度上采用关联系，将税收优惠与实质性的研发活动挂钩。不断持续更新应对有害税收实践工作的将会降低其对具备流动性的融资和服务交易活动产生的利
reduce the distortory influence of taxation on the location of profits from mobile financial and service activities, thereby encouraging an environment in which fair tax competition can take place.

15. With the strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure (MAP), agreement on a minimum standard to secure progress on dispute resolution has been reached. This will help ensure that cross-border tax disputes between countries over the interpretation or application of tax treaties are resolved in a more effective and timely manner. The Forum on Tax Administration (FTA), including all OECD and G20 countries along with other interested countries and jurisdictions on an equal footing, will continue its efforts to improve MAP through its recently established MAP Forum. This will require the development of an assessment methodology to ensure the new standard for timely resolution of disputes is expeditiously met. In parallel, a large group of countries is committing to move quickly towards mandatory and binding arbitration. It is expected that rapid implementation of this commitment will be achieved through the inclusion of arbitration as an optional provision in the multilateral instrument to be developed to implement the BEPS treaty-related measures. An effective monitoring mechanism will be established to focus on the improvement of dispute resolutions.

16. The BEPS Project has also revisited the existing international tax standards to eliminate double taxation, in order to stop abuses and close BEPS opportunities. This translates into a set of agreed guidance which reflects the common understanding and interpretation of provisions based on Article 9 of both the OECD and UN model tax conventions. Changes to the Transfer Pricing Guidelines will ensure that the transfer pricing of MNEs better aligns the taxation of profits with economic activity. Outcomes will be determined in accordance with the actual conduct of related parties in the context of the contractual terms of the transaction. These and other changes will reduce the incentive for MNEs to shift income to "cash boxes" — shell companies with few if any employees and little or no economic activity, which seek to take advantage of low or no-tax jurisdictions. Specifically, the revised guidelines on transfer pricing address the situation where a capital-rich member of a group, i.e. a cash box, simply provides assets such as funding for use by an operating company but performs only limited activities. If the capital-rich member does not in fact control the financial risks associated with its funding, then it will be entitled to no more than a risk-free return, or less if, for example, the transaction is not commercially rational and therefore the guidance on non-recognition applies. The Transfer Pricing Guidelines are also being modernised in relation to intangibles. Recognising the difficulty in valuing certain intangibles, an approach to assure the appropriate pricing of hard-to-value intangibles has been devised to give countries an additional tool to address the use of information asymmetry between taxpayers and tax authorities to undervalue intra-group transfers of intangibles.

17. Changes to the permanent establishment definition have been agreed to address techniques used to inappropriately avoid tax nexus, including via commissioner arrangements and the artificial fragmentation of business activities. As indicated in the Report on Action 7, follow-up work will be undertaken to provide additional guidance on profit attribution to the PEIs resulting from the changes proposed in that Report. Follow-up work will also be needed in 2016 to incorporate the changes resulting from the Report on Action 7 into the Model Tax Convention through an update of the Model. This follow-up work will allow the Committee, where necessary, to provide additional clarification on the new treaty wording introduced by the Report and to address any unintended consequences of the changes resulting from that Report, notably by examining an issue related to the global trading of financial products.

18. The BEPS package also includes a common approach which will facilitate the convergence of national practices by interested countries to limiting base erosion through interest expenses, for example via intra-group and third party loans that generate excessive deductible interest payments, as well as on domestic legislation and related treaty provisions where necessary to neutralise hybrid mismatches which undermine their tax base or the tax base of their partners. Recommendations for the design of
润的归属地带来的扭曲的机会，并借此促进公平的税收竞争环境。

15. 为践行通过MAP更有效及时地解决相关税收争议的强有力政策承诺，各国已经为推进争议解决进程就最低标准达成共识，以确保各国对税收协定解释和适用的跨境税收争议以一种更有效和及时的方式得以解决。由OECD和G20所有成员国，以及其他有意参与的国家或地区共同平等参与的“税收征管论坛”近日组建了相关协商程序（MAP）论坛，以致力于持续改进MAP。通过重新审议和调整MAP协定中关于转移定价等不规范行为的处理。通过将跨境性仲裁制度作为可选条款纳入即将出台的BEPS当中与协定相关问题的多边工具之中，这一承诺可望迅速实现。同时，一个有效的监督机制也将建立以关注争议解决的进一步完善。

16. BEPS 项目也重新审视了旨在避免双重征税的现行国际税收标准，以堵塞协定滥用的漏洞和遏制 BEPS 的可乘之机。以上理念体现于反映了对 OECD 和 UN 税收协定范本第 9 条的通用认识和解读的一套通用指引。转让定价指引的修订将确保跨国企业的转让定价政策更好地体现利润征税原则和经济活动致混一的这一原则，即转让定价的结果将取决于交易双方在执行合同条款时的实际行为。而修订后的该指引将会降低跨国企业将收入转移到“现金箱”（Cash boxes）来逃避公司税的机会。空壳公司是指那些甚至没有员工和业务活动，仅为了税收或低税率而在某一管辖区设立的公司。具体而言，转让定价指引的修订针对的是那些集团内资金充裕的企业（即所谓的“现金箱”）提供资金或资产给实际经营的公司使用，同时仅从事非常有限的活动。如果资金充裕的企业实际上并没有参与控制该资产相关的风险，那么其应获得的回报则不应高于无风险企业所应获得的回报。换句话说，不被认可原则的情况下，甚至应获得更多的抵扣。转让定价有关无形资产的指引已经即时更新。考虑到某些无形资产的价值难以评估，该指引设计出一套一套方法以确保对较高估值的无形资产进行合理的定价，并借此让各国对一种方法来应对利用税务机关与纳税人之间存在的信息不对称以低估集团内部无形资产转让价格的问题。

