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KIPF BRIEF

The OECD's BEPS Project and Korea's Responses to Changes in International Tax Standards

Hong, Sunghoon Associate Fellow

한국조세재정연구원
KOREA INSTITUTE OF PUBLIC FINANCE

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Ⅰ. Renovation of the International Tax Standards and on the BEPS Action Plan ······························ 02

Ⅱ. Introduction of Action Plan on BEPS ·················· 06

Ⅲ. Discussion of strategies for the post-BEPS environment ·· 21

I Renovation of the International Tax Standards and on the BEPS Action Plan

- A number of multinational corporations organize complex forms of business, investment, and ownership structure to avoid tax on income obtained through international economic activity.
  - International tax avoidance scheme not only showed up in high-tech industries, such as Information and Communication Technologies (ICT), but were also detected in the field of traditional industries such as finance and food.
  - Since the development of the financial market, it has become relatively easier to form a complex structure of trade and investment by the reduction in transaction costs and increasement in the capital movement.
  - The growing importance of intangible assets-such as knowledge and trademark-as factors of production has made it easier to evade tax internationally.

- The level of the increase of cases of creating up-to-date tax standard for tax avoidance and the need for strengthening the current tax system started receiving stronger support in the international community.
  - OECD/G20 countries promoted to adopt the Action Plan to address Base Erosion and Profit Shifting project beginning in 2012.

- There are various causes and reasons facilitating Base Erosion and Profit Shifting (BEPS), and also several complex tax strategies that can be used to address issues.
  - Generally, the existing mismatches in the interaction of country domestic tax laws permit countries to reduce their tax burden internationally by forming an artificial form of trade (investment).
  - Artificial restructuring is when you perform a transaction (investment) that would have not been made if it were not for the intention to receive tax benefits and tax treaties.

- Discussions of the BEPS Project and policy changes are commonly referred to as "Google Tax." It may rather bring the result of not seeing the importance of the BEPS Project properly because it does not cover the BEPS Project comprehensively.

  - The so-called "Google Tax" is related with "permanent establishment of a multinational company avoidance status" (BEPS Action 7, legislation, etc.) and VAT payment avoidance transactions using a remote server.

Summary of BEPS Project by actions

Action	Summary
1	Addressing the Tax policies of the Digital Economy - Tacking tax challenges raised by the digital goods(software, audio recordings), digital distribution, and digital consumption. - Discussing BEPS in the digital economy.
2	'Neutralizing the Effect of Hybrid Mismatch Arrangements' (common approach) - Troubleshooting hybrid financial instruments, which is caused by the cross-border mismatches. - EX: Trade of convertible bond(bond/equity hybrid products)
3	'Designing Effective Controlled Foreign Company Rules' (Good practices) - Addressing the terms and conditions applicable to specific areas(countries) and conditions of corporate governance (Minimum of 50%). - Method to calculate income from CFC (CFC exemptions and threshold requirements; Rules for computing income)
4	'Limiting Base Erosion Involving Interest Deductions and Other Financial Payments' (Common Approach) - Improving the approach to rules on the deduction of interest. - Considering both the fixed rate and the average financial ratios of multinational corporations, exception to the application for industry sectors.
5	'Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance' (Minimum standards). - Regulating tax competition to attract capital from abroad. - The mandatory exchange of information on cross-border tax rulings between governments.
6	'Preventing the Granting of Tax Treaty Benefits in Inappropriate Circumstances' (Minimum standard) - Limitation-on-benefits rule and review of the primary purpose of introducing the examination clause. - Including the strengthened equity real estate condition on the holding period and providing the amendment of the OECD Model Tax Convention.

