



# Base Erosion and Profit Shifting (BEPS)

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**Presented By:**

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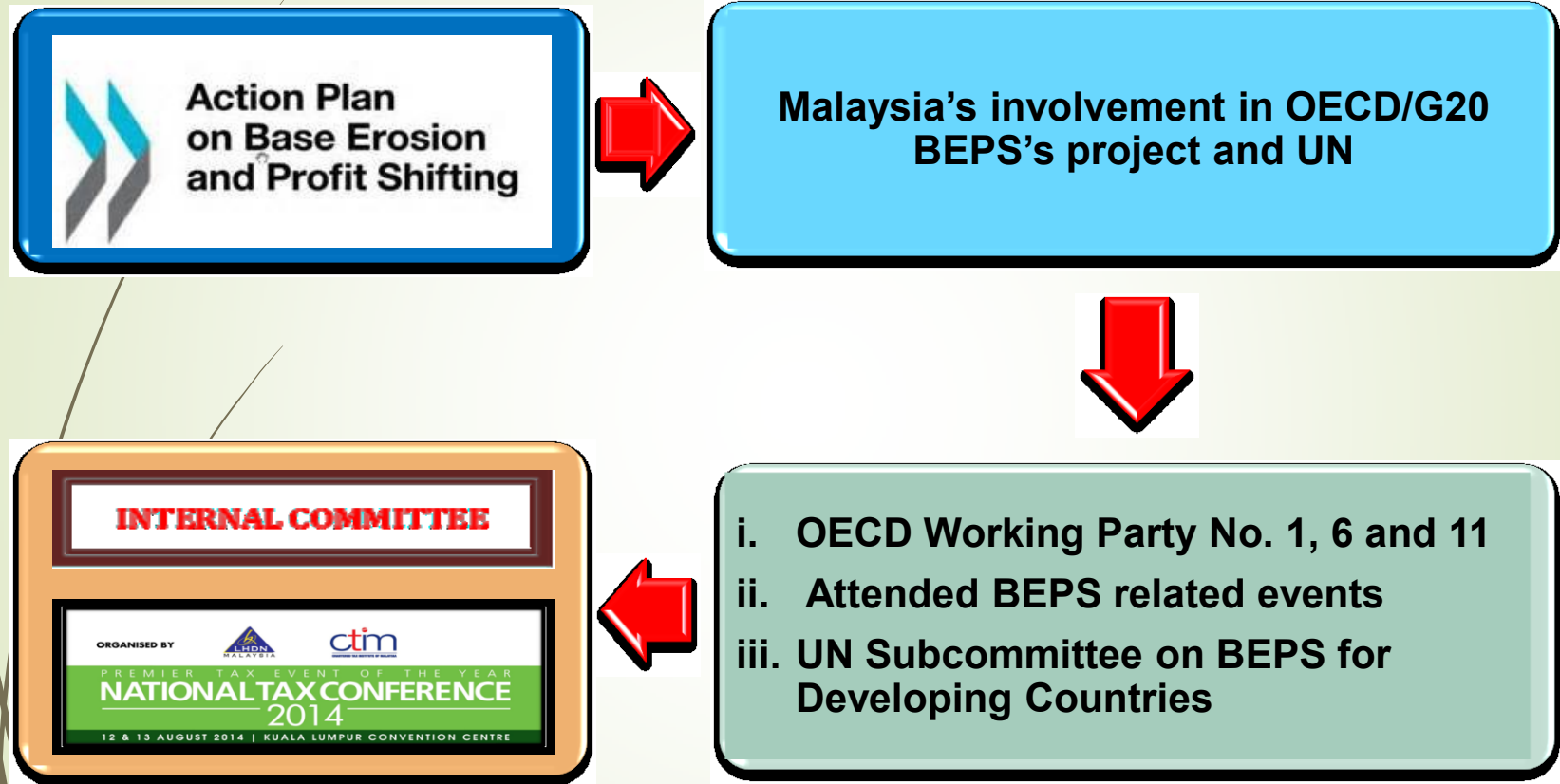
**Director**