17. 修订常设机构定义则是要打击那些不恰当地，为了规避税负关联度的行为，包括通过代理安排以及人为的拆分业务活动以规避常设机构的构成等行为。正如《报告》所述，对于该报告提出的修订引起的常设机构利润归属问题，相关后续工作将持续开展以便在这一方面提供更进一步的指引。同时，2016年还将进行相关后续工作以使的常设机构定义的修订在对OECD税收协定范本的更新中有所体现。这一系列后续工作将使委员会有足够的时间来对报告引用的新税收协定文字表述提供额外的解释和澄清，也有助于应对由于修订本身导致的非其设计本意的结果变化——尤其是与全球金融产品交易相关的问题。

18. BEPS—一套报告还包含促使各利益相关国的国内惯例趋向一致，限制通过利息费用达到税基侵蚀目的的通用方案，例如通过集团内部和第三方借贷产生的多余的可抵扣利息支出。同时，这项通用方案也将收窄国内法与税收协定相关条款之间的差异。消除通过混合错配侵蚀一方或交易另一方税基的影响。各方就国内法和税收协定条款范本的相关设计及具体实施的建议业已达成
domestic rules and model treaty provisions have been agreed together with detailed commentary for their implementation. There is also guidance based on best practices for countries which seek to strengthen their domestic legislation relating to mandatory disclosure by taxpayers of aggressive or abusive transactions, arrangements, or structures, and the building blocks of effective Controlled Foreign Company (CFC) rules.

19. The past decade has seen the rapid expansion of the digital economy, and today it is increasingly the economy itself; therefore a ring-fenced solution to the tax challenges it poses is not appropriate. **BEPS risks are however exacerbated by the digital economy, and the measures developed in the course of the BEPS Project are expected to substantially address these risks.** The key features of the digital economy have in fact been taken into account across the BEPS Project, in particular the changes to the permanent establishment definition, the update of the Transfer Pricing Guidelines and the guidance on CFC rules. In the area of indirect taxes, guidelines have been developed and implementation mechanisms identified to facilitate VAT collection based on the country where the consumer is located, which is particularly relevant for online ordering and delivery of goods and services. The work also considered several options to address the broader tax challenges raised by the digital economy, including a new nexus in the form of a significant economic presence. None of these options were recommended at this stage. This is because, among other reasons, it is expected that the measures developed in the BEPS Project will have a substantial impact on BEPS issues previously identified in the digital economy, that certain BEPS measures will mitigate some aspects of the broader tax challenges, and that consumption taxes will be levied effectively in the market country. Countries could, however, introduce any of these options in their domestic laws as additional safeguards against BEPS, provided they respect existing treaty obligations, or in their bilateral tax treaties. OECD and G20 countries have agreed to monitor developments and analyse data that will become available over time. On the basis of the future monitoring work, a determination will also be made as to whether further work on the options discussed and analysed should be carried out. This determination should be based on a broad look at the ability of existing international tax standards to deal with the tax challenges raised by developments in the digital economy.

20. An innovative mechanism has been launched to update the global network of more than 3 500 bilateral tax treaties: 87 countries have joined an ad hoc group to **negotiate a multilateral instrument** to implement the treaty-related BEPS measures which will facilitate the modification of bilateral tax treaties in a synchronised and efficient manner, without the need to invest resources to bilaterally renegotiate each treaty. To be concluded by the end of 2016, the multilateral instrument will further enhance coordination and improve international tax cooperation.

21. With recent announcements indicating important changes to tax structuring by some large MNEs, the impact on taxpayer behaviour can already be seen before implementation is even fully underway. An Action-by-Action summary of the BEPS package is found in the Annex to this Explanatory Statement.

3. Post-BEPS environment

22. With the adoption of the BEPS package, OECD and G20 countries, as well as all developing countries that have participated in its development, will lay the foundations of a modern international tax framework under which profits are taxed where economic activity and value creation occurs. It is now time to focus on the upcoming challenges, which include supporting the implementation of the recommended changes in a consistent and coherent manner, monitoring the impact on double non-taxation and on double taxation, and designing a more inclusive framework to support implementation and carry out monitoring.
共识：对希望通过加强国内法的国家，则制定了基于最佳实践的指引，要求纳税人对其不良或滥用的税收筹划的交易、安排架构，以及采取不当方法阻止CFC规则的有效执行等一系列行为进行强制性披露。

19. 数字经济在过去十年急速发展，如今数字经济越发成为经济本身。因此，单独地离开出来讨论如何应对数字带来的税收挑战并不恰当。数字经济加剧了BEPS风险，而BEPS项目提出的措施应能实质性地应对这些风险。BEPS项目已经考虑到数字经济的关键特征，尤其体现在对经济的定义、转让定价指引和CFC规则指引作出的修订。在间接税方面，相关指引及相应的执行措施也已出台，以确保相应的增值税（VAT）能够基于消费者所在国（来源国）征收。这取决于在线订购以及商品和服务的配送等所有相关。该工作也考虑了应对数字经济带来的更广泛税收挑战的其他方案，包括基于显著经济存在的新的关联度方法。但现阶段这些方案都不被推荐。这是因为，除非其他原因之外，我们预期BEPS项目提出的措施将对数字经济中识别出来的BEPS问题产生重大影响，这些特定措施将缓解数字经济带来的某些方面的更广泛税务挑战，而同时消费环节税也能在市场所在地得到有效征收。当然，为打击BEPS，各国也可以考虑延续其国内法，或者在遵循现有协定义务的前提下引入各国双边税收协定。OECD和G20成员国一致同意监控局势发展和分析未来可获得的数据。在此基础上，将视乎现有国际税收标准能否有效应对数字经济发展带来的税收挑战，决定是否将上述讨论分析的方案进一步付诸实践。

20. 一项致力于全面更新全球超过35000的双边税收协定的创新机制已经启动。有87个国家已经加入有关特别小组就多边工具的障碍问题进行协商，落实与税收协定相关的BEPS措施问题，以便同步高效地修改双边税收协定，而无须再投入人力物力对协定进行逐一重新谈判。此项多边工具将于2016年底前出台，届时国际税收合作将得到进一步协调和提升。

21. 近日某些大型跨国企业的公告显示其税务架构正在发生重大变化，由此可见BEPS行动计划在尚未全面开展时就已经对纳税人的行为产生了影响。关于BEPS一揽子报告行动总结请参见本解释性声明附录。

