



In partnership with

TAX JOURNAL

Report: How is BEPS impacting your business?

The results of the Tax Journal & FTI Consulting BEPS Benchmarking Survey

Welcome from FTI Consulting



In conjunction with Tax Journal, FTI Consulting conducted a survey of in-house tax professionals from multinationals around the world to give their view on the impact of BEPS on their business a year after the final reports of the 15-point Action Plan to tackle BEPS were presented by the OECD. We would like to thank everyone who has participated in the survey – without your valuable input this report could not have been completed.

Turning to the results, there is some degree of consensus that the BEPS project is expected to lead to a more sustainable, uniform global tax system. However, as the survey results show, there is still a lot of work to be done to achieve this goal. In particular, it is important that BEPS actions are implemented by individual countries in a similar timeframe and without significant modifications, which is not what we are currently observing. There are also some doubts over the success of the BEPS project if the extent of US participation remains limited. It is not surprising, therefore, that an increase in tax disputes leading to the incidence of double taxation is widely expected.

One of the striking findings, which also reflects what FTI Consulting are currently seeing in the market, is that following the changes to the Permanent Establishment (“PE”) definition recommended by Action 7, most respondents expect to have

more PEs. This is also consistent with the statement made by the Co-Chair of the OECD’s WP6 during the Public Consultation on Action 7 held at the OECD on 11 October, in which FTI Consulting participated. Specifically, he said “The threshold for PEs has now been agreed at a high level, but it is paramount to businesses and the tax authorities... to apply that [threshold] consistently [to] what we believe... will be a substantial increase in the number of PEs”. It is therefore logical that the vast majority of respondents who expect additional PEs are considering changing their group’s operating model.

It is reassuring, however, that despite the uncertainty brought about by the BEPS Action Plan, most organisations feel they are ready for BEPS compliance in most areas. To the 34% of respondents who are not yet ready, time is really now of the essence for you to consider your actions for addressing any such deficiencies. As always, we look forward to continuing to work with companies on their strategy for becoming BEPS compliant in all areas.

A handwritten signature in dark ink that reads "Marvin Rust".

Marvin Rust
Head of Tax



Survey results

More than 100 in-house tax directors and heads of tax from large companies took part in a survey from Tax Journal in conjunction with FTI Consulting, to give their view on the impact of BEPS on their business one year on. Respondents came from a variety of industries, with about a fifth from finance, a tenth from real estate investments and services, and a tenth from the travel and leisure industry.

BEPS and group tax impact (Q1-5)

Some 60% of respondents agreed that the BEPS project would create a more sustainable, uniform global tax system, while 22% disagreed; and a third said their group had been actively involved in responding to BEPS-related guidance (such as OECD draft proposal documents), while 67% admitted they provided little to no input.

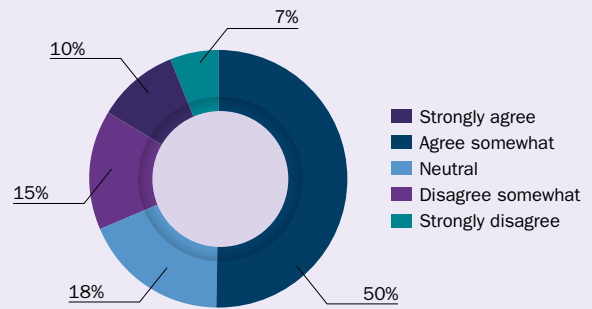
Despite this, there were concerns. 'BEPS made more progress than expected, but without additional resource at the OECD it will stall,' one respondent told Tax Journal. 'The piecemeal implementation of BEPS recommendations around the world is not ideal and it significantly increases the compliance burden and double tax risk.'

'Not confident that all countries will implement BEPS and in the same timeframe,' said another. 'Without this, any success is questionable.' A third agreed, saying that 'ultimately, how successful the BEPS project is in meeting its own objectives will depend on the extent of US participation'.

