Resumption of Application of Substantial Activities Factor to No or only Nominal Tax Jurisdictions

Inclusive Framework on BEPS: Action 5

Resumption of application of substantial activities factor to no or only nominal tax jurisdictions

INCLUSIVE FRAMEWORK ON BEPS
ACTION 5

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Abbreviations and acronyms

BEPS	Base Erosion and Profit Shifting
FHTP	Forum on Harmful Tax Practices
IP	Intellectual Property
OECD	Organisation for Economic Co-Operation and Development

1. Introduction

1. The 1998 Report on Harmful Tax Competition: An Emerging Global Issue ("the 1998 Report", OECD, 1998)[1] set out the framework to identify harmful tax practices, with specific criteria for assessing harmful preferential regimes and for assessing "tax havens" (as they were then called).

2. Action 5 of the BEPS Action Plan committed to the following:

> *"Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework."*

3. This report provides an update on aspects of the work relating to the last part of the mandate contained in action 5 of the BEPS Action Plan, i.e. the consideration of "revisions or additions to the existing framework."

4. Since the BEPS Action 5 Report (OECD, 2015) was published, the Forum on Harmful Tax Practices (FHTP) has discussed various approaches to revising the framework of the 1998 Report (OECD, 1998).

5. Consensus has been reached in the FHTP on a number of issues, including that it has been agreed to resume the substantial activities factor for no or only nominal tax jurisdictions. Given the speed at which jurisdictions with preferential regimes are making changes to their legal and administrative frameworks governing those regimes, and the importance of a level playing field, it is appropriate to release the outcome of that work immediately.

6. This document sets out the background and rationale for the resumption of the substantial activities factor, and the technical guidance governing the application of that factor. An update on other aspects of this work will be included in the next progress report on BEPS Action 5.

Note

[1] Harmful Tax Competition: An Emerging Global Issue (OECD, 1998).

References

OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264241190-en.

OECD (1998), *Harmful Tax Competition: An Emerging Global Issue*, OECD Publishing, Paris, https://doi.org/10.1787/9789264162945-en.

2. Resumption of application of substantial activities factor to no or only nominal tax jurisdictions

2.1. Introduction

7. The 1998 Report (OECD, 1998) set out a framework for approaching the problem of how certain no or only nominal tax jurisdictions ("tax havens" as they were then referred to in the 1998 Report (OECD, 1998)) and harmful preferential tax regimes "affect the location of financial and other service activities, erode the tax bases of other countries, distort trade and investment patterns and undermine the fairness, neutrality and broad social acceptance of tax systems."[2] The 1998 Report (OECD, 1998) referred to certain no or only nominal tax jurisdictions and harmful preferential regimes collectively as "harmful tax practices," (although each discipline is mutually exclusive) and built a framework for how to assess these practices. There was a need to include both aspects of these practices, in order to deliver a level playing field between jurisdictions in a context where taxpayers can easily relocate their mobile activities in response to tax considerations.

8. Given the elevation of the substantial activities requirement in the work on preferential regimes as part of the BEPS Project, it was appropriate to resume the application of the substantial activities requirement set out in the 1998 Report (OECD, 1998) for no or only nominal tax jurisdictions and provide guidance on the application of the requirement.

2.2. Background

9. The framework of the 1998 Report (OECD, 1998) used for assessing preferential regimes used four key factors and eight other factors. The four key factors set out in the 1998 Report (OECD, 1998) are the following:

a) The regime imposes no or low effective tax rates on income from geographically mobile financial and other service activities.

b) The regime is ring-fenced from the domestic economy.

c) The regime lacks transparency (for example, the details of the regime or its application are not apparent, or there is inadequate regulatory supervision or financial disclosure).

d) There is no effective exchange of information with respect to the regime.

