

European Business Initiative on Taxation (EBIT)

**Comments on the OECD's Discussion Draft on
BEPS ACTION 1:
ADDRESS THE TAX CHALLENGES OF THE DIGITAL ECONOMY**

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

EBIT Comments on the OECD's Discussion Draft on BEPS Action 1: TAX CHALLENGES OF THE DIGITAL ECONOMY

Pascal Saint-Amans
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FRANCE

Brussels, April 2014

Dear Pascal,

EBIT welcomes this opportunity to provide comments to the OECD on the Discussion Draft on BEPS ACTION 1: Address the Tax Challenges of the Digital Economy (hereinafter: "Discussion Draft").

General Comments

EBIT agrees with the OECD in its Discussion Draft that "ring-fencing the digital economy as a separate sector and applying tax rules on that basis would be neither appropriate nor feasible" and that it will therefore be important for business that the neutrality principle is satisfied for any of the OECD's proposed potential solutions.

V. TACKLING BEPS IN THE DIGITAL ECONOMY

2. Restoring Taxation on Stateless Income

We note that the Discussion Draft in relation to direct tax is focused heavily on restoring taxation on "stateless income" and that this is expected to be delivered by various measures including on treaty abuse, hybrids, PEs, CFC rules etc. Indeed, EBIT believes that the answers to the difficulties with BEPS in relation to the digital economy lie in addressing the other action items rather than special measures for the digital economy.

VII. POTENTIAL OPTIONS TO ADDRESS THE BROADER TAX CHALLENGES RAISED BY THE DIGITAL ECONOMY

3. Options Proposed to the Task Force

3.1. Modifications to the Exemptions from Permanent Establishment Status

EBIT believes that it may be reasonable to revisit the borderline between what is to count as crossing the PE threshold rule and what is treated as not creating tax nexus for the purposes of the rule given the potential to operate in the market of another state without or with hardly any physical presence. However, EBIT considers that the variations of the proposed changes by the OECD to the exemptions of PE status for various items of a preparatory or auxiliary nature (Article 5, paragraph 4 of the Model Convention) suggested, are relevant to some (but probably a limited number of) digital businesses, but may potentially have a more significant impact on wider businesses, which does not seem an even-handed approach to the issue.

3.2. A New Nexus based on Significant Digital Presence

EBIT notes that the OECD is effectively presenting a new nexus band / PE threshold concept but leaves open the difficult related and contentious questions pertaining to how to attribute profits to a PE and value to data.

EBIT is of the opinion that these proposals are not helpful and should be rejected on the grounds that they are not practical. It will be extremely difficult to measure the tax base and extremely difficult to appropriately allocate either revenues or costs. There is a high risk of multiple double taxation as countries will not agree on the allocations.

3.4. Creation of a Withholding Tax on Digital Transactions

This option moves away from the trend in previous years in international taxation which was based on an international consensus to minimise or eliminate withholding taxes because taxes imposed on gross income do not take into account profitability and making cross-border expansion unprofitable. Imposing a new withholding tax could also mean that many non-digital or conventional businesses would become subject to withholding tax on digital products designed for a specifically targeted industry. EBIT would like to know which payments would become subject to tax and which rates would apply, and whether these decisions would be taken at local or international level?

EBIT is also concerned about the collection and enforcement issues for tax authorities related to the possible introduction of a myriad of domestic withholding taxes.

3.5. Consumption Tax Options

EBIT believes that consumption taxes will not provide a solution to the problem posed by BEPS. This is because the subject of consumption taxes is consumption whereas the issue with BEPS is the erosion or shifting of the tax base applicable to the business activities which generate the profits.

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 happy to discuss with and remain committed to a constructive dialogue with the OECD.

Yours sincerely,

The European Business Initiative on Taxation – April 2014

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

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