

ACT MIDDLE EAST TREASURY SUMMIT

16-17 October 2018

Madinat Jumeirah, Dubai



A silhouette of the Dubai skyline, including the Burj Khalifa, reflected in the water at sunset. The sky is a warm orange-brown color.

Inclusive framework on BEPS spotlight: impacts on financial activities

Wednesday 17 October - 11h45 to 12h45

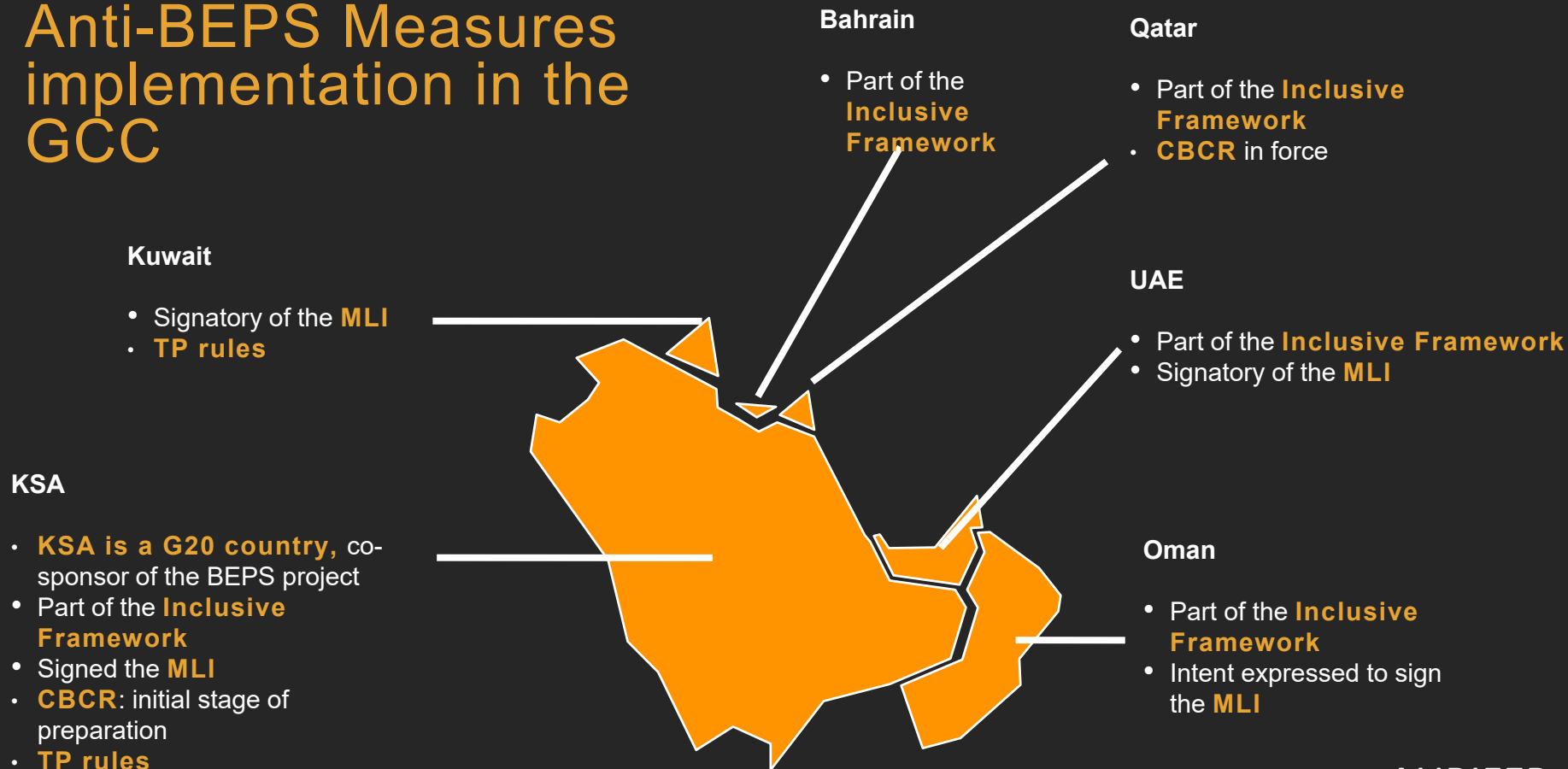
Mohamed Faycal Charfeddine, Group Tax Manager, Aujan Group

Thomas Vanhee, Managing Director, Aurifer Middle East Tax Consultancy DMCC

OECD BEPS Inclusive Framework

- BEPS stands for Base Erosion and Profit Shifting: **tax avoidance strategies** that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations.
- **BEPS minimal standards** to prevent tax avoidance to be followed by world's economic leaders:
 - Country by country (CbC) reporting
 - Countering harmful tax practices
 - Prevent abuse double tax treaties
 - Making dispute resolution more effective
- **Commitment taken by the UAE and Bahrain** to be removed from the EU Black list