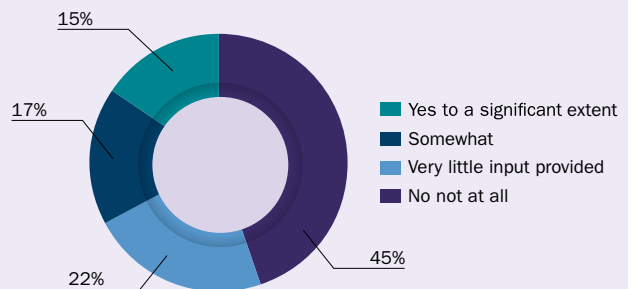
'The key challenges and concerns are: increased compliance and administration costs, potential re-emergence of double taxation, confidentiality and the use of our sensitive information and most of all, the increased risk of tax position uncertainty,' said a fourth. A fifth observed: 'BEPS was intended to increase global consistency in tax authorities' approach to taxation of MNEs. In practice this has gone the other way: countries have introduced ad-hoc new taxes, the new PE rules are accepted by some countries and not others, even though these countries may be bilateral treaty partners, and interest rules are being interpreted differently in different jurisdictions.'

Over half expected an increase in the incidence of double taxation within the respondent's group's tax as a result of BEPS, with 17% saying it was 'very likely' as opposed to 'somewhat likely' (36%). While 54% did not anticipate hybrid mismatch arrangements would have an impact, just over half (51%) expected some sort of

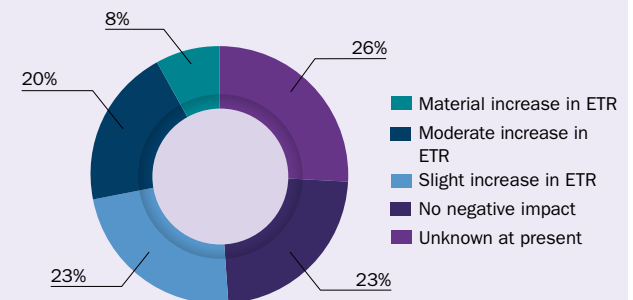
Q1 Do you agree that the BEPS project will create a more sustainable uniform global tax system?



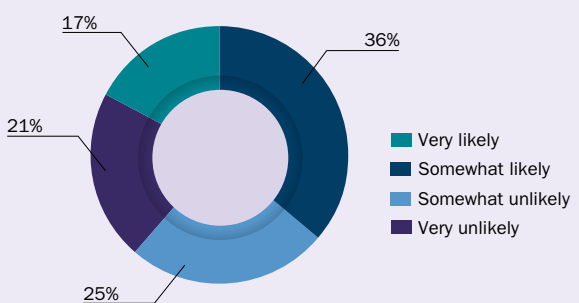
Q2 Has your group been actively involved in responding to the BEPS related guidance e.g. through responding to OECD draft proposal documents?



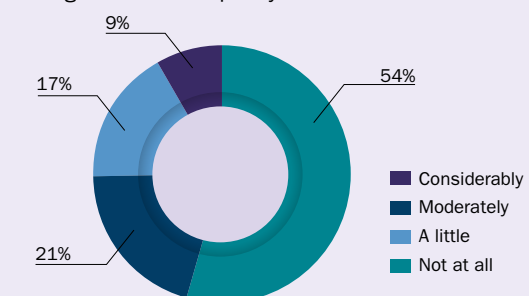
Q3 How do you currently see the impact of BEPS on your group's ETR?



Q4 Do you expect an increase in the incidence of double taxation to occur within your group as a result of BEPS Actions?

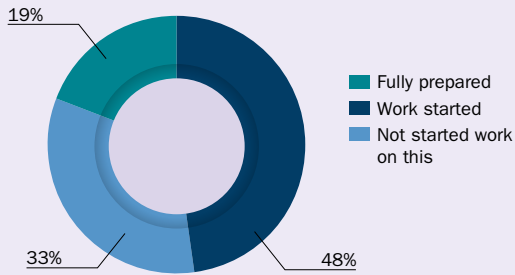


Q5 To what extent do you anticipate that hybrid mismatch arrangements will impact your business?

