BIAC has been supportive of the OECD's Base Erosion and Profit Shifting (BEPS) project since its inception and has provided constructive and detailed input from the international business community in response to all discussion drafts. Although we valued the openness of the consultation processes and acknowledged the efforts of OECD and G20 member governments and the OECD Secretariat, we are concerned that some serious business concerns that were not sufficiently considered or addressed during the BEPS Project itself remain unadressed in the OECD's follow-up work and individual jurisdiction's implementation of the BEPS measures.

This paper outlines some of the concerns that our members have over the continuing direction of certain aspects of the project, and the potentially negative economic consequences of certain recommendations. This paper was originally developed in 2015, and has been periodicaly updated. This latest version now also covers developments during 2016 in many areas, including six discussion drafts on follow-up work, the launch of the Inclusive Framework and the The Multilateral Competent Authorities Agreement (MCAA), the release of the Multilateral Convention for Implementing Treaty related BEPS Measures (the MLI), and many examples of the OECD's recommendations being introduced at a national-level.

BIAC wants the BEPS Project to succeed by leading to a new stable and consistently applied set of international tax rules that prevents inappropriate base ersion and profit shifting, while not adversely impacting cross-border trade and investment. We will continue to approach the BEPS project in a constructive, flexible and incremental way as we believe this is the best way of achieving that success. We hope that the OECD will continue to include us in the completion of remaining work, with the aim of bringing about this successful outcome.

General comments

Many of the concerns identified in this Position Paper are common across the range of Action Items. We feel they are worth setting out at the beginning of this paper as their importance continues to grow as the follow-up and implementation work continues.

Economic impact: There is business concern that the economic consequences of the BEPS recommendations have still not been fully considered. For example, countries should be undertaking realistic assessments of the additional tax revenues that may flow from implementing the consensus recommendations (rather than assuming that implementation will bring additional tax revenues). There should also be study of the effects that overly strict regulation may have in restricting economic activity in countries that focus solely on tax-avoidance measures. This could ultimately undermine the BEPS process and bring about unintended economic implications as countries seek to meet unrealistic revenue estimates.

Although uncertainty, double-taxation, disputes and compliance burdens are a focus of business, we are also concerned about the broader economic impact, which may include, for example, the impact on the efficiency of markets, or the sustainability of certain legitimate non-tax driven commercial transactions and structures (for example, cross-border infrastructure projects or regionalisation of certain functions to improve quality and efficiency). We believe that the justified targeting of BEPS activities must be integrated with larger economic concerns related to creating jobs and growth through cross-border trade and investment. We are encouraged to see the OECD addressing some of these issues through its G20-mandated work on tax uncertainty and its impact on investment and inclusive growth.

Complexity & Compliance: In a number of areas, the BEPS Action Plan proposes substantially new and complex rules to tackle avoidance. Given the pressures of the ambitious timeframe, there have been very few opportunities to explore how these complex proposals can be adopted and implemented on an international basis. Both tax authorities and businesses will need detailed implementing guidance to ensure that the intention of each recommendation is clear. This will be critically important in ensuring that the recommendations are uniformly adopted, whilst avoiding overlaps. The challenges that will be brought about through the interaction of different timelines and domestic implementations should not be underestimated. They could, and in some cases have already started to, lead to double taxation and to a significant compliance burden on both businesses and tax authorities and create uncertainty that will delay necessary investments. The BEPS Inclusive Framework should support and monitor the implementation (as proposed by the G20 Finance Ministers) to assist in maintaining international co-operation and as much consistency in timing and application as is possible. We would encourage the OECD to seek agreement from involved countries on effective dates after which new rules and guidelines will apply; even with the OECD's work on Action 14, it will be very difficult to eliminate double taxation and would be inequitable if some tax authorities seek to revisit past years with new concepts and methodologies.