10. The corresponding framework for assessing whether a jurisdiction was a "tax haven" is based on four criteria: (a) whether a jurisdiction imposes no or only nominal taxes; (b) lack of effective exchange of information; (c) lack of transparency and (d) the absence of a requirement that the activity be substantial.[3]

11. With regard to the substantial activities factor, the 1998 Report (OECD, 1998) noted that "the absence of a requirement that the activity be substantial is important because

it suggests that a jurisdiction may be attempting to attract investment and transactions that are purely tax driven. It may also indicate that a jurisdiction does not (or cannot) provide a legal or commercial environment or offer any economic advantages that would attract substantive business activities in the absence of the tax minimising opportunities it provides."[4] Notably, this is essentially the same rationale as applies in the case of preferential regimes.

12. However, in 2001 the FHTP decided to only seek commitments and to determine whether or not a jurisdiction was considered uncooperative on the basis of the first three criteria.[5] This was followed by the release in 2002 of a list of uncooperative jurisdictions based on the first three criteria. The fourth criterion on substantial activities remained within the analytical framework of the work, but had no practical application.

13. Subsequently, the Global Forum on Transparency and Exchange of Information for Tax Purposes grew out of the FHTP and took on the work on transparency and exchange of information, without distinction on the basis of tax rates or tax systems and with all jurisdictions participating on an equal basis. These developments meant that the FHTP's work then focussed on preferential regimes rather than no or only nominal tax jurisdictions.

14. Therefore, until the BEPS Project, both of the frameworks in the 1998 Report (OECD, 1998) (i.e., those on no or only nominal tax jurisdictions and on preferential regimes) included a criterion based on substantial activities, but in neither case was it in itself applied as a decisive factor for identifying, and eliminating, harmful tax practices.

15. This changed with the creation of the BEPS Action Plan, which elevated the substantial activities requirement as it applied to preferential regimes, and the Inclusive Framework subsequently agreed guidance on what is required to meet this criterion.[6] It is now an essential requirement, and without meeting this criterion a preferential regime that meets the gateway criterion and is within scope will be found to be potentially harmful. This now applies across the membership of the Inclusive Framework, which has grown to over 120 jurisdictions, and is a global standard.

16. However, this leaves the analytical framework underlying the BEPS Action 5 work exposed to a potential incoherence: the substantial activities criterion has now been elevated as a key factor in one pillar of the work and is being applied, whereas it is not being applied in the other pillar of the work despite having been included as a key factor in the 1998 Report (OECD, 1998) in that context.

17. It also leaves the Inclusive Framework in a situation where, in elevating the substantial activities criteria for preferential regimes only, it has created a perceived level playing field issue. The specific concern that has been raised is that business could simply relocate to a no or only nominal tax jurisdiction to avoid having to meet the substance requirements that apply to preferential tax regimes. For example, some Inclusive Framework members which have a corporate income tax system offer international business company regimes, and these jurisdictions have been assessed and committed to amend or abolish the regimes. If the regime is being amended, this includes the addition of substantial activities requirements. At the same time, similar international business company laws apply in no or only nominal tax jurisdictions, but based on the current application of the criteria, the Inclusive Framework would not ask for the same amendments or abolition of the corresponding legislation. It has been argued that this may even increase the pressure on taxing jurisdictions with low rates of corporate income tax to consider abolishing them – possibly triggering a race to the bottom that the FHTP was created to address.

18. It was agreed to address this potential incoherence and address the perceived challenge to the level playing field, by drawing on the existing guidance agreed by the Inclusive Framework on the substantial activities factor that applies for preferential regimes. This would hold similar mobile business activities to a similar standard, irrespective of whether they are taxed under a preferential regime or a no or nominal tax rate.

19. The resumption of the application of the substantial activities factor for assessing no or only nominal tax jurisdictions would address the particular level playing field challenges that have been raised, and recognise the particular risks that such jurisdictions create in attracting income without substantial local activities.

20. However, this does not suggest that the absence of a corporate tax rate, or any particular level of corporate income tax is in itself harmful. This is analogous to the analytical framework for preferential regimes where the no or low effective tax rates criterion is a gateway criterion for the analysis of preferential regimes, but not in and of itself a harmful feature.