3. 后BEPS时期的税收环境

22. 随着BEPS－－一揽子报告的逐步落实，G20和OECD成员国以及所有参与其中的发展中国家都为现代国际税收框架奠定基础。在此框架下，利润将在经济活动发生地和价值创造地留存并被征税。目前是时候将焦点放在未来的挑战上，包括如何持续一致和连贯地实施其中的相关修订，如何监控双重征税和双重征税的影响，以及如何发展出一个更具包容性的框架来支持有关措施的实施和监督。
a. Implementation starts now

23. Some of the revisions may be immediately applicable such as the revisions to the Transfer Pricing Guidelines, while others require changes that can be implemented via tax treaties, including through the multilateral instrument. Some require domestic law changes, such as the outputs of the work on hybrid mismatches, CFC rules, interest deductibility, Country-by-Country Reporting, and mandatory disclosure rules, as well as to align, where necessary, domestic rules on preferential IP regimes with the harmful tax practices criteria. Countries are sovereign. It is therefore up to them to implement these changes, and measures may be implemented in different manners, as long as they do not conflict with their international legal commitments. However, BEPS by its nature requires coordinated responses, particularly in the area of domestic law measures; it is therefore expected that they will implement their commitments, and that they will seek consistency and convergence when deciding upon the implementation of the measures.

24. Challenges have arisen in the course of the development of the measures: some countries have enacted unilateral measures, some tax administrations have been more aggressive, and increasing uncertainty has been denounced by some practitioners as a result of both the changes in the world economy and the heightened awareness of BEPS. As noted in the BEPS Action Plan:

... the emergence of competing sets of international standards, and the replacement of the current consensus-based framework by unilateral measures, could lead to global tax chaos marked by the massive re-emergence of double taxation.

25. Governments recognise these challenges and that consistent implementation and application are key: options developed to be adaptable to different tax systems should not result in conflicts between domestic systems; interpretation of the new standards should not result in increased disputes. Instead, to support effective and consistent implementation, OECD and G20 countries agree to continue to work together in the BEPS Project framework. Initiatives to further ensure consistent and coordinated implementation are already underway amongst OECD and G20 countries, and beyond. For example, the European Commission has recently published a Communication on a Fair and Efficient Corporate Tax System in the European Union which aims to set out how the BEPS measures can be implemented within the EU. The participation of 87 countries in the negotiation of the multilateral instrument is also a strong signal that countries are committed to swift and consistent implementation in a multilateral context.

26. OECD and G20 countries will also keep working on an equal footing to complete the areas which require further work in 2016 and 2017. These include finalising transfer pricing guidance on the application of transactional profit split methods and on financial transactions, discussing the rules for the attribution of profits to permanent establishments in light of the changes to the permanent establishment definition, and finalising the model provisions and detailed Commentary on the Limitation on Benefit (LOB) rule with a continued examination of the issues relating to the broader question of treaty entitlement of investment funds (other than collective investment funds i.e. non-CIV funds). It will also mean finalising the details of a group ratio carve-out and special rules for insurance and banking sectors in the area of interest deductibility and developing a strategy to expand participation of non-OECD, non-G20 countries to the work on harmful tax practices, including the possible revision of the relevant criteria.

27. Beyond the finalisation of these actions, OECD and G20 countries will seek to improve clarity and certainty in the application of the rules and will also consider work in related areas which have emerged in the course of the work on BEPS.
a. 马上启动落实的项目

23. 某些修订，比如对转让定价指引的修订，可以即时启用；而另一些修订则需要通过修改税收协定（包括多边工具）和国内法才能推行，例如混合错配安排的工作成果、CFC规则、利息扣除相关规则、分国别报告制度、强制性披露规则，以及必要时要求用有害税收实践的判断标准衡量国内法下有关知识产权的优惠税制。在不违背国际法律承诺的前提下，各国政府自主决定是否实施以及采取何种方式实施这些变更。然而，BEPS的性质决定了其需要各国协调一致的应对，尤其是在国内法方面；因此我们期待各国履行承诺，并在决定如何实施相关应对措施时，同时顾及相互的一致性和趋同性。

24. 在制定这些措施的过程当中也曾经遇到各种挑战：某些国家制定了单边措施，某些税务执法当局较为激进，部分企业者更担心世界经济变化和对BEPS意识的提高带来更多的不确定性。正如BEPS行动计划中所提到：

......相互竞争的国际标准的出现，用单边措施来替代各方之前就框架达成的共识，都可以引致大量双重征税的重现，并造成全球税收的混乱局面。

25. 各国政府已经意识到，一致性的实施和应用尤其关键。采纳BEPS——多边报告建议的方案，不应造成各国国内法之间的冲突；对于新标准的解释也不应带来更多的争议。为了保证实施的有效性和一致性，G20和OECD成员国同意在BEPS项目框架下继续合作。G20和OECD成员国以及其他组织已经启动开始具体行动，进一步确保措施实施的一致性与趋同性。例如，欧盟委员会最近发布了“在欧盟建立公平有效的征税系统的通知”，旨在阐述如何在欧盟内实施BEPS措施。同时，87个国家加入多边工具协商这一事实也发出了一个强而有力的信号：各国承诺在多边的环境中采取迅速而一致的行动来协作实施。

26. G20和OECD成员国将继续于2016年及2017年期间在平等的基础上合作，完成未尽事宜。其中包括完成转让定价指引中有关交易利润分割法的应用和金融交易的定价、基于常设机构定价改变而讨论相应的常设机构利润分配规则、继续审视投资基金（不包括集体投资基金，即非CIV基金）享受协定待遇的问题，以完善有关利益限制规则（Limitation on Benefits）的协定成本条款和具体评价等。同时包含发布集团利率税例外规则的详细标准，完成保险、银行业利息和相关特别规定的协定，筹划如何在非OECD和非G20成员国更多地参与有害税收实践的讨论（包括可能的对相关判断标准的修订工作）。

27. 除对上述这些行动计划定额外，OECD和G20成员国也会致力提高在应用规则时的清晰度和确定性，共同探讨在BEPS工作过程中凸显出来的问题。
b. Monitoring implementation and impact

28. Recognising all the progress made, including in establishing a new OECD-G20 framework for more inclusive deliberations, it appears necessary to further deepen cooperation and focus on monitoring the implementation and effectiveness of the measures adopted in the context of the BEPS Project as well as the impact on both compliance by taxpayers and proper implementation by tax administrations.

