Taxation and Fiscal Policy Committee

Activity Update
April 2018

BIAC's Committee on Taxation and Fiscal Policy (the BIAC Tax Committee) advocates predictable, stable and transparent tax policies and tax administrative practices for the elimination of double taxation and of other tax barriers to cross-border trade and investment.

The following report provides an update of the BIAC Tax Committee key activities, tax policy perspectives and future events.

As the officially recognized voice of business to the OECD, Business at OECD (BIAC) conveys business perspectives and expertise to policymakers on a broad range of global taxation and fiscal policy issues.

Overview

- **Base Erosion & Profit Shifting (BEPS)**
  - Action 1: Tax and Digitalisation
    - OECD Interim Report released 16 March 2018 with expected update in 2019 followed by a final, consensus report in 2020.
    - European Commission proposals released 21 March 2018 outlining a short-term and long-term approach.
  - Action 15: Multilateral Instrument (MLI) to enter into effect 1 July with 5th country enacting the MLI. Entry into effect and entry into force for other countries being closely monitored as they continue ratification procedures.
  - Action 7: Revised OECD Guidance on Attribution of Profits to Permanent Establishments (PEs) issued 22 March 2018. BIAC Position Paper being developed.
  - Action 13: Monitoring Implementation of Country-by-country Reporting (CbCR), Master File, and Local File requirements at the local country level.
  - Actions 8-10: Additional discussion drafts and guidance expected in 2018 regarding Profit Splits and Financial Transactions.
- **Tax and Development**
  - Engagement with the Platform for Collaboration on Tax
  - Update on Business as a key partner to the Tax Inspectors Without Borders (TIWB) programme
- **Tax Administration and Transparency**
  - Common Reporting Standard (CRS) update and OECD release of Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures
- **VAT/GST**
  - OECD work on the role of digital platforms in the collection of VAT/GST
  - Update South Africa and Singapore digital VAT consultations
- **International Outreach**
  - Brazil transfer pricing (TP) programme launched March 2018
  - Business at OECD call for continued engagement
- **Upcoming Engagement/Conferences (see list below)**

OECD Base Erosion and Profit Shifting (BEPS) Project

- In 2012, the G20 looked to the OECD, the leading multilateral institution for setting standards in international taxation, to develop a framework to equip governments with tools and common rules to address tax avoidance strategies designed to exploit mismatches — subsequently coined the "BEPS" Project.
- BEPS, in the view of the G20/OECD, was MNE's exploitation of the existing international tax rules to move profits (and related tax) from jurisdictions with operations and relatively high-tax rates to low or no-tax jurisdictions.
- Pursuant its G20 mandate, the OECD developed 15 action items across a range of tax issues, including the digital economy, transfer pricing, coherence of corporate income taxation, as well as transparency, certainty, and predictability of taxation.
- From 2012 to today, the OECD has addressed all 15 Actions, with final reports issued in fall of 2015 and continuing work on non-BEPS challenges highlighted during the BEPS Project, e.g., the Tax Challenges of the Digital Economy or "digital."
- The "Inclusive Framework"[1] extends the traditional 35 OECD members to >100 countries and territories, with all participants agreeing to implement four minimum BEPS Standards:
  - Harmful tax practices (Action 5) – standards for preferential tax regimes and spontaneous exchange of information on tax rulings
  - Treaty Abuse (Action 6) – rules to eliminate/reduce treaty-shopping
  - CbCR (Action 13) – reporting/disclosure rules
  - Dispute Resolution (Action 14) – mechanisms for binding dispute resolution

