

Paris, September 19, 2014

BIAC response to the OECD request for input on BEPS Action 11:

Establish methodologies to collect and analyse data on BEPS and the actions to address it

1. The Business and Industry Advisory Committee (“BIAC”) thanks Working Party 2 (“WP2”) for the opportunity to respond to the OECD’s request for input on BEPS Action 11 to establish methodologies to collect and analyse data on BEPS and the actions to address it.
2. BIAC notes the technical nature of the request, and believes that economists and governmental bodies may be best placed to provide the detailed input required at this stage. That being said, we have identified a number of comments that we would like to share at this stage, prior to the development of specific proposals by WP2.
3. As a general comment on the scoping of other BEPS Actions, we would welcome close collaboration between WP2 and the OECD’s other Working Parties so that data and analysis is made available to assist those Working Parties in clearly and tightly defining and identifying the problems that require targeted solutions.
4. We understand there will be a full consultation process when initial proposals have been developed and we look forward to providing a more detailed response to those proposals.

New vs. existing data

5. Section D of the request for input asks for “*recommendations for new types of data, including types of data that taxpayers should provide to tax administrators, to be collected as part of future indicators*”. BIAC supports the use of more sophisticated and consistent techniques by tax authorities to assess both micro and macro level data. However, we do not believe that any additional or new data should be collected from taxpayers at this stage.
6. Through the OECD’s BEPS Action Plan, taxpayers will be asked to produce and provide substantial amounts of additional information to tax authorities through the Country-by-Country Reporting (“CbCR”) template and Transfer Pricing Documentation (“TPD”) requirements under Action 13. In addition, Action 12 on disclosure requirements will require additional reporting of certain transactions. Apart from these two actions, where additional reporting will be specifically mandated, a number of other actions will also require taxpayers to prepare and compile new and additional types of information to prove compliance with the proposed laws and guidelines. On top of the BEPS project, Multinational Enterprises (“MNEs”) also face an ever growing number of reporting requirements from other sources, such as FATCA¹, CRD IV² and the European disclosure

¹ Foreign Account Tax Compliance Act

² Capital Requirements Directive IV

requirements for extractive and logging/forestry industries³ for example. We strongly advise against adding to the substantial burden faced by MNEs, especially before the usefulness of all this new data has been established. We believe that existing data and new data provided by other BEPS Actions should be sufficient to allow for extensive analysis. However, if new data is determined to be necessary, we would encourage the OECD to provide an analysis as to why existing data cannot satisfy the need in order to avoid duplicative requirements and additional costs. In addition, such requirements should permit companies the flexibility to provide data in a format that is not already prepared (much like the flexibility we have seen provided under Action 13 with respect to the source of financial data).

7. We welcome the acknowledgement in the request for input that, through the collection of data, there is a *“need to maintain the confidentiality of taxpayers and minimise administrative and compliance costs upon taxpayers and tax administrations”*. A full impact assessment taking into account the cost and burden for taxpayers and tax administrations should be undertaken before any proposals are finalised. Any economic costs should be more than outweighed by the benefit. We note in this regard that several organisations have developed estimates of the cost of compliance with the OECD’s latest CbCR proposals (through the time and systems changes that will be required). Those estimated costs are very significant, and are a substantial concern to the business community. We also note that the economic cost will not only be limited to the cost of complying with reporting requirements, but also the increased cost to tax administrations and taxpayers of additional cross-border disputes and litigation.
8. We believe that Action 11 provides an excellent opportunity to reach international agreement on how existing micro and macro data is gathered and used. This should include an exploration of existing sources of information (including publically available commercial databases) and the best automated tools that can be used to accurately mine and assess that data. Developing an inventory of what governments already collect may also be useful in developing best practices of how data can be used. We also believe that it should be made clear to taxpayers how governments will use micro and macro level data to ensure accountability.

Developing a consistent framework

9. In relation to some of the more specific items mentioned in the request, the difficulty of achieving an internationally consistent (and workable) approach would be significant. For example, section B.3. of the request for input identifies Effective Tax Rates (“ETRs”) as a possible useful indicator and asks for proposals on which specific ETRs should be used. We note in this respect that expanded ETR data collection would impose a substantial additional burden for business as concepts will vary across countries, companies and industries. It would be a significant challenge for the OECD to develop a consistent and meaningful ETR definition that would contribute to understanding whether BEPS Actions are effective. Many companies already publish ETR calculations, and in a number of cases, provide forward guidance on how they believe their ETR may change over time. To the extent that ETR data is used, it should be gathered from information that is already calculated and published.
10. In order to effectively compare specific data items, it would be necessary to develop consistent and useful international definitions of the data required. Such definitions would have to take into account the various different ways that MNEs gather and report what might be considered to be the same or similar types of data. Imposing a stringent definition for reporting items might well disadvantage large sectors of the economy if substantial investment is required in terms of systems or information reporting processes to comply.

Action 11, beyond the BEPS project

11. As noted above, various Actions under the BEPS project will result in taxpayers gathering and providing many new types of additional data to tax authorities. Rather than being a discreet project aimed at delivering a data solution within the time parameters of the BEPS project, we believe that

³ EU Accounting Directive: Chapter 10: Extractive industries reporting - Government

work on Action 11 should continue beyond the current BEPS project time-frame to monitor the impact of the data collected through the other Actions, develop new tools (where necessary and relevant) over time, and promote the international adoption of best practices for the gathering and use micro and macro level data. This should contribute to the development of more sophisticated, accurate and consistent approaches to data collection and use across governments.

12. Part of this ongoing role should include assisting member governments to assess the impact of OECD BEPS proposals that will be implemented through local laws. We believe that guidelines should be developed to assist countries in determining whether the proposals (and new laws) have been successful in tackling BEPS concerns, but that methodologies should also be developed to understand the broader impact on trade, investment, and double taxation.
13. We strongly believe that the promotion of cross-border trade and investment and the mitigation of double taxation should remain central to the OECD's work.

Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Will Morris". The signature is written in a cursive, slightly slanted style.

Will Morris
Chair, BIAC Tax Committee