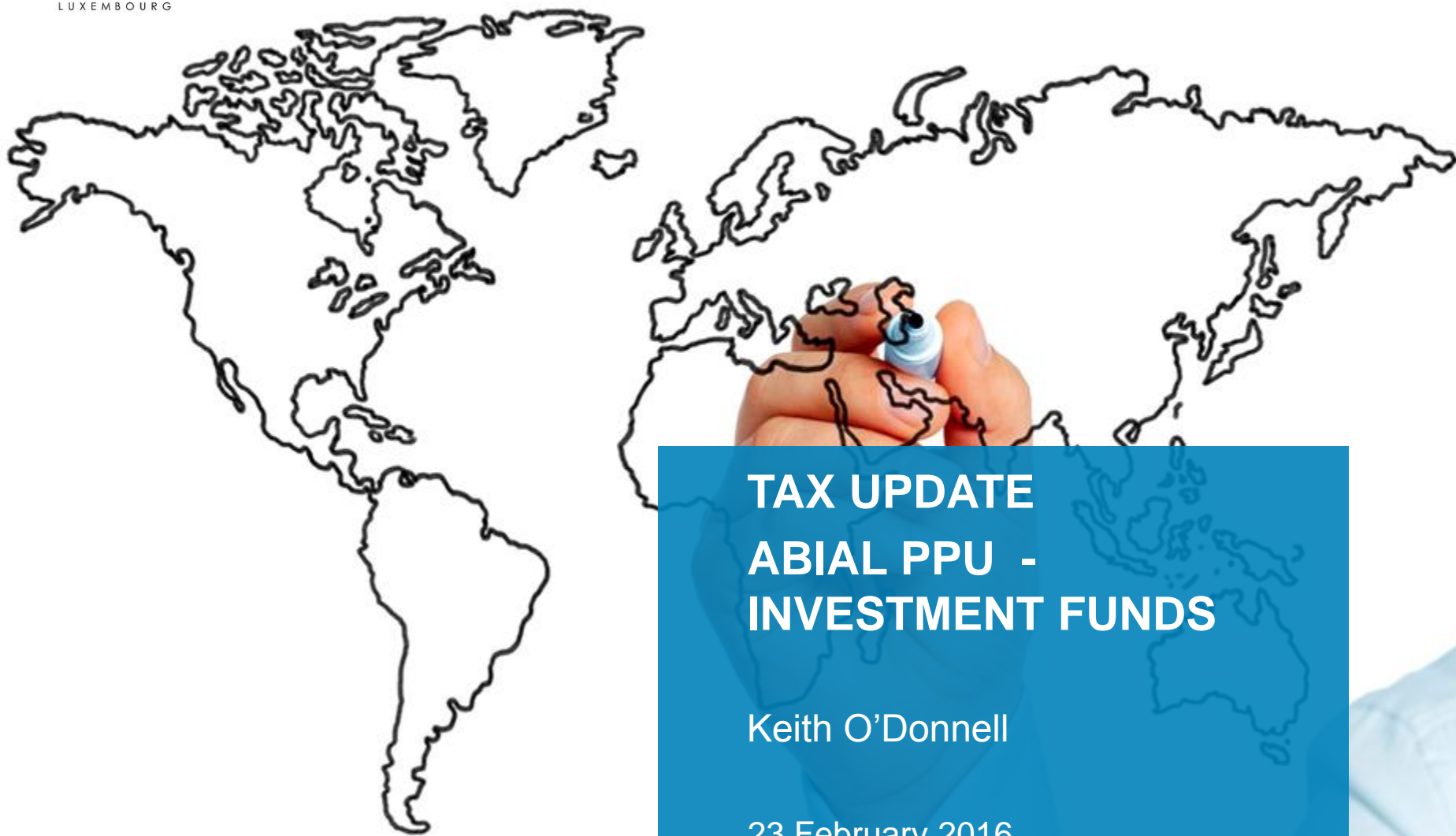


# ATOZ

TAX ADVISERS  
LUXEMBOURG



## TAX UPDATE ABIAL PPU - INVESTMENT FUNDS

Keith O'Donnell

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# TAX UPDATE

**A year is a long time in politics, but it can seem like eternity in the tax world.**

# KEY TAX DEVELOPMENTS AFFECTING THE INVESTMENT FUND INDUSTRY

- BEPS
- VAT
- SECURITY LEVEL TAXATION
- INVESTOR LEVEL TAXATION
- OTHER

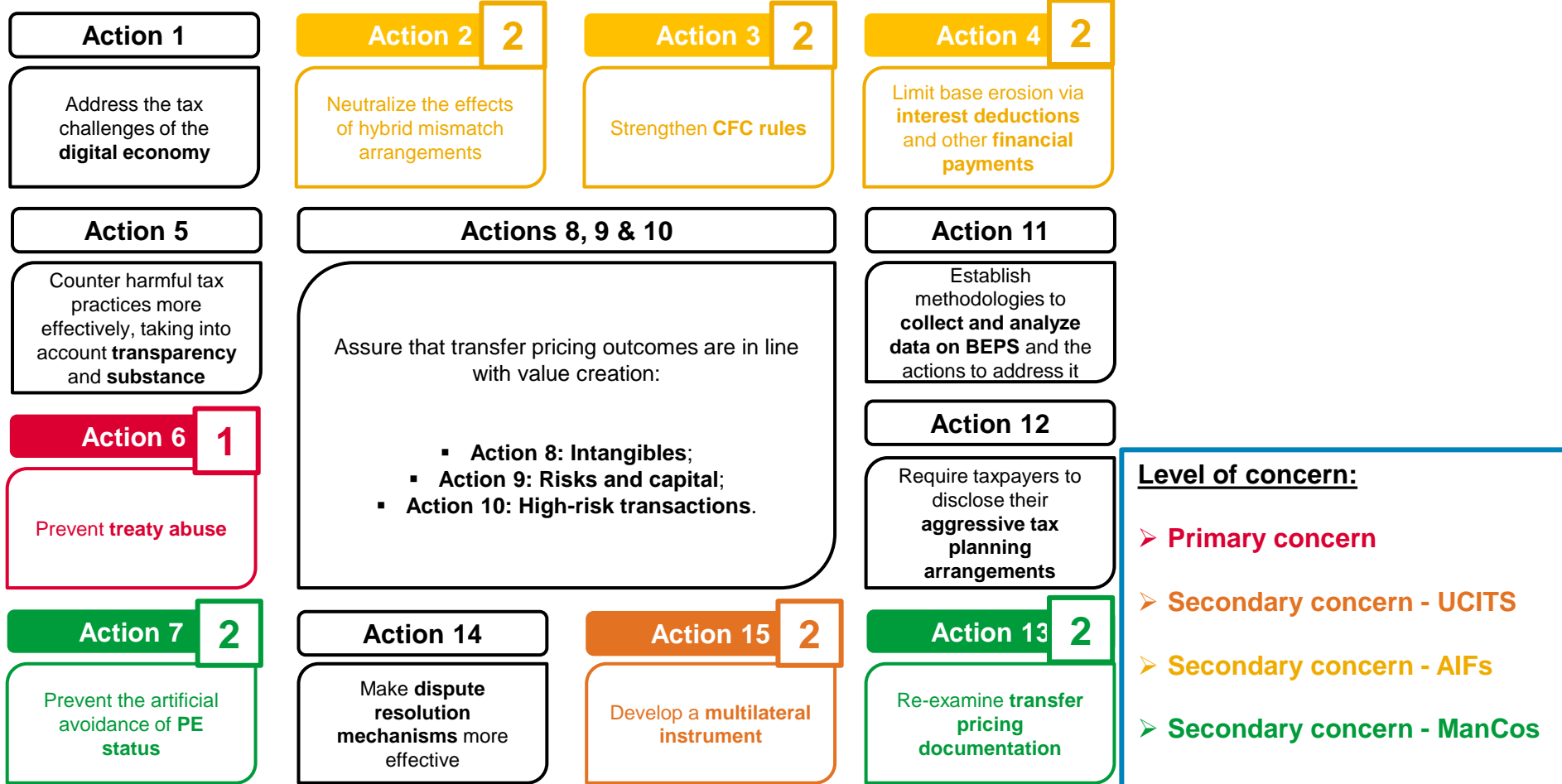
## What is BEPS?

- BEPS Definition: “tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear’ for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low resulting in little or no overall corporate tax being paid”.
- Global drive against corporate tax avoidance by the G7, OECD and the EU
- The BEPS project combines a strong political commitment with breakneck speed, complex institutional issues, politics and law

## Recent dates in the BEPS timeline:

- On 5 October 2015, the OECD published the 13 final Base Erosion and Profit Shifting (BEPS) reports covering the 15 actions of the very ambitious and challenging BEPS action plan
- On 28 January 2016, the European Commission presented its Anti-Tax Avoidance Package. One of the core pillars of this package is a Draft European Union Anti-Tax Avoidance Directive
- There is currently no timeline regarding the implementation of a finalized directive into the national laws EU of Member States.