Scoping: As part of the implementation framework, we believe it would be helpful to target the scope of each recommendation more narrowly to increase the chance of developing the necessary inter-governmental co-operation. It is worrying for business that, as has emerged during 2016, a number of governments and supranational organisations are implementing so-called "BEPS

measures" which go well beyond (and in some cases are antithetical to) the consensus reached at the OECD. We strongly believe that "success" in the BEPS project would be achieved with a set of detailed, well-defined proposals that can be (and are) implemented consistently. Countries should be encouraged to avoid overly-broad implementation that could lead to a less uniform international tax regime.

Timing: As well as the timing concerns raised above in relation to the potential economic impact and the potentially disjointed international adoption of the recommendations, we also have a more general timing concern that impatient countries and tax authorities may seek to commence full implementation of recommendations where it has been agreed that further work is required. For example, critically important work must be completed before the OECD Transfer Pricing Guidelines can be updated to reflect a consensus on the pricing of Profit Splits and the attribution of profits to Permanent Establishments (PEs), and a period of monitoring is required across many Actions, particularly in relation to the "Digital Economy" and the Multilateral Instrument.

Reaching consensus

BIAC has strongly supported the OECD as the best organisation to deliver a successful consensus outcome under the BEPS mandate and recognises the extraordinary work that the OECD has undertaken in brokering compromises and consensus wherever it has been possible. However, despite the OECD's claims, we are concerned that in several instances it has proved difficult (and occasionally impossible) for member governments to reach consensus. This has resulted in a lack of clarity and a degree of ambiguity. For example, whilst the OECD has not recommended solutions regarding the "Digital Economy", the door has been left open for countries to implement unilateral solutions which could lead to double taxation.

Understanding the economic impact

The BEPS project did not begin with a detailed economic analysis of the abuses identified in the Action Plan, and few economic analyses have been undertaken of each of the BEPS recommendations broader economic impact. Despite their expectations, there may be countries that do not receive additional tax revenues, and overly strict regulation could even push economic activity away. We remain concerned that this expectations gap could lead to countries budgeting for higher tax revenues than they will receive, increasing the pressure on individual tax authorities to aggressively audit taxpayers in an attempt to collect *more* rather than *the right amount of* tax based on the consensus agreed. We are hopeful that the G20's focus on growth and tax certainty (supported by the OECD) will be helpful in addressing these concerns and ensuring that tax systems are used effectively to maximise growth, investment, and international trade whilst ensuring that BEPS concerns are addressed.

Complexity and compliance burden

In certain areas the BEPS recommendations are already creating significant implementation difficulties and greater compliance burdens, not only for Multinational Enterprises (MNEs), but also governments - this is in part due to the substantial number of recommendations, but also their complexity and the different timelines that are being followed to implement them (for example, the adoption of revised OECD Guidelines into domestic law, or different processes for implementing domestic recommendations). Public and considered consultation and strong commitment by countries to work together through the Inclusive Framework are essential to avoid fragmentation.

We would encourage the OECD to seek agreement from involved countries on effective dates after which new rules and guidelines will apply; even if the OECD's work on Action 14 is successful in improving dispute resolution, it will be very difficult to eliminate double taxation and would be inequitable if some tax authorities seek to revisit past years with new concepts and methodologies.

We support the OECD's statement that VAT registrations should not create PEs, and we would encourage tax administrations to heed this and not assume that PEs exist where a company is registered for VAT (or vice versa), which would result in significant compliance burden. Other Action Items (for example, Actions 2, 3, 4, 7 and 12) are requiring significant additional resource to ensure compliance with new, complex and sometimes contradictory rules.

Discouragement of related party trade

Many of the BEPS Action Items apply only in an intra-group context and could significantly increase the cost of performing various functions or undertaking certain transactions inside a group of related companies. For example, the provisions lowering the PE threshold and the complex new transfer pricing analyses that only apply to transactions between affiliates could greatly increase the compliance cost and tax liabilities associated with various intra-group activities. In some cases, taxpayers may, effectively, be forced to conduct business with third parties to mitigate excessive tax cost or uncertainty. This would reduce

commercial and economic efficiencies and hamper international trade (as well as, quite possibly, lowering the wages and benefits in outsourced functions – especially in developing countries). We believe that these effects should be considered in greater detail and we would still encourage additional guidance to be developed to provide greater certainty. In particular, these considerations should be kept in mind when finalising the new guidance on Profit Attribution to PEs.

