

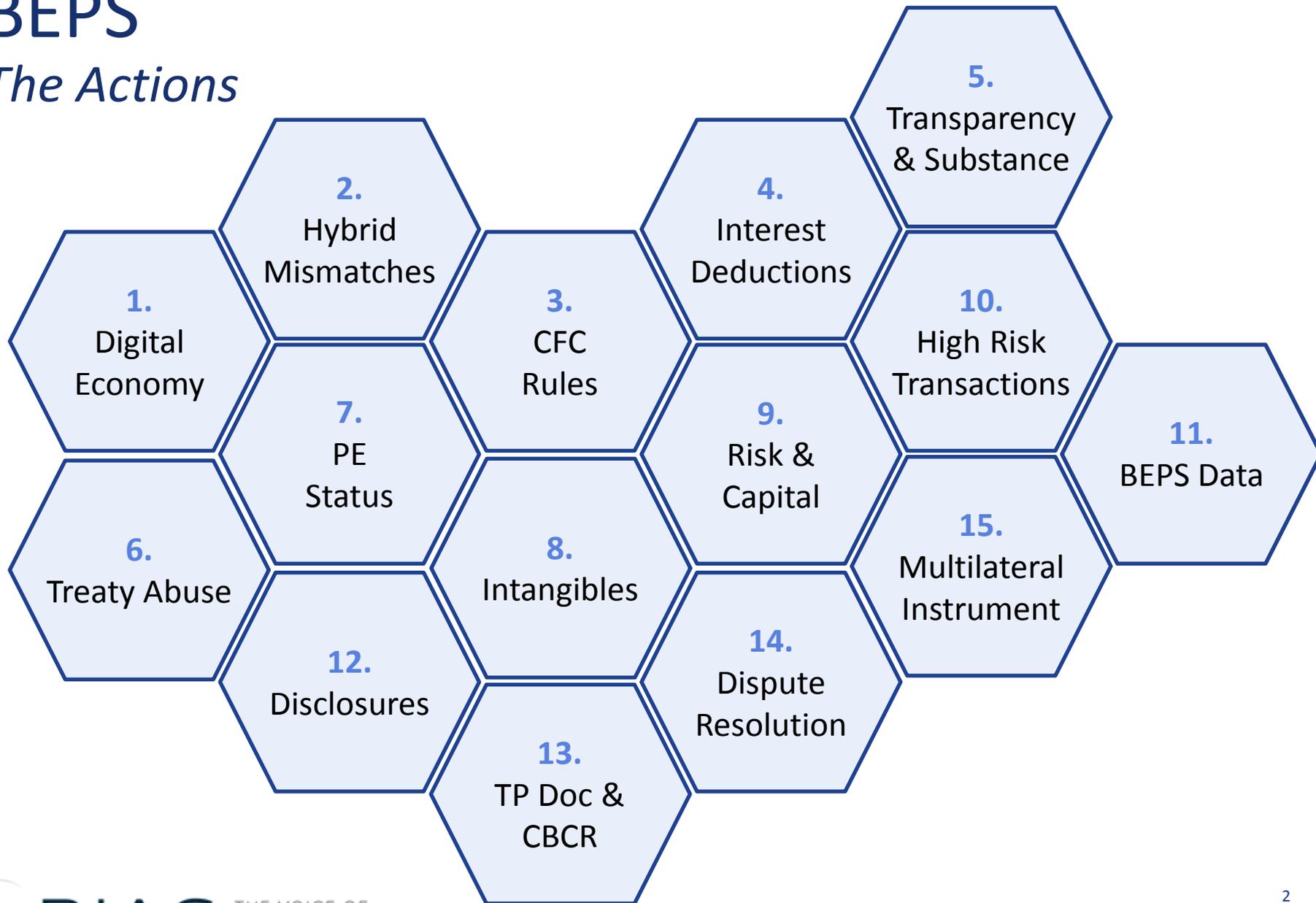
OECD Base Erosion & Profit Shifting (BEPS) Update

CII Conference on Base Erosion and profit Shifting (BEPS):
Impact on the Indian Landscape

Archie Parnell, Vice Chair BIAC Tax Committee
New Delhi, 7 November 2014

BEPS

The Actions



Where are we now?