# BEPS – ACTION BY ACTION



- The investment fund industry is not the primary target of the BEPS actions, but it does suffer collateral damage

# BEPS – LEVEL OF IMPLEMENTATION

## New minimum standards

*Countries committed to adopt these minimum standards*

- **Action 5:** Harmful tax measures
- **Action 6:** Treaty Abuse
- **Action 13:** Country-by-country reporting
- **Action 14:** Dispute resolution

*Partly minimum standards*

- **Action 7:** Permanent establishment definition
- **Action 8, 9 & 10:** Transfer pricing

## Common approaches

*Countries expected over time to move towards these approaches*

- **Action 2:** Hybrid mismatches
- **Action 4:** Interest deduction

## Guidance based on Best Practice

*If implemented, these measures should be in line with the OECD guidelines*

- **Action 3:** Controlled Foreign Corporations rules
- **Action 12:** Disclosure rules

*Partly best practice*

- **Action 7:** Permanent establishment definition
- **Action 8, 9 & 10:** Transfer pricing

## Horizontal measures

- **Action 1:** Digital economy
- **Action 15:** Multilateral instrument
- **Action 11:** Measure the economic impact of BEPS

# BEPS INSPIRED TAX CHANGES IN LUXEMBOURG

Luxembourg is already implementing new tax measures to ensure compliance. These new tax measures mainly affect the AIF business.

## Primary concern:

- Amendments to the participation exemption regime (elimination of situation of double non-taxation and new General Anti-Abuse Rule)

## Secondary concern: (less effect on Fund Industry)

- Minimum CIT replaced with Minimum NWT
- Repeal of IP regime from 1 July 2016
- Exit tax rule changes



# BEPS CONCLUSION

- **International tax planning** will continue to be a necessary exercise for investors to manage their overall tax burden
- **Tax competition** will remain a common phenomenon in the international tax arena
- Preparation for BEPS is possible now even though further work will be performed on different action items
- There is no “one size fits all” model
- Ultimately, Luxembourg will continue to be a prime location for structuring international investments
- The OECD BEPS Project will have a **significant impact** on the international tax landscape
- More substance requirements
- More transparency and exchange of information
- Increased scrutiny of transfer pricing and related documentation
- More aggressive attitude of tax administrations




# VAT UPDATE

- Management of special investment funds is VAT exempt based on the EU VAT Directive;
- Management services have to be “specific to” and “essential for” the management of the funds in order to benefit from the VAT exemption. Notably covered by the VAT exemption:
  - portfolio management services;
  - investment advisory and research services;
  - computation of net asset value, etc.
- Mere material or technical supplies (e.g. I.T. support, basic accounting services) do not qualify as such for the VAT exemption since not considered as “specific”. The VAT incurred on these services constitutes a cost for investment funds.

# VAT UPDATE

- VAT on Directors' fees
- European Court of Justice – C-595/13 – Fiscale Eenheid X NV c.s. – A.G. Kokott's opinion delivered on 20 May 2015: RECENTLY CONFIRMED BY ECJ
  - a real estate investment fund can qualify as a special investment fund when the fund is regulated by the UCITS Directive, the AIFM Directive or a local legislation;
  - the term “management” covers the actual - outsourced or not - exploitation of real estate since this is a specific and essential function / services for the fund in order to realize profits;
  - in Advocate General Kokott's view property management services should therefore benefit from the VAT exemption
  - this ruling may create significant relief for REIFs.

# SECURITY LEVEL TAXATION

<b>INDIA</b>	<b>- Minimum Alternate Tax</b>		<b>Solved</b>
<b>KOREA</b>	<b>- Litigation</b>		<b>Ongoing</b>
<b>NETHERLANDS</b>	<b>- EU Claims</b>		<b>Bad news...</b>

# INVESTOR LEVEL TAXATION

- **Germany - Investor Taxation and Reporting proposed changes:**
  - Move to lump sum Taxation
  - End of Individual Investor Reporting
  - **CRS** now « live » for client acceptance in particular

# OTHER

- Reform of Luxembourg Taxation of Funds to improve Double Tax Treaty access?
- ManCo Taxation
- Treaty Relief and Compliance Enhancement (TRACE)
- EU Commission focus on Double Tax Treaties / Withholding Tax relief
- Financial Transaction Tax (FTT) – still not dead