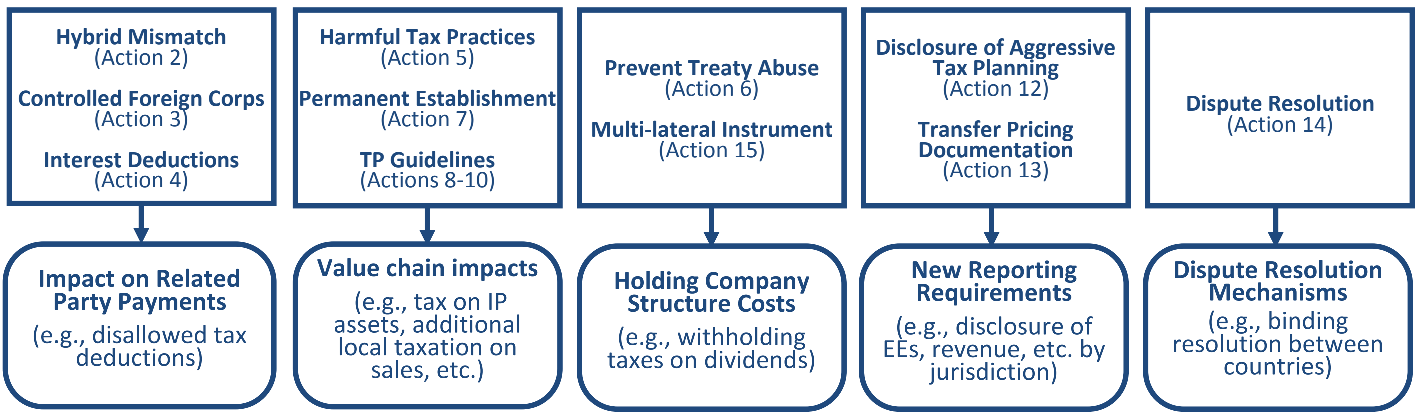
BY THE NUMBERS

15 Consensus Actions Items
>100 jurisdictions involved in the process
>10,000 MNEs impacted by new rules
~3,000 potential tax treaties impacted
~USD 100-240B annual tax revenue lost

BUSINESS AT OECD ENGAGEMENT

35 written responses to discussion drafts
13 public consultations attended
8 Regional Network Meetings attended
5 Public Position Papers
18 Press Releases

Impact of Action Items on Business



[1] The Inclusive Framework on BEPS brings together over 100 countries and jurisdictions to collaborate on the implementation of the OECD/ G20 BEPS Package, providing greater potential for multi-lateral implementation.

Tax and Digitalisation

The OECD Released a "final" report on Action 1 in October 2015. However, there were several remaining broader challenges that digitalisation posed the international tax system that were identified as requiring continued work. This tax focused work is being performed simultaneously with a new multidisciplinary, horizontal initiative at the OECD on the digital economy (the Going Digital project).

Continued Work on the Tax Challenges of Digitalisation

- The OECD had a call for input and a public consultation in the fall of 2017. Business at OECD was intimately involved in the process, including providing a comment letter in response to the OECD's call for input and arranging Digital Days in Europe and the U.S. for the OECD to meet with leading digitalized businesses and openly discuss business models and address concerns.

- Business at OECD joined the OECD at a public consultation in Berkley, California on 1 November 2017. At the consultation, Will Morris, Business at OECD Tax Chair, emphasized that the effects of rule changes on the whole economy must be considered, and, instead of rushing towards imperfect unilateral solutions, there needs to be a serious and sustained conversation between all stakeholders, refocused towards encouraging further growth, jobs and prosperity. A recap and video of the conference is available here.

OECD Interim Report

- The OECD released an Interim Report on 16 March 2018 on the Tax Challenges Arising from Digitalisation. Business at OECD commends the forward-thinking, multilateral approach of the OECD, which aims to deliver a global consensus on taxation of the digital economy to facilitate and not hinder cross border trade, investment, and growth.

- The Interim Report includes analysis of highly digitalised business models (by way of illustrative case studies), identification and analysis of common characteristics related to such business models, impacts on the historic international tax framework, and discussion of the potential for interim measures until a global consensus is reached by 2020 (with an update in 2019).

- As a part of the Interim Report:
    - Consensus was reached to review two foundational principles of the international tax framework in light of digitalisation – (1) Nexus (i.e., a level of activity providing right to tax) and (2) Profit Allocation (i.e., the allocation/apportionment of income between affiliates and activities).

- No consensus was reached on either the merit or the need for interim taxation measures related to digital services, as such, the report does not recommend introduction. However, Chapter 6 does outline the views of opponents of short term measures as to their disadvantages, as well as the views of the proponents of such measures as to the possible parameters if such provisions are implemented.
- The Interim Report also looks at the impact of digitalisation on indirect tax (in particular VAT/GST) and follows up on the Action 1 Report, which recommended that countries should implement the OECD's International VAT/GST Guidelines – in particular the destination principle, and the simplified registration and collection regime for foreign vendors.

European Commission (EC) Proposals

- The week following the release of the OECD Interim Report, the EC released two significant proposals regarding digital taxation. The first is short-term measure known as the "digital services tax," and second outlines a long-term approach to taxation of digital activities with the introduction of digital PE through the threshold of a "significant digital presence." Business at OECD provided immediate comments warning against unilateral action and fragmentation in international taxation with a call for a broad, multi-lateral approach to this complicated issue.
- These proposals released are a follow-up to preliminary guidance from October 2017. Business at OECD provided comments with respect to the EC paper in early January 2018, arguing for a multi-lateral approach to this complicated issue.