2.3. Translating the substantial activities requirements to a no or only nominal tax jurisdiction

Scope

21. In order to translate the FHTP guidance on substantial activities to a no or only nominal tax jurisdiction, the starting point is to identify the jurisdictions to which it would apply. It would apply to jurisdictions which do not impose a corporate income tax. It would also apply to jurisdictions which impose only nominal corporate income tax to avoid the requirements.[7] It would not apply to jurisdictions which have been reviewed on the basis of the preferential regimes they offer (unless they subsequently significantly undertook reforms which abolished or substantially abolished their corporate income tax altogether).

22. The next step is to identify the type of activities that are within the scope of the 1998 Report (OECD, 1998). These are geographically mobile activities, such as financial and other service activities, including the provision of intangibles. The FHTP has typically identified these types of mobile activities as falling into the categories of headquarters, distribution centres, service centres, financing, leasing, fund management, banking, insurance, shipping, holding companies and the provision of intangibles.

23. In respect of those activities, substantial activities requirements apply. The FHTP's guidance on substantial activities falls into two basic categories: activities earning non-IP income (which is set out in Annex D of the 2017 Progress Report), and activities for the exploitation of IP assets (which is the nexus approach set out in the Action 5 Report (OECD, 2015)).

Non-IP income

24. For activities within scope earning non-IP income, this would mean that the no or only nominal tax jurisdiction would be required to meet the same substantial activities criterion,[8] meaning that it would need to introduce laws to (i) define the core income generating activities for each relevant business sector; (ii) ensure that core income generating activities relevant to the type of activity are undertaken by the entity (or are undertaken in the jurisdiction); (iii) require the entity to have an adequate number of full-time employees with necessary qualifications and incurring an adequate amount of

operating expenditures to undertake such activities; and (iv) have a transparent mechanism to ensure compliance and provide an effective enforcement mechanism if these core income generating activities are not undertaken by the entity or do not occur within the jurisdiction.

25. In order to implement these requirements in a context where there may be no corporate income tax that can be levied, and in some cases, no tax administration, a jurisdiction would need to implement rules that translate those requirements within the context of its legal and regulatory framework. Legislation may, for instance, be included in the financial services regulatory framework or the company incorporation framework.

IP income

26. Where the business activities are the exploitation of IP assets, the substance requirements used by the FHTP are the "nexus approach". The nexus approach is essentially comprised of two elements: a first part which sets out a formula to determine the amount of eligible income which can benefit from a lower tax rate, and a second part which is a consequence for the non-eligible income which is then taxed at the normal (higher) tax rate. For a no or only nominal tax jurisdiction, the challenge is that even though the formula could be applied (the result of which might be that there is zero eligible income), it is unclear how to apply the second part.

27. In other words, the nexus approach would clearly not function as intended because it is designed to operate within the context of a corporate income tax system. In such a system, the consequence of a taxpayer having income which does not qualify under the nexus formula (e.g. income earned from trademarks, or income earned where the IP has been acquired rather than developed by the entity) is the application of ordinary (non-preferential) corporate income tax rates to such income. This cannot translate by analogy to no or only nominal tax jurisdictions as there is no corporate income tax to impose.

28. In order to translate the principle underlying the nexus approach to no or only nominal tax jurisdictions and deliver a level playing field, the best way forward is to apply a similar concept as applies for non-IP income, which is the core income generating activities guidance.

29. At the outset, in all cases, the substantial activities requirements for IP income would always be insufficient if the entity only passively held IP assets which had been created and exploited on the basis of decisions made and activities performed outside of the jurisdiction. Similarly, the test would never be met if the only activities contributing to the income were the periodic decisions of non-resident board members in the jurisdiction.

IP income – patents and similar assets

30. This would mean that if an entity is earning income from exploiting a patent (or similar IP assets as defined in paragraphs 34 – 37 of the Action 5 Report (OECD, 2015)), the entity should demonstrate that it has conducted the core income generating activities with the adequate number of qualified full-time employees and adequate amount of operating expenditures. The core income generating activities in this context would be conducting research and development (rather than simply acquiring or outsourcing it), which reflects the same concept as the nexus approach.