Action	Summary
7	'Preventing the Artificial Avoidance of Permanent Establishment Status' (Strengthening international standards) - Preventing artificially avoidance of PE status through dependent agents and splitting-up of contracts. - Reducing the scope to avoid the PE status and reviewing the structure of permanent establishment for insurance agents.
8	'Aligning Transfer Pricing Outcomes with Value Creation'(Strengthening international standards) - Identifying intangibles, selecting the most appropriate transfer pricing methods, and discussing the ways of calculating Transfer Pricing Guidelines
9	'Amendment of Transfer Pricing Methods for risk and capital'(Strengthening international standards) - Preventing the Transfer Pricing Manipulation on R&D projects resulting from the use of Cost Contribution Agreements.
10	'Amendment of Transfer Pricing Methods for other high-risk transactions' (Strengthening international standards) - Revising the guidance on the transactional profit split method and developing transfer pricing rules to give protection against common types of base eroding payments, such as management fees and head office expenses.
11	'Measuring and Monitoring BEPS' - Developing the indicators of base erosion and profit shifting. - FDI to GDP ratio, profit margin ratio, the ratio of the value of royalties received to R&D, the interest-to-income ratio.
12	Introducing the Mandatory Disclosure Rules for Aggressive Tax Planning (Good practices) - Imposing a disclosure obligation on the taxpayer to reduce abusive tax avoidance schemes.
13	'Transfer Pricing Documentation and Country-by-Country' (Minimum Standards) - Master File (MNE groups' current business status) - Local file (Individual nations' business status) - Country-by-Country report (Summary of MNE Groups' global business status and transactional information)
14	'Making Dispute Resolution Mechanism More Effective(minimum standard)' - Introducing the procedure of arbitration to make up for Mutual Agreement Procedure(MAP). - Discussing alternatives to the procedure of arbitration by taking into account the obligations to commence arbitration or considering the result of arbitration.
15	'Developing a multilateral Instrument to Modify Bilateral Tax Treaties' - Expanding bilateral treaties into multilateral treaties and revising the changes to the commentaries on the OECD Model Tax Convention.

Sources : OECD BEPS Final Reports (www.oecd.org/ctp/beps-2015-final-reports.htm)

- OECD/G20 completed the Final Report on the BEPS Project in 2015.
  - The G20 Finance Ministers have approved the Final Report at the G20 summit in October 2015, and further details were on additional follow-up measures and an effective monitoring system in November.
  - The BEPS Project is comprised of 15 Action Plans.

- There is a difference in relative importance depending on the BEPS individual actions. OECD/G20 have separated individual actions according to duty level as follows:
  - Action 5, 6, 13, and 14 are the Minimum Standard Projects which have the highest duty level to be carried out.
  - Action 7, 8-10 are the Reinforced International Standard Projects.
  - Action 2 and 4 are the Common Approach Projects.
  - Action 3 and 12 are the Best Practice Projects.

- Meanwhile, the OECD has scheduled to discuss on the existing Bilateral Tax Treaties(Action 15) by the end of 2016 to expediate the revision of the tax treaty related to the BEPS Project in a more consistent and efficient manner.
  - Korea plans to actively participate in establishing a system relevant to BEPS to build a joint response and a comprehensive monitoring system as a council member of the OECD's Asia-Pacific Network.

- In addition, by installing the OECD Development Centre, it provides the relevant information systematically; and supports development and implementation of corporate strategies in response to changes in international tax laws.
  - The BEPS Development Centre aims to enhance domestic companies' understanding and predictability of BEPS countermeasures by establishing a stable communication channel between the government and businesses.

- A memorandum of understandings was signed between The Ministry of Strategy of Finance of ROK, KIPF, and FKI on implementing the BEPS Development Centre.

●● This report overviews policy recommendations that were presented in the BEPS Final Report on a general level, and shares what the Korean government and businesses should consider when implementing the Action Plans.

- II introduces the contents of the report on individual assignments in a numerical order.
- III addresses the things that need to be considered when implementing the Action Plans.

Ⅱ Introduction of Action Plan on BEPS

●● Introduction to policy recommendations and relevant discussions presented in the Final Report of BEPS Action Plan.
(Source: http://www.oecd.org/ctp/beps-2015-final-reports.htm)
(http://www.oecd.org/ctp/beps-2015-final-reports.htm)

Action 1. Addressing the Tax Challenges of the Digital Economy

●● Although the business models based on the digital economy do not cause a problem in itself, some of the key characteristics of the digital economy may exacerbate risks in BEPS in the context of the direct taxation in particular.

