



4. FORUM ON HARMFUL TAX PRACTICES LATEST DISCUSSIONS

2nd International Tax Forum “Fiscal Policy and Inclusive Growth”, Manila, Philippines, Friday 28 October, 2016

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1. THE OECD BEPS PROJECT

From Diagnosis to Responses



Diagnosis
Feb 2013



Action Plan
July 2013



BEPS Package
Oct 2015

Overview – BEPS Actions by theme

Coherence

Action 2

Neutralising the Effects of Hybrid Mismatch Arrangements

Action 3

Designing Effective Controlled Foreign Company (CFC) Rules

Action 4

Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

Action 5

Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance

Substance

Action 6

Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

Action 7

Preventing the Artificial Avoidance of Permanent Establishment Status

Actions 8 – 10

Aligning Transfer Pricing Outcomes with Value Creation:
Intangibles
Risks & Capital
High-Risk Transactions

Transparency

Action 11

Measuring and Monitoring BEPS

Action 12

Mandatory Disclosure Rules

Action 13

Transfer Pricing Documentation and Country-by-Country Reporting

Action 14

Making Dispute Resolution Mechanisms More Effective

Analysis

Action 1

Addressing the Tax Challenges of the Digital Economy

Action 15

Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

Overview – Minimum standards

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Objectives of the Inclusive Framework

- Launched in Kyoto: **inaugural meeting** on 30 June – 1 July 2016
- Enable all countries and jurisdictions to work **on an equal footing** with OECD and G20 members on developing standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package.
- Countries committing to the IF are granted with the status of **Members of the Inclusive Framework on BEPS**
- Developing countries will then be able to directly shape the content of the BEPS-related standards and have a **stronger weight in the decision-making.**
- **This also gives countries better access to capacity building** to support BEPS implementation and to tackle DRM challenges.



1st MEETING OF THE INCLUSIVE FRAMEWORK ON BEPS
OECD Committee on Fiscal Affairs
30 June 2016 - 1 July 2016, The Westin Miyako Kyoto, Kyoto, Japan



Composition of the Inclusive Framework

(as of September 2016)



Disclaimer: the map is just meant to provide a rough indication of the composition of the Inclusive Framework and not an accurate representation of the project, and it is included without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

2. COUNTERING HARMFUL TAX PRACTICES MORE EFFECTIVELY



Harmful tax practices in general

Objective: Reduce the distortionary influence of taxation on the location of mobile financial and service activities and promote fair tax competition