IP income – marketing intangibles

31. An adjustment would be needed from the nexus approach where an entity is exploiting marketing IP assets such as trademarks.[9] The nexus approach provides that this type of IP asset is not permitted to benefit from a preferential regime, given that the policy rationale of an IP regime is to encourage and reward scientific innovation rather than marketing activity, with the consequence that a taxpayer engaged in exploiting marketing intangibles is required to pay tax at the ordinary rate. However, in the context of a no or only nominal tax jurisdiction, there is no (or no significant) "ordinary" tax to apply. An analogous approach would be to apply a similar substantial activities principle as set out in the preceding paragraph, where the core income generating activities are branding, marketing, and distribution.

IP income – exceptional cases and rebuttable presumption

32. It is possible that an entity exploiting IP assets in a no or only nominal tax jurisdiction could in fact be conducting substantial activities, even if this did not involve research and development (for patents and similar assets) or branding, marketing and distribution (for marketing IP assets). Although such situations should be the exception rather than the rule, there may be some situations where it will be appropriate to give the entity some flexibility to demonstrate that it is performing the core income generating activities with the adequate number of qualified full-time employees and adequate amount of operating expenditures. Such activities could include conducting the strategic decision-making, managing and bearing the principal risks relating to the development and subsequent exploitation of the IP asset, or carrying on the underlying trading activities through which the asset is exploited.

33. However, as the absence of substantial activities in the form of research and development, or marketing, branding, and distribution (as the case may be depending on the type of IP asset) creates additional risks, the ability to conduct other types of activities and still meet the substantial activities test should be prima facie excluded for higher risk scenarios.

34. Higher risk scenarios would be cases where (i) the entity has acquired the IP asset from related parties or through the entity funding research and development activities which took place outside the no or only nominal tax jurisdiction; and (ii) the IP asset is licensed or sold to related parties, or the exploitation is conducted by related parties outside the jurisdiction (e.g. foreign related parties are paid to develop and sell a product in which the intangible asset is embedded).

35. In these higher risk scenarios, there should be a "rebuttable presumption" that the substantial activities test is not met in the absence of research and development (for patent and similar IP assets), or in the absence of marketing, branding, and distribution (for marketing intangibles). This would be the case notwithstanding that a transfer pricing analysis would allocate some profits to the entity.

36. However, similar to the rebuttable presumption created in BEPS Action 5 in the context of the nexus approach, a company in a higher risk scenario could rebut the presumption, by providing evidence that the income generated is directly linked to activities undertaken in the local jurisdiction rather than in a foreign jurisdiction.

37. Given the risks, this would need to be a high evidential threshold. Entities would need to provide evidence that there was, and historically has been, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the