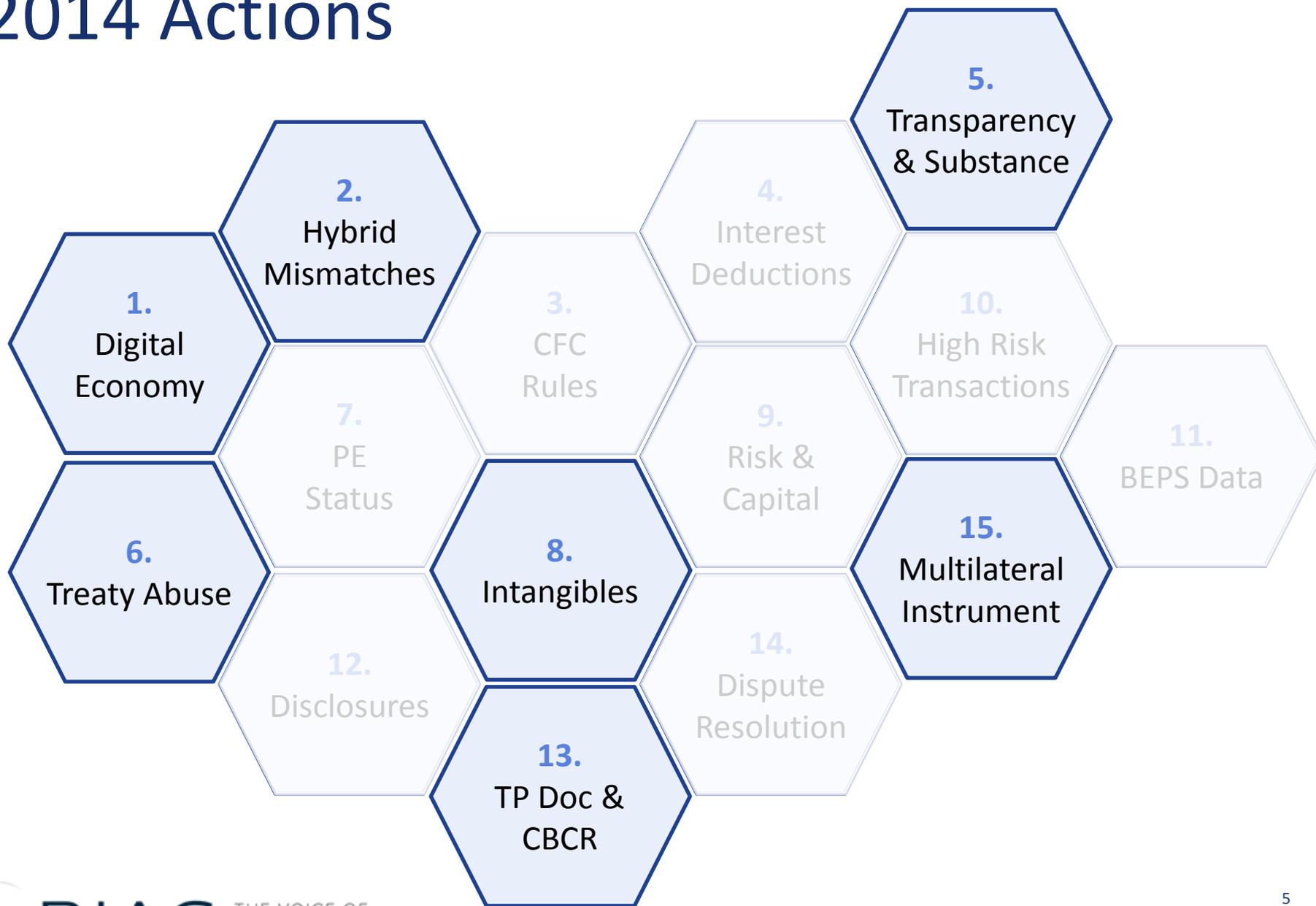
- Developing **consensus positions** has continued to present challenges
- Draft 2014 proposals presented to **G20 Finance Ministers** Sept 20/21, G20 Leaders in November
- G20 has accepted and **endorsed OECD deliverables** and re-committed to finalising all actions in 2015.
- OECD recognises **interaction between 2014 and 2015 actions** (and some 2014 implementation issues still to consider)
- But OECD has stated that only at the end of the project will countries be able to make **tough compromises** on the totality of the package
- Increased support from some countries for **effective dispute resolution**
- Active **business engagement** must continue to avoid/mitigate unilateral or damaging solutions
- Important to carefully **scope** 2015 work to ensure it is achievable