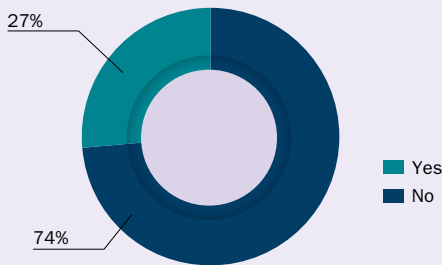


Due to rounding issues, some charts may not add up to 100%.

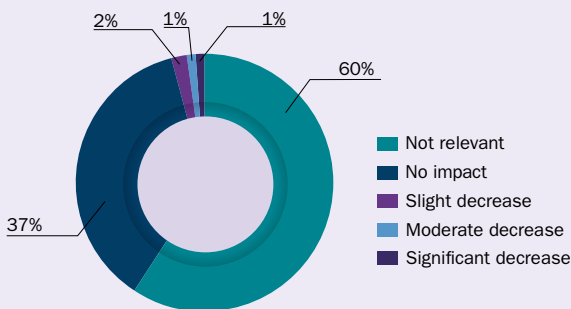
Q6 To what extent is your group ready to implement BEPS Action 4 in relation to interest deductions?



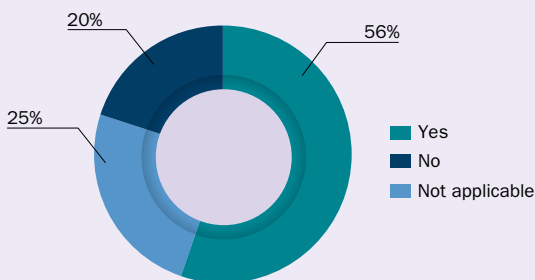
Q7 Are you considering refinancing/altering the mix of external and internal debt/equity as a result of BEPS Action 4?



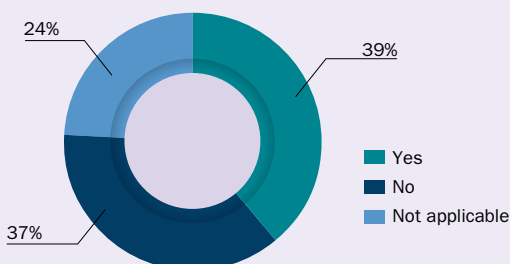
Q8 Will the level of benefit you enjoy from the UK Patent Box be impacted by the BEPS changes?



Q9 Do you expect that following changes recommended by BEPS Action 7 to the permanent establishment definition there is a risk that your group would be deemed to have one or more additional permanent establishments in a foreign jurisdiction?



Q10 Are you considering changing your group's operating model in order to manage increased permanent establishment risk resulting from BEPS Action 7?



increase on their group's effective tax rate as a result of BEPS, although 26% said the effect on their ETR could not be known at present.

'Double taxation, or more correctly multiple taxation, can result from BEPS actions,' one respondent said. 'There should be an "anti-abusive" or "anti-aggressive" package for tax officers or countries that abuse their powers.'

Interest deductions, patent box and permanent establishment (Q6–11)

Two-thirds of respondents had at least started some preparation for when BEPS Action 4 on interest deductions needs to be implemented, with 19% saying they were fully prepared. However, only 27% were considering refinancing or altering the mix of external and internal debt/equity ratio as a result of Action 4.

Regarding how the UK patent box changes, as a result of BEPS, would impact the group companies surveyed, almost all replied that the changes were either not relevant (60%) or would have no impact (37%).

With one respondent confirming that 'a major challenge for us is the risk of new permanent establishments' and another saying PE changes were 'a significant issue', BEPS Action 7 on PEs seemed to cause much greater concern than interest deductibility. While a quarter answered that Action 7 was not applicable to them, 56% expected that there would be a risk that their group would be deemed to have one or more PEs in a foreign jurisdiction. Fifty-one percent said it was likely or highly likely that they would seek external confirmation from advisers that their foreign operations do not create a PE in that jurisdiction, while 39% said they were considering changing their group's operating model in order to manage increased PE risk as a result of Action 7 (37% said they were not considering it).

Operational issues, reporting, and disputes (Q12–16)

Given that the financial capacity to assume risk and the ability to control risk were key concepts of the guidance under BEPS Actions 8–10, most respondents were either very comfortable (26%) or moderately comfortable (54%) that their organisation can determine whether an entity meets the OECD's new requirements in relation to control and risk on an entity-by-entity basis.