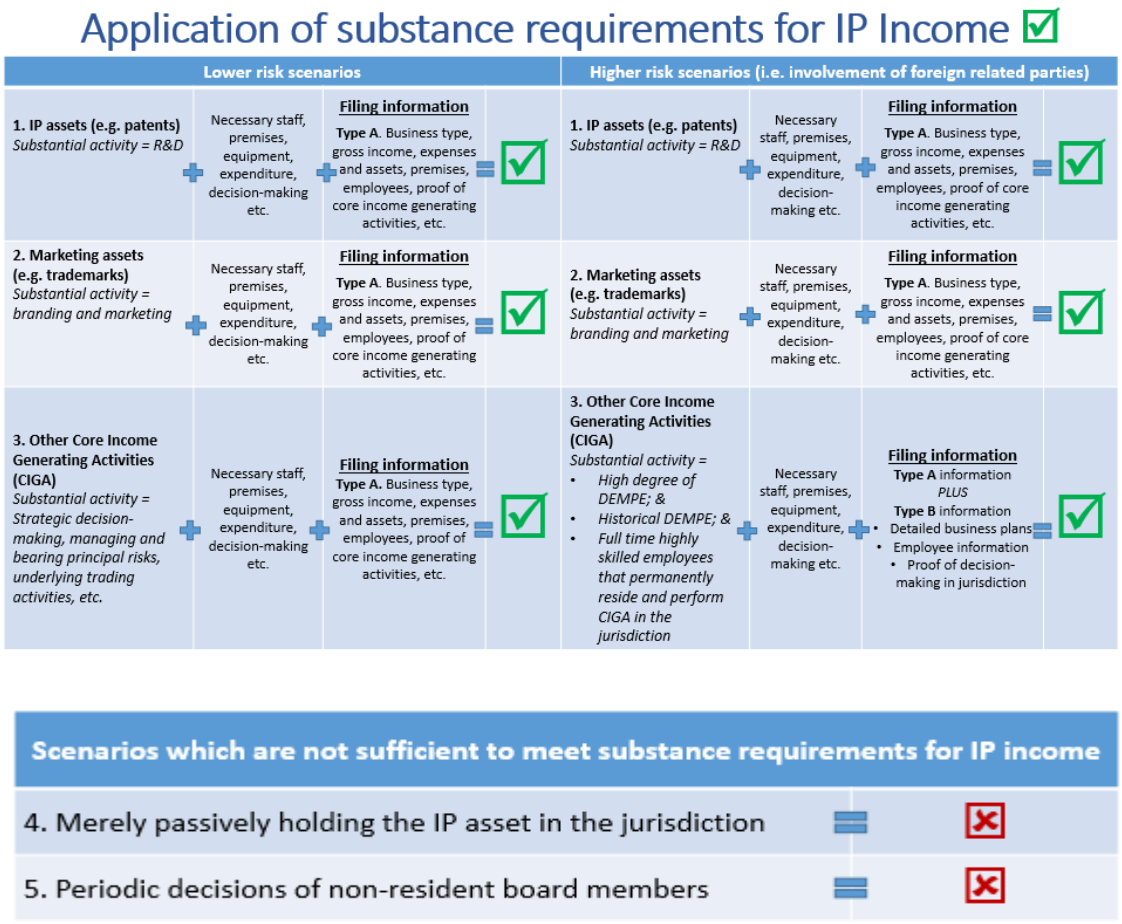
intangible asset, exercised by an adequate number of full-time employees with the necessary qualifications that permanently reside and perform their activities within the jurisdiction. This would need to be demonstrated by providing additional information including:

- detailed business plans which demonstrate the commercial rationale for holding the IP assets in the jurisdiction;
- employee information, including level of experience, type of contracts, qualifications, and duration of employment; and
- evidence that decision making is taking place within the jurisdiction, rather than periodic decisions of non-resident board members.

38. In keeping with the agreed approach for certain aspects of the nexus approach, this rebuttable presumption would be subject to a review by the FHTP no later than 2020.

39. A graphic providing an overview of the requirements as they apply for IP income is included in Figure 1.

Figure 1. Application of substance requirements for IP income



Ensuring compliance

40. A key element of the substantial activities requirements is that there is an effective mechanism to ensure compliance. In the context of a taxing jurisdiction offering a preferential regime, this can be done, for example, by collecting information in tax returns, and denying tax benefits to the extent the requirements are not met. As this does not apply in the context of a no or only nominal tax jurisdiction, other approaches are needed to provide an equivalent means to ensure compliance.

41. First, there should be a mechanism to identify the entities conducting the relevant categories of mobile activities and to detect whether the core income generating activities were being carried out. To be able to do so, the relevant entities would need to report information in the jurisdiction on:

- the type of mobile activity being conducted;
- the relevant core income generating activities the entity has conducted;
- the amount and type of gross income (e.g. rents, royalties, dividends, sales, services);
- the amount and type of expenses incurred, and assets and premises held, in the course of carrying out the business; and

- the number of full-time, qualified employees.

42. Second, there should be a mechanism to take action in the event an entity failed to meet the substantial activities requirements. Given that there is no ability to apply a higher rate of tax as would be the case in the context of a preferential regime, there should be a sanction mechanism that is rigorous, effective and dissuasive. The determination of whether a sanction mechanism is rigorous, effective, and dissuasive will depend on the context. If relevant and appropriate, such a mechanism would include striking an entity off the register where this is an effective sanction. The no or only nominal tax jurisdiction would also need to continue enforcement efforts and remedy any shortcomings in the enforcement process.