- There is the need to settle tax issues related to the distribution and services of digital goods (software, audio recordings, etc.).

●● The following suggestions are ways to tackle the potential tax challenges that may rise with the digital economy.

- Anti-fragmentation rule has been introduced to modify the list of exception to the definition of PE to prevent the fragmentation of a closely united operating business into several small operations in order to get the “preparatory or auxiliary“ exemption.
- It revises to work on the definition of PE to address circumstances in which artificial arrangements relating to the sales of goods or services cannot be used to avoid the status of PE.
- It has updated the previous Transfer Pricing Guidance so that legal ownership does not exclusively generate a right to all of the return that is generated by the intangibles profits. Instead, the group of companies performing significant functions and contributing assets will be entitled to a suitable benefit reflecting the amount of their input.
- Controlled Foreign Company rules must be revised to adequately address the taxation of mobile income attained in the digital economy.

•• An additional report of persistent work on the complete taxation of the digital economy is in need. This report should be released in 2020.

Action 2. Neutralizing the effects of hybrid mismatch arrangements

•• Hybrid mismatch arrangements are cross-border arrangements that take advantage of variation in the tax treatments of an instrument or entity under the laws of more than one tax jurisdiction to obtain double non-taxation.

- ‘Hybrid Financial Instruments’, ‘Hybrid Entity Payments’, and ‘Reverse Hybrids’ are identified as the 3 primary examples of Hybrid Mismatch Arrangements.
- A ‘Hybrid Financial Instrument’ are financial instruments, such as covertible bonds, classified as capital in one country and debt in the other.
- A ‘Reverse Hybrids’ refers to transactions considered as collateral for debts in one country, such as repurchase agreements, and transfers of ownership of assets in another country.

●● Part I of Action Plan Two contains recommendations for changes to local tax rates, and Part II sets out recommended changes to the OECD Model Tax Convention.

■ Part I of the report contains recommendations for rules to address Hybrid Mismatch Arrangements on domestic laws of jurisdiction involved in the BEPS Project as listed below.

- The primary response: In principle, international income flows are taxed on the "source" countries. (No inclusion)
- The secondary response: International income flows are taxed on the receiving countries when the "source" countries are subjected to non-taxation. (Inclusion in gross revenue)

■ In addition, the following measures are recommended in order to prevent Hybrid Mismatch Arrangements.

- The amount of dividend deducted from the source countries is exempted from dividend income.
- It should also introduce or strengthen the CFC regime to prevent retained earnings using hybrid entities.
- The Contracting State should consider the relevant entities as the resident of the contracting state and restrict the entities to comply fully with their tax obligations.

■ Part II examines the problems of dual resident entities and sets out recommendations to be made out to the Tax Model Convention.

- When a group other than an individual is the resident of both Contracting States, the competent authorities of the Contracting State shall endeavor to determine by mutual agreement of which such person shall be deemed to be a resident for the purposes of the Convention.

Action 3. Designing effective controlled foreign company rules

- CFC rules are designed to protect revenue by ensuring profits remain within the tax base of the parent companies, typically by preventing taxpayers from shifting income into CFCs.
  - Implementation of effective CFC rules will ensure that countries will have efficient ways to address concerns of BEPS such as ‘transfer-pricing rules’ and ‘hybrid mismatch arrangements.’

- Currently, 30 OECD/G20 member countries, including Korea, have already introduced the CFC system in their tax laws.
  - In Korea, a significant proportion of the OECD recommendation has already reflected in the tax law, so Korea plans to reflect only some of the not-yet-adopted recommendations.

- The followings are suggestions to improve the CFC rules:
  - The report is broadly defined not only for corporations in the range of the CFC but also for partnerships, permanent establishments, and additionally, sets the following shareholding requirements.
    - The CFC regime applies to subsidiary companies when its parent company directly or indirectly owns 50% or more of the total shares of the foreign subsidiaries.
    - However, regardless of the voting rights, the CFC regime also applies to subsidiary companies when the parent company controls its foreign subsidiaries economically and substantially.
    - In the case of Korea, stakeholder requirements and the actual control requirements are already reflected in the tax laws, however, there is currently no provision that defines the CFC rules including partnership and permanent establishment.