Key BIAC Messages

- **Timing:** Because of the demanding timetable, business (and other stakeholders) should be involved in scoping and formulation as early as possible.
- **Success and scoping:** The scope of each Action Item should be narrowly targeted to allow sufficient effort in allowed time to produce workable, broadly-agreed upon results.
- **Clarity on national interests:** Transparency regarding national interests is crucial to ensure that realistic agreements can be reached.
- **Time for review:** We advocate inclusion of a review process to ensure holistic (rather than siloed) approach to Action Items.

Addressing these issues will be necessary to ensure that the final recommendations of the BEPS project are well designed and consistently applied. This will help ensure the development of a predictable international tax environment that is conducive to international trade and investment.

2014 Actions



2014 update

1: Tax challenges of the digital economy

- The digital economy cannot be separated from the broader economy
- Task force will monitor progress in other areas

2: Neutralising the effects of hybrid mismatches

- Domestic law, and some treaty-related proposals
- ‘Primary’ and ‘secondary’ rules will with jurisdictional overlaps
- “Imported mismatches” to get further consideration
- OECD considering further aspects of regulated financial services and implementing guidance

5: Counter harmful tax practices more effectively

- Progress report on review of OECD member regimes
- Countries agree the need to strengthen substantial activity requirement (but no agreed method yet)
- Agreed transparency framework for preferential regimes

6: Preventing treaty abuse

- A ‘menu-based approach’ being developed. Combines Limitation of Benefits (LOB) clause and Main Purpose Test (MPT)
- OECD considering derivatives benefits test
- Acknowledges that flexibility will be needed due to interactions with hybrids, TP and other Actions

8: Transfer pricing: intangibles

- Finalised guidance on location savings & other market features and also on identifying intangibles, transactions w/ intangibles, and pricing
- Guidance on the ownership of intangibles will remain in draft
- Work on hard-to-value intangibles & “special measures” (to include guidance on excessive capitalisation, substance, and assumption of risk) outside ALS