Appropriate resources for tax administrations

Tax administrations already receive significant amounts of information that they often struggle to process. We are concerned that without additional resources, tax administrations will face difficulties in effectively using additional information and in dealing with the expected increase in requests for exchange of tax information between countries. It may actually become more difficult to identify risks, or to target abuse, to the advantage only of the most aggressive taxpayers.

We believe a greater focus on tax administration would be beneficial - for example, through fully integrating the work of the Forum on Tax Administration - and the use of targeted risk-based measures. This could include materiality thresholds and other risk-identification tools to target higher risk taxpayers/issues that represent the most substantial sums of lost tax revenues. Such approaches reduce the burden on the vast majority of compliant taxpayers, freeing up resources for more productive, value-creating activities. Cooperative compliance also has an important role to play in this area.

Multilateral implementation

The ultimate success of the BEPS project will be based upon be the multilateral implementation of specific, measurable, achievable and realistic recommendations on a timely basis. We encourage continued discussions on approaches to enhance credibility and likely success of the project. The development of the Inclusive Framework managed by the OECD is a positive step forward and we are pleased that BEPS Associate Countries (in addition to OECD and G20 countries) have agreed to implement at least the BEPS Minimum Standards, which include inter alia a commitment to improve Dispute Resolution mechanisms under BEPS Action 14.

Further, we hope that all countries participating in the Inclusive Framework will agree to key principles to be followed in any domestic legislation used to enact BEPS proposals. Such principles could include that:

- the policy objective of the legislation should be clearly stated;
- those policy objective should be consistent with the BEPS recommendation, and in limited to addressing specific abuses;
- draft legislation should be prospective in application and be published with a minimum period for detailed stakeholder consultation; and
- an impact assessment should be prepared to evaluate any compliance burdens created.

We encourage the OECD to coordinate the implementation so that national measures have a reasonable degree of consistency and to speak out against legislation in the name of BEPS which is not reflective of the OECD's consensus. To date, implementation has been, in some instances, very uncoordinated.

BEPS Action Item-specific comments

Address the tax challenges of the digital economy (Action 1)

We greatly welcomed the original 2014 report (*Addressing the Tax Challenges of the Digital Economy*), but we consider that the final 2015 report does not go far enough by recommending only that such countries be "mindful" of their treaty obligations until further review in 2020. BIAC's concern that countries may take this as an invitation to introduce unilateral measures appears to be justified; several countries have now implemented or are planning to implement taxes on digital operations. Such unilateral action can result in double or even multiple-taxation and we believe they should be strongly discouraged pending the review. BIAC looks forward to participating in the ongoing monitoring and evaluation of characteristics of digital trade that may cause BEPS concerns. We are aware the OECD is undertaking a cross-directorate digital project, to be concluded in 2020, and we ask that business is fully engaged on all tax aspects.

Neutralizing the effects of hybrid mismatch arrangements (Action 2)

While we do not defend hybrid mismatches as a general policy matter, we do want to make three important points on the final report:

- It is not clear which countries intend to implement any or all of the recommendations, when they plan to do so, or how the interaction with the local legislative processes will result in differences between countries in terms of application or

timing. Implementation through a combination of complex changes to domestic laws and treaty provisions increases the uncertainty on timing further, although we look forward to seeing the details regarding which treaties will be changed in this area under the Multilateral Instrument, which could provide greater clarity.