●● However, even if it corresponds to the CFC definition as defined above, in some cases it will be exempt from the CFC.

- The Final Report recommends in applying a low tax threshold where the CFC rules only apply to residents in countries with a lower tax rate than the parent companies based on the effective tax rate.
  - In the case of Korea, the CFC rules would only apply if the effective tax rate of CFC does not exceed the fixed tax rate of 15%.

- It is desirable to exclude the CFC rules among the income of the overseas subsidiaries, and it is up to the individual countries to decide which income to excluded from the CFC rule according to each country's situation.
  - In the case of Korea, the CFC rules are not applied to foreign companies equipped with facilities such as permanent establishment that perform business activities abroad for the income of overseas subsidiaries.

Action 4. Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

●● 'Debt planning and restructuring' is a general approach to reducing taxable income by raising deductions among various entities in a multinational group of entities.

- In most countries, interest payments are eligible as tax-deductible expenses, whereas dividend payments to equity capital are made using the non-deductible differences.
- When funds are borrowed from low tax rate countries and rented out to high tax rate countries, both countries enjoy the benefit of tax exemption that is effective in both countries at the same time transferring income to low tax rate countries.
  - This can result in potential competitive distortions like giving tax preferences to asset values held by multinational groups rather than domestic groups.

- Action 4 recommends measures to regulate tax avoidance by setting a limit on deductible financial expenses including interest expenses.
  - Applicable interest rate includes all types of financial costs and payments that are economically correspondent to the interest rate include those which linked to the financing of an entity.
  - However, to reduce the risk of international double taxation, the interest cost deduction restriction is not applied if the total amount of net interest expenses of all individual companies in the local group is less than a certain amount.

- It suggests allowing an entity to deduct only the net interest expense up to a benchmark net interest/EBITDA ratio.
  - Countries can set the fixed ratio in the range of 10~30% of EBITA.
  - Based on the above-mentioned fixed rate rule, it is possible to choose supplementary systems such as group ratio rule, minimum standard rule, to carry-over of unused interest limit, or a selection of complementary schemes such as personalized regulations.
    - The group ratio rule is a method that allows an entity to deduct net interest expense up to its group's net interest/EBITA ratio.
  - The thin capitalization rules of Korea may disallow interest deduction when a firm's debt-to-equity ratio is larger than a certain fixed ratio. However, this rule differs significantly from the OECD recommendation.

Action 5. Countering Harmful Tax Practices more effectively, taking transparency and substance.

●● The exchange of information on rulings on improving transparency should be issued by the competent government office.

- Providing excessive investment incentives for the purpose of attracting foreign direct investment could distort international capital movements and erode tax revenues in other countries.
- Meanwhile, even in the area without any harmful tax practices, it may result in ruling regimes to be potentially harmful by distortions created by competitions to attract foreign direct investment.
- There is a need for exchange of information between government to target the ruling that gives the benefit of tax reduction to run the work transparently.

●● In the area of transparency, a framework including all rulings that could give rise to BEPS concerns in the absence of compulsory spontaneous exchange has been agreed. The framework covers five categories of rulings:

- Ruling related to high mobility activities such as finance and service sectors.
- Cross-border unilateral advance pricing arrangements (APAs) or other unilateral transfer pricing rulings.
- Cross-border rulings related to reduce the taxable income range.
  - Treat it as capital contributions, if you borrow money at low-interest rates from someone whom you have a special relationship with.
- Permanent establishment (PE) ruling, a particular ruling of income attribution, is any ruling that provides for how much profit will be attributed to a PE.
- Ruling for conduit company in international trade.

