

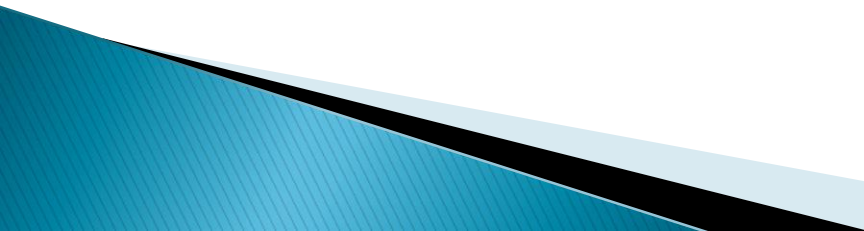
# Global corporate tax: anti-abuse, transparency and co-operative compliance– UK perspective

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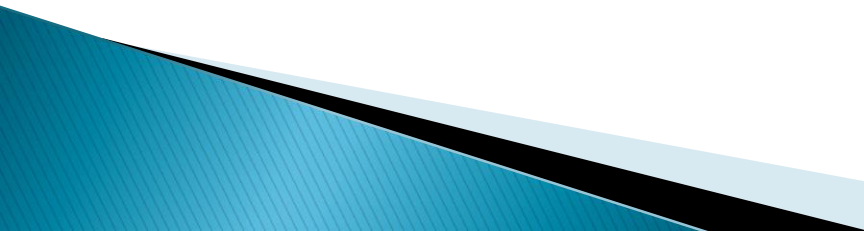
# Where are we now?

- Austerity in developed world plus developing world problems
- media/public/NGO interest
- political emphasis on tax
- Emphasis in debate on corporate tax rather than other taxes (importance of corporation tax in Australia and in developing countries great than in other countries)
- Pot of gold arguments are attractive
- UK role in Base Erosion and Profit Shifting project (BEPS)
- BUT – tension between competitiveness and ‘fair share’ concerns

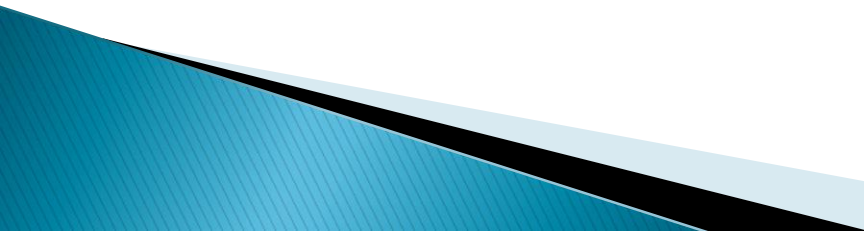
# Where are we going?

- ▶ Pressure for more transparency
  - ▶ BEPS action plans– overlay of substance over older source/residence system leads to greater confusion (Devereux and Vella, Fiscal Studies 2015)
  - ▶ Strong arguments for more radical change– unitary taxation/ formulary apportionment; destination based corporation tax etc
  - ▶ Meanwhile BEPS proceeds plus unilateral actions eg Diverted Profits Tax, Indian equalisation levy
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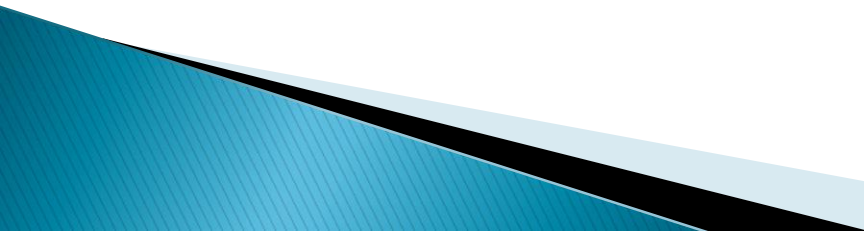
# Where is the UK going?

- ▶ Brexit
  - ▶ Corporate Tax rate reduction? (20% going to 17% by 2020– further?)
  - ▶ Tax haven UK?
  - ▶ Likely structural impact of CT reduction
  - ▶ Likely international effect– EU, Australia (DPT)
  - ▶ Is this best way to provide incentive for investment? Contrast depreciation allowances
  - ▶ Who would benefit from CT reductions?
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# But-UK anti-avoidance