Focus: The focus here is only on the removal of **harmful** preferential regimes

Preferential regimes for non-mobile income

e.g. Tax incentives to attract investment in plant, building and equipment

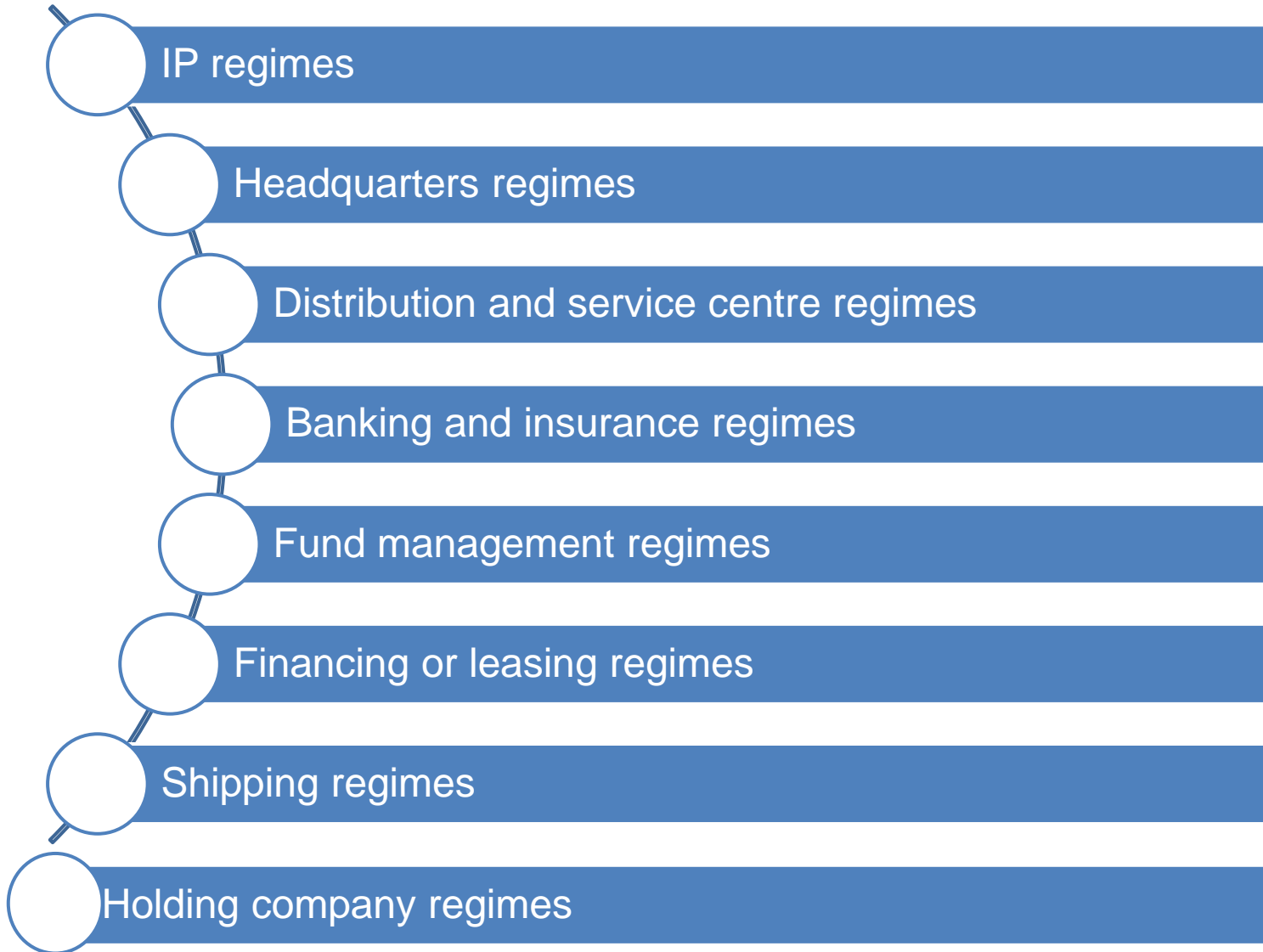
Preferential regimes for mobile income

e.g. IP regime tied to substantial activity

Harmful preferential regimes for mobile income

e.g. Tax preferences for mobile income only available to entities owned by non-residents

