

BEPS

01-Nov-2014

International Taxation - Cross
Border Transaction



Countries follow sources & Resident
Rule to tax the transaction.



Which leads to double taxation

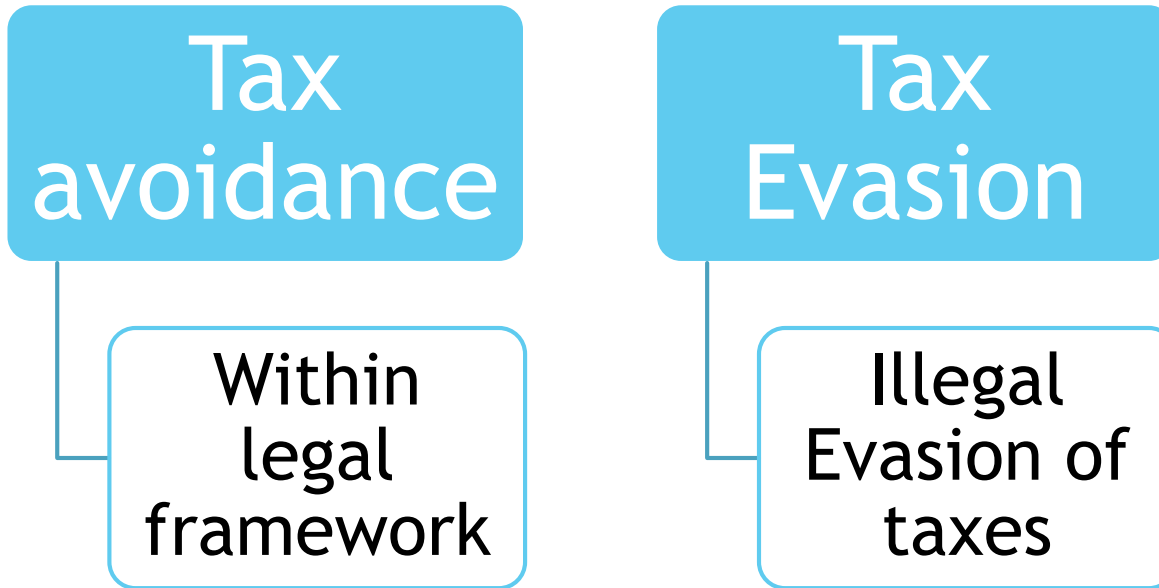


Burden on Tax Payer



Countries enter into DTAA to avoid
double taxation.

TAX AVOIDANCE/EVASION



Tax Evasion



By Multinational Companies



Tax Haven - Country where taxes are levied at low rate or not at all.



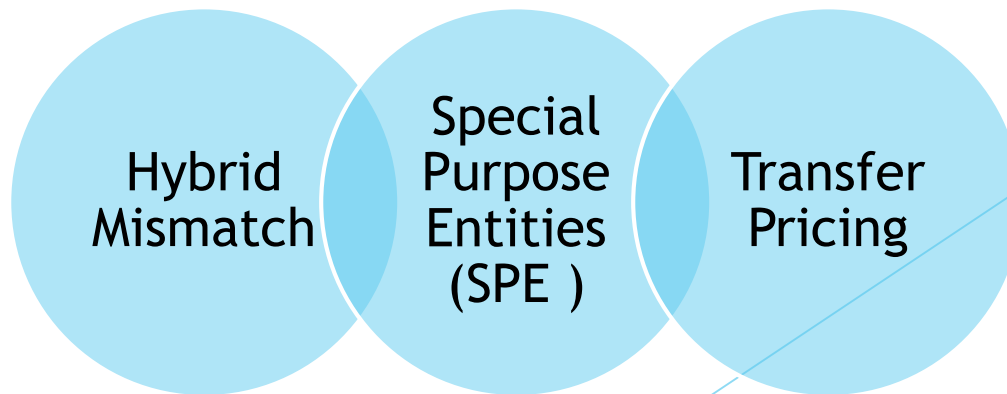
MNCs - Evade Tax by shifting their profits into tax Haven Countries.

BEPS

Complicated schemes with a simple objective.

Objective : Shift profits across borders to take advantage of tax rates that are lower than in the country where the profits are made.

Mechanisms:



Origin

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graph TD; A[Origin] --> B[Countries resident (Tax) in more than one country.]; B --> C[Pays taxes twice]; C --> D[Countries agree to share the taxes on a set of rules- Double Taxation Avoidance Agreements]; D --> E[Now, Corporates use 'BEPS' to take advantage of gaps in the rules to avoid paying taxes completely or less compared to Previous times (also called Double Non Taxation)];
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Countries resident (Tax) in more than one country.

Pays taxes twice

Countries agree to share the taxes on a set of rules- Double Taxation Avoidance Agreements

Now, Corporates use 'BEPS' to take advantage of gaps in the rules to avoid paying taxes completely or less compared to Previous times (also called Double Non Taxation)

How it can be done?

- ▶ Through Hybrid Mismatches
- ▶ Through SPE
- ▶ Transfer Pricing

- ▶ Constant Increase in the level of Sophistication in the structuring of cross border Transactions.