- ▶ Reduction in interest deductibility
  - ▶ Hybrid mismatch rules
  - ▶ Diverted profits tax
  - ▶ Reduction of carried forward loss relief.
  - ▶ C b c reporting (not public)
  - ▶ Publication of large business tax strategies, framework for cooperative compliance and special measures (FB 2016)
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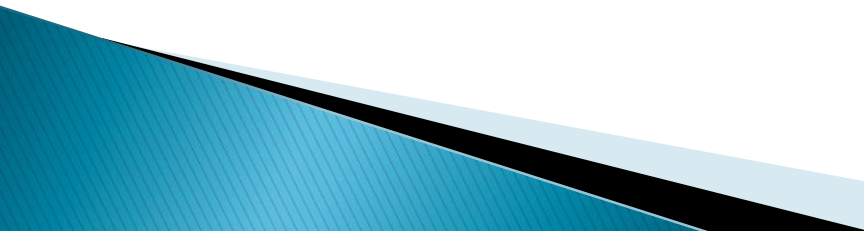
# Themes for discussion

- ▶ Need for different solutions to different problems
  - ▶ Changing features of tax system without changing basis structure
  - ▶ Tension between competitiveness and concern about inter state allocation and developing countries
  - ▶ Focus on transparency without tackling resources and trust
  - ▶ Belief in a pot of gold that could be diverted to good causes without cost
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# Defining the problem to be addressed

- ▶ Not helpful to aggregate all behaviours into ‘tax dodging’(eg Oxfam Hidden Billions 2016)
- ▶ Different problems require different solutions  
Devereux , Freedman and Vella 2012, Christians 2014) , Forstater 2015
  - Need to change corporate behaviour to comply with law? OR
  - Anti-avoidance provisions OR
  - Need to change the law to make it reflect ‘economic reality’ better?

# The 'reality' concept

- ▶ Current international tax architecture– residence, source etc. is based on one view of reality
  - ▶ BEPS does not seek to change this fundamentally
  - ▶ But BEPS adds concepts based on another reality– where economic activity takes place.
  - ▶ Clashing overlay of reality moves away from coherent principles and opens door to unilateral initiatives
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# DPT as eg of combining two realities

- ▶ DPT looks to ‘economic substance’
  - 1. Where PE avoided (designed to ensure no UK PE)
  - 2. Involvement of entities or transactions lacking economic substance
- ▶ Intended to apply to very few companies
- ▶ But –anecdotal evidence suggests being applied more widely eg every APA needs a DPT opinion
- ▶ Escalation of wide legislation inevitable
  - Advisers must advise, and taxpayers decide, whether notification necessary. (Penalties if no notification and should be).
  - HMRC criticised for ‘sweetheart deals’ must apply strictly (cf Google case in 2016)

# Conceptual problem with DPT

- ▶ Underlying rationale confused
- ▶ Unlike GAAR works against, not with underlying law
- ▶ Why not change underlying law on taxable presence, role of residence, transfer pricing arms length rules?
- ▶ Because BEPS reached no consensus
- ▶ So unilateral action undermines global consensual nature of BEPS
- ▶ Do we have a PE concept or not? Do we recognise separate legal personality and residence basis or not? If transaction is arms length, why does rate of tax matter?


# Transparency and Trust

- ▶ Increasing amounts of data to be required and exchanges
  - ▶ Cost, especially to developing countries
  - ▶ Disclosure to public?
  - ▶ Are we replacing trust in tax authorities with trust in media and NGOs to process tax data?
  - ▶ Who are the tax collectors?
  - ▶ Need for well resourced revenue authorities and oversight arrangements that develop trust.
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# Co-operative compliance

- ▶ Tension between co-operative compliance, settlements programme etc and co-ercive approaches such as DPT, special measures etc
- ▶ There may be pressure on revenue officials not to settle even where that would make commercial sense.
- ▶ In UK most recently case of Google
- ▶ Exercise of discretion can be valuable for all but scrutinise revenue authorities for sake of authorities themselves as well as public

# The pot of gold

- ▶ Use of large numbers often speculative
  - ▶ May elide different categories of behaviour
  - ▶ May combine different countries
  - ▶ Assumes that reduction of certain behaviours eg diversion through low tax areas would increase direct investment into developing countries.  
Would it?
  - ▶ Assumes higher tax collected would be used for social good.
  - ▶ Could damage development debate to rely heavily on availability of source that will never emerge.
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# More positively

- ▶ Growing will to work together– business, NGOs and governments
  - ▶ More debate should lead to better understanding if not polarised into ‘goodies’ and baddies’
  - ▶ Global business awareness of need to make contribution
  - ▶ Some BEPS changes may help even if some confused and serious discussion of radical change
  - ▶ Working together likely to be more effective now than naming and shaming
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# References

- ▶ Maya Forstater, Can Stopping 'Tax Dodging' by MNEs Close the Gap in Development Finance?, CGD Policy Paper 069 October 2015
- ▶ Devereux, Freedman and Vella, Tax Avoidance, 2012 CBT online report
- ▶ A. Christians Avoidance, Evasion and Morality(2014 Journal of Law and Policy vol 44)
- ▶ Freedman, Ng and Vella, HMRC's Relationship with Business (2014) sbs.ox.ac.uk website