Business at OECD will continue to engage with the OECD and governments on digital taxation issues going forward, and endorses the OECD Inclusive Framework on taxation that includes more than 100 countries and territories as the most appropriate forum for this pertinent issue.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

On 7 June 2017, over 70 countries participated in the signing ceremony the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (also known as the "MLI"). As implemented, the MLI will modify the application of thousands of bilateral double tax treaties, in hopes of applying minimum standards, countering treaty abuse, and improving dispute resolution.

MLI Legally Effective 1 July 2018

- With nearly 80 countries expressing their interest in adopting the MLI, Business at OECD continues to monitor the implementation process related to the MLI. On 22 March, Slovenia became the 5th country to enact the MLI (along with Austria, Isle of Man, Jersey, and Poland). As a result, the MLI will enter into force on 1 July 2018, and for those countries who have ratified, the provisions will enter into effect at various points the following year.

- As countries ratify the MLI, it will override a range of existing bi-lateral treaty provisions with corresponding jurisdictions that have also enacted the MLI (after set lead time periods).

OECD Model Tax Convention – Condensed Version

- The OECD Model Tax Convention on Income and Capital: Condensed Version 2017 was released in early 2018, available here. The 2017 Edition of the OECD Model mainly reflects a consolidation of the treaty-related measures resulting from the work on the OECD/G20 BEPS Project.
- The full version of the *OECD Model Tax Convention*, including the Articles, Commentaries, non-member economies' positions, and historical notes, is expected to be published later in 2018.

Revised Guidance on Attribution of Profits to Permanent Establishments

The Inclusive Framework identified additional workstreams regarding TP and PE issues in Actions 8-10 and 7 respectively, which are now at various stages of completion.

- The OECD released two revised discussion drafts in June 2017 covering TP and PE issues surrounding the BEPS Action 8-10 (Revised Guidance on Profit Splits) and the BEPS Action 7 (Additional Guidance on the Attribution of Profits to PEs). These discussion drafts outlined certain general principles regarding the attribution of profits to PEs and also invited clarification of the application of transfer pricing methods, in particular the transactional profit split method, in the context of global value chains.
- Business at OECD submitted comments in September 2017 on both papers, Revised Guidance on Profit Splits and Additional Guidance on the Attribution of Profits to PEs.
- On 22 March, the OECD issued a final report containing Additional Guidance on the Attribution of Profits to PEs, which reflected a few minor updated from the discussion draft in June 2017. A Business at OECD position paper is currently being developed. The final report on Revised Guidance on Profit Splits is expected later this spring, and final Guidance on Profit Splits is also expected in 2018
- In addition, the OECD is expected to issue Implementation Guidance for its recommendations on Hard to Value Intangibles, and a Discussion Draft on Financial Transactions (covering mostly captive insurance, cashpooling, and guarantee fees) in 2018.

Action 13 – Country-by-country Reporting (CbCR), Master File, and Local File

The final Action 13 Report outlines three separate reporting obligations, CbCR (employees, revenues, etc. by jurisdiction), Master File (general summary of global business operations) and the Local File (financial details of local operations and detail of interaction with affiliates). Business at OECD has been supportive of the initiative since its inception as a tool and method to improve transparency to (and between) governments and taxpayers (Business at OECD's full Statement on CbCR Implementation).

Business at OECD continues to monitor the implementation of BEPS Action 13 with the hopes of ensuring the intended objectives are met and the measures are implemented consistency across jurisdictions. Business at OECD remains of the opinion that this will allow local governments and tax authorities to focus their scare resources and will also help build trust within the international tax system.

CbCR Exchange Agreements

- Business at OECD continues to applaud the effort of the OECD on pursuing the effective implementation of Action 13 (and notably CbCR) across the Inclusive Framework.
- In addition, Business at OECD commended the U.S. Internal Review Service's Large Business and International Division on its work to ensure the U.S. had sufficient active exchange agreements in place to avoid additional CbCR local filings for U.S.-based corporations. These efforts avoided a significant burden that otherwise would have borne by U.S.-headquartered MNEs.

Master File

- To minimise the administrative burden created by Action 13, Business at OECD believes respective local country implementations of Action 13 should remain consistent with the guidance provided by OECD in the final Action 13 Report. If countries add their own, different requirements to the Master File, the benefits of the Master File are significantly undermined.
- India enacted requirements pursuant to Action 13, requiring most MNEs to e-file a Master File by 31 March 2018. Several BIAC members provided feedback of general concern with regards to the India requirements, with a consensus opinion that the rules raise significant barriers to compliance, confidentiality issues, and require much more specific and precise information than what was outlined in the Action 13 Report.
- These comments and concerns were consolidated in a formal letter, which was sent to the OECD on 22 March 2018. By implementing rules that are not consistent with the Article 13 standard, there is a risk that the objectives agreed to by consensus during the BEPS Project are undermined.
- Business at OECD will continue to monitor the implementation of the Action 13 requirements across jurisdictions to ensure such provisions are consistent and within the spirit of Action 13.