29. OECD and G20 countries agree to keep working on an equal footing to monitor the implementation of the BEPS measures. The monitoring will consist of an assessment of compliance in particular with the minimum standards in the form of reports on what countries have done to implement the BEPS recommendations. It will involve some form of peer review which will have to be defined and adapted to the different Actions, with a view to establishing a level playing field by ensuring all countries and jurisdictions implement their commitments so that no country or jurisdiction would gain unfair competitive advantages. In addition, a better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business, with an important role to play for the Forum on Tax Administration. Finally, proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

c. Designing an inclusive framework

30. Globalization requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries. The strong interest expressed by developing countries through their participation in the BEPS Project should be sustained by the establishment of an even more inclusive framework, which will continue to include other international organisations and regional tax organisations. Drawing on the successful experience of the Global Forum on Transparency and Exchange of Information for Tax Purposes, in early 2016 OECD and G20 countries will work together to design and propose a more inclusive framework to support and monitor the implementation of the BEPS package, with countries and jurisdictions participating on an equal footing. Such work will include consideration of the manner in which non-OECD non-G20 countries and jurisdictions can commit to the agreed standards and their implementation. It will draw on the mandate from the G20 Finance Ministers and Central Bank Governors as included in their Communiqué issued in Ankara on 5 September 2015: “... The effectiveness of the project will be determined by its widespread and consistent implementation. We will continue to work on an equal footing as we monitor the implementation of the BEPS project outcomes at the global level, in particular, the exchange of information on cross-border tax rulings. We call on the OECD to prepare a framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions, particularly developing economies, on an equal footing...”

d. Next steps

31. The OECD and G20 countries will extend their cooperation on BEPS until 2020 to complete pending work and ensure an efficient targeted monitoring of the agreed measures. They will, in early 2016, conceive a framework for monitoring with a view to better involve other interested countries and jurisdictions.
b. 监管方案的实施及影响

28. 鉴于目前取得的进展，包括建立一个新的OECD-G20框架以利更广泛的讨论研究，各方有必要进行进一步深化合作，并关注对BEPS行动计划措施如何落实以及是否有效的监测，同时紧密关注纳税人遵从以及税务机关正确执行的情况。

29. G20和OECD成员国同意在平等基础上共同监管BEPS措施的实施情况。监督行动将依据最低标准的要求对各国实施BEPS建议的遵从落实情况进行评估并做出相关报告。在这一过程中将在一定程度上采用类似同行审议的形式，以此确保所有国家和地区都能履行承诺。从而建立公平的竞争环境，使得没有国家或地区能获得不公平的竞争优势。监督审议的个中操作细节将依据不同行动的情况而具体制定。此外，充分理解BEPS建议措施如何在实际操作中顺利执行，也有助减少政府之间的误解和争议。对于行动计划的实施和相关的税务管理的更多关注可以为政府和企业双方带来互利共赢，这本身也是OECD“税收征管论坛”的重要职责之一。最后，完善数据和分析的相关建议将有助于支撑对BEPS影响以及各国针对BEPS项目的相应措施的实际效果的量化评估。

c. 构建包容性的框架

30. 全球化促使国际间的解决方案和国际对话不应仅限于OECD和G20成员国之间。鉴于发展中国家在参与BEPS行动计划中表现出的积极性，为了使这种积极性得以持续，BEPS项目应建立一个更广泛包容的框架，并让其他的国际组织和区域税务组织继续参与。借鉴税务信息透明度和情报交换全球论坛的成功经验，2016年里OECD和G20成员国以及其他在BEPS项目中平等参与的国家和地区，携手共建一个更广泛包容的框架体系，更好地落实BEPS一揽子报告的各项应对措施。

这项工作也会考虑如何使非OECD非G20国家和地区能够遵循已通过的规则并予以实践的方法。这基于2015年9月5日在安卡拉举行的G20财长和央行行长会议公报的要求；“BEPS项目的有效性将取决于其实施的广泛性和一致性。我们将继续携手努力，平等参与，监督全球范围内的BEPS项目实施成果，尤其关注跨境税收法规的信息交换。我们期待OECD在2016年早期建立一个旨在让更多感兴趣的国家和地区，尤其是发展中国家平等参与其中的监督框架……”

d. 下一步工作

31. 为完成相关未竟工作，并确保达到建成共识的措施采取有效的监督，OECD和G20成员国就BEPS的相关工作的紧密合作将持续至2020年。他们将在2016年初将设定一个旨在让更多感兴趣的国家和地区共同参与其中的监督框架。
ANNEX – OVERVIEW OF BEPS PACKAGE

Action 1 – Address the Tax Challenges of the Digital Economy

The Action 1 report concludes that the digital economy cannot be ring-fenced as it is increasingly the economy itself. The report analyses BEPS risks exacerbated in the digital economy and shows the expected impact of the measures developed across the BEPS Project. Rules and implementation mechanisms have been developed to help collect value-added tax (VAT) based on the country where the consumer is located in the case of cross-border business-to-consumers transactions. These measures are intended to level the playing field between domestic and foreign suppliers and facilitate the efficient collection of VAT due on these transactions. Technical options to deal with the broader tax challenges raised by the digital economy such as nexus and data have been discussed and analysed. As both the challenges and the potential options raise systemic issues regarding the existing framework for the taxation of cross-border activities that go beyond BEPS issues, OECD and G20 countries have agreed to monitor developments and analyse data that will become available over time. On the basis of the future monitoring work, a determination will also be made as to whether further work on the options discussed and analysed should be carried out. This determination should be based on a broad look at the ability of existing international tax standards to deal with the tax challenges raised by developments in the digital economy.