The majority of respondents were unlikely to make operational changes (for example, moving personnel to increase economic substance) in light of the changes in the OECD's guidance for transfer pricing: 30% said it was somewhat unlikely and 38% said it was very unlikely they would.

Over three-fifths (62%) said their organisation's systems were configured to produce at least some of the necessary data required for country-by-country reporting (CbCR) and the preparation of transfer pricing local files. For groups with consolidated revenue of €750m or more, 29% said their senior management was 'moderately involved' in reviewing the master file, and the same number answered that the master file was the responsibility of the tax team but senior management wasn't involved.

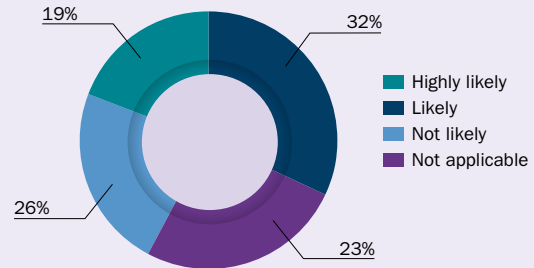
'One of the key issues/changes we have faced as a group is a change in the burden of risks and responsibilities for the tax reporting,' one respondent explained. 'We are a subsidiary group of a foreign MNE, with a UK sister group that operates relatively independently. As two UK groups under common control, we are viewed as one under some sections of the new interest deductibility calculations and CbCR. The result is that we are largely reliant on our non-UK shareholders for the information and calculations necessary under the interest deductibility, and CbCR. This results in a situation where a UK subgroup bears the responsibility and risk of penalties but is reliant on a foreign company, albeit the parent, for the information to report.'

Another respondent cited that their organisation's main concern was 'cost, particularly of data gathering for the CbCR template', while another said BEPS would result in 'much more of a compliance burden, and more tax authority enquiries are expected'.

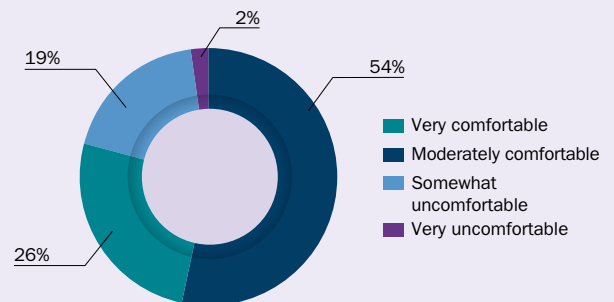
'Our key challenges thus far have been configuring financial systems / processes for CbCR / dialogue with business regarding tougher substance standards', one said of their organisation's operational issues. 'The BEPS project already has to be seen as a success, but there are still challenges regarding work on the financial services sector and the US take up of BEPS.'

Some 56% answered that they were not confident at all in the effectiveness of the proposed Mutual Agreement Procedure ("MAP") mechanism under BEPS Action 14 to resolve disputes within tax authorities. 'We're less likely to do MAP as we believe tax authorities will be so overwhelmed with more claims from larger entities than ours, they'll decline as we

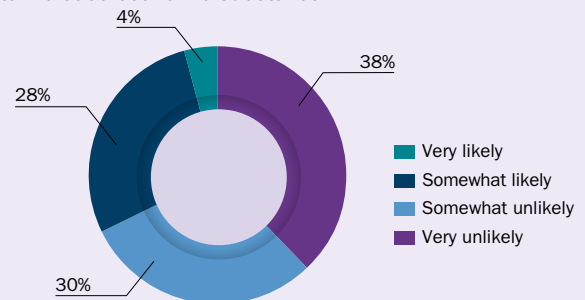
Q11 If your company has business operations in a foreign jurisdiction, are you seeking external confirmation from advisers that these operations do not create a permanent establishment there?



