OECD webcast on the BEPS Action Plan: Update on 2014 deliverables

January 24, 2014

In brief

On January 23, 2014, the Organisation for Economic Cooperation and Development (the OECD) held a webcast providing updates and insight into its ongoing Base Erosion and Profit Shifting (BEPS) project. The OECD's presentation follows the release of its Action Plan on Base Erosion and Profit Shifting on July 19, 2013, which addressed the perceived flaws in international tax rules that were discussed in the OECD's February 2013 BEPS Report. The OECD's presentation reiterated its commitment to developing guidance for counteracting BEPS, provided updates regarding the progress of specific portions of its Action Plan, and gave an opportunity for stakeholders to ask questions. (For prior coverage regarding the BEPS initiative, see our February 13, 2013 and July 19, 2013 articles).

In detail

Leading the presentation for the OECD was Pascal Saint-Amans, Director, Centre for Tax Policy and Administration (CTPA). Joining Mr. Saint-Amans were Raffaele Russo, Head of BEPS Project, CTPA; Marlies de Ruiter, Head of the Tax Treaty, Transfer Pricing and Financial Transactions Division, CTPA; and Achim Pross Head of the International Co-operation and Tax Administration Division, CTPA. The OECD began its presentation by reiterating that while the OECD has historically focused on the development of common standards to eliminate double taxation for cross border investment, there is now a recognition that double non-taxation resulting from BEPS should also be addressed. The OECD further noted that the BEPS initiative comes at a time of unprecedented public attention paid to the corporate tax affairs of multinational entities (MNEs). Further, the OECD noted the strong support it enjoys from the G20 to address BEPS.

The presentation then noted that BEPS arises because "MNEs are often able to artificially separate the allocation of their taxable profits from the jurisdictions in which these profits arise." As a consequence of this separation, income can become "stateless" as it goes untaxed in any jurisdiction. The result is a significant reduction in corporate income tax paid by MNEs in the jurisdictions in which they operate, which affects competition, distorts investment decisions, and reduces overall trust in the integrity of the tax system. The OECD also acknowledged that most tax planning which results in BEPS is legal under the existing rules and that governments which are unhappy with the results are free to change their rules.

Observation: A greater emphasis on aligning the allocation of income with the location of the performance of functions has been a consistent theme in recent OECD publications. The notion of aligning "intangible related returns" and "people functions" is a significant concept in the OECD's Revised Discussion Draft on Transfer Pricing Aspects of Intangibles, published July 30, 2013. Also, the acknowledgement that the existing international tax rules enable BEPS hints at the fundamental tension inherent in the BEPS project, that subjective judgment is involved in determining whether any provision is an unintended "loophole" or an intentionally-created incentive to attract business.

Increased Participation

The OECD also noted that no single country can effectively address BEPS. Instead, the OECD argues that multilateral action is a prerequisite for a comprehensive solution to BEPS issues. The OECD then stated that all members of the G20, including those which are not full members of the OECD, are participating in the BEPS initiative on an equal footing with OECD members, along with Colombia and Latvia. With respect to engagement with developing countries, the OECD noted that their input is obtained through several mechanisms, including (i) the Task Force on Tax and Development, (ii) the OECD's Global Relations Programme, (iii) Global Fora on Tax Treaties, on Transfer Pricing, and on VAT, and (iv) the United Nations.

Non-governmental stakeholders will also continue to have opportunities to participate in the BEPS initiative. The OECD plans to continue to reach out to its Business and Industry Advisory Committee (BIAC) and Trade Union Advisory Committee (TUAC). Additionally, the OECD will continue to issue discussion drafts, request public comment, and hold public consultations on the various items enumerated in its BEPS Action Plan, along with future webcasts.

Update on 2014 deliverables

Most importantly, the OECD also provided an update on the deliverables expected in 2014, including the dates of the next meetings of the relevant working parties, the release of discussion drafts and public consultations, and finalization of the relevant reports:

The digital economy

- Next meeting – February 2014
- Discussion Draft –March 2014
- Public Consultation – April 2014
- Report finalized by September 2014

Treaty abuse

- Next meeting – February/March 2014
- Discussion Draft – March 2014
- Public Consultation – April or May 2014

Hybrid arrangements

- Held meetings in October 2013 and December 2013
- Discussion Draft – April 2014
- Public Consultation – May 2014

Intangibles transfer pricing (TP)

- First draft – June 2012
- Second draft – July 2013
- Report finalized during Working Party 6 meetings in March and May 2014

Harmful tax practices

- Next meetings – February/May 2014
- Review of member country regimes by September 2014
- Review of G20, non-OECD members started before September 2014
- Report on review of member country regimes published by September 2014

TP documentation

- Discussion Draft on Chapter V (Documentation) of OECD Guidelines, including Country-by-Country Reporting Template – February 2014
- Public Consultation – March 2014
- Finalize update to Chapter V – May 2014

Multilateral instrument report

- Work undertaken by Secretariat with input from Working Party 1
- Goal of implementing BEPS solutions quickly
- Finalization of report – September 2014

Observation: The tentative time frames for the release of discussion drafts, deadlines for comments, and public consultations dealing with transfer pricing documentation and country-by-country reporting, the tax challenges of the digital economy, hybrid mismatch arrangements, and tax treaty abuse were already previewed in a calendar for planned stakeholder input released by the OECD on December 3, 2013. (See our article dated December 3, 2013). The information regarding the time frames for the work to be done on harmful tax practices and the multilateral instrument, however, is new.

The Takeaway

While the OECD repeated themes from prior documents and discussions and provided little information during its webcast that had not previously been disclosed, the important message conveyed is that the BEPS project is continuing on schedule, consistent with its extremely ambitious two-year time frame. Discussion drafts will be released, comments received, public consultations held, and reports finalized, all in a matter of mere months. For all stakeholders wishing to influence the process, time is of the essence. The focus on OECD and G20 countries acting together in a coordinated fashion is welcome. However, the ability of the OECD to achieve consensus on substantive changes will be tested as never before, and the danger exists that governments will take unilateral action without waiting for the OECD to finish its work, resulting in double taxation and impediments to cross-border trade and investment.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Transfer Pricing and Tax Controversy

Garry Stone, *Chicago*
+1 312 298 2464
garry.stone@us.pwc.com

Richard Collier, *London*
+44 0 20 7212 3395
richard.collier@uk.pwc.com

Tony Clemens, *Sydney*
+61 2 8266 2979
tony.e.clemens@au.pwc.com

Isabel Verlinden, *Brussels*
+32 2 710 44 22
isabel.verlinden@pwc.be

Aamer Rafiq, *London*
+44 20 7212 8830
aamer.rafiq@uk.pwc.com

Adam Katz, *New York*
+1 202 414 4650
adam.katz@us.pwc.com

David Ernick, *Washington DC*
+1 202 414 1491
david.ernick@us.pwc.com

Kathryn Horton O'Brien, *Washington DC*
+1 202 414 4402
kathryn.obrien@us.pwc.com

Lili Kazemi, *Washington DC*
+1 202 346 5252
golaleh.kazemi@us.pwc.com

Noel de Santos, *Washington DC*
+1 202 312 7943
noel.desantos@us.pwc.com

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