Action 6. Preventing the granting of treaty benefits in inappropriate circumstances

- Given the increase in the number of people using the benefit of the treaty in inappropriate circumstances, it recommends developing model treaty provisions and recommendations regarding the design of domestic rules to Treaty Abuse.
  - Treaty shopping, which involves the use of conduit companies to obtain benefits of the tax treaty, is identified as one of the typical cases of treaty abuse.

- The report recommends for countries to reflect the following two measures in their treaties as a measure to prevent treaty shopping:
  - It has been determined to state clearly in the title and preamble of tax treaties a clear statement that the Contracting States, when entering into a treaty, intend to prevent tax avoidance and, aim to prevent developing opportunities for treaty shopping.
  - Countries will choose one of the options listed below and state the ruling to prevent treaty shopping.
    - ① Limitation on Benefits; LOB rule:
      A specific anti-abuse rule, the limitation-on-benefits (LOB) rule, limits the treaty benefits only to entities that meet the conditions of State of residence.
    - ② Principal Purpose Test; PPT:
      If one of the principal purposes of a transaction or arrangement is to obtain treaty benefits, these benefits would be denied, unless the allocating of these benefits is in accordance with the object and purpose of the treaty provision.
    - Korea has only implemented the PPT rule alone in their treaties.
    - ③ The combined approach of LOB and PPT rule described above.

- Recommendations for responding to the specific type of treaty abuse are as follows:
  - Strengthen the applicable requirements for receiving a lower limit than the source

country tax rate on dividend income.

- In the past, if you were to hold the shares over a certain level of ownership you were able to apply to a lower tax rate, but it is now set out in the treaty that you also need to hold the shares for at least one year to receive the tax treaty benefits.

■ Strengthening the principles of equity capital gains tax premises of holding excess real estate corporation.

■ Countries are encouraged to implement of the OECD Action Plans that are relevant to them.

Action 7. Preventing the Artificial Avoidance of Permanent Establishments Status

●● There are many cases of commissionnaire arrangements and similar strategies that are currently being used to artificially avoid the status of Permanent Establishment.

■ Requirements of the permanent establishment are not satisfied for many multinational companies' business areas because of the developed digital economy, and the rapid expansion of the digital economy allows a business to operate without a physical office in that market country.

- Currently, in the case of electronic commerce, the server's location is to act as the enterprise's permanent establishment.

■ Controls the role of an agent artificially by controlling the terms of the contract to avoid the status of a permanent establishment.

- A substantial amount of dependent agents avoids the status of the permanent establishment through commissionnaire arrangements by claiming themselves as independent agents.

■ The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise subject to a preparatory or auxiliary character exempted from PE status is often misused in inappropriate circumstances.

- For e-commerce, displaying or delivering activities such as storage should be regarded as the essential feature that constitutes part of the businesses sales and distribution.

●● The Final Report recommends to expand the range of the agent's act acknowledged as a 'permanent establishment.'

- Currently, even if a formal contract was signed, it shall not be considered as a 'permanent establishment' if the contract was not carried out in that country.
  - Currently, even if there was a formal contract, it shall not be considered a 'permanent establishment' if the contract was not carried out in that country.

- It shall be regarded as a 'permanent establishment', despite the types of contracts, if the agent is only being in business with their speical related parties(shall not be recognized as independent agents).
  - Even if the agent signed the contract under a daily business routine, it is regarded as a 'permanent establishment' if done repetitively only 6with their special related parties.
  - It should be stated in the treaty that the sale of an asset owned by the foreign companies should be considered as a permanent establishment even if the contract was on behalf of the agent's name through a form of a consignment of a sale agreement.

●● Regulation recommendations to prevent the exploitation of permanent establishment.

- At present, most countries have rulings on tax treaties that do not allow for industries to qualify for the exceptions to PE status that are for the maintenance of a fixed place of business of a preparatory and auxiliary activity.
  - Exceptions to PE status when industries use facilities solely for the purpose of storage, display or delivery of goods in a preparatory and auxiliary activity.

- It recommends consideration of the various characterizations of the industry, and whether it can be exempt from the status of permanent establishment subject to the condition of being 'preparatory or auxiliary'.

- Due to digital economic development, there is a need for more rigorous evaluation of the use of preparatory and auxiliary activity exemptions of preparatory and auxiliary activities.

●● The OECD is expected to provide guidelines for calculating earnings attributable to a permanent establishment by the end of 2016.

■ A lot of effort is needed to revise the tax treaty in the future related to permanent establishments because the amendment recommendations for the fixed business sites are currently not included in most of the tax treaties concluded by Korea.

Action 8~10. Aligning Transfer Pricing Outcomes with Value Creation

●● BEPS Action 8-10 considers contents such as transfer prices shall be set up so that profit distribution could be made properly to entities that have actually generated economic activities.

■ It regulates that analysis of transaction conditions shall not be done based on trade terms if the transactions do not reflect the economic substance well.

■ By mainly focusing on BEPS issues regarding low-added value service provision among intangible asset transfer, risk-capital transfer, inter-group services, and guidelines on transfer prices are revised.

●● Suggesting new methods of calculating guidance on transfer pricing aspects of intangibles.

■ Only the actual contributed ratio to the trade is admitted when legal ownership and practical one are different.

■ The intangible asset development and the number of steps taken to exploit opportunities in risk and risks involved are to determine how the income and loyalties are distributed.

- The Final Report suggests a way to solve problems like transferring risks in writing between group subsidiaries or transferring profits and transferring profits from risk management through excessive capital allocation.
  - This emphasizes period attributable profit to economic, practical priority, executing functions like transfer trade of intangible asset.
- It makes the proposition to apply the principle of simplified normal price to low-added value services such as the service of management support type among the group internal service.
  - Calculating all costs of total group related to executing low-added value services → Distributing by applying proper distribution standards to all subsidiaries having gotten benefits of service provision → The mark-up of 5% should be charged equally.
  - The material evidence must now be submitted that contain the contents of the method for calculating costs, standards for distributing, etc.
- In addition to the contents above, it recommends to add or supplement the following contents to the transfer price guidelines.
  - Let economic environment, location savings, group synergy, etc. be considered when analyzing comparative possibilities.
  - It is recommended to refer to raw material prices when applying the CUP method in commodity trading.
  - Let same transfer price guideline (practical priority, etc.) with intangible asset trade related to cost assignment agreement be applied.
- OECD plans to publish the revised transfer pricing guideline reflecting the contents as mentioned above in 2018. Korea plans to incorporate the revised contents into the tax law.

Action 11. Measuring and Monitoring BEPS

- Since 2013 and up-to-date, the report estimates that BEPS reduces global corporate income tax revenue by 4%-10% (i.e., US$100 billion to US$240 billion annually).
  - This indicates revenue losses from BEPS are estimated at 100-240 billion USD annually of global corporate income tax revenues.

- While the evaluation methodology and data are currently available, it is argued that this has limits in performing the analysis of current data and a methodology to analyze the economic effects of scale and marginal BEPS.

- Improvement in access to information and reinforcement in the existing data analysis on BEPS, and presenting a recommendation for a new data collection, such as presented in Action 5, 12, 13.
  - Advice to develop BEPS data collection method and analysis methodology.
  - Recommends the development of BEPS indicator indexes using FDI/GDP ratio, yield, interest rates, etc.

Action 12. Mandatory Disclosure Rules

- It sets out recommendations to develop regarding the design of mandatory disclosure rules for aggressive transactions, or structures, taking into account the administrative costs for tax administrations and businesses, and tracing back to experiences of the growing number of nations that have such rules.
  - The Final Report recommends introducing a reporting system that reflects on cases currently being implemented in eight different countries including the UK.