43. Third, there should also be the following enhanced spontaneous exchange of information of the information filed with the jurisdiction based on, subject to and limited by the applicable exchange of information instruments. The framework for spontaneous exchange of information will consist of two parts. First, for any entities that do not comply with the substantial activities requirement, all no or nominal tax jurisdictions would be required to spontaneously exchange all relevant information with the jurisdictions of residence of the immediate parent, ultimate parent, and ultimate beneficial owner.

44. Furthermore, outside the context of non-compliant entities, the scope of further spontaneous exchange will depend on whether a no or nominal tax jurisdiction can demonstrate that it has a fully equipped monitoring process. This means a monitoring process operated by a tax administration or other governmental authority with all resources, processes and procedures in place to ensure not only an effective data collection process but also a high-quality review of the substantial activities standard with proactive follow-up where necessary. The FHTP will determine whether monitoring mechanisms are equipped with the appropriate resources and effective processes and procedures.

45. If a jurisdiction does demonstrate that it has a fully equipped monitoring process, it would only be required to spontaneously exchange information on entities engaged in high-risk scenarios, as defined in paragraph 34. In such scenarios, the exchange would be a two-step process. The first step would be the annual exchange of the name and address of the entity; the type of mobile income; the name of the immediate parent, ultimate parent and ultimate beneficial owner; and the amount and type of gross income (e.g. rents, royalties, dividends, sales, services). In the second step, the recipient jurisdiction could then make a follow up request for further information, subject to the applicable exchange of information instrument.

46. If a jurisdiction does not demonstrate that it has a fully equipped monitoring mechanism, it would be required to spontaneously exchange all relevant information on entities engaged in high-risk scenarios, as defined in paragraph 34. For all other entities conducting activities in scope, as set out in paragraph 22, the jurisdiction would be required to use the two-step exchange process described in paragraph 45.

47. All exchanges would provide information to the jurisdictions of residence of the immediate parent, ultimate parent, and ultimate beneficial owner.

48. The tables below set out the different types of information to be exchanged in different scenarios.

Jurisdictions with Fully Equipped Monitoring Mechanisms

Scenario requiring exchange	Content of exchange	Recipient jurisdictions
Non-compliance by the entity	• Entity name and address • Summary of what elements of the core income generating activities test the entity has failed to meet • Name of the immediate parent, ultimate parent, and ultimate beneficial owner • Type of mobile income • Amount and type of gross income • Amount and type of expenses incurred, and assets and premises held, in the course of carrying out the business • Number of full-time, qualified employees • Any other relevant information.	Residence jurisdictions of: • Immediate parent • Ultimate parent • Ultimate beneficial owner
In high risk cases (see paragraph 34) that are not also cases of non-compliance by the entity	*Step 1:* annual exchange of: • Entity name and address • Type of mobile income • Name of the immediate parent, ultimate parent, and ultimate beneficial owner • Amount and type of gross income (e.g. rents, royalties, dividends, sales, services) *Step 2:* recipient jurisdiction makes follow up request for further information	Residence jurisdictions of: • Immediate parent • Ultimate parent • Ultimate beneficial owner

Jurisdictions without Fully Equipped Monitoring Mechanisms		
Scenario requiring exchange	**Content of exchange**	**Recipient jurisdictions**
Non-compliance by the entity and in high-risk cases (see paragraph 34)	• Entity name and address • Summary of what elements of the core income generating activities test the entity has failed to meet (for non-compliant entities) • Summary of the core income generating activities performed by the entity (for high-risk scenarios) • Name of the immediate parent, ultimate parent, and ultimate beneficial owner • Type of mobile income • Amount and type of gross income • Amount and type of expenses incurred, and assets and premises held, in the course of carrying out the business • Number of full-time, qualified employees • Any other relevant information.	Residence jurisdictions of: • Immediate parent • Ultimate parent • Ultimate beneficial owner
In all other cases involving entities engaged in activities within scope (see paragraph 22)	*Step 1*: annual exchange of: • Entity name and address • Type of mobile income • Name of the immediate parent, ultimate parent, and ultimate beneficial owner • Amount and type of gross income (e.g. rents, royalties, dividends, sales, services) *Step 2*: recipient jurisdiction makes follow up request for further information	Residence jurisdictions of: • Immediate parent • Ultimate parent • Ultimate beneficial owner

49. To activate the exchanges set out above, recipient jurisdictions would need to opt in to receive spontaneously exchanged information.