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# INTRODUCTION



# ORGANIZATIONAL RESTRUCTURING

## Department of International Taxation

- Policy functions on international tax matters

## Multinational Tax Branch

- Operational functions to strengthen the audit activities focusing on BEPS issues, mainly transfer pricing

## Dispute Resolution Department

- Resolves disputes without resorting to the court process, thus reducing cost and time of the parties concerned

## Malaysia Tax Academy

- Provide trainings and courses, locally and internationally on international tax matters

# STATUTORY PROVISIONS

Existing Domestic Legislation in the Income Tax Act 1967:

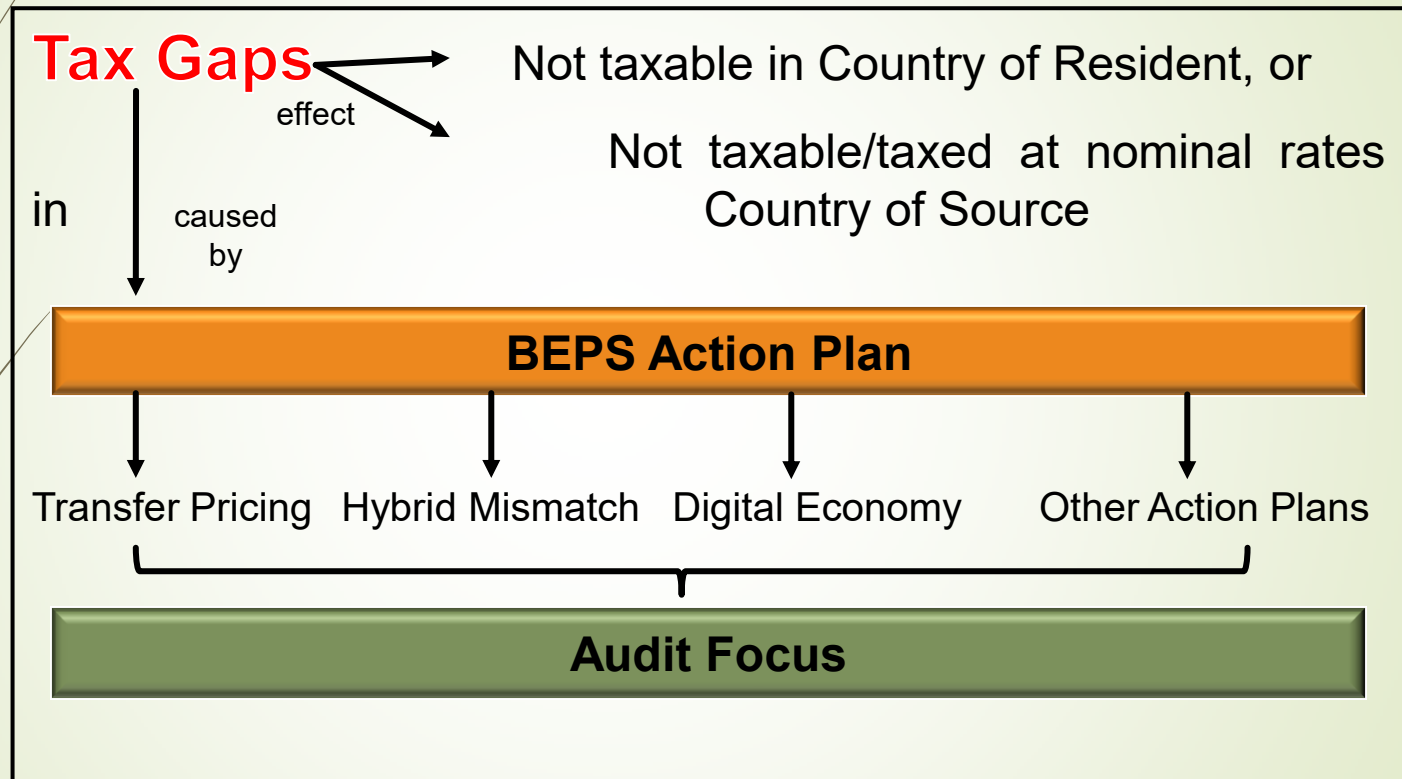
- ❑ Section 109: Deduction of tax from interest or royalty in certain cases.
- ❑ Section 102(1A) – (Where application to invoke a MAP made – effective from 1 January 2014)
- ❑ Section 132: Double Taxation Arrangements
- ❑ Section 138C: Advance Pricing Arrangement
- ❑ Section 140: Power to disregard certain transactions (also served as Anti-Avoidance Rules)
- ❑ Section 140A: Power to substitute the price and disallowance of interest on certain transactions
  - Section 140A (3) – To address the issue of transfer pricing
  - Section 140A (4) – To address the issue of thin capitalisation