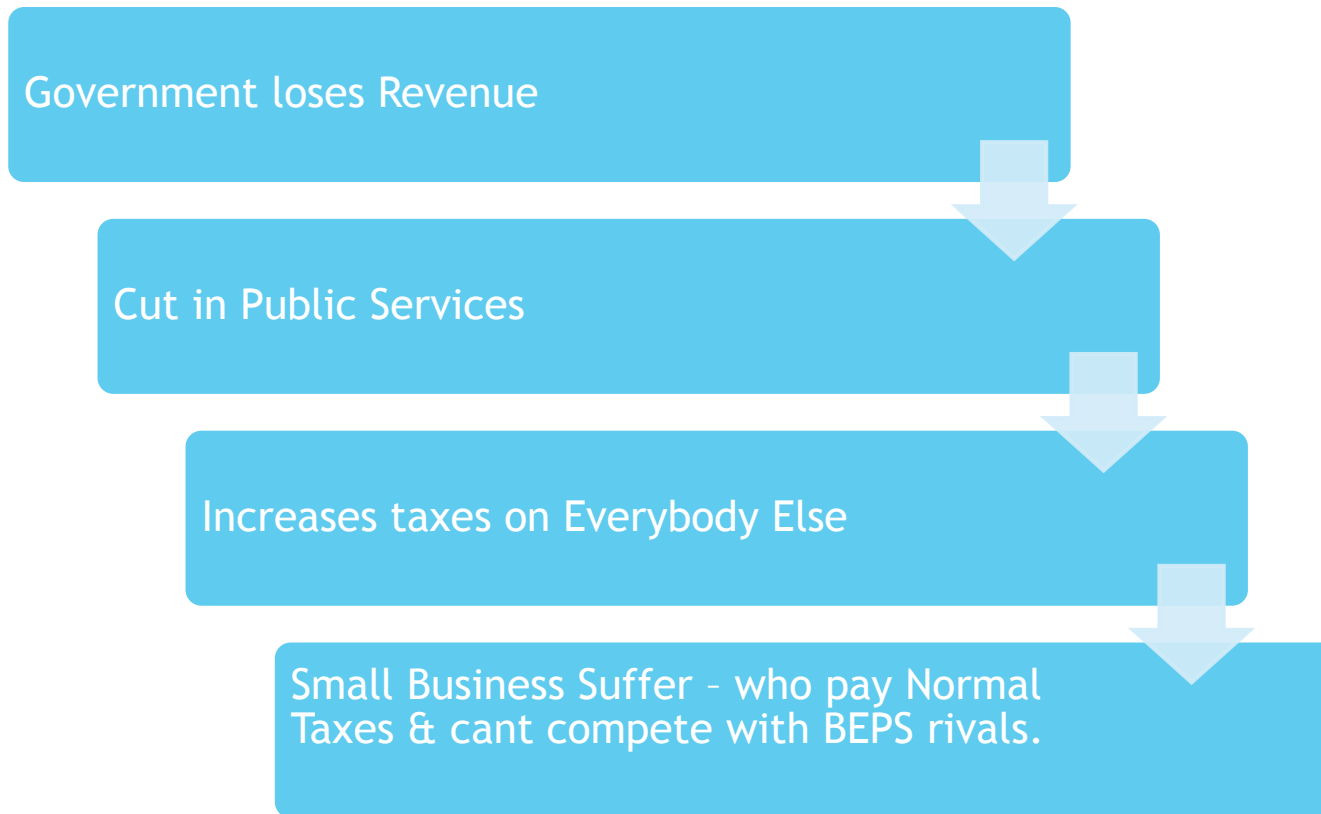
- ▶ Hybrid - Means different treatment in different countries.

- ▶ Hybrid Mismatches + SPE are
 - ▶ Double Deduction Scheme
 - ▶ Deduction/ No inclusion Scheme
 - ▶ Foreign Tax credit generators

▶ Examples-

- ▶ The Pritired Case (US + France)
- ▶ The American International Group transaction (US + other)
- ▶ Foppingadreef transaction (US + Dutch)
- ▶ The Sovereign Bank stars transaction (US + UK)(Sovereign + Barclay)

Effects of BEPS



Solution

- ▶ OECD -gave 15 point Action plan framed on/
concentrating on
 - ▶ Greater Transparency & improved data
 - ▶ Restriction of Profit shifting by non materializing transfer
of Intangibles.
 - ▶ Reporting of aggressive tax planning arrangements.

- ▶ OECD members & G20 Countries - Multilateral
agreement will be signed.

- ▶ 23/24 oct - Dublin Ireland (OCED met)

15 STEP ACTION PLAN

- ▶ **Action 1** : Address the tax challenges of the digital economy.
- ▶ **Action 2** : Neutralize the effects of hybrid mismatch arrangement.
- ▶ **Action 3** : Strengthen CFC rules.
- ▶ **Action 4** : Limit base erosion via interest deductions & other financial payments.
- ▶ **Action 5** : Counter harmful tax practices more effectively taking into account transparency of substance .
- ▶ **Action 6** : Prevent Treaty abuse.
- ▶ **Action 7** : Prevent the artificial avoidance of PE status.

- ▶ **Action 8,9,10** : Assure that transfer pricing outcomes are in line with value creation
 - 8) Intangibles
 - 9) Risks & Capital
 - 10) Other High Risk transactions.
- ▶ **Action 11** : Establish methodologies to collect & analyze data on BEPS & the actions to address it.
- ▶ **Action 12** : Require taxpayers to disclose their aggressive tax planning arrangement.
- ▶ **Action 13** : Re-examine transfer pricing documentation
- ▶ **Action 14** : Make dispute resolution mechanisms more effectively.
- ▶ **Action 15** : Develop a multilateral Instrument.

THANK YOU