

European Business Initiative on Taxation (EBIT)

**Comments on the OECD Public Discussion Draft BEPS Action 12:
Mandatory Disclosure Rules**

EBIT's Members at the time of writing this submission: AIRBUS, BP, CATERPILLAR, DEUTSCHE LUFTHANSA, DIAGEO, GSK, INFORMA, JTI, LDC, MTU, NUTRECO, REED ELSEVIER, ROBECO, ROLLS-ROYCE, SAMSUNG ELECTRONICS, SCA, SCHRODERS and TUPPERWARE.

EBIT comments on the OECD's Public Discussion Draft on BEPS Action 12: Mandatory Disclosure Rules

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Submitted by email to: mandatorydisclosure@oecd.org

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Dear Achim,

EBIT is grateful for this opportunity to comment on the OECD's Public Discussion Draft on Action 12: Mandatory Disclosure Rules (the "Discussion Draft").

- EBIT Members generally welcome the OECD's efforts aimed at providing further detailed guidance on how a standard framework for Mandatory Disclosure Rules (MDR) could help to combat BEPS, although we have a number of concerns with the Discussion Draft, which we outline below.
- EBIT considers that the Discussion Draft should be more explicit as to whether the BEPS-44 should be obliged to implement MDR or whether this could actually remain optional.
- We believe that a proper gap analysis should be done first by the OECD around the adoption by the BEPS-44 countries of all the other BEPS Actions before any MDR can be implemented. We note the interlinkages of the MDR proposals with Action 5 (disclosure of rulings) and Action 13 (Transfer Pricing documentation and country-by-country reporting), which are not clearly dealt with in the Discussion Draft. This is bound to lead to unwelcome multiple and cross reporting requirements and duplication. EBIT Members urge the OECD to return to its original holistic view on BEPS, especially concerning MDR.
- EBIT suggests the OECD therefore defer the further development of the recommendations on MDR until the BEPS package as a whole has been implemented. This also makes sense given that the Discussion Draft is only based on inconclusive evidence of the success and merits of existing disclosure regimes, which in our view are based on limited available data. EBIT Members strongly believe that this is hardly a solid or proper basis for proposals which will have such far-reaching consequences for tax payers and tax administrations.
- Regarding the reporting of certain international tax arrangements, EBIT is concerned that the Discussion Draft does not differentiate between aggressive tax planning schemes and low-risk, benign transactions, and the need for advice in purely domestic and cross-border situations. This will lead to a disproportionate and excessive disclosure burden for benign transactions, which are the vast majority of cases. The MDR proposals will also lead to an unnecessary compliance burden, huge costs and capacity problems for many tax administrations which will have to review and analyse all disclosures (data overload). It is furthermore unclear to EBIT's Members what the impact will be of MDR when the

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reporting obligation falls partially on both the taxpayer and the adviser. We believe the Discussion Draft therefore needs extensive further consideration in order to make MDR more targeted, effective, proportionate, and workable for taxpayers and tax administrations. EBIT also urges the OECD to explain how the disclosed information will be shared amongst tax authorities through automatic exchange of information and what safeguards are applied to protect commercially sensitive information in line with countries' international obligations under EU law, the UN Charter of Human Rights, etc.

- EBIT notes that taxpayers and the BEPS-44 tax authorities have much more to gain from targeted MDR hallmarks and that these hallmarks should not be generic or even hypothetical, and should focus on and be limited initially purely to aggressive tax planning schemes which have no substance.
- EBIT Members welcome the reference in the Discussion Draft that work on MDR will be coordinated with the OECD's work on Cooperative Compliance, although the OECD does not elaborate on this. Cooperative Compliance is a more positive, alternative way of enforcing compliance and transparency, and for mitigating BEPS, through the work of the OECD and the FTA. If tax authorities and tax payers engage in voluntary Cooperative Compliance, and tax payers subsequently move toward regulatory self-assessment *en masse*, the very rationale for implementing full-blown MDR will no longer be there. Companies engaging in disclosure under Cooperative Compliance schemes should be exempted from the MDR, otherwise this would lead to duplication. In EBIT's view, the ongoing work by the OECD and FTA on Cooperative Compliance, which is progressing well as we understand it, would be another prudent reason to wait with the further roll-out of ambitious MDR as proposed in the Discussion Draft under the current tight BEPS Action Plan timeline. EBIT strongly believes that Cooperative Compliance has great potential to be a positive driver of change and to become the new norm internationally and MDR could act as a secondary line of defence against BEPS, provided the earlier mentioned concerns and suggested improvements as we noted above, are taken into account.
- Lastly, we would urge the OECD to make some reference as regards MDR in relation to the Human Rights Convention and the EU Charter of Human Rights, to which half of the BEPS-44 are subject.

EBIT trusts that the above comments are helpful and will be taken into account by the OECD in finalising its work in this area. We are committed to a constructive dialogue with the OECD and are always happy to discuss.

Yours sincerely,

European Business Initiative on Taxation – April 2015

For further information on EBIT, please contact its Secretariat via Bob van der Made, Telephone: + 31 6 130 96 296; Email: bob.van.der.made@nl.pwc.com).

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