

## Activity Update

Fall 2014



**BIAC** THE VOICE OF  
BUSINESS AT THE OECD

BUSINESS AND INDUSTRY ADVISORY COMMITTEE TO THE OECD (BIAC)



### Tax Committee leadership

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William Morris  
Senior International Tax Counsel & Director –  
Global Tax Policy  
GE International Inc.  
(United Kingdom)

#### Deputy Chair

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Executive Vice President Taxation and Corporate  
Structure  
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Business representatives from France, Germany,  
Israel, Italy, Japan, Netherlands, Sweden,  
Switzerland, United States

The OECD BEPS Action Plan is available  
for download [here](#).

## OECD Base Erosion and Profit Shifting (BEPS) Action Plan

### What is the BEPS Action Plan?

The OECD BEPS Action Plan was endorsed by G20 Finance Ministers on 19 July 2013 in Moscow in response to growing public concern around the tax affairs of international groups.

In the BEPS Action Plan, the OECD sets out for itself 15 areas of work to be undertaken across a range of tax issues, including digital economy, transfer pricing, coherence of corporate income taxation, as well as transparency, certainty and predictability of taxation.

The timeline for BEPS is ambitious aiming for completion by December 2015. This is an unprecedented schedule with extremely tight deadlines for each action item to be addressed.

## Why is the BEPS project important?

The BEPS Project represents an opportunity to restore public and private sector confidence in the corporate taxation system, by undertaking review and analysis to ensure that tax rules are up to date, without dampening the potential for private sector growth and job creation through cross-border trade and investment.

BEPS is ultimately about competitiveness, and importantly ensuring the relevance of the OECD international tax standards.

**BIAC believes that the OECD is the right place for the BEPS analysis to take place.** If as a result of the analysis rules are changed, we believe that these changes must be done on the broadest possible international basis through G20 and beyond, to ensure a level playing field in the global economy.

This will be essential to harness the greatest potential for trade and investment by all players in the global economy – developed and developing countries alike.

In this context, BIAC believe that the BEPS project can only reach a successful outcome with the full and active engagement of business. BIAC looks forward to continued engagement with the OECD on this initiative.

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## BIAC's engagement with the OECD and national governments on the BEPS Project

Business engagement is necessary for a successful outcome to the BEPS project. BIAC is working to coordinate this engagement with its members. In this aspect, BIAC has outlined to the OECD a number of broad issues that will be important as the BEPS project continues:

- **Timing:** Despite the demanding timeframes, it will be important to ensure that quality final policy recommendations are developed with broad consensus across countries.
- **Success and scoping:** The scope of each Action should be narrowly targeted to increase the chance of developing the necessary consensus in the time allowed. Success will be a set of detailed, well-defined proposals that are implemented consistently. We should avoid overly-broad proposals that countries might implement differently.
- **Clarity on national interests:** We support transparency regarding national interests to ensure that realistic agreements can be reached.
- **Time for review:** We promote the inclusion of a review process to ensure that the links between the different Actions are identified and considered.

These are fundamental issues. Addressing them will be necessary to ensure that the final recommendations of the BEPS project are well designed and consistently applied. This will help ensure the development of a predictable international tax environment that is conducive to international trade and investment.

# The 15 BEPS Action Items



*More than ever,  
business needs a  
stable and  
predictable tax  
environment  
conducive to  
international trade  
and investment to  
foster sustainable  
growth for the  
benefit of all.*

**Action 1:** Address the tax challenges of the digital economy (2014/2015)

*Examine various business models and identify the main difficulties posed to the application of existing international tax rules.*

**Action 2:** Neutralise the effects of hybrid mismatch arrangements (2014/2015)

*Develop model treaty provisions and recommendations regarding domestic rules to neutralise the effect of hybrid instruments and entities.*

**Action 3:** Strengthen CFC rules (2015)

*Develop recommendations regarding CFC rules.*

**Action 4:** Limit base erosion via interest deductions and other financial payments (2015)

*Develop recommendations regarding domestic rules to prevent base erosions through excessive interest deductions. The OECD recognises potential interactions with Actions 2 and 3.*

**Action 5:** Counter harmful tax practices more effectively taking into account transparency and substance (2014/2015)

*Refocus work on Forum on Harmful Tax Practices (FHTP) to prioritise improving transparency (including spontaneous exchange of information on rulings related to preferential regimes) and to holistically evaluate tax regimes in the BEPS context.*

**Action 6:** Prevent treaty abuse (2014/2015)

*Develop model treaty provisions and recommendations regarding domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. The OECD will clarify that tax treaties are not intended to be used to create double non-taxation. The OECD recognises potential interactions with Action 2.*

**Action 7:** Preventing the artificial avoidance of PE status (2015)

*Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemption.*

**Action 8, 9 & 10:** Assure that transfer pricing outcomes are in line with value creation for intangibles (2014/2015), risks & capital (2015), and other high-risk transactions (2015)

*Develop transfer pricing rules to prevent profit shifting through pricing of intangibles, risk & capital, and other high risk transactions.*

**Action 11:** Establish methodologies to collect and address data on BEPS and the actions to address it (2015)

*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.*

**Action 12:** Require taxpayers to disclose their aggressive tax planning arrangements (2015)

*Develop recommendations regarding the mandatory disclosure of aggressive or abusive transactions, arrangements or structures.*

**Action 13:** Re-examine transfer pricing documentation (2014)

*Develop rules regarding transfer pricing documentation to enhance transparency, taking into consideration the compliance costs for business.*

**Action 14:** Make dispute resolution mechanisms more effective (2015)

*Develop solutions to address the absence of arbitration provisions in most treaties and the fact that MAP/arbitration may be denied.*

**Action 15:** Develop a Multilateral Instrument (2014/2015)

*Analyse the feasibility of developing a multilateral instrument, reflecting the need to adapt quickly to the rapidly evolving nature of the global economy.*

***BIAC believes that a successful outcome of the BEPS project depends upon the effective engagement and continued dialogue with business.***



# Key BEPS Action Plan Deliverables

## OECD BEPS Action Plan

### 2014 deliverables

*The 2014 BEPS consensus reports and instruments cover*

**Action 1:** Addressing the Tax Challenges of the Digital Economy

**Action 2:** Neutralising the Effects of Hybrid Mismatch Arrangements

**Action 5:** Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance

**Action 6:** Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

**Action 8:** Guidance on Transfer Pricing Aspects of Intangibles

**Action 13:** Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

**Action 15:** Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

## Key BEPS Action Plan deliverables

On 16 September 2014, the OECD released its first set of **seven deliverables** of the BEPS project including two final reports (Action 1 and Action 15), one interim report (Action 5) and four reports containing draft recommendations (Actions 2, 6, 8 and 13). The 2014 deliverables were endorsed by the G20 Finance Ministers in September 2014.

The OECD provided an overview of the new reports and recommendations to BIAAC Tax Committee Chairman, Will Morris and Members of the BIAAC Tax Bureau at an OECD briefing conducted just prior to the release of the BEPS documents.

In response to these documents, BIAAC stated that we broadly welcome the first set of BEPS consensus reports and recommendations released by the OECD.

BIAAC also welcomes the acknowledgment from the OECD that the proposal contained within the seven deliverables are not yet formally finalised as they may be impacted by some of the decisions taken with respect to the 2015 deliverables with which they interact.

In reviewing the 2014 BEPS deliverables, BIAAC notes that a number of key business positions submitted to the OECD have been taken up in the BEPS reports

notably that ring fencing of the digital economy is not deemed appropriate and information submitted to tax authorities as part of country-by-country reporting will not be made public.

BIAC cautions against governments acting too rapidly to implement recommendations into domestic tax legislation until further implementing guidance has been provided by the OECD and interactions with future action items are understood as this would risk creating a series of disparate rules that could negatively impact trade and investment.

BIAC will continue to engage with the OECD and governments throughout 2015 to ensure that critical issues are addressed in the implementation rules.



## 2015 BEPS Deliverables

### 2015 BEPS Deliverables

#### *BEPS Actions that will be addressed in 2015*

**Action 1:** Address the tax challenges of the digital economy (**continued from 2014**)

**Action 3:** Strengthen CFC rules

**Action 4:** Limit base erosion via interest deductions and other financial payments

**Action 5:** Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance (**continued from 2014**)

**Action 7:** Preventing the artificial avoidance of PE status

On 1 October 2014, the OECD released its BEPS Project timetable for planned stakeholders' inputs. We highlight that the timeframe for the submission of written comments are exceptionally short. Given this, BIAC anticipates that there will only be scope for limited consultation with business and other stakeholders when the Discussion Drafts are released.

In advance of the release of the Discussion Drafts, BIAC has asked its members for inputs on Transfer Pricing related BEPS actions (click [here](#)) and Best Practices for Mutual Agreement Procedures (click [here](#)). BIAC will gather the responses and identify thematic areas where BIAC Members have strong opinions. BIAC will then use the committee contributions to develop a position paper that could be shared with the OECD and with the BIAC membership in discussions with national governments.

**Action 8, 9 & 10:** Assure that transfer pricing outcomes are in line with value creation for intangibles **(continued from 2014)**, risks and capital, and other high-risk transactions

**Action 11:** Establish methodologies to collect and address data on BEPS and the actions to address it

**Action 12:** Require taxpayers to disclose their aggressive tax planning arrangements

**Action 14:** Making dispute resolution mechanisms more effective

**Action 15:** Developing a Multilateral Instrument **(continued from 2014)**

The OECD/G20 BEPS Project timetable is available for download [here](#).

In continuation of BIAAC's engagement with the OECD and national governments in 2014, BIAAC also intends to actively contribute to the OECD's work on the BEPS project throughout 2015 such as providing written submissions to the OECD's consultation papers and attending all public consultation meetings in Paris to represent the consensus views of the international business community.

It is important that BIAAC Members stay engaged and continue to work with their governments to ensure that we arrive at a successful outcome.