- We welcome the Inclusive Framework and ongoing monitoring processes developed by the OECD to assist international cooperation but retain concerns, in particular regarding the risk of double taxation, increased compliance burden and uncertainty that will arise from countries implementing at different times.
- Even if implemented in a coordinated manner, the complexity of the proposed rules will create substantial compliance difficulties, and will complicate the allocation of taxing rights between jurisdictions, increasing the risk of double taxation (e.g., the rules on "imported mismatches" and the as yet unfinished recommendations on branch mismatch arrangements). The accompanying expanded examples may provide clarity on some issues, but at the price of still further complexity.
- The financial services industry continues to be concerned that insufficient attention has been given to how the proposals will impact instruments deemed important by banking regulatory authorities for systemic liquidity. By relying on countries to opt not to tax such transactions at their discretion increases uncertainty and the risk of double taxation.

The draft report released on Branch Mismatch Structures in August 2016 was similarly concerning, given the large number of companies it will impact who rely on branch structures for commercial reasons and are already facing significant uncertainty under the implementation of the Action 7 recommendations.

Strengthen CFC rules (Action 3)

The broad nature of the OECD's final CFC proposals illustrate the difficulty in reaching a consensus position on even the basic purpose of rules, with clear disagreements between governments over whether such rules should tackle profit shifting from the parent entity or foreign-to-foreign abuse. Without clear agreement over the underlying principles, the chances of delivering clear, proportionate and practical solutions were almost impossible. This was an opportunity missed to refine a useful tool, based on well-understood concepts of "active" and "passive" income in ways that could reduce dependence on subjective, fact-intensive enquiries while at the same time limiting the compliance burden and risk of double taxation. We urge the OECD to consider CFC rules further when addressing any future BEPS concerns that the monitoring and analysis highlight.

Limiting base erosion via interest deductions & other financial payments (Action 4)

The final report on Action Item 4 will have serious implications for groups' economic activity and their ability to obtain tax deductions for funding costs. The proposals have been made without a clear articulation of how they specifically target BEPS activities. The OECD's proposals are likely to restrict interest deductions for a significant number of non-aggressive taxpayers, particularly those investing in infrastructure or long term projects where it remains unclear whether they would qualify for the proposed exemptions. The lack of support for the arm's length principle in Action Item 4 also undermines legitimate commercial reasons for having intercompany debt. A group's cash position and decisions on how to deploy cash should not be limited by rules that are not based on the arm's length principle.

However, given the options previously put forward in discussion drafts, we welcomed the broadening of the corridor approach to a range between 10% and 30% of EBITDA and the relative simplicity it brings. The group ratio rule has the potential to be a useful tool to ensure that a fixed ratio rule does not unduly and adversely impact highly leveraged businesses, particularly when operating in jurisdictions which have adopted a lower fixed ratio restriction. The guidance on the group ratio rule released in December 2016 is welcome. However, there are many elements of these proposals where the discretion on how to implement is in the hands of individual countries, rather than having a consensus on precisely how the rules should be implemented. We hope the OECD will work with countries to ensure it is implemented in a consistent and practicable way.

If ratios are too low, this could substantially raise the cost of capital for low-risk taxpayers undertaking commercial transactions. We are disappointed that the proposals do not recommend more strongly the elements of the proposals that would seek to limit double taxation, such as the ability to carry forward unutilised interest capacity (especially for start-ups and companies in loss-making positions) or give credit for all withholding taxes suffered.

The OECD's recommendations on approaches to address BEPS involving interest in the banking and insurance sectors, released in December 2016, was disappointing in that it did not suggest a single and uniform approach to address the perceived problem. BIAC is concerned that adoption by different countries of different approaches will create uncertainties for tax administrators and MNEs in the banking and insurance sectors. Further, it could also result in double taxation of commercially motivated business models that have been approved by financial regulators (and thus effectively reward models which are not aligned with those favoured by financial regulators).