50. The modalities of the above exchange framework, including the terminology used in the framework, timing for such exchanges, the precise data points, the details of what constitutes a fully equipped monitoring mechanism, the mechanism for opting in, and the development of a standardised template and XML schema, will be developed in cooperation with Working Party 10, drawing also on other reporting regimes, in 2019 and prior to the first exchanges under the framework.

51. To ensure the effectiveness of the information collection and exchange mechanism, a review will take place in 2022 in cooperation with Working Party 10, which should provide enough time to allow jurisdictions to gain experience with the mechanism. Should particular issues surface in the operation of the exchange mechanism, the FHTP could also have an earlier discussion.

Notes

[2] 1998 Report, para. 4 (OECD, 1998).

[3] 1998 Report, para. 52 (OECD, 1998).

[4] 1998 Report, para. 55 (OECD, 1998).

[5] This decision was driven in large part by technical challenges in applying the criteria, and the fact that at the time the jurisdictions affected by it were not participants in the work. Both of these aspects are significantly different now from what they were then, given the agreed guidance on substantial activities in preferential regimes, and the institutional changes brought by the Inclusive Framework.

[6] See Annex D of the 2017 Progress Report on Preferential Regimes, www.oecd.org/tax/beps/harmful-tax-practices-2017-progress-report-on-preferential-regimes-9789264283954-en.htm (OECD, 2017).

[7] The 1998 Report (OECD, 1998) uses the terminology of "no or low effective tax rates" for preferential regimes and "no or only nominal taxes" for jurisdictions that were then called "tax havens" without defining either term by reference to a set or a specific rate. The purpose of considering nominal tax jurisdictions along with zero tax jurisdictions is to ensure that there is not an incentive for zero rate jurisdictions to shift to a rate near zero.

[8] Within the non-IP income category, there is specific guidance that applies given the nature of pure equity holding companies and shipping activities. For holding companies, see paragraph 8 of Annex D of the 2017 Progress Report; for shipping companies see note 1 under the table of results on shipping regimes in Chapter 2 of the Progress Report (OECD, 2017).

[9] The normal rule under the nexus approach, whereby marketing-related IP assets such as trademarks cannot qualify for tax benefits, remains unchanged. However, there is a difficulty in applying the nexus approach to no or only nominal tax jurisdictions. Under the nexus approach, the preferential tax treatment cannot apply to income from such assets and instead tax is to be paid at the ordinary rate. However, in the case of no or only nominal tax jurisdictions, there is no preferential rate and no ordinary rate to apply where income from such assets is earned. The application of the nexus rule would mean as a matter of law or otherwise that entities in a no or only nominal tax jurisdiction would not be allowed to hold and receive returns on marketing intangibles at all. This would seem disproportionate.

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OECD (2017), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264283954-en.

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Resumption of Application of Substantial Activities Factor to No or only Nominal Tax Jurisdictions

Inclusive Framework on BEPS: Action 5

The Inclusive Framework on BEPS has decided to resume the application of the substantial activities requirement for no or only nominal tax jurisdictions. Originally a criteria set out in the harmful tax framework from 1998, it had not been applied to date. However, with the elevation of the substantial activities requirements in preferential regimes, and the broad-based membership of the Inclusive Framework working together on an equal footing, it was considered the right time to ensure that equivalent substance requirements apply in no or only nominal tax jurisdictions.

This global standard means that mobile business income cannot be parked in a zero tax jurisdiction without the core business functions having been undertaken by the same business entity, or in the same location. In doing so, the Inclusive Framework will ensure that substantial activities must be performed in respect of the same types of mobile business activities, regardless of whether they take place in a preferential regime or in a no or only nominal tax jurisdiction.

For more information:
http://oe.cd/bepsaction5