Action 2 – Neutralise the Effects of Hybrid Mismatch Arrangements

A common approach which will facilitate the convergence of national practices through domestic and treaty rules to neutralise such arrangements. This will help to prevent double non-taxation by eliminating the tax benefits of mismatches and to put an end to costly multiple deductions for a single expense, deductions in one country without corresponding taxation in another, and the generation of multiple foreign tax credits for one amount of foreign tax paid. By neutralising the mismatch in tax outcomes, but not otherwise interfering with the use of such instruments or entities, the rules will inhibit the use of these arrangements as a tool for BEPS without adversely impacting cross-border trade and investment.

Action 3 – Strengthen CFC Rules

The report sets out recommendations in the form of building blocks of effective CFC rules, while recognizing that the policy objectives of these rules vary among jurisdictions. The recommendations are not minimum standards, but they are designed to ensure that jurisdictions that choose to implement them will have rules that effectively prevent taxpayers from shifting income into foreign subsidiaries. It identifies the challenges to existing CFC rules posed by mobile income such as that from intellectual property, services and digital transactions, and allows jurisdictions to reflect on appropriate policies in this regard. The work emphasises that CFC rules have a continuing, important role in tackling BEPS, as a backdrop to transfer pricing and other rules.

Action 4 – Limit Base Erosion via Interest Deductions and Other Financial Payments

A common approach to facilitate the convergence of national rules in the area of interest deductibility. The influence of tax rules on the location of debt within multinational groups has been established in a number of academic studies and it is well-known that groups can easily multiply the level of debt at the
附录 - BEPS一揽子报告的项目概述

行动 1 - 应对数字经济面临的税收挑战

行动 1 的报告结论指出不能将数字经济截然单独隔离，因为它越发成为经济本身。报告分析了数字环境下 BEPS 风险的加剧，并且展示了在 BEPS 项目下制定出来的措施的预期影响。相关 VAT 法规和实施机制已经制定，旨在有助于跨境 B2C 交易情况下 VAT 基于消费者所在国征收。此举不仅为国内外供应商创造公平的竞争环境，同时也便于征收与该类交易相关的 VAT 税款。报告讨论和分析了为应对数字经济引起的更广泛的税收挑战的各种技术方案，包括诸如税收角度和数据等问题，由于该类挑战和潜在的对方案对现有跨境活动税收框架所带来的一些新问题已经超出了 BEPS 的范围。OECD 和 G20 成员国一致同意监控局势发展和分析未来可得数据。在此基础上，将提供现有国际税收标准能否有效应对数字经济带来的税收挑战，作为重点讨论分析的方案进一步付诸实践。

行动 2 - 消除混合错配安排的影响

行动 2 制定的相关通用方案将有助于通过国内法和税收协定规则来促进不同国家间的操作趋于一致，从而消除混合错配安排。这将有助于通过消除因错配带来的税收利益而防止双重征税。同时也能防止同一笔费用的多次扣除和同一笔费用在两国扣除但在另一国却不征税。这将有助于消除因错配带来的税收影响，但同时又不至于干涉到相应的金融工具或实体在商业中的正常运作。在不影响跨境贸易和投资的前提下，行动 2 的相关规则将限制使用混合错配安排作为 BEPS 的工具。

行动 3 - 强化受控外国企业(CFC)规则

该报告针对有效 CFC 规则的构建提出建议，但同时报告也承认 CFC 规则在不同国家（或地区）之间或有关不同的政策目的。这些建议并非最低标准，但其被设计用于确保选择采用它们管辖区能有一套规则以有效防止纳税人在外国设立子公司，报告指出了由知识产权、服务和数字交易产生的流动性所得对现有 CFC 规则带来的挑战，并允许各国针对上述情况进行适当的政策以应对。行动 3 强调，CFC 规则作为转让定价和其他相关规则的一道重要防御线，在应对 BEPS 问题上将发挥重要作用。

行动 4 - 通过利息扣除和其他金融支出的相关规定遏制税基侵蚀

在利息扣除方面，一个用来促进不同国家间规则操作趋于一致的通用方案已详细制定。许多学术研究都阐述了税收规则对跨国集团内债务发生地的影响；同时，一个广为人知的情况是
individual group entity level via intra-group financing. At the same time, the ability to achieve excessive interest deductions including those that finance the production of exempt or deferred income is best addressed in a coordinated manner given the importance of addressing competitiveness considerations and of ensuring that appropriate interest expense limitations do not themselves lead to double taxation. The common approach aims at ensuring that an entity's net interest deductions are directly linked to the taxable income generated by its economic activities and fostering increased coordination of national rules in this space.

**Action 5 - Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance**

Current concerns on harmful tax practices are primarily about preferential regimes which can be used for artificial profit shifting and about a lack of transparency in connection with certain rulings. The Action 5 report sets out a minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime. In the context of IP regimes such as patent boxes, consensus was reached on the "nexus" approach. This approach uses expenditures in the country as a proxy for substantial activity and ensures that taxpayers benefiting from these regimes do in fact engage in research and development and incurred actual expenditures on such activities. The same principle can also be applied to other preferential regimes so that such regimes would be found to require substantial activities where they grant benefits to a taxpayer to the extent that the taxpayer undertook the core income-generating activities required to produce the type of income covered by the preferential regime. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange. The results of the application of the elaborated substantial activity and transparency factors to a number of preferential regimes are included in the report.

**Action 6 - Prevent Treaty Abuse**

The Action 6 report includes a minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse and offer a certain degree of flexibility regarding how to do so. The new treaty anti-abuse rules included in the report first address treaty shopping, which involves strategies through which a person who is not a resident of a State attempts to obtain the benefits of a tax treaty concluded by that State. More targeted rules have been designed to address other forms of treaty abuse. Other changes to the OECD Model Tax Convention have been agreed to ensure that treaties do not inadvertently prevent the application of domestic anti-abuse rules. A clarification that tax treaties are not intended to be used to generate double non-taxation is provided through a reformulation of the title and preamble of the Model Tax Convention. Finally, the report contains the policy considerations to be taken into account when entering into tax treaties with certain low or no-tax jurisdictions.