13: Transfer pricing documentation & CbC

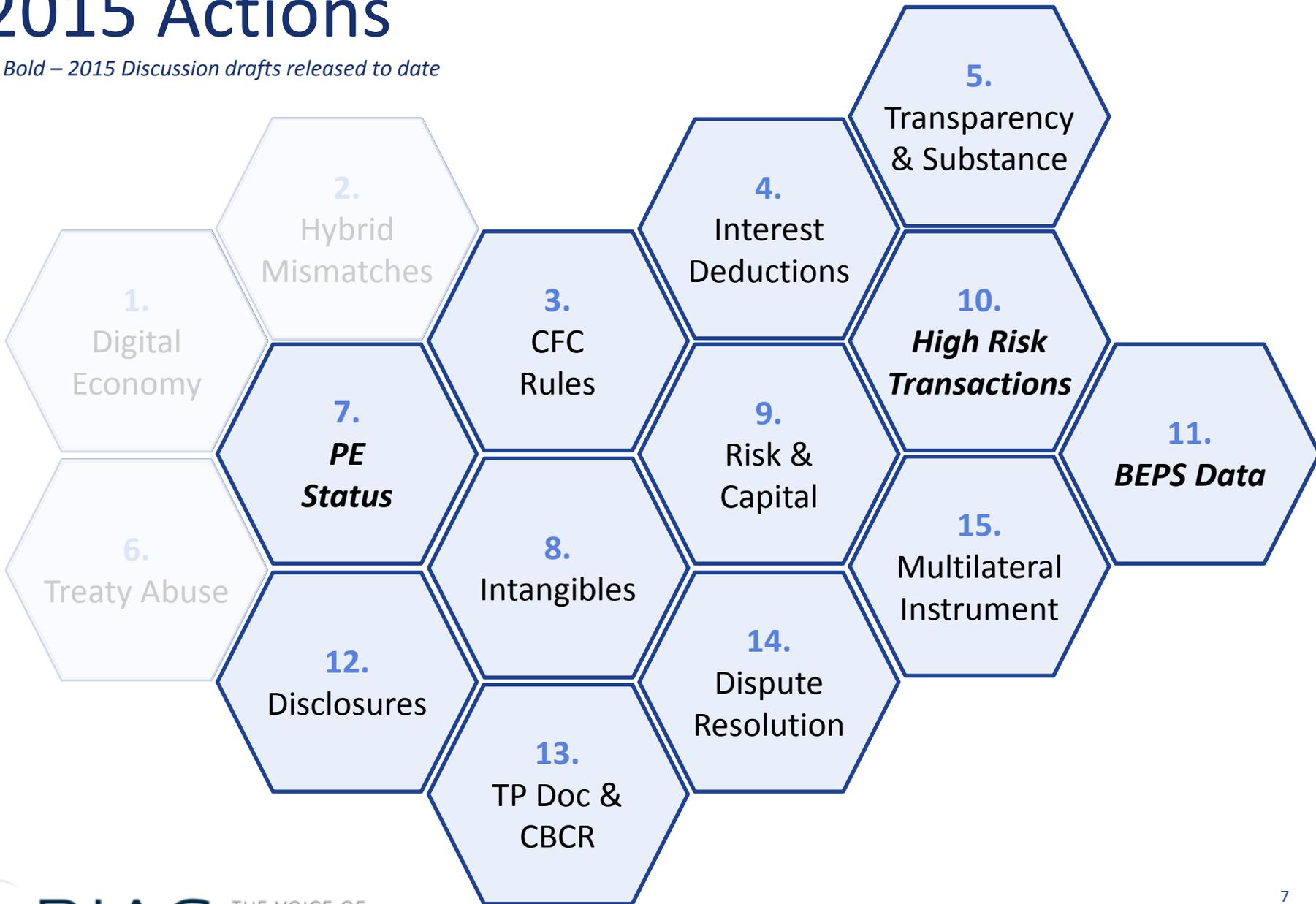
- A three tier approach adopted: CbC, Master File and Local File
- CbC template is high level risk assessment tool using aggregate data (implementation methods still to be agreed)
- Concerns: delivery, confidentiality, balanced costs, usefulness for govts – esp. Less Dev’d Countries

15: Multilateral instrument

- OECD concluded that an international instrument is legally feasible and that flexibility is possible
- Reaching broad consensus may be challenging

2015 Actions

In Bold – 2015 Discussion drafts released to date



2015 Actions

3: CFC Rules

- Some countries may oppose tightening own rules over feared loss of competitive advantage
- Developing consensus will be a challenge

4: Interest Deductibility

- “Debt bias” seen by govts as a key BEPS issue
- A more mechanistic (non-ALS) approach may be proposed (similar to German limitation rules)
- Recharacterisation will have knock-on implications
- Interest allocation currently within scope

5: Transparency and Substance

- 2015 proposals for tighter criteria & the elimination of harmful regimes
- Patent Box regimes may be called into question

7: Permanent Establishment Status

- Changes to definition of PE to prevent the avoidance Review of Agency PE (commissionaire) principle & specific activity exemptions will be reviewed
- Risk of more subjectivity & fewer ‘bright line’ tests
- “Digital PEs” & “Prep & aux” rules may be in scope

8: TP Intangibles

- “Special measures” could = ad hoc/non-ALS responses to specific issues.

9: TP: Risk and Capital

- First consultation doc expected late 2014
- OECD seeks to “realign the substance with pricing”
- “Special measures,” in or outside ALS on specific concerns on IP and risk/capital (esp. cash boxes); also recharacterisation

10: TP: High Risk Transactions

- Relates to management fees and HQ charges
- Split between source and residence countries

12: Disclosures

- US already has Reportable (listed) Transactions and Uncertain Tax Positions rules
- Nothing tougher expected (but a risk that country rules may differ)

14: Dispute Resolution

- Binding mandatory arbitration gaining ground, but some countries have serious concerns
- “Cooperative compliance” should also be promoted coordinating with the work of the FTA

15: Multilateral Instrument

- Consistent application of proposed rules could provide some stability for business, but the broad implementation will be challenging