Tax and Development

The OECD Tax and Development Programme delivers support initiatives for developing countries seeking to implement or strengthen their regimes for addition transfer pricing and other BEPS-related issues. The Task Force on Tax and Development is currently focused on sharing global insight, capacity building activities, and international engagement. Two capacity building activities are the Platform for Collaboration on Tax and Tax Inspectors Without Borders.

The Platform for Collaboration on Tax

- On 14 February 2018, Business at OECD Tax Committee Chair Will Morris spoke at the first Global Conference of the Platform for Collaboration on Tax. Since its inception, Business at OECD has supported the objectives of the Platform and the opportunity for collaboration and alignment between the OECD, UN, World Bank Group and IMF.
- Business at OECD Tax Chair Will Morris addressed the Platform's work and how it can be best leveraged and supported by business to maximise progress on meeting the 17 Sustainable Development Goals, making it clear that this process is aided by consistent, certain, pro-growth tax policy.

- The Business at OECD Tax Committee has responded the Platform's consultations as it develops its Toolkits to assist developing countries related to taxation and development – first regarding hard-to-value intangibles and later on taxation of indirect transfers.
- BIAC will respond as necessary to the upcoming toolkits on TP Documentation, Treaty negotiation, Risk assessment, Base eroding payments and Supply chain restructures as they are release (expected to be throughout 2018).

Tax Inspectors Without Borders (TIWB)

- TIWB is a joint initiative of the OECD and the United Nations Development Programme (UNDP), designed to support developing countries to build tax audit capacity. In a real-time 'learn by doing' approach, TIWB facilitates the sharing of expertise by the deployment of experienced tax auditors on a demand-led basis to developing countries.
- Business at OECD has been involved with TIWB since inception and is a member of the Technical Advisory Group, providing business input through the process. The first TIWB eNewsletter was recently released (available online in English, French and Spanish), summarizing involvement and the expanding number of active deployments.

Tax Administration / Transparency

The Common Reporting Standard (CRS) is a standard for the automatic exchange of tax and financial information at the global level (between jurisdictions), developed by the OECD in 2014. Business at OECD's Business Advisory Group, led by Keith Lawson (ICI), has continued to provide business input to OECD for the creation/development of these proposed rules and has monitored their continued progress and implementation.

CRS Update

- Comments filed by Business at OECD on Mandatory Disclosure Rules for Addressing Common Reporting Standard (CRS) Avoidance Arrangements and Offshore Structures were presented to OECD governments on 8 February during a joint session with the OECD Committee on Fiscal Affairs Working Parties on Exchange of Information and Tax Compliance (WP10) and Addressing Aggressive Tax Planning (WP11).
- At the meeting, Business at OECD, emphasized the need for clear guidance that limits the reporting obligations on financial institutions engaged in commercial arrangements that are not designed to circumvent the CRS.
- On 9 March, the OECD released an updated *Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures*. Business at OECD was pleased to find that many of our members' comments were well received by OECD and were included in the final report. Specifically, many of the explanations and rules were clarified regarding their scope and potential application.

International VAT/GST Update

The OECD's Working Party on Consumption Taxes (WP9) and the Working Party's Technical Advisory Group (TAG), comprised of government, academic, and business is further advancing its work on the international VAT/GST framework with the OECD International VAT/GST Guidelines. The Business at OECD VAT/GST work, which is led by Karl-Heinz Haydl, currently focuses on:

OECD´s VAT/GST Digital Platforms Project

- A government only meeting took place the last week of February as the government colleagues needed more time for further in depth discussion on the topic. Therefore, the February 2018 TAG meeting was postponed to 15-16 May, where further business input will be provided.
- Business at OECD hosted a call with OECD to debrief from the February meeting and will continue to host updates and provide business input as the work advances.

Consultations – Singapore and South Africa – Request for business input

- The Inland Revenue Authorities of Singapore (IRAS) approached Business at OECD in December 2017 requesting input from a business perspective on their revised proposal of the overseas vendor registration regime in Singapore. Business at OECD members provided formal comments directly to the IRAS.
- South Africa also proposed changes regