Dear Mike and Pascal,

Thanks to both of you, and to the representatives of the Committee on Fiscal Affairs (CFA), for attending and contributing to the second BIAC Business Dialogue with the OECD on BEPS on 1 October 2013 in Paris. We greatly appreciate that you and your colleagues gave business stakeholders so much of your time to discuss this important project.

The meeting was an important opportunity for us to further develop the open and transparent relationship between business and the OECD, which will be especially important as the BEPS process continues. Input from all stakeholders will be valuable, but providing perspectives on new business models, on globalisation and on the practical challenges of day to day compliance with tax rules are areas where business can particularly contribute.

As we have discussed in the past, business is glad that the BEPS project is being led by the OECD. The collective analytical capabilities, well-established processes, and ability to pull together a wide group of countries (beyond the OECD membership), makes the OECD uniquely suited to delivering proportionate and considered multilateral solutions, and prevent potentially damaging, uncoordinated unilateral action by individual countries.

We appreciate the OECD’s hard work to maintain and improve the principled approaches that have been developed over many decades. We recognise the significant effort that will be required to preserve consensus which will also help to avoid unilateral action.

We very much value the opportunity to engage with OECD and G20 governments on these critical issues and we are determined to engage constructively in the BEPS process – wherever, whenever and however would be useful – in order to restore trust and confidence in the international tax system.

Comments from the 2nd International Business Dialogue

At the meeting we confirmed that businesses completely understand the political mandate underpinning the BEPS process, and that this is not a normal OECD consultation. We recognise that action will be taken and international principles will be adjusted. We are committed to being a constructive contributor to the project.

We welcomed a CFA comment at the meeting that it is helpful for business to be heavily engaged in the process, and that it is in both business’ and governments’ interest that we create single standards.

We also support several comments made by Secretariat concerning the need to continue with the OECD’s core business of promoting the cross border investment which is necessary for the creation of wealth, growth and jobs. We agree that protectionism should be avoided and that the goal of avoiding double-taxation should be maintained.

Business is concerned about the increased risk of double taxation due to new rules, and we were reassured to hear about the OECD’s BEPS Action on MAP and arbitration. This makes it easier for business to engage fully with the process. Business hopes for, and can support, consensus on actions and ‘bright line’ international rules, when the risk of double taxation is removed.

Business is willing and able to assist the OECD in developing a definition of substance, although we would note that “substance” may not have the same meaning in relation to every individual action plan item; and also that “substance” includes a number of factors, not just “people”. 
As we stated at the meeting, we would be happy to arrange a third International Business Dialogue meeting or to arrange for smaller focus group meetings to fit with the OECD agenda.

Finally, we also believe that “Cooperative Compliance” (as articulated by the Forum on Tax Administration) can play an important role in the BEPS process. Greater trust will lead to “soft law” solutions, which may obviate some of the need for complex “hard law” solutions.

**Written business comments on the BEPS Action Plan**

In advance of the meeting, BIAC issued a set of questions to its members relating to the 15 OECD BEPS Actions and requested written responses. The BIAC questions were intended to help frame and focus the business comments on the primary issues. We also requested that business share examples of fact patterns and business models with the OECD in order to explain how businesses operate and how we approach some of the issues identified in the BEPS Action Plan.

After the meeting, we asked business to submit (or revisit earlier) written comments and to share them with BIAC for submission to the OECD. You will find enclosed a substantial number of documents from business providing comments on various aspects of the OECD BEPS Action Plan.

To make this significant volume of information more useful, we have appended the comments received to this letter, setting them out under each of the OECD BEPS Actions. The various OECD Working Parties should hopefully find this useful to target the information and contributions that are most relevant.

We note in this regard that the comments include some responses to the BIAC questions (noted above), detailed comments on the OECD’s BEPS Actions and also explanations of business models, practices and industries. BIAC is committed to contributing the broadest range of comments possible and therefore the information appended to this letter does not currently represent a BIAC consensus view.

We note that many of the business contributors have requested that their comments not be made public because of the commercial sensitivity of some of the information submitted, and some other contributors have already requested their comments be submitted on an anonymous basis. We will release this cover letter, but please treat the enclosed documents as confidential and do not distribute outside of the OECD CFA and relevant Working Parties. We are working on a version that can be made public, and will send that to you shortly.

**Next steps**

Several government representatives at the meeting mentioned specific periods of time where business would be consulted on the BEPS Actions, and BIAC appreciates this commitment. It did appear from those comments that the OECD is expecting to follow its traditional approach of public consultation, requesting comments from various stakeholder groups after draft proposals have been prepared. We would like to reiterate our willingness to engage with the OECD in a more dynamic way throughout the BEPS process, for example; by contributing to policy discussions. We are prepared to be flexible and reactive in our interactions with the OECD, and stand ready to work to the OECD’s tight timeframes.

We thank you and the CFA again for openly engaging with BIAC and the wider business community. We look forward to working together over the coming months as the work on the BEPS Actions is advanced and also throughout the implementation stage. Please do let me know how and when we can help as the CFA continues its work on this important project.

Sincerely,

Will Morris
Chair, BIAC Tax Committee

CC:  Mr. Masatsugu Asakawa
     Chair, Committee on Fiscal Affairs, OECD
     Deputy Vice Minister for International Affairs
     Japanese Ministry of Finance