***It is critical for BIAAC positions to be sufficiently communicated to governments. We urge BIAAC Members to stay engaged and support this important communication.***

## BIAAC Business Outreach

BIAAC Members engage on BEPS issues directly with their national governments. In support of national and regional dialogues on BEPS issues, BIAAC has organised meetings addressing BEPS in OECD and non-OECD countries, for example in Australia, France, Japan, United States, United Kingdom, Brazil, China and India. BIAAC has also addressed OECD regional meetings on BEPS in Asia (Seoul, Korea) and Latin America (Bogota, Colombia).

The BIAAC Tax Leadership has addressed BEPS related conferences globally including most recently the B20 meetings in Turkey, the USCIB conference in Washington and the G20 International Tax Conference in Tokyo.

Upcoming BIAAC outreach include the CNI BIAAC Second Conference on BEPS to be held in Brasilia, Brazil on 26 November 2014 and the CII conference on BEPS to be held in New Delhi, India on 6 November 2014.



# Business Proactive Measures

BIAAC has also produced two sets of voluntary guidance for business: a Statement of Tax Principles (click [here](#)) intended to promote and affirm responsible business tax management generally, and Best Practices for Engaging with Tax Authorities in Developing Countries (click [here](#)).

## **BIAAC Statement of Tax Principles**

The Statement of Tax Principles is intended to promote and affirm responsible business tax management by international business.

These principles are based on five key observations:

1. Public trust in the tax system is a vital part of any flourishing society and growing economy.
2. Most businesses comply fully with all applicable tax laws and regulations, recognising the obligations of governments to protect a sustainable tax base.
3. International businesses contribute significantly to the global economy and pay a substantial amount of tax comprising not only corporation tax, but also labour taxes, social contributions and other taxes such as environmental levies and VAT.
4. Transparency, open dialogue and co-operation between tax authorities and business contributes to greater compliance and a better functioning tax system.
5. Tax is a business expense which needs to be managed, like any other, and therefore businesses may legitimately respond to tax incentives and statutory alternatives offered by governments.

## **BIAAC Best Practices for Engaging with Authorities in Developing Countries**

The tax best practices identified in this statement are intended to support responsible business tax management and to enhance co-operation, trust and confidence between tax authorities in developing countries and international business, understanding that business must comply with the laws and regulations of the jurisdiction in which it operates. These tax best practices aim to promote stability, certainty and consistency in the application of tax principles as well as to support capacity building for efficient, effective tax authorities in developing countries. This will foster cross-border trade, investment and sustainable growth for the benefit of all.

## Upcoming meetings

Please find below a non-exhaustive list of upcoming BEPS meetings. Please note that some meetings are subject to confirmation and others might be added. Please contact the BIAC Secretariat for final confirmation.

### BEPS Public Consultations in Blue.

- 15 September 2014:** BIAC Tax Bureau Call with OECD CTPA on 16 September BEPS paper release (teleconference)
- 16 September 2014:** OECD CTPA Press Conference on BEPS and BEPS Webcast in Paris
- 16 September 2014:** Business preparatory meeting with OECD on CRS and TRACE in Paris
- 17 September 2014:** BIAC OECD Meeting on the CRS Commentary with focus on TRACE
- 22 September 2014:** Business members to the OECD VAT TAG preparatory meeting
- 23-24 September 2014:** OECD VAT TAG meeting in Vienna, Austria
- 20 October 2014:** Meeting of the AEOI BAG in Paris
- 21 October 2014:** Meeting of the AEOI BAG with OECD CFA WP10 in Paris
- 23 October 2014:** Ninth Meeting of the Forum on Tax Administration (FTA) in Dublin, Ireland
- 28 October 2014:** Meeting of the BIAC Tax Committee Bureau in Paris
- 29 October 2014:** Meeting of the BIAC Tax Committee in Paris
- 6 November 2014:** CII tax conference on BEPS in New Delhi, India
- 26 November 2014:** CNI BIAC Second Conference on BEPS in Brasilia, Brazil
- 21 January 2015:** OECD Public Consultation on PE Status (**Action 7**)
- 22 January 2015:** OECD Public Consultation on Treaty Abuse (**Action 6**)
- 23 January 2015:** OECD Public Consultation on Dispute Resolution (**Action 14**)
- 17 February 2015:** OECD Public Consultation on Interest Deductions (**Action 4**)
- 17-19 February 2015:** Meeting of the OECD VAT TAG in Paris
- 19 or 20 February 2015:** OECD Public Consultation on VAT B2C Guidelines (**Action 1**)
- 19-20 March 2015:** OECD Public Consultations on Risk, recharacterisation, base eroding payments (including commodity transactions and low value adding services) and profit splits (**Actions 8-10**)
- 27 March 2015:** OECD Public Consultation on Data Analysis (**Action 11**)
- 11 May 2015:** OECD Public Consultation on Disclosure Rules (**Action 12**)
- 13 May 2015:** OECD Public Consultation on CFC rules (**Action 12**)
- July 2015 (date tbc):** OECD Public Consultation on CCAs and Intangibles – ownership; hard to value (**Actions 8-10**)

For further information, please contact



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