Status of Anti-BEPS Measures implementation in the GCC



Country by country (CbC) reporting and Transfer Pricing Documentation in the GCC

Countries	UAE	KSA	Oman	Qatar*	Bahrain	Kuwait
TP rules on intra - group transactions	✗	✓	✗	✗	✗	✓
General TP rules to comply with arm's-length principle	✗	✓	✓	✓	✗	✓
Mandatory TP documentation requirements	✗	✗	✗	✗	✗	✗
Local TP documentation recommended	✗	✓	✓	✓	✗	✓
Country-by-country report	✗	✗	✗	✓	✗	✗

*In Qatar Financial Center stricter TP rules apply

OECD Country by country (CbC) reporting template

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

[illegible]

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

[illegible]

Transparency and exchange of information commitments in the GCC

Jurisdiction	Global Forum Member	EOIR rating round 1	EOIR rating round 2	Commitment to AEOI (CRS)	CRS MCAA signed	Mutual Administrative Assistance Convention	Existence of any harmful tax practices (Action 5)	Exchange of information on tax rulings (Action 5)	Preventing treaty abuse (Action 6)	CbC – Domestic law (Action 13)	CbC – Information exchange network (Action 13)	Inclusive Framework on BEPS member	Effective dispute resolution (Action 14)
Bahrain	yes	largely compliant	compliant	2017/2018	yes	signed	--	--	--	--	--	yes	--
Kuwait	yes	not reviewed	scheduled 2019	2017/2018	yes	signed	--	--	--	--	not activated	--	--
Oman	--	--	--	no date for first exchanges	not applicable	no	no harmful regime exists	review scheduled	review scheduled	update on status pending	not activated	yes	review to be scheduled/deferred
Qatar	yes	largely compliant	largely compliant	2017/2018	yes	signed	no harmful regime exists	review scheduled	review scheduled	in force – first reporting by 31 December 2018	not activated	yes	review to be scheduled/deferred
Saudi Arabia	yes	largely compliant	scheduled 2018	2017/2018	yes	in force	no harmful regime exists	reviewed/no recommendations	review scheduled	initial stages of preparation	not activated	yes	review scheduled
United Arab Emirates	yes	prov. largely compliant	scheduled 2018	2017/2018	yes	signed	--	--	--	--	--	yes	--

Countering harmful tax practices and Prevent abuse double tax treaties

- The Multilateral Instrument “MLI” is meant to swiftly implement anti-BEPS minimum standards
- MLI is not a compulsory tool but the best list of statutory anti-BEPS measures regarding:
 - Hybrid mismatches (Part II),
 - Treaty abuse (Part III) and its General Anti-avoidance Rule (Principle Purpose Test),
 - Avoidance of permanent establishment status (Part IV)
- MLI signed by Kuwait, UAE, KSA. Intent expressed by Oman
- Financial sector at risk with “HYBRID financial instruments” provisions (article 3 of the MLI)

DTT Network* within the GCC

Countries	UAE	KSA	Oman	Qatar	Barhain	Kuwait
DTT	116	46	32	68	43	67

*Source: IBFD, local Tax Authority website - DTT signed, all have not yet entered into force

Making dispute resolution more effective

- MLI Part VII “Arbitration” measures **only apply** where **both Contracting Jurisdictions** have notified the Depositary in such extent
- **None of the GCC Countries** opted for the binding MLI dispute resolution mechanism
- Mechanism meant to **ease dispute resolution** regarding DTT’s interpretation of two countries
- Guarantee of a smoother and more efficient application of the DTTs

Implementing minimum standards

Organisational

Group structure:

- Intra-corporate group recharges and sales
- Shared services
- Joint ventures
- Operational units
- Agency
- Routing of costs (where costs enter group, where supplies are made etc.)

Organization structure:

- Who will be responsible for Anti-BEPS compliance
- Tax compliance function

Governance:

- The need to develop Transfer Pricing and international taxation policy
- Frameworks to ensure oversight and responsibility
- Appropriate processes and controls

Operational

Contracts: pricing/margins for new/existing contracts

Compliance liabilities: requirement to collect, retain and make information available

Processes: impact of arm's length principle on O2C and P2P process

IT: capabilities of current IT systems (including procurement/billing platforms) for transactions reporting

Bookkeeping: set-up of strong transactions administration and accounting framework (analytical accounting)

Financial

Withholding taxes, exemption or foreign tax credits:

Potential required business restructuring and new DTT interpretation under Anti-BEPS measures might raise new withholding taxes

Product pricing/margin:

Possible modification of the intra-company transactions pricing

Fines:

Applicable penalties for getting it wrong

Cash-flow:

Impact on working capital due to:

- Modification of the pricing of intra-group purchases or sales
- Restructuring of the transactions flows
- Potential increase of the ETR of the group

Implementing minimum standards