- The final report covers who has to report, what has to be reported, and when.
  - Promoters or taxpayers in aggressive tax planning carry the burden of the duty to report.
  - While introducing cases of being able to be a compulsory reporting object on trades characterized by the following aggressive tax avoidance behavior, it lets countries to decide its scope according to each country's situation.
    - In cases where the promoter requests security maintenance on trading structure having been consulted by himself to the taxpayer.
    - In cases where the promoter receives commissions linked with the tax profit obtained by taxpayer advantages by utilizing the transaction structure advised by the taxpayer. (excessive incentive fee)
    - In cases of corresponding to tax evasion trade types (black list) having been enumerated by the tax authority.
  - The obligation to report can be settled when the tax avoidance transaction becomes available or when profit is actually generated.
  - And it is necessary to introduce sanctions such as penalties for not fulfilling reporting obligations.
    - Canada is also taking measures of penalizing of denying tax benefits in addition to penalties for not fulfilling reporting obligations

Action 13. Transfer Pricing Documentation and Country-by-Country Reporting

- The new guideline was set up to reflect the surge in Transfer Pricing Guideline to prevent the current consensus-based international tax framework from unraveling, which would increase uncertainty for businesses at a time when cross-border investments are more mandatory than ever.

- Action 13 is intended supplement the existing Transfer Pricing Guidelines(Chapter V).

●● An essential overarching consideration in developing such rules is to adjust the beneficial of the data to tax administrations for transfer pricing risk assessment and other intentions with increased compliance burdens placed on taxpayers.

●● A three-tiered approach to transfer pricing documentation is composed of a mater file, a local file, and a country-by-country report.

- The master file should present an overview of the multinational entities group business, including the nature of its global business operations, its general transfer pricing policies, and its global allocation of income and economic activity. The Final Parent Company of the multinational entities shall bear the duty to report.
  - Organizational structure, main description of multinational entities's business (important drivers of business profit, a list of important service arrangements between members of the MNE group, a brief written analysis describing the principal input to value creation), MNE's intangibles, etc.

- The local file provides more exact information relating to specific intercompany transactions. The local subsidiary shall bear the duty to report.
  - It provides information of local entities (organizational structure, human resources, business strategy, etc) and a description of special exchange agreements (transaction contents, contract, on transfer pricing analysis, matters related to APA, etc.)

- Large multinational entities 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. Country-by-Country Reports must be filed in the jurisdiction of tax residence of the ultimate parent entity.
  - Country-by-Country template to include on a tax jurisdiction basis of revenues, profit or loss before income tax, income tax accrued, stated capital, accumulated earnings, a number of employees, and details of business activities.

- Country-by-Country Reports should be put in place in the jurisdiction of tax residence of the ultimate parent entity and distributed between jurisdictions through automatic exchange of information, pursuant to government-to-government systems such as the multilateral convention on mutual administrative assistance in tax matters, bilateral tax treaties or tax information exchange agreements.

Action 14. Making Dispute Resolution Mechanisms More Effective

●● It is necessary to improve the mutual agreement procedure in resolving treaty-related disputes in a comprehensive manner as the tax treaty provisions are introduced and revised by the BEPS project recommendations.

●● Revisions to domestic tax laws for efficiency and strengthened accessibility of mutual agreement procedures with executions of practical business affairs are recommended.

▪ The Action Plan states from the treaty that taxpayers can also present their cases to the competent authority of the State of which they are resident.

- If the country of residence which receives mutual agreement request in detail judges that the corresponding requests are not reasonable, it is recommended for the country to notify it to the counter country or to progress a consultation.

▪ Executing mutual agreement results between both countries are manifested in the treaty regardless of the imposition exclusion period of each country's tax laws.

●● Matters regarding mutual agreement are now expected to be reflected in the OECD Model Tax Convention as compulsory regulations.

▪ Failure to resolve the issues of mutual agreement within the given time frame will prolong double taxation.

- At the request of the taxpayer, the third-party needs to resolve matters that are not settled within two years after the initiation of a mutual agreement procedure between countries.
  - Currently compulsory arbitration could be selected only by the country that hopes it in the OECD model agreement.

- Each country shall manifest reservation opinion in the case of being difficult to reflect this regulation to a tax treaty.
- Korea will also decide whether to adopt a compulsory arbitration system through international trends and expert opinions.

Action 15. Developing a multilateral instrument to modify bilateral tax treaties

●● Promoting to develop a multilateral instrument to modify the current system of bilateral tax treaties.