Categories of regimes



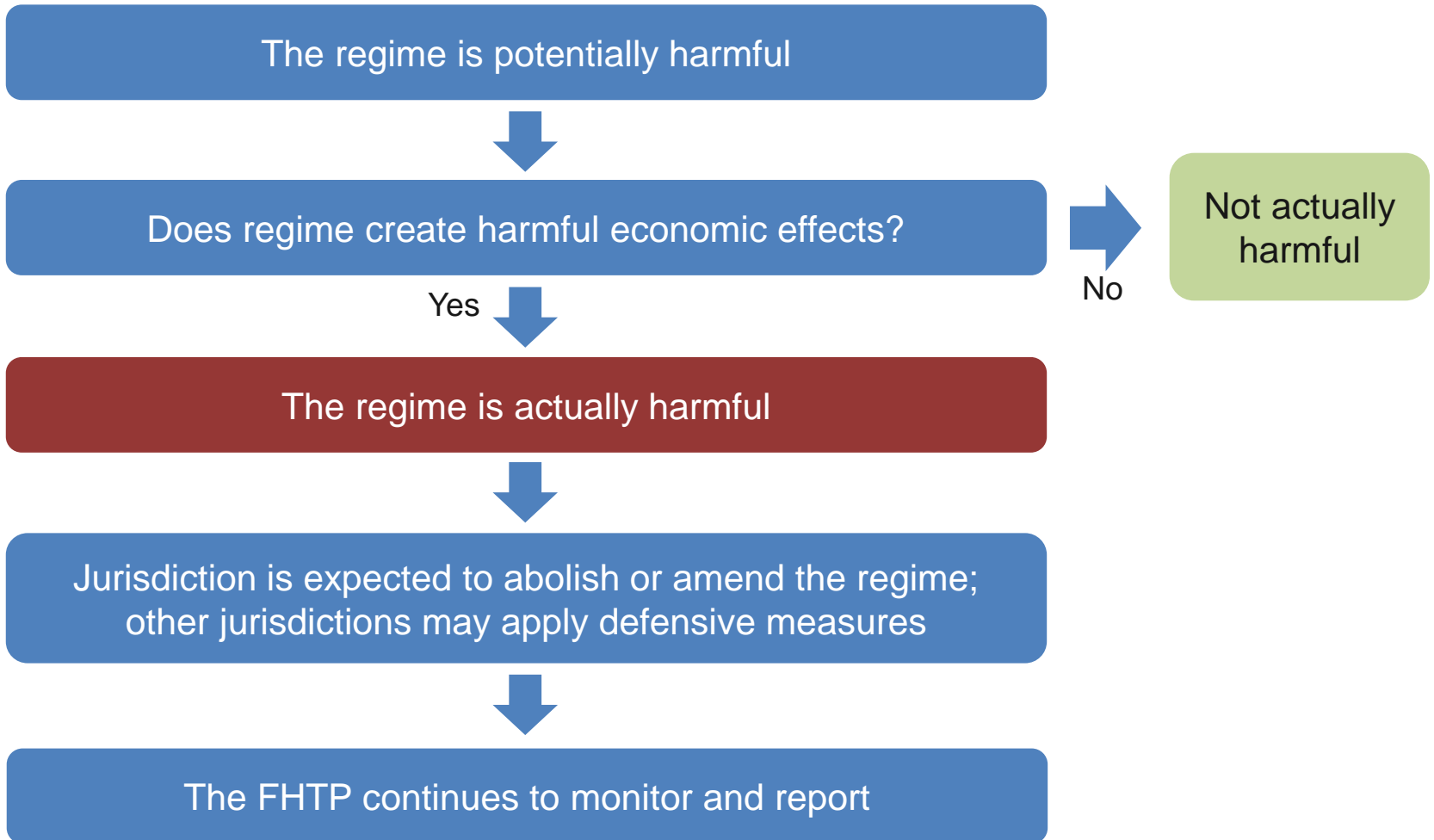


Review process of preferential regimes (1)

- **Scope:** Preferential taxation of geographically mobile income
- **Gateway:** No or low effective tax rate
- **3 other key factors to consider:** Ring-fencing, transparency, exchange of information
- **Plus 8 additional factors:**
 - artificial definition of tax base
 - failure to adhere to international transfer pricing principles
 - foreign source income exempt from residence country taxation
 - negotiable tax rate or tax base, secrecy provisions
 - wide network of tax treaties
 - promotion as a tax minimisation vehicle
 - purely tax-driven without substantial activities
- **Potentially harmful if...** 1) in scope, 2) gateway criteria met and 3) presence of one or more of the other key factors



Review process of preferential regimes (2)



3. MINIMUM STANDARD ON ACTION 5



Minimum Standard

Substantial activity / Transparency

Substantial activity requirement

IP regimes

- The **Nexus approach**: the amount of benefiting income depends on the proportion of R&D expenditure incurred by the benefiting taxpayer

Regimes other than IP regimes

(i.e. Headquarters, Distribution and service centre, Financing or leasing, Fund management, Banking and insurance, Shipping, Holding company)

- Link between the income qualifying for benefits and the core activities necessary to earn the income
- The core activities at issue in non-IP regimes are geographically mobile activities such as financial and other service activities

Transparency: Compulsory spontaneous exchange

Categories of rulings:

1. Rulings related to preferential regimes
2. Unilateral APAs and other TP rulings
3. Rulings giving a unilateral downward adjustment
4. Permanent establishment (PE) rulings
5. Related party conduit rulings
6. Other rulings subsequently agreed to give rise to BEPS concerns

To be exchanged with:

1. Countries of residence of related parties with a transaction covered by the ruling, or in the case of PE ruling country of head office/PE as the case may be
2. Country of Immediate Parent Co
3. Country of Ultimate Parent Co



Nexus formula

$$\frac{\text{Qualifying R\&D expenditures to develop IP asset}}{\text{Overall R\&D expenditures to develop IP asset}} \times \text{Overall income from IP asset} = \text{Income receiving tax benefits}$$



IP regimes

Nexus: implementation timelines

Date	Action required
6 February 2015	Enhanced transparency requirements for new entrants to existing IP regimes
31 December 2015	Commencement of legislative process to amend existing IP regimes
30 June 2016	Cut-off date for new entrants to an existing IP regime
30 June 2021	The latest abolition date (i.e. end of grandfathering) for existing IP regimes

