BIAC THE VOICE OF BUSINESS AT THE OECD

ACTION 4: INTEREST DEDUCTIONS AND OTHER FINANCIAL PAYMENTS

Background Documents:

OECD Discussion Draft: December 18th, 2014

BIAC Response: February 6th, 2015

OECD Final Report: October 5th, 2015

Last updated: 30 November 2015

TOPIC	BIAC COMMENTS	OECD RESPONSE
Group-wide rules	1. BIAC is reluctant to endorse group-wide tests.	Group ratio rule is included in the best practice approach as an optional supplement to the fixed ratio rule.
Fixed ratio Rules	2. A fixed ratio approach on a jurisdiction-by-jurisdiction basis is preferable to a group-wide test.	Countries can decide whether to apply the fixed ratio rule to the position of each entity separately or to the overall position of all group entities in the same country.
	3. If fixed ratios were adopted as the preferred rule, there would be no need for a threshold rule.	Although a fixed ratio rule is recommended, the final report includes an optional monetary *de minimis* rule. If a country decides to have such a threshold, the report suggests having an anti-fragmentation rule as well.
	4. Taxpayers should be given a choice to use an earnings or asset based test as long as the election is consistently applied.	Earnings is the most appropriate measure for a fixed ratio rule. Asset values may exceptionally be used as an acceptable alternative. Where a country uses asset values, other elements of the rule should be consistent with the best practice approach.
	5. BIAC suggests EBITDA be used rather than EBIT.	Although EBITDA is the recommended measure of earnings for the fixed ratio rule, the best practice permits flexibility thus EBIT can also be used.
	6. The percentages set forth in DD4 Box 3 (25% to 50%) are appropriate percentages.	The recommended benchmark ratio for the fixed ratio rule includes a corridor of possible ratios within 10% to 30%.
Combined approach	7. The option that holds the greatest promise would be 'combined approach 2'.	The final report encourages countries to combine a fixed ratio rule with a group ratio rule, i.e. combined approach 2 under the DD4.
	8. OECD should explore the following question: Should 3rd-party debt be treated differently than related-party debt?	Action 4 applies equally to 3rd-party, related party and intragroup debt. 3rd-party debt as a general rule is not treated differently; exceptionally it can be excluded (e.g. loans used to fund public-benefit projects).
General	9. Chapter V of DD4 should be deleted, or at a minimum, the 25% threshold should be removed.	Chapter V of the DD4 is chapter 3 of the final report. The 25% threshold is included in the definition of related party in chapter 9.
	10. BIAC supports an unlimited carryover period, subject to change of control/ownership rules that would disallow the carryover of	Under the best practice, a carry forward/back is not required. However, if a country permits to carry forward/back, the report recommends imposing limits

	disallowed net interest expense in the event of change of control.	in terms of time or value.
	11. Tax rules on interest expense for the financial sector should be analysed independently.	Further work will be conducted in 2016 to identify best practice rules to deal with BEPS risks posed by banks and insurances companies.
	12. In the Oil & Gas, Mining, Utility, Infrastructure and Real Estate sectors the focus should be on identifying actual abuse with targeted rules based on the ALP.	The best practice rules contained in Action 4 apply equally to these sectors. Regarding the targeted rules, there is no specific mention to the arm's length standard.
	13. Should include reasonable transitional periods and grandfathering rules so MNE can adapt to new rules.	The final report leaves it up to countries to decide whether they include transitional rules.
Comments to the questions in the DD	14. It is beyond the scope of Action 4 to undertake an exhaustive analysis of interest equivalence.	Action 4 does not undertake an exhaustive analysis of payments equivalent to interest, but it sets some guidance and examples.
	15. General limitation rules should not apply to an entity unless it is fully consolidated in a Group under IFRS.	An entity would be part of a group if included on a line-by-line basis in the consolidated financial statements of any company or it would be included if the company prepared consolidated financial statement in accordance with local GAAP and the most common standards (IFRS, US GAAP and JAP GAAP).
	16. If there are specific risks arising from JV, they should be addressed by targeted rules on a country by country basis.	The best practices apply to JV and examples 7c and 7d illustrate when a JV forms part of a group and when it does not. There are no specific risks arising from JV under chapter 9 (Targeted rules).
	17. If group-wide rules were introduced, it would be more practical for most multinational groups to be able to use IFRS rather than parent country GAAP. A one-time election to choose a different GAAP should be offered to groups.	It is recommended that, as a minimum, countries should accept consolidated financial statements prepared under local GAAP and the most common accounting standards used by large listed multinational groups (i.e. IFRS, Japanese GAAP and US GAAP).
	18. No income should be excluded from the definition of earnings.	Non-taxable income (e.g. branch profits or dividend income) should not be included in the calculation of earnings. Appropriate adjustments should also be made for taxable branch profits and dividend income to the extent that they are shielded from tax by foreign tax credits.
	19. Targeted rules should be kept as minimal as possible to retain certainty for taxpayers. The first targeted rule described in paragraph 181 is particularly problematic.	A fixed ratio rule and group ratio rule should be supported by targeted rules. It is recommended that countries consider introducing rules addressing the risks listed in Chapter 9. First risk in para. 181 DD4 is no longer included, although there are specific references to risks posed by related parties.