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## **OECD publishes report on neutralising the effects of branch mismatch arrangements (BEPS Action 2)**

A branch mismatch occurs where two jurisdictions apply different classifications to the allocation of income or expenditure between, the branch in head office of the same taxpayer.

In 2015 as part of the BEPS Project, the OECD released a report entitled Neutralising the effects of Hybrid Mismatch Arrangements. This report focused on mismatches resulting from differences in the tax treatment or characterisation of hybrid entities. However, It did not directly consider similar issues that can arise through the use of branch structures, although such structures can pose and create similar problems for domestic tax systems. The 2015 Report contained recommendations for changes to domestic laws that can mitigate the use of hybrid entities to generate multiple deductions for a single expense or deductions without corresponding taxation of the same payment. This latest Report seeks to set out similar recommendations to bring the treatment of these branch mismatch structures into line with outcomes described in the 2015 Report.

The 2015 BEPS Action 2 Final Report on [Neutralising the effects of Hybrid Mismatch Arrangements](#) is available here.

The 2017 OECD [Report on Neutralising the effects of branch mismatch arrangements](#) is available here.

## **Advocate General Kokott issues Opinion in *A Oy* case (C-292/16)**

In her Opinion published on 13 July 2017, AG Kokott held that Finnish legislation relating to the implementation of Article 10 of the Mergers Directive (90/434 / EEC of 23 July 1990) and the transfer by a resident company of a foreign PE to a foreign company contravenes the freedom of establishment (Article 49 TFEU).

The case concerned the transfer of an Austrian PE by its Finnish Head Office to an Austrian resident company in exchange for shares in the Austrian company.

The legislation in question imposes an immediate charge to taxation in the year of the transfer of the assets in a PE when a Finnish resident company disposes of the assets in that PE for the purposes of transferring the business to a foreign company. The disparity arises by virtue of

the fact that if the PE is transferred to another Finnish company the charge to tax may be deferred so as not to arise until the year of realisation.

AG Kokott held that this disparity in treatment contravened the Freedom of Establishment and was not justified by the principal of fiscal territoriality.

The Opinion is as yet not available in English, but is available in French, German and other languages at this link: [Opinion of AG Kokott in A Oy case \(C-292/16\) 13 July 2017](#)

### **BRICS Countries sign a mutual Memorandum of Understanding for dealing with G20 Tax Work**

On 28 July 2017, the five BRICS countries (Brazil, Russia, India, China and South Africa) signed a memorandum of understanding pursuant to which they will enhance their cooperation on international tax matters including coordinating responses to the G20 tax initiatives, such as the BEPS Project. In addition, the five countries agreed to share knowledge and their experience on the implementation of the OECD BEPS measures and also in relation to the standard for the automatic exchange of information.

### **Senior Republican politicians abandon U.S. border tax proposals**

In a [Joint Statement on Tax Reform](#) from Speaker of the House of Representatives, Paul Ryan, and other senior Republican lawmakers, they stated that the proposed border tax would be shelved in favour of achieving broader and more far reaching tax reform, “there are many unknowns associated with it and have decided to set this policy aside in order to advance tax reform”. The statement identifies, simplifying the tax code, and lowering tax rates for businesses and American families as priorities for reform.

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