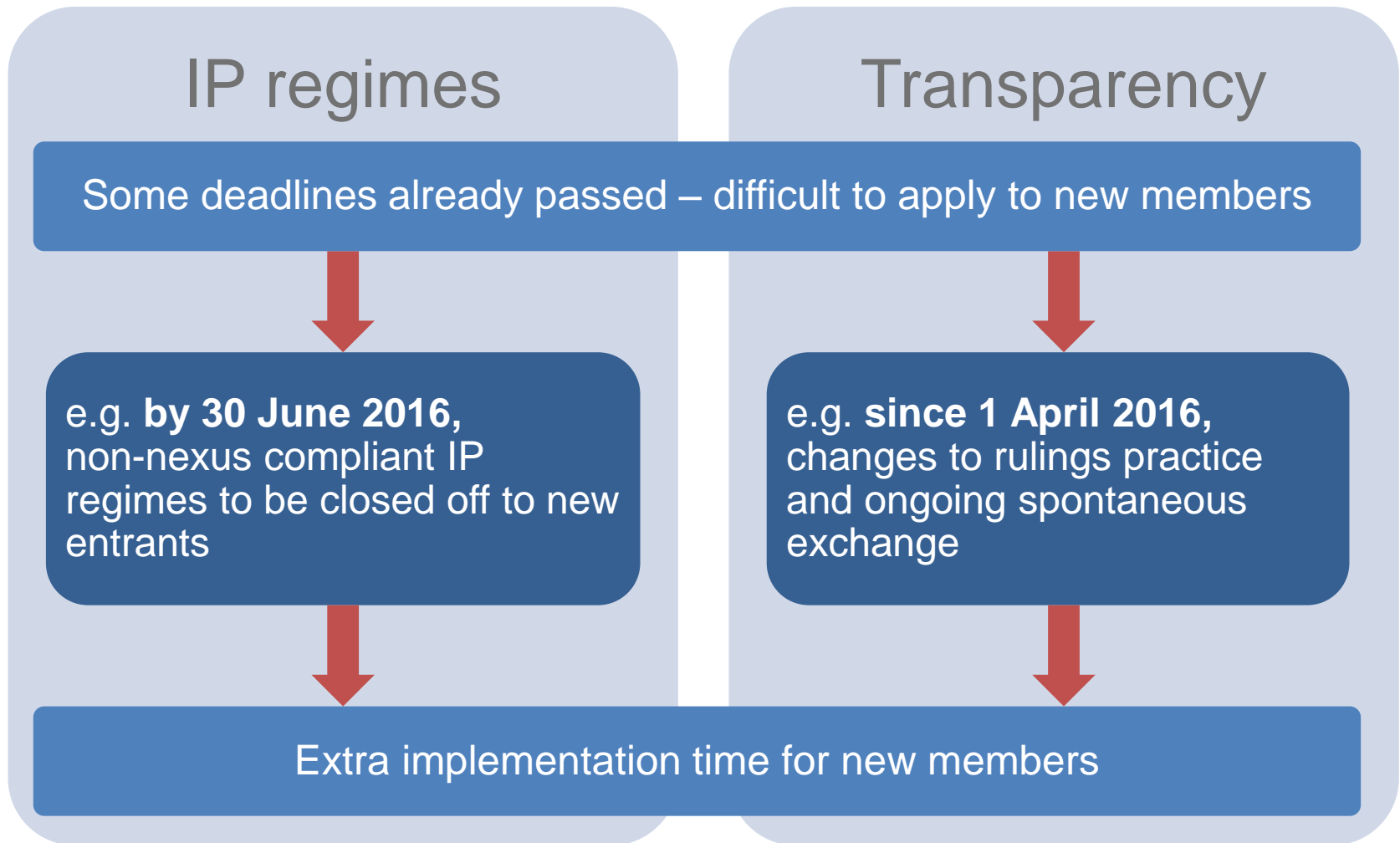


Transparency: implementation timelines

Type of ruling	Action required and timeline
<p>Past rulings (any tax ruling within scope that was issued either (1) after 1 January 2014 but before 31 March 2016, or (2) on or after 1 January 2010 but before 1 January 2014, provided it was still in effect as at 1 January 2014)</p>	Information is to be exchanged by 31 December 2016 (subject to existence of necessary legal basis)
<p>New rulings (any tax ruling in scope issued on or after 1 April 2016)</p>	Information is to be exchanged as soon as possible and no later than three months after the ruling becomes available to the Competent Authority



Timing issues for new members



QUESTIONS?