The Voice of OECD Business

Paris: 9 May 2014

ADDITIONAL BIAC COMMENTS: REVISED OECD PROPOSALS ON TRANSFER PRICING DOCUMENTATION ("TPD") AND COUNTRY BY COUNTRY REPORTING ("CBCR")

Dear Joe and Marlies,

Following a recent discussion with an OECD member country, a number of BIAC's business members became aware of a possible interpretation of certain revised CBCR requirements which would be a matter of significant concern.

The revised CBCR template includes columns for third party revenues and intra group revenues with what appears to be a much broader definition of revenue than would typically be used in a set of accounts to define sales, i.e. including intra group service fees, royalties etc.

We believe that it would be advantageous to clarify the position and in particular to pay very close attention to the terminology used in the following areas, but also across the other parts of the CBCR template:

Revenue/sales/income

We had assumed that revenue was intended to focus on "sales" comprising income arising from an MNE's main revenue generating activity (such as the sale of goods) and would be equivalent to the sales line (i.e. generated from third parties) on the consolidated group income statement. It now appears that a broader interpretation may be permitted by the language in the revised Discussion Draft.

It is important to note that International Accounting Standard ('IAS') 18, as a benchmark GAAP, defines 'revenue' as the gross inflow of economic benefits arising in the course of the ordinary activities of an entity, and requires disclosure of categories of revenue listed as : (1) the sale of goods; (2) the rendering of services; (3) interest; (4) royalties; (5) dividends. IAS 1 (presentation of financial statements) then refers to 'main revenue generating activities', and goes on to say that other revenue generating activities are presented by netting income with expense.

- What this means for an MNE is that revenue from the sale of goods (or equivalent main revenue generating activity) is shown as one line on the income statement (i.e. as turnover), and the other items are shown net of expenditure. Systems are therefore typically set up to only capture the net amounts of interest, royalties, and dividends.

Related parties/intragroup

We understand that intra group revenue is intended to be defined as revenues between related parties. We would like to draw your attention to IAS 24, which has a wide definition of related parties, including both entities within the group (which we agree should be the focus), and entities or persons not in the group. It then states that '*Intragroup related party transactions are eliminated in the preparation of consolidated financial statements of the group*' but disclosure of transactions with related parties NOT in the consolidated group is required.

- For an MNE there are, therefore, in practice, two separate types of related party transactions (1) intragroup transactions that form part of the consolidated reporting numbers and (2) related party transactions that are not part of the consolidation, but are disclosed.

Our concerns

We have significant concerns, therefore, in relation a broader interpretation of this proposal which we have set out very briefly below. As ever, we are available to discuss this in more detail at your convenience.

1. If the broad interpretation prevails, then all that arguably would have been achieved by the removal of the intra group columns would be to no longer be required to analyse out the components of intragroup activities, whilst at the same time disregarding the related expenditure.
2. A requirement to provide ‘revenue’ in its widest sense will mean an overstatement – especially of the related party element of income – which would make it even more difficult to perform a meaningful comparison between sales (of, e.g. goods supplied) and PBT. The inclusion of income (but not expense) for royalties and interest in a ‘revenue’ number makes any comparison essentially meaningless for risk assessment purposes.
3. Systems are typically set up to capture the net amounts of interest, royalties, etc. Therefore, disclosing intragroup income in its widest sense will be a significant burden on business to design and implement new system.
4. A requirement to ‘sum’ the data – we are strongly of the view that for all data points, MNEs should have the option to prepare data on the most appropriate of aggregation or consolidation, that each MNE considers gives the most meaningful output in the most efficient manner.

For all of the above points, we reiterate the very basic point that the compliance effort should be proportionate to the usefulness to tax authorities of the output achieved. Definitions of data or approaches that are substantially different from the way MNEs currently collect and report will result in a significantly increased burden that is not likely to deliver useful information. We hope that this broader interpretation is not intended and that the position can be clarified with a more precise definition of revenue.

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On a separate point, and as we have said many times, we fully understand the significant time pressure that the OECD is under to prepare recommendations for the September 2014 deadline. We understand there is pressure to expand the types of information collected on the CBCR template. Rather than do this, we would encourage you to consider a review clause for the template. Such a review clause could give the OECD an opportunity, after a set number of years (we would propose three at a minimum) to consider the effectiveness of the template, and to further consider what other data points might be useful (whilst not create a disproportionate compliance burden for taxpayers). We hope that would satisfy those countries asking for more information now.

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

Sincerely,

Will Morris

Will Morris
Chair, BIAC Tax Committee