# OTHER RULES AND REGULATIONS

The issuance of:

- **Income Tax (Transfer Pricing) Rules 2012**
  - Domestic legislation on the enforcement for transfer pricing
- **Transfer Pricing Guidelines 2012**
  - Provide further explanation on the content and interpretation of the Rules
- **Transfer Pricing Audit Framework**
  - Explain in detail how the TP audit will be conducted
  - For purpose of clarity and certainty for the taxpayers
- **In the pipeline:**
  - Petroleum (Income Tax) (Transfer Pricing) Rules 2015
  - Petroleum Transfer Pricing Guidelines 2015

# BEPS AGENDA IN MALAYSIA



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## ➤ Action 1: **Digital Economy**

- Guidelines on Taxation of Electronic Commerce
- Perform audits that focus on cases of e-commerce structures and transactions

## ➤ Action 2 : **Hybrids mismatch arrangements**

- Actions have been taken to ensure no deduction / no inclusion mismatch or double deduction mismatch

## ➤ Action 3: **CFC RULES**

- No CFC rule in Malaysia

# BEPS AGENDA IN MALAYSIA

- **Action 4: Limit base erosion via interest deductions & other financial payments**
  - To relook application of Thin Cap.
  - Deferred until 31 December 2015.
  
- **Action 6 : Preventing treaty abuse**
  - Malaysia has 73 bilateral tax treaties
  - A few more treaty agreements are in the pipelines.
  - Audit activities will focus on cases where the potential treaties shopping that will result in unintended double non-taxation.

# BEPS AGENDA IN MALAYSIA

## ➤ Action 8-10: **transfer pricing of intangibles, risk and other high-risk transactions**

Domestic rules and regulations are regularly being reviewed, taking into account any recommendations made by OECD to assure that transfer pricing outcomes are in line with value creation under the BEPS agenda.

- to prevent BEPS by moving intangibles among group members
- to prevent BEPS by transferring risks among or allocating excessive capital to group members
- to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties

# BEPS AGENDA IN MALAYSIA

- **Action 13: TP Documentation /Master File & CbC report**
  - CbC report-intended to give tax administrations the relevant information to better understand the interactions between related parties of a multinational enterprise.
  - The intention of CbC report is to serve three objectives:
    - i. Ensure that taxpayers give appropriate consideration to relevant requirements;
    - ii. Provide tax administrations with the information to conduct transfer pricing risk assessment;
    - iii. Provide tax administrations with useful information when conducting a thorough TP audit.

# BEPS AGENDA IN MALAYSIA

- **Action 13: TP Documentation /Master File & CbC report**
  - Malaysia TPGL 2012 emphasizes on contemporaneous documentary evidence in respect of the pricing policies,
    - procedures and methods applied by an entity in cross border transactions with related parties, is vital to the issue of transfer pricing
    - will be one of the first documents auditors will request, thus, aid in the following direction of audit focus.
    - the audit visits are conducted only to verify the information provided in the reports
  - Domestic regulation pertaining to CbC report is under discussion, by making guidelines provided by OECD as the basis.

# IMPACTS OF BEPS

## Short Term

Different implications  
(developed vs  
developing countries)

Reduction in source-  
based taxation

## Long Term

Sovereignty of jurisdictions

Recognize the importance  
of tax incentives for  
developing countries



Thank  
You!

Breaking Barriers Hitting New Highs

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