**Action 7 – Prevent the Artificial Avoidance of PE Status**

Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a State only to the extent that the enterprise has in that State a permanent establishment to which the profits are attributable. The definition of permanent establishment included in tax treaties is therefore crucial in determining whether a non-resident enterprise must pay income tax in another State. The report includes changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention, which is widely used as the basis for negotiating tax treaties. These changes address techniques used to inappropriately avoid tax nexus, including via replacement of distributors with commissionaire arrangements or via the artificial fragmentation of business activities.
通过集团内部融资、跨国集团短期互惠就可以将集团内部单个成员企业的债务水平大幅降低。此外，为了避免债务的相互转移以及确保保证利益扣除不会引起双重征税的重要，应对超额利息扣除方面，包括那些为免税或延期收入融资所产生的利息，报告建议相关措施最好是以协作的方式进行。通则方式旨在确认企业抵扣的净利润直接与其从事的经济活动产生的应税所得相挂钩，并致力于促进该领域下各国规则的协调。

行动 5 – 关注信息透明度与实质性因素，有效打击有害税收实践

目前对有害税收实践的关注主要集中在两个方面，即：利用优惠制度进行人为利润转移，以及针对某些特定纳税人个别规定欠缺透明度的相关问题。基于各方一致同意的相关方法，行动 5 报告提出了一个最低标准，并以此评估某项税收优惠制度是否针对的是实质性经营活动的行为。对于涉及知识产权的问题，如“专利盒”等，讨论一致认为应采用“关联法”。该方法利用企业在该国发生的费用作为实质性经营活动的评估指标，确保享受特定优惠制度的纳税人确实参与了研发活动并且该活动也实际产生了真实的费用。这一原则同样适用于其它的税收优惠制度，从而使该制度包含实质性活动要求，即仅在纳税人从事了产生相关优惠制度所涵盖的所得的有关核心活动时，才准予适用该税收优惠。对于透明度的问题，目前各方已同意构建一个强制自发信息交换特定类型的框架，以免因缺乏与此有关的情报交换而引起 BEPS 问题。对于已采纳详尽的实质性活动以及信息透明度等因素评估的税收优惠政策制度的实施效果，行动 5 的报告也有相关建议。

行动 6 – 防止协定滥用

行动 6 报告包括了一项防止协定滥用的最低标准措施，以及为防止协定滥用而制定的新的保护措施，同时就如何执行这些措施给予了一定的灵活性。报告中新的反滥用协定措施首先提出应对滥用协定待遇的问题，即非税收协定缔约国的居民企图获得该缔约国签订的协定优惠待遇。更多有针对性以解决其它滥用协定形式的措施会相继出台。OECD 税收协定范本的其他修正也获得了一致通过，用来确保税收协定相关条款不会在无意中导致了国内法的反避税规则的适用。协定文本的标题和序言的改写将明确地阐明双重征税并不适用协定的意图。最后，报告也指出了与无税或低税率国家（或地区）签订税收协定过程中应有的政策考量。

行动 7 – 防止人为规避常设机构的构成

税收协定通常只赋予缔约国一方对外国企业归属于在该缔约国内设立的常设机构的利润才具有征税权。因此，协定中常设机构的定义对于非居民企业是否在另一国具有所得税纳税义务而言至关重要。OECD 税收协定范本中，第五条常设机构的定义被广泛用于税收协定谈判磋商的蓝本，本报告对其予以了修改。这些修改主要针对采取不当方法人为避免税收关联度的问题，包括通过以代理安排来代替销售商，或通过人为拆分业务活动等手段。
Actions 8-10 Assure that Transfer Pricing Outcomes are in Line with Value Creation

Transfer pricing rules, which are set out in Article 9 of tax treaties based on the OECD and UN Model Tax Conventions and the Transfer Pricing Guidelines, are used to determine on the basis of the arm's length principle the conditions, including the price, for transactions within an MNE group. The existing standards in this area have been clarified and strengthened, including the guidance on the arm's length principle and an approach to ensure the appropriate pricing of hard-to-value-intangibles has been agreed upon within the arm’s length principle. The work has focused on three key areas. Action 8 looked at transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Misallocation of the profits generated by valuable intangibles has heavily contributed to base erosion and profit shifting. Under Action 9, contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks. Action 10 has focused on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation. The combined report contains revised guidance which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them.

The report also contains guidance on transactions involving cross-border commodity transactions as well as on low value-adding intra-group services. As those two areas were identified as of critical importance by developing countries, the guidance will be supplemented with further work mandated by the G20 Development Working Group, which will provide knowledge, best practices, and tools for developing countries to price commodity transactions for transfer pricing purposes and to prevent the erosion of their tax bases through common types of base-eroding payments.

Action 11 – Measuring and Monitoring BEPS

There are hundreds of empirical studies finding evidence of tax-motivated profit shifting, using different data sources and estimation strategies. While measuring the scope of BEPS is challenging given the complexity of BEPS and existing data limitations, a number of recent studies suggest that global CIT revenue losses due to BEPS could be significant. Action 11 assesses currently available data and methodologies and concludes that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required. Noting these data limitations, a dashboard of six BEPS indicators has been constructed, using different data sources and assessing different BEPS channels. These indicators provide strong signals that BEPS exists and suggest it has been increasing over time. New OECD empirical analyses estimate, while acknowledging the complexity of BEPS as well as methodological and data limitations, that the scale of global corporate income tax revenue losses could be between USD 100 to 240 billion annually. The research also finds significant non-fiscal economic distortions arising from BEPS, and proposes recommendations for taking better advantage of available data and improving analyses to support the monitoring of BEPS in the future, including through analytical tools to assist countries to evaluate the fiscal effects of BEPS and impact of BEPS countermeasures for their countries. Going forward, enhancing the economic analysis and monitoring of BEPS will require countries to improve the collection, compilation and analysis of data.
行动 8-10 – 确保转让定价的结果与价值创造相一致