Harmful Tax Practices (Action 5)

Preferential tax regimes (including IP regimes) are primarily designed by Governments to improve investment, innovation and overall economic growth in their countries. In this respect, they have a critical impact on the development of products, goods or services and consequently on competitiveness. BIAC agrees that such regimes should only seek to encourage real economic activity and genuine productive investment. We support the objective of the OECD of making preferential regimes (i.e. granting zero or low tax rates) more transparent by ensuring that the tax benefits are granted in line with activity. However, we believe that the recommendations provided a solution which does not necessarily target abuses, and in some cases will disregard both the spirit of R&D regimes and the particularities of innovation activities.

Denying the expenditures incurred by entities located in the same jurisdiction as the IP owner for the sole reason that they are "related" entities does not take into account situations where the group's activities are centralised or decentralised according to a broader commercial strategy or where R&D activities require the use of subsidiaries that are specialised in a given area or to undertake specific R&D at a global level for regulatory or commercial reasons. The mere existence of multiple legal entities in the same country has no impact on cross border transactions and should not automatically facilitate base erosion of a given jurisdiction.

To avoid discrimination, we believe that the recommendations should be limited to adjusting the tax attractiveness conflicts between different countries and not condition the granting of the tax benefit to the exercise of an economic activity artificially constrained in a single entity. The interaction with EU law will make operation of this provision particularly challenging for EU businesses.

Finally, while we welcome the significant effort made by the OECD, we note that the practical implementation of the nexus approach will generate important administrative costs and complexity for traceability, control and documentation on the link between the different parameters of the ratio. This effort will be even greater for those who want to benefit from the rebuttable presumption when the creation of value is not reflected in the calculation of the nexus ratio.

Prevent treaty abuse (Action 6)

We are concerned that significant uncertainty remains as to whether treaty relief is available in ordinary commercial circumstances. This uncertainty risks undermining the usefulness of treaty networks in facilitating trade and promoting economic growth. Whilst we recognise that tax administrations require assurance that treaty benefits are only being granted in appropriate circumstances, anti-abuse rules should be applied in a proportionate and targeted manner. The existing provisions and Guidance could provide more clarity (e.g. low taxed branches with substance, calculation of head office tax rate). Broad disapplication of treaty benefits could create substantial withholding tax burdens and negatively impact cross-border trade.

The final proposed minimum treaty standards are at the very least expected to create a significant compliance burden for taxpayers (especially where both a simplified LOB and a PPT rule are adopted in certain treaties), and will potentially bring into scope legitimate structures that ought to be entitled to treaty benefits. We remain concerned that:

- Structures not involving treaty shopping may be unintentionally caught by broad rules.
- There will be increased cross-border investor uncertainty, especially for pension fund investors and sovereign wealth funds, where the potential for tax treaty abuse is low.
- Uncertainty for Collective Investment Vehicles (CIVs) will be unavoidable, and the time taken to receive repayments of tax deducted at source will impact the Net Asset Values of funds.
- Source country tax authorities may experience additional demands to process an increased volume of reclaims, placing further pressure on already resource constrained administrations.

Preventing the artificial avoidance of PE status (Action 7)

While many of our members welcome the move away from the ambiguous language of the discussion draft that sought to establish a PE where persons "negotiated the material elements of contracts", we are concerned that the final deliverables introduce new concepts that were not open to consultation and so retain ambiguity. Whilst we welcome the move to recommendations that a dependent agent PE is only established where a person "plays the principal role" in negotiating contracts, we urge the OECD to undertake additional consultation and provide tax authorities with additional guidance to clarify the meaning further. Similarly, the meanings of "complementary functions that are part of a cohesive business operation" in relation to fragmentation and "at the disposal of" regarding fixed places of business should be more tightly defined to ensure consistency in implementation.

It is disappointing that recommendations regarding PE thresholds were released well in advance of the guidance that will follow on profit attribution; we are concerned that this guidance is still not forthcoming and there appears to be little or no consensus

regarding the approach that will be applied. Some tax authorities have sought to establish the existence of PEs based on new concepts before providing business with any certainty regarding the attribution of profits to these newly defined PEs. For instance, the example of a PE being triggered by an agent who convinces customers to accept standard contracts without any authority to make deviations is very different to the previous definitions. Additionally, we would welcome the confirmation that PEs can be loss making.

It is also disappointing that the changes required to the OECD Model Treaty, OECD Guidance and domestic/multilateral implementation thereof are disjointed, and we believe that some tax authorities have sought to apply the new concepts to open periods, causing considerable uncertainty and the risk of double taxation. We urge the OECD to consider the impact of this as part of the implementation framework being developed and wait until there is a consistent understanding of the concepts before updating the Model Treaty and Guidance.

Transfer pricing (Actions 8-10)

We have consistently acknowledged the need to update international tax rules on Transfer Pricing (TP), especially in relation to intangibles. However, aspects of BEPS project illustrate fundamental differences in opinions between countries over the Arm's Length Principle (ALP) in TP and its continued viability. We are hesitant in agreeing with the OECD that the final report's recommendations have been finalised without a departure from the ALP.

We welcome the confirmation that where clear contractual arrangements exist that are supported by economic reality, then recharacterisation is not generally required. However, we are concerned about the complexity of the process, the level of detail required, and the consequences it will entail in the practical application. For example, the modifications do not clearly address the relevance of or extent to which (control and) performance of DEMPE functions and risk should contribute to calculating price under the ALP. These are not generally factors that are taken into account by unrelated parties. We welcome the reiteration that the most appropriate TP methodology should be used, and the OECD's commitment to developing guidance on profit split methodologies. However, we note that with this work expected to remain incomplete until at least 2017, a significant period of uncertainty remains. We urge the OECD to consider the impact of this and prioritise these areas accordingly.

We welcome the confirmation that tax authorities should only be permitted to consider *ex post* outcomes as presumptive evidence about the appropriateness of the *ex ante* pricing arrangements in the circumstance where taxpayers cannot demonstrate that the uncertainty was appropriately measured in the pricing methodology adopted. However, the distinction between foreseen and unforeseen is subjective and very difficult to make. Additionally, there are many areas of the report that appear ambiguous which will allow countries to take divergent positions. We believe that there remains a significant risk of divergence in interpretation and extent of these approaches, and ultimately of tax authorities using hindsight to recharacterise non-abusive transactions.

While we would welcome the simplicity that the elective regime for Cost Contribution Arrangements (CCAs) could provide, nevertheless, without a commitment from a significant number of countries to implement such a regime, it remains the case that businesses will still face a significant compliance burden in satisfying the countries that do not implement it. If a significant number of countries could be encouraged to implement the elective regime at least in part (e.g. service CCAs) this would address these concerns in some cases.

Financial services institutions face regulatory pressures that differentiate them from groups operating in other sectors. The OECD's 2010 report on the attribution of profits to PEs remains relevant for the taxation of this sector. BIAC cautions against special measures or general principles that move away from this well-established approach.

BEPS Data (Action 11)

BIAC agrees with the OECD that insufficient data is available on the scale of BEPS. Whilst there was no significant engagement with business in this area during the development of the Action 11 Final Report, the OECD's more recent work on Tax Uncertainty has been very well received by business, who look forward to seeing the results of the OECD's Survey on Tax Uncertainty (which was completed by 691 business tax practitioners from around the world). We hope that the data collected can be useful to all countries as they introduce tax policies to address BEPS concerns in a structured and consistent way that provides certainty to taxpayers, and to the OECD as they undertake work for the G20 in 2017 on tax systems that provide certainty and encourage growth. We would welcome the opportunity to provide any additional input into the OECD's work in these areas.

Country-by-country reporting (Action 13)

BIAC advocates for consistent implementation of country-by-country reporting requirements across all jurisdictions in which such requirements are implemented. We consider that local requirements should be in accordance with the OECD proposals without additions or amendments to the OECD proposals. Differences between national requirements for country-by-country reporting and the OECD proposals could potentially result in an additional administrative burden for multi-national companies in the form of secondary filing requirements in jurisdictions that implement country-by-country reporting requirements that differ from those of the "home country" in which a company files its country-by-country reporting under the OECD proposals. We would therefore urge the OECD to actively encourage the consistent implementation of the country-by-country reporting as recommended by the OECD across all jurisdictions. BIAC welcomes the guidance on country-by-country reporting released by the OECD in June 2016.

