

ACTION 11: IMPROVING THE ANALYSIS OF BEPS

Background Documents:

- [OECD Discussion Draft:](#) April 16th, 2015
[BIAC Response:](#) May 8th, 2015
[OECD Report:](#) October 5th, 2015

Last updated: 30 November 2015

TOPIC	BIAC COMMENTS	OECD RESPONSE
General	1. OECD should use paras 13, 68, 101, 102 & 104 of the DD to reassess whether each Action Point individually and all Action Points collectively are adequately targeted and do not have unintended spill-over effects regarding genuine economic activities.	Comment not acknowledged.
	2. There is a need to distinguish normal tax planning from aggressive tax planning and tax avoidance.	There is no express reference to the distinction among these terms. However, it is said that BEPS is about international tax avoidance (para. 116) and that revenue losses from BEPS arise from aggressive tax planning (para. 170).
	3. Both the aggregate tax rate differential approach and the BEPS channels approach, should separate real economic factors and tax policy measures (e.g. changes in the effective tax rates) from BEPS-related activities.	Both the aggregate tax rate differential approach and the BEPS channels approach were removed in the final report. Moreover, the final report included two new subheadings dealing with separating BEPS from real economic activities and from non-BEPS preferences, i.e. tax incentives.
	4. Purely national tax policies affecting real economic activity through changes in non-BEPS-affected tax rates may very well influence BEPS-related activities.	The final report states that domestic tax incentives which reduce corporations' average tax rates and which encourage real activity are not BEPS, as long as those tax preferences are not artificial schemes without economic substance.
	5. The indicators developed in the DD are not sufficient to analyse BEPS (e.g. difficult to assess).	The final report explains that there are clear deficiencies in the available data sources used by researchers in analysing BEPS, and that the current data limitations are a significant challenge to the development of both indicators and economic analyses. Moreover, the "future path of BEPS measurement" shows that it is expected that in the future, better data is expected which can be analysed in line with refined indicators.
	6. It should be clear that none of the indicators give conclusive evidence. They can be useful to provide a rudimentary risk assessment that could lead to closer examination or provide an opportunity to MNEs to give a	The final report states that the indicators are designed to be illustrative rather than definitive, as the insights that can be discerned from these indicators are greatly affected by the limitations of the existing available

	satisfactory explanation that there are no BEPS concerns.	data. Therefore, the indicators provide an indication of the scale of BEPS and help policymakers monitor changes in the scale of BEPS over time.
	7. The development of indicators should not lead to additional reporting requirements for MNEs, and the design of the indicators should be reliant on currently available info and/or additional info that will be available to tax authorities through other Action Items.	Not expressly acknowledged. However, the final report's recommendations focus on the need for governments to make better use of data that is already collected (or will be collected through Actions 5, 12 and 13) and share best practices.
	8. Indicator 1: BIAC questions whether it is appropriate to mix stock and flow variables. BIAC sees few merits for this indicator as presented.	Final report keeps this indicator, and does not address appropriateness of mixing stock and flow variables. Two versions are presented: one relying on net FDI, and the other on gross FDI. High concentrations of FDI to GDP in a country or group of countries may provide an indication of BEPS.
	9. Indicator 2: There is a need to distinguish between the profit rate and profit level, and the level of taxation from ETR.	Comment not acknowledged. Indicator 2 is kept unchanged in the final report, no guidance on the distinction between the profit rate and profit level, or the level of taxation from ETR.
	10. Indicator 3: Certain economic activities are high value adding and others are low value adding. It would make sense if the indicator could flag low levels of profit connected to high value adding activities and vice versa.	Comment not acknowledged. Indicator 3 is kept broadly unchanged in the final report and does not acknowledge whether the indicator could flag low levels of profit connected to high value adding activities and vice versa.
	11. Indicator 6: Does not capture the possibility that IP is transferred across borders for non-BEPS business reasons. Sale of IP at fair market value would not give rise to BEPS, but would inflate the proposed metric. BIAC has serious doubts about the validity of this indicator.	Final report keeps this indicator, and does not address BIAC concerns. However, it recognises (through caveats) that a limitation of this indicator is that current income from IP could be a result of R&D expenditures in prior years, and it clarifies that royalties include more than just charges for the use of patents (e.g. trademarks, copyrights, softwares, etc.).
	12. Indicator 7: Does not use net interest payments. This is a major and unacceptable deficiency.	In the final report, this indicator is as well calculated using gross interest expense as reported in financial statements. However, if additional data becomes available, net interest expense could be used in the calculation.
	13. BIAC strongly advises against extrapolation.	Although the final report acknowledges that extrapolation beyond the sample from which an analysis is conducted is a further source of bias since it is not known whether the missing companies have the same behaviours as the included companies, it states in the the toolkit that extrapolation from the available financial account data to the universe of affected taxpayers will be necessary, especially given the missing data problems with available databases. Moreover, since estimating the fiscal effects of Action 7 countermeasures is difficult, it suggests that once a sample of potentially

		<p>affected companies are identified, that sample can be extrapolated to the potential total economic activity affected by the Action 7 countermeasures in the country.</p>
	<p>14. To develop best practice in the government sector and to evaluate indicators and measures presented over time of BEPS.</p>	<p>The final report includes a new chapter 4 that has in Box 4.1. some best practices in data availability for tax analysis of corporate tax and MNEs. Regarding the evaluating indicators and measures, it is not expressly recognised, but it can be implied that there will be eventually an evaluation since the objective is that, in the future, better data will allow new and more refined indicators as well as refined economic analysis of BEPS and the effectiveness of BEPS countermeasures.</p>