基于 OECD 和联合国范本的税收协定第 9 条以及转让定价指南中涵盖的转让定价规则被用于在独立交易原则的基础上如何确定跨国企业集团内部交易的条件（包括价格）。近年来该领域的现行标准不断得到明确和强化，包括独立交易原则指南本身以及在独立交易原则下难以评估的无形资产进行合理定价的方法等。相关工作重点关注三个领域。由于无形资产具有极大流动性且通常难以估算，行动 8 关注涉及无形资产的受控交易相关的转让定价问题。对有价值的无形资产所产生利润的行为进行不合理分配很大程度上造成了税基侵蚀与利润转移的问题。按照行动 9，只有在有实际决策及对相关风险实施实际控制的情况下，按照法定合同进行的风险分配才会被认可。行动 10 关注于其他高风险领域，包括应对商业上不合理的受控交易的利润转移。跨国企业集团是否采用了使利润偏离其最重要的经济活动发生地的转让定价方法，以及跨国企业集团成员间是否使用某种与价值创造不匹配的税基侵蚀支付方式（如管理费和总部费用）等。各国报告应提出有针对性的指引，并使转让定价指南可以确保产生的营业收入与经济活动发生地相匹配。

该报告也为跨境商品的交易和集团内部低附加值服务提供了激励。发展中国家认为这是两个对它们至关重要的领域。G20 发展工作组委托的下一步工作将致力于补充该指引的内容。为发展中国家提供商品交易定价和防止以常规形式的费用支付侵蚀税基的相关转让定价知识、最佳实践介绍和相应的应对工具。

行动 11 – 评估和监督 BEPS 项目

使用不同的数据来源和估算方法，众多的实证研究确认了以避税为目的进行利润转移的证据。尽管受限于 BEPS 复杂性与现有数据局限性而使估算 BEPS 的影响范围非常困难，但近期许多研究表示因 BEPS 造成的全球 CIT 税收流失可能非常严重。行动 11 对现有数据和研究方法进行了评估，并得出了结论：各种重大的局限严重限制了对 BEPS 规模和其经济影响的经济分析。因此需要改进数据和研究的方法。在认识到这些数据的局限性的基础上，通过使用不同的数据来源并评估各种 BEPS 发生的途径，行动 11 已经构建一个拥有十项 BEPS 指标的框架。这些指标强有力地揭示出 BEPS 是真实存在的并且随着时间推移而增长。尽管受到 BEPS 复杂性以及方法和数据局限性的限制挑战，新的 OECD 实证研究估计全球 CIT 流失规模可能在每年 1,600 至 2,400 亿美元之间。该项研究还发现了 BEPS 所引起的严重非财政上的经济扭曲，并就如何更好地利用现有税收数据和改进分析方法提出多项建议，以便在未来对 BEPS 监控提供支助。包括利用分析工具来评估各国评估 BEPS 对本国财政的影响和采取的对策。今后，对经济分析水平和对 BEPS 监控要求的进一步提高将需要各国改进数据的收集、整理和分析工作。
Action 12 – Require Taxpayers to Disclose their Aggressive Tax Planning Arrangements

The lack of timely, comprehensive and relevant information on aggressive tax planning strategies is one of the main challenges faced by tax authorities worldwide. Early access to such information provides the opportunity to quickly respond to tax risks through informed risk assessment, audits, or changes to legislation. The Action 12 report provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules which seeks to design a regime that fits those countries’ need to obtain early information on aggressive or abusive tax planning schemes and their users. The recommendations in this report do not represent a minimum standard and countries are free to choose whether or not to introduce mandatory disclosure regimes. The framework is also intended as a reference for countries that already have mandatory disclosure regimes, in order to enhance the effectiveness of those regimes. The recommendations provide the necessary flexibility to balance a country’s need for better and more timely information with the compliance burdens for taxpayers. It also sets out specific best practice recommendations for rules targeting international tax schemes, as well as for the development and implementation of more effective information exchange and co-operation between tax administrations.

Action 13 – Re-examine Transfer Pricing Documentation

Improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations and limit the compliance burden on businesses. The Action 13 report contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on Country-by-Country Reporting. This minimum standard reflects a commitment to implement the common template for Country-by-Country Reporting in a consistent manner. First, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a ‘master file’ that is to be available to all relevant tax administrations. Second, it requires that detailed transactional transfer pricing documentation be provided in a “local file” specific to each country, identifying material related-party transactions, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations they have made with regard to those transactions. Third, large MNEs are required to file a Country-by-Country Report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued and other indicators of economic activities. Country-by-country reports should be filed in the ultimate parent entity’s jurisdiction and shared automatically through government-to-government exchange of information. In limited circumstances, secondary mechanisms, including local filing can be used as a backup. An agreed implementation plan will ensure that information is provided to the tax administration in a timely manner, that confidentiality of the reported information is preserved and that the Country-by-Country reports are used appropriately.

Taken together, these three documentation tiers will require taxpayers to articulate consistent transfer pricing positions, and will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries. By ensuring a consistent approach to transfer pricing documentation across countries, and by limiting the need for multiple filings of Country-by-Country Reports through making use of information exchange among tax administrations, MNEs will also see the benefits in terms of a more limited compliance burden.
行动 12 – 要求纳税人披露恶意税收筹划安排

缺乏与恶意税收筹划策略有关的信息是全球税务机关面临的主要挑战之一，及时获取这些信息可以使税务机关有更多机会通过风险评估、税务检查或修改相关法律等形式快速应对相应的税务风险。行动 12 为没有制定强制性披露规则的国家提供了一个从最佳实践方法中提炼出来的框架。通过设计一个满足所有涉及到的国家需求的制度，用来获取与恶意税收筹划有关的信息及使用者的其他信息。该报告内的建议不代表最低标准，各国可以根据自身情况选择是否采用强制性披露。该框架同时有利于已经实行强制性披露规则的国家参考，以加强其制度的有效性。该方法具有必要的灵活性，可以平衡一个国家对及时可靠的信息需求与纳税人遵从负担之间的关系。它还为国际税收规则制定提供了可参考的建议。

