OECD BEPS Action Plan – BIAC Summary

July 19, 2013

Methodology

The OECD recognises:

- The need to engage the G20 countries that are not OECD countries (as Associates).
- The need to transparently consult with business and society, including BIAC, TUAC, NGOs, think tanks and academia. High level policy dialogues will be organised on an annual basis.

The OECD will draw on the expertise of the CFA and its subsidiary bodies, which will set up small focus groups for the actions they are responsible for. The focus groups will work remotely and actively, and prepare drafts for their respective subsidiary bodies for approval

Timing

No set dates for delivery of any of the actions, although section B and Annex 1 include expected timing. The actions below are marked in line with these expectations as follows:

12-18 months	Actions more likely to be delivered in 12-18 months.
12-24 months	Actions more likely to be delivered in part in 12-18 months, and in full within two years.
24 months	Actions to be delivered within two years.
24 months +	Actions to be delivered in part within two years, and in part may require more than two years.
More than 24 months	Actions that may require more than two years.

The Action Plan

1 *12-18 months*

Address the tax challenges of the digital economy
The OECD will lead an examination of various business models used in the digital sector and seek to identify the main difficulties posed through:

- Ability to have a 'digital presence' without being liable to tax;
- Attribution of value from the generation of marketable location-relevant data;
- Characterisation of income derived from new business models;
- Application of related source rules; and
- How to ensure effective collection of VAT/GST.

2 *12-18 months*

Neutralise the effects of hybrid mismatch arrangements
The OECD will develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise double non-taxation, double deduction and long-term deferral. This may include:

- Changes to OECD model convention to ensure hybrid entities (and dual residents) cannot obtain treaty benefits unduly;
- Recommendations for domestic law provisions that would:
  - Prevent exemption or non-recognition for payments that are deductible by the payor;
  - Deny a deduction for a payment that is not includable in income by the recipient (or subject to tax under CFC/similar rules);
  - Deny a deduction for a payment that is also deductible in another jurisdiction; and
- Guidance on coordinated tie-breaker rules.

Special attention will be given to the interaction between possible future changes in domestic law and the Model Tax Convention.
The OECD recognises the need to coordinate this Action with Actions 3 and 4.

3 *24 months*

Strengthen CFC rules
The OECD will develop recommendations regarding the design of CFC rules.
The OECD recognises the need to coordinate this Action with Actions 2 and 4.

4 *24 months*

Limit Base Erosion via Interest Deductions and Other Financial Payments

The OECD to develop recommendations regarding:

- Best practices in the design of rules to prevent base erosion through excessive deductions; and
- TP guidance on pricing of related party financial transactions (incl. guarantees, derivatives, internal derivatives, captives and other insurance arrangements).

The OECD recognises the need to coordinate this Action with Actions 2 and 3.

5 *24 months +*

Counter harmful tax practices more effectively taking into account transparency and substance

Refocus work of Forum on Harmful Tax Practices (FHTP) to prioritise improving transparency (incl. spontaneous exchange of information on rulings related to preferential regimes & requiring substantial activity in preferential regimes) & to holistically evaluate tax regimes in the BEPS context. FHTP to:

- Engage with non-OECD members on basis of existing framework.
- Consider revisions and additions to existing framework.

6 *12-18 months*

Prevent Treaty Abuse

The OECD will develop model treaty provisions and recommendations regarding domestic rules to prevent granting of treaty benefits in inappropriate circumstances.

The OECD will also clarify that tax treaties are not intended to be used to create double non-taxation and identify policy considerations that treaty partners should be taken into account before entering into tax treaties.

7 *24 months*

Preventing the artificial avoidance of PE status

The OECD will consider changes to definition of PE to prevent artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and specific activity exemptions (incl. associated attribution issues)

8 *12- 24 months*

Assure that TP outcomes are in line with value creation – *Intangibles*

The OECD will develop rules to prevent profit shifting by moving intangibles by:

- Adopting a broad and clearly delineated definition of intangibles;
- Ensuring profits are appropriately allocated in accordance with value creation;
- Creating special guidelines for transfers of hard-to-value intangibles; and
- Revisiting guidance on cost contribution arrangements.

9 *24 months*

Assure that TP outcomes are in line with value creation – *Risk & capital*

The OECD will develop rules to prevent profit shifting by transferring risks/allocating capital by:

- Adopting TP rules so that returns do not accrue to an entity solely because it bears contractual risk or provides capital; and
- Aligning returns with value creation.

10 *24 months*

Assure that TP outcomes are in line with value creation – *Other high-risk transactions*

The OECD will develop rules to prevent profit shifting by entering into transactions that would not/only rarely occur between unrelated parties by:

- Clarifying circumstances in which transactions can be recharacterised;
- Clarifying the application of TP methods (in particular profit splits with respect to global value chains); and
- Providing protection against common types of base eroding payments, such as management fees and head office expenses.

11 *24 months +*

Establish methodologies to collect and analyse data on BEPS

The OECD will develop recommendations regarding indications of the scale of BEPS and ensure that tools are available to evaluate the actions taken to address BEPS on an on-going basis.

12 *24 months*

Require taxpayers to disclose their aggressive tax planning arrangements

The OECD will develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements or structures taking into consideration the administrative costs to tax authorities and business of such recommendations. The work will be completed in coordination with work on cooperative compliance, and will focus on:

- A modular design that allows maximum consistency but also to address country specific risk;
- A wider definition of 'tax benefit'; and
- Enhanced models for sharing international tax schemes between tax authorities.

13 *12-18 months*

Re-examining transfer pricing documentation:

The OECD will develop rules regarding TP documentation to enhance transparency, taking into consideration the compliance costs for business. This may include rules requiring disclosure to governments of:

- Global allocation of income; and
- Economic activity and taxes paid among countries.

14 *24 months*

Making dispute resolution mechanisms more effective

The OECD will develop solutions to address:

- Absence of arbitration provisions in most treaties; and
- The fact that MAP and arbitration may be denied in some cases.

15 *More than 24 months*

Develop a Multilateral Instrument

The OECD will analyse the tax and public international law issues related to the development of a multilateral instrument, reflecting the need to adapt quickly to the rapidly evolving nature of the global economy.