- It is realistically very difficult to reflect BEPS recommendation to more than 3,000 already existing bilateral treaties.
- For this reason, governments have agreed to seek the feasibility of a multilateral instrument that would have the same effects as a simultaneous renegotiation of thousands of bilateral tax treaties.

●● Action 15 is to analyze tax and international public law issues for the development of multilateral agreements and to assist in the implementation of the treaty-related BEPS recommendations.

●● It concludes that Action 15 is considered both desirable and feasible and that negotiations for such instrument should be opened to the participating of all countries to develop the multilateral instrument. And, the signing work for the development of multilateral agreements is planned to be completed by the end of 2016.

Ⅲ Discussion of strategies for the post-BEPS environment

●● (Macroeconomics environment) Korea is one of the 10 largest economy in the world in terms of GDP, and is active in overseas investments relatively among nations of similar volumes.

- Countries such as Russia, Canada, Australia, Spain, and Mexico are similar in economic volume.
- Korea is highly active in foreign investment considering when only Canada's FDI net stock is bigger than Korea and the others in the smaller level.
  - The FDI net stock is defined by the difference of outward stock and inward stock.
- Countries like Austria, Ireland, and Norway show similar FDI net stock levels to Korea.

●● (Tax Treaty network environment) Korea has been forming vast relatively wide be concluding tax treaties ensured tax treaty networks, which have been relatively wide by concluding tax treaties with 85 nations as of 2016.

- Tax Treaty is a method to ease the tax burden related to international economic activities and uncertainty by mediating tax policies between countries.
- The structure of tax treaties shows a meaningful relationship with the flow of international economic activities, especially its relationship with the scale of FDI.
- Although the tax treaty network of Korea seems to have been effective in preventing tax evasion by foreign investment firms entering Korea, it was not able to play any significant role in facilitating investment of domestic investors or in mediating foreign investment through Korea.

●● (BEPS responses) The top priority in responding to BEPS is to first consider the interests of the Korean government and business cycle and to ensure that the interests are sustainable.

- The government's goal in establishing International Tax Policy could be thought of as securing stable tax revenue and improving the efficiency of domestic and international economic activities.
- In the case of foreign investors who invest to Korea or Korean investors who invest in other countries may be considered as a way to reduce the uncertainty that a complex and variable tax code creates for individuals without overpaying taxes.

●● (Addressing the response strategies-1) The role of Korea in the international economic stage should not only be looked from the perspective of capital importing country but also from perspective of capital exporting country or capital mediating country when discussing of relevant policies.

- Korea is a relatively more active capital exporting country according to the FDI standards, and capital exporting countries(such as Ireland, Austria) similar to Korea are playing an active role as capital mediating countries compared to the size of its economy.
- Relatively, the international tax policy of Korea was not active in supporting Korea's overseas direct investment (capital export) or the role of an intermediary.

●● (Addressing the response strategies-2) The international tax code has been changed drastically, so active preparation for the changing tax environment has to be made for the Korean investors, and efforts have to be done by the government so that the profits of our investors are not unfairly affected from other country's government.

- The development of policy recommendations of the BEPS Project is to prepare for a possible financial crisis in Korea.
- The Korean government will examine and review ways to provide a recommendation to protect the foreign investors of Korea when an audit is conducted by other countries under the influence of the BEPS Project.

- In the case of conspicuously using aggressive tax planning, there is a necessity to make adjustments in advance to make sure there are no problems in the tax investigation.

●● (Addressing the response strategies--3) In order to enable Korea to act more actively in capital export and intermediary role in the long run, it is necessary to reduce the uncertainty of tax policy and administration and to establish communication channels between experts on taxation, finance, and investment who can support international economic activities.

- For economic activities that overpass a certain size, preliminary screening and approval system should be extended and adopted in order to control the tax uncertainty.
- The government, public, and private sectors have trained leading experts on international taxation, finance, and investment professionals to enable and support international economic activities.

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KIPF BRIEF

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