行动 13 – 重新审视转让定价文档资料

不断改进的具有更好协调性的转让定价文档资料将提高传递给税务机关信息的质量，并减少企业的遵从负担。行动 13 报告针对转让定价资料规定了三部分内容的处理方法，包括 CbC 报告的最低标准。这反映了实施统一的 CbC 报告标准的总体要求。第一层，转让定价资料提出要求跨国企业就其全球商业运营情况和转让定价政策向税务机关提交全面的“主文档报告”，该信息将向所有相关税务机关公开。第二层，企业一般以“本地文档报告”的形式向各个特定的该国提交一份详细的本地文档资料，并对重大关联交易、交易涉及的金额，以及企业就这些交易的转让定价政策的决策说明。第三层，大型跨国企业(MNEs)应每年向税务机关报告，其在各有关运营国家(或地区)的经营活动所取得的收入、税前利润、应缴及实缴所得税额和其他经济活动指标做出说明。跨国报告应在最终股东大会上公开，并且通过政府间情报交换机制进行自动共享。在特定情况下，第二层机制，包括本地报告可以作为第三层的备用方法。各国一致同意的实施计划将确保税务机关及时取得信息，所报告的信息得以保密，同时，各个国别报告也将得以传递使用。

上述三部分内容规定一并施行，将要求纳税人清晰说明其一贯的转让定价情况，并且可以为税务机关评估转让定价风险、制定在哪里部署稽查资源最为有效，以及在需要进行税务检查时开展问询等提供一系列有用的信息。通过确保各国的转让定价资料采用一致的方法，并且通过利用税务机关之间的情报交换机制减少需要多次申报跨国报告的情况，跨国企业也可以享受到因减轻遵从负担带来的好处。
Action 14 – Make Dispute Resolution Mechanisms More Effective

Countries recognize that the changes introduced by the BEPS Project may lead to some uncertainty, and could, without action, increase double taxation and MAP disputes in the short term. Recognizing the importance of removing double taxation as an obstacle to cross-border trade and investment, countries have committed to a minimum standard with respect to the resolution of treaty-related disputes. In particular, this includes a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure. The commitment also includes the establishment of an effective monitoring mechanism to ensure the minimum standard is met and countries make further progress to rapidly resolve disputes. In addition, a large group of countries has committed to quickly adopt mandatory and binding arbitration in their bilateral tax treaties.

Action 15 - Develop a Multilateral Instrument

Drawing on the expertise of public international law and tax experts, the Action 15 report explores the technical feasibility of a multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties. It concludes that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly. Based on this analysis, a mandate has been developed for an ad-hoc group, open to the participation of all countries, to develop the multilateral instrument and open it for signature in 2016. So far, [87] countries are participating in the work on an equal footing.
行动 14 – 更有效的争端解决机制

各国意识到 BEPS 项目带来的变化可能导致某些不确定性，如不采取行动，将对短期内增加双重征税和相互协商程序（MAP）争议。充分意识到消除双重征税壁垒对跨境贸易和投资牵制的重要性，各国承诺采用最低标准来解决税收协定相关争议。其中特别包含了有力的政府承诺来确保通过 MAP 有效和及时地解决争端。此承诺还包含建立一个有效的监督机制来确保最低标准得以落实以及各国在快速解决争端方面取得进展。此外，很多国家已承诺在其双边税收协定中采取强制性和约束力的仲裁机制。

行动 15 – 制定多边工具

借助国际法和税法专家的专业知识，行动 15 报告探究了通过制定多边工具来落实 BEPS 中与协定相关的措施和修订双边税收协定的技术可行性和实施可行性。这项行动结论表明，多边工具是值得制定并且是可行的。针对多边工具的协商需要尽快展开。基于上述分析，一个所有国家均能参加的临时专项小组业已成立，以期制定多边工具并在 2016 年完成后各方签署。至目前为止，已有 87 个国家在平等的基础上参与该项工作。
<table>
<thead>
<tr>
<th>注释词组 (排序以词组首写英文字母顺序为列)</th>
<th>译者注</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commissionaire arrangements (代理安排)</strong></td>
<td>Commissionaire arrangements 是在欧洲大陆法系下基于对代理人概念认可的一种法律安排。根据这种法律体系下的相关规定，代理人可以以自身的名义代表委托人签署销售合同，但通常情况下，其签署的合同对委托人是没有法律约束力的。</td>
</tr>
<tr>
<td><strong>G20 (20 国集团)</strong></td>
<td>G20 是一个国际经济合作论坛，于 1999 年 9 月 25 日由八国集团（G8）的财长在华盛顿宣布成立，属于布雷顿森林体系框架内非正式对话的一种机制，由原八国集团以及其余 12 个重要经济体组成，成员包括：阿根廷、澳大利亚、巴西、加拿大、中国、法国、德国、印度、印度尼西亚、意大利、日本、韩国、墨西哥、俄罗斯、沙特阿拉伯、南非、土耳其、英国、美国以及欧盟。 (排序以国家首写英文字母顺序为列，<a href="http://www.oecd.org/g20/g20-members.htm">http://www.oecd.org/g20/g20-members.htm</a>)。</td>
</tr>
<tr>
<td><strong>Nexus approach (关联法)</strong></td>
<td>Nexus approach 是指在税收概念下，收入应与经济活动的发生地和价值的创造地一致。</td>
</tr>
<tr>
<td><strong>OECD (经济合作与发展组织)</strong></td>
<td>OECD 全称是 Organization for Economic Co-operation and Development，目前由 34 个市场经济国家组成的政府间国际经济组织。成员国包括：澳大利亚、奥地利、比利时、加拿大、智利、丹麦、爱沙尼亚、芬兰、法国、德国、希腊、匈牙利、冰岛、爱尔兰、以色列、意大利、日本、韩国、卢森堡、墨西哥、荷兰、新西兰、挪威、波兰、葡萄牙、斯洛伐克、斯洛文尼亚、西班牙、瑞典、瑞士、土耳其、英国、美国。 (排序以国家首写英文字母顺序为列，<a href="http://www.oecd.org/about/membersandpartners/">http://www.oecd.org/about/membersandpartners/</a>)。</td>
</tr>
</tbody>
</table>