European Business Initiative on Taxation (EBIT)

EBIT Contribution to the 1 October 2013
BIAC Consultation on the BEPS Action Plan

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

Will Morris
Chair, BIAC Tax Committee
Business and Industry Advisory Committee to the OECD
13/15 Chaussée de la Muette
75016 Paris
France

Brussels, 30 September 2013

Dear Will,

The European Business Initiative on Taxation (EBIT)[1] first of all wishes to thank BIAC for the opportunity to provide a written contribution to BIAC's Consultation on 1 October 2013 on the OECD's 19 July 2013 BEPS Comprehensive Action Plan.

This letter sets out the general and more specific comments and concerns of EBIT about the evolving BEPS initiative. For EBIT's Key Messages and early general and specific concerns on BEPS we refer to EBIT's contribution to BIAC and the OECD of 5 April 2013.

Since its establishment in 2001, EBIT's aim has been to help eliminate remaining tax barriers in Europe and encourage the implementation of business-friendly solutions. EBIT's input to OECD and EU tax policy-makers and other key stakeholders such as BIAC is always rooted in the day-to-day practice and experience of EBIT's member companies.

COMMENTS AND CONCERNS ABOUT BEPS

- EBIT understands that an overall G20/OECD objective for BEPS is to level the playing field between domestic and multinational groups (MNCs). The BEPS project will be more than a diagnosis of the key issues and the possible solutions at treaty level and will in fact involve the coordination of domestic implementation of the 15 point Action Plan - a first for the OECD in the area of taxation;

- EBIT reiterates its grave concern that, with the deadlock in U.S. Congress on everything from the debt ceiling to tax reform, and, in particular, the fight over next year's federal budget, which may result in a possible partial government shutdown, the likelihood of any meaningful implementation of in particular the anti-hybrid mismatch arrangements and CFC Action Points (Action Points 2 and 3, respectively), is surely negligible. We believe that this will result in a much less level playing field for MNCs potentially unfairly favouring U.S. MNCs compared to others. U.S. MNCs remain free to foreign base erode without domestic counteraction, whilst EU based MNCs are seriously competitively disadvantaged by European delivery of implementation of BEPS and a tougher application of the EU state aid rules;

- In EBIT's view, the timetable for Action Point 1 on the Digital Economy and taxation looks leisurely compared to most of the rest of the Action Plan, with just an initial report due in September 2014. So, if the objective here is to look to level the playing field with conventional business, the differential treatment (unless justifiable) is going to subsist for several years longer. It is admittedly a difficult area, but, coupled with point 1 above it doesn't seem to be that even-handed. EBIT notes the intentions of the EU to launch

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a similar study within the EU, which will be conducted in parallel with the OECD's initial report, but with possibly a shorter deadline;

- EBIT understands that 42 countries have signed up to BEPS, including all the G20. We are concerned whether the OECD has the resources to cope with coordination of implementation across 42 countries (or maybe 41 minus the U.S.). We consider that monitoring and catalysing implementation in some of the BRICs would be a lifetime job in itself. The existence of additional subnational level taxes that MNCs need to pay in certain locations and a source-based approach operated by some countries complicates matters further;

- In addition to the above point, EBIT is concerned about the impatience of politicians with regard to progress with the BEPS Action Plan and the high risk of unilateral actions by some if not many of the 42 participating countries. How can the OECD police this?;

- EBIT believes that the recognition by the OECD of group synergies is very welcome but the distinction drawn between "passive" reliance on group synergies and concerted action will be extremely difficult to define/police fairly. Although this point mainly relates to the parallel OECD Revised Discussion Draft on Transfer Pricing intangibles, it also potentially has a bearing on Action Point 8 on moving intangibles around a group;

- The comfort offered by the OECD that the global country-by-country reporting template to be provided by all MNCs to fiscs should be only a risk assessment tool and shouldn't be used to make Transfer Pricing adjustments is welcomed by EBIT, but what safeguards would be put in place and how will this be policed?;

- EBIT wonders whether there is a hierarchy with regard to the 15 point Action Plan. EBIT wishes to underline in particular the importance to international business of Action 14 on MAPs and dispute resolution and calls on the OECD to lead the way and ensure real progress well before the rather loose September 2015 deadline.

EBIT trusts that the above comments are helpful for BIAC and will be taken into account in the OECD's decision-making on BEPS going forward.

Yours sincerely,

The European Business Initiative on Taxation – September 2013

For further information on EBIT, please contact its Secretariat via Bob van der Made, Tel: + 31 (0) 6 130 96 296; Email: bob.van.der.made@nl.pwc.com).

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