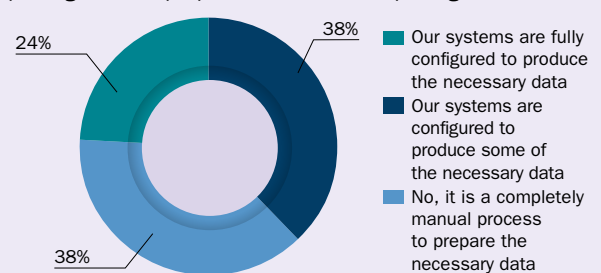
Q12 Financial capacity to assume risk and the ability to control risk are key concepts of the guidance under BEPS Actions 8 – 10. How comfortable are you that your organisation can determine whether an entity meets the OECD's new requirements in relation to control and risk on an entity-by-entity basis?



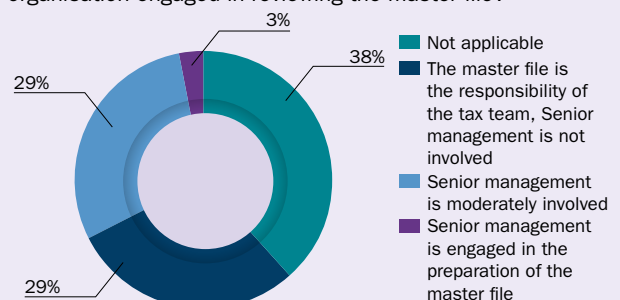
Q13 In light of the changes in the OECD's guidance for transfer pricing from BEPS, how likely is your organisation to make operational changes e.g. to move personnel to increase economic substance?



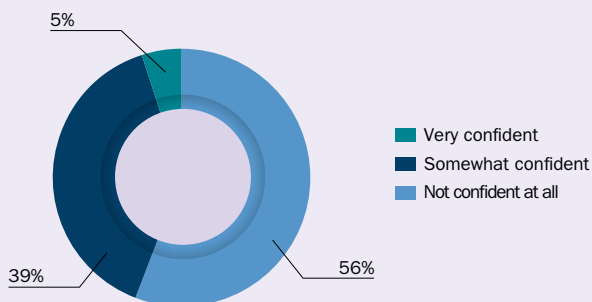
Q14 Does your organisation have the systems capability to produce the information required for country-by-country ("CbC") reporting and the preparation of transfer pricing Local Files?



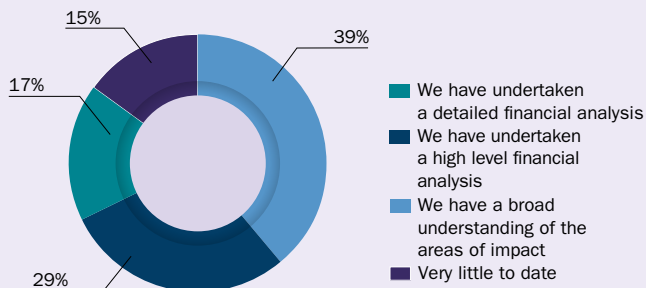
Q15 If your group has consolidated revenue of €750m or more, to what extent is senior management in your organisation engaged in reviewing the master file?



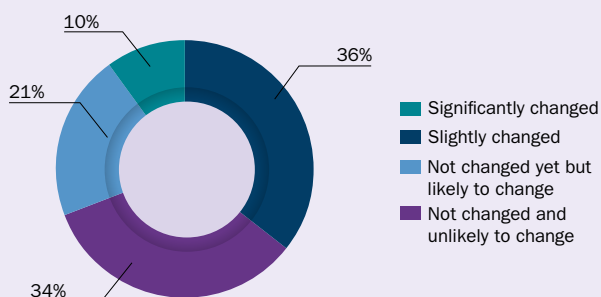
Q16 How confident are you in the effectiveness of the proposed Mutual Agreement Procedure (“MAP”) mechanism under Action 14 to resolve disputes with tax authorities?



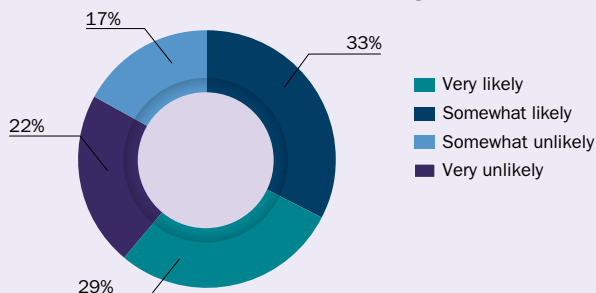
Q17 What level of work has your group undertaken to date to determine the impact of BEPS?