In cases where there are differences between the OECD proposals and national requirements, we consider that it would be helpful (and is important) for the OECD to confirm that, in principle, country-by-country information prepared and filed in accordance with the requirements of the "home country" of a multi-national company and shared with other tax authorities under the exchange of information arrangements, should be considered to satisfy local requirements in the locations in which it is shared. We request that specific guidance be issued by the OECD, for the sake of clarity and to limit unnecessary compliance burdens on businesses.

BIAC welcomes the efforts of the OECD and the countries that have implemented country-by-country reporting requirements. This includes the efforts taken to ensure that the timing is consistent, and the provision of mechanisms for voluntary filing. However, differences in technical implementation (particularly regarding definitions and notification requirements) and the failure of some G20/OECD countries in signing up to the MCAA is of great concern for those companies trying to meet their compliance obligations. Overall we consider that the OECD should continue to encourage a greater level of coordination between tax authorities regarding the implementation of country-by-country reporting requirements at the national level and the timing of those requirements.

BIAC considers that the information provided under the country-by-country reporting requirements should not be made publicly available. The purpose of the country-by-country reporting requirement is to provide tax authorities with sufficient information to carry out a risk assessment. The information required under the OECD proposals should satisfy this purpose without the requirement to make the information publicly available. Further, consideration has not been given to the impact of publicly disclosing this information on tax authorities and the relationship between them and taxpayers, the effectiveness of which could be affected if they have to operate under high levels of public scrutiny.

Make dispute resolution mechanisms more effective (Action 14)

We congratulate the OECD on the significant steps forward that have been taken in its work on Mutual Agreement Procedure (MAP). The recommended minimum standards on MAP and peer reviews is a very positive development in the final report. We welcome the OECD FTA's MAP Forum as the best place for peer reviews to be undertaken, and encourage the OECD and governments to commit appropriate resource to ensure that the minimum standards can be upheld. The full picture of the success of the minimum standards on MAP (and the success of the BEPS Project as a whole) cannot be judged with reference only to tax authorities' data. We are encouraged that business is being given the opportunity to input as part of the OECD's monitoring framework through the MAP Peer Review questionnaire, although we note the scope of questioning is very limited (i.e. only covering MAP procedures which started after 1 January 2016) and there are concerns from taxpayers regarding the individual impact their feedback could have on ongoing MAP processes.

We also congratulate the OECD on securing the commitment of a large group countries to binding arbitration and we urge the OECD to allocate necessary resource to ensuring this area is successful. We hope that this will demonstrate to non-participating countries the benefits of such a process to its participants and hope that this will become an international standard that other countries are compelled to join.

Multilateral Instrument (Action 15)

We congratulate the OECD on finalising the text of the multilateral instrument and an associated explanatory note in November 2016 and we are cautiously optimistic about the potential of this instrument to swiftly implement some of the OECD's proposals. We understand that the in-built flexibility in the instrument is necessary to maximise the number of countries involved, although we remain concerned that participating countries could opt out of (or disagree on the method of implantation for) key provisions, including the minimum standards, in favour of slower bilateral negotiations or administrative procedures. This is also not helpful for taxpayers who will need to navigate multiple changes to the operation of various bilateral treaties.

The OECD must encourage bilateral treaty partners to publicly clarify exactly which parts of the Multilateral Instrument they will adopt and their impact on existing treaty clauses. We would consider it most useful if participating countries published bilateral memoranda of understanding for each treaty that is amended by the Multilateral Instrument.

It was disappointing that OECD was not able to consult with business or other stakeholders on the text of the Multilateral Instrument, however, we will monitor the impact of the MLI and seek to provide constructive feedback.