Q18 To what extent has your business changed its approach to tax planning for cross-border transactions as a result of BEPS Actions?



Q19 In light of the changes in the OECD’s guidance for transfer pricing from BEPS, how likely is your organisation to review and amend its transfer pricing policies?



‘won’t represent enough of a risk of tax loss in comparison,’ one said. ‘So we’ll be left carrying the burden, uncertainty, and cost.’ Another observed that a ‘binding MAP and dispute resolution procedure is mandatory to avoid double taxation as result of BEPS’.

Cross-border and transfer pricing issues (Q18–20)

Under half of businesses had changed their approach to tax planning for cross-border transactions as a result of BEPS, although 21% admitted that while they had not changed yet, they were likely to do so in future.

In the light of the changes in the OECD’s guidance for transfer pricing from BEPS, 62% said they were either very likely (29%) or somewhat likely (33%) to review and amend their group’s transfer pricing policies; although 61% said they were no more likely to pursue additional binding agreements such as advance pricing agreements or thin capitalisation agreements, despite perceived uncertainty from BEPS.

Overall concerns (Q17, 21–23)

Only 15% of respondents have done ‘very little work to date’ to determine the impact of BEPS – encouragingly, 39% said they have at least a broad understanding of the areas of impact on their group, while 29% have undertaken a high-level financial analysis and 17% have performed a ‘detailed’ one.

An overwhelming majority (64%) said that they were not likely to undertake a group-wide business transformation, although 13% were likely or very likely to do so. One respondent confirmed: ‘We commenced restructuring in anticipation of the BEPS changes and with awareness that our previous models were not robust in 2014 [and] completed a major business transfer with effect from 1 January 2016.’

Certain BEPS papers have increased the compliance burden on companies – ‘Overall I feel [BEPS] will lead to an increased compliance burden for some immeasurable benefits,’ opined one – as well as creating additional work from revisiting policies. Nevertheless, 59% did not see their tax team expanding in the coming year to handle the changes. A fifth, however, confirmed that they needed external support to augment their team.



Encouragingly, a majority of businesses were at least mostly ready for BEPS compliance: 54% deemed themselves ready in most areas and 12% were ready in all areas. However, 28% said they were not ready in most areas. One cited 'uncertainty around detailed working of some of the BEPS plans on the investment management industry', while another cited their concern around BEPS Action 6 on holding companies for private equity investments, explaining that Working Group 1 was 'still opining on this'. Another said: 'Raising awareness of this in my organisation is slow, mostly due to a long-term lack of awareness of tax and all the other tax changes currently underway.'

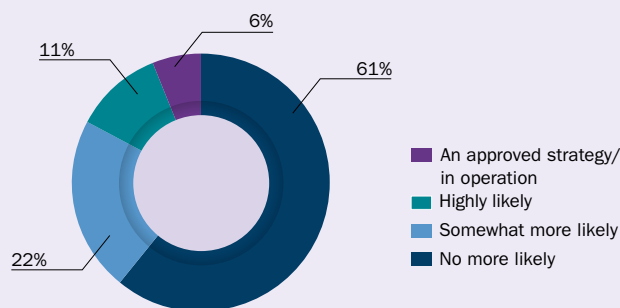
Many respondents felt the biggest problem with the BEPS project – or the biggest problem the BEPS project might run into – was to do with lack of coordination between countries involved. 'The main issue is uncertainty whilst some countries implement and some don't and therefore needing to analyse multiple sets of rules for a number of years and not knowing what positions tax authorities will end up taking, post-case law,' one said. 'As a result, the intended outcome may not be achieved in practice, albeit that the rules may be as intended.'

A second respondent said: 'Pre-emptive actions by states (not BEPS directly) adds to uncertainty, as well as different levels of adoption of BEPS actions. Also less well-developed countries under the UN model have a different perspective.' A third added: 'While US, China and Russia remain unconvinced, it is hard to see aims being met. In addition you have EU and others introducing their own rules above and beyond BEPS.'

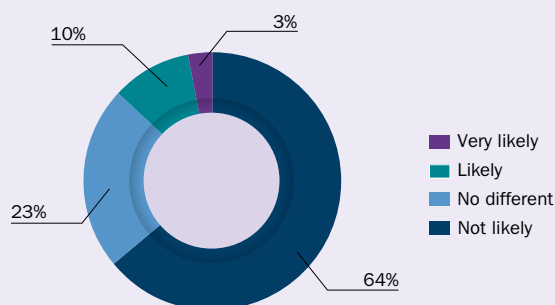
'Any anticipated benefit to tax authorities and other stakeholders in terms of anti-arbitrage or disruption of genuine BEPS activities is unlikely to be of a quantum to justify the significant additional compliance burden imposed on all non-SME international businesses by the project's recommendations,' said another.

Meanwhile, one wrote the BEPS project may well have to be re-done and re-implemented at a later date: 'With CCCTB re-emerging and the ATAD, there is one positive outcome of Brexit! My personal view on BEPS is that there won't be enough co-ordinated approach between jurisdictions. Every country being allowed to implement the package (or parts of it), plus some unilateral measures (e.g. DPT) will lead to a fragmented global tax system. Anyone for BEPS2 in 2025?'

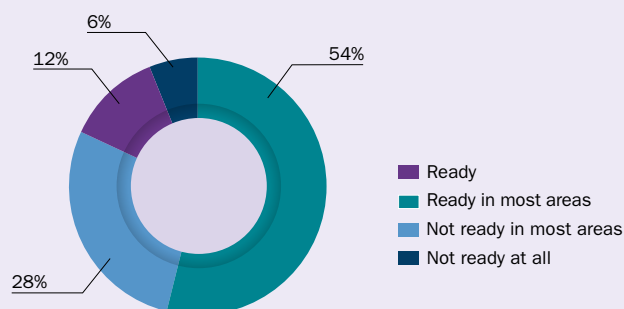
Q20 Given the perceived uncertainty from BEPS, how likely are you to pursue additional binding agreements such as advance pricing agreements or thin capitalisation agreements?



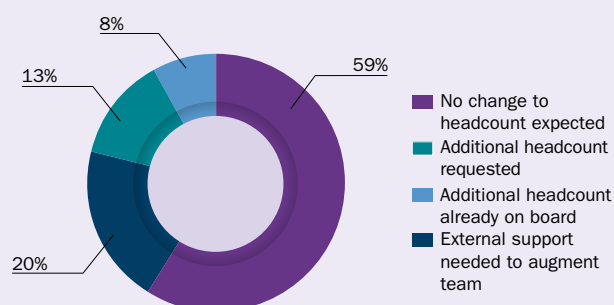
Q21 As a result of the BEPS Actions, is your company likely to undertake a group wide business transformation?



Q22 To what extent is your organisation ready for BEPS compliance?



Q23 Certain BEPS papers have increased the compliance burden on companies, as well as created work from revisiting policies. Do you see your tax team expanding in the coming year to handle these changes?



Our team is ready to discuss any tax matters you may be facing, or any matters arising from the survey – please see full details below

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About FTI Consulting



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Our senior management team members are leaders in their field, qualified in accounting, tax, law and surveying. We occupy a unique position in the market, by combining highly experienced tax experts and our market leading strategic communications, economics and technology teams. Our services include Transactions Tax, Transfer Pricing, Restructuring Tax Advisory, Tax Depreciation, Real Estate Tax, VAT & Indirect Tax Compliance, Supply Chain Alignment, Research & Development and Patent Box Relief, Financial Services Tax, Corporate Tax Compliance & Reporting, and Tourism Hospitality & Leisure Tax.

We are also proud to lead the FTI Global Tax Network, a global network which provides high quality tax advisory, transfer pricing and compliance services to large multinational clients across all industry sectors.

You can find out more about us, and the FTI Global Tax Network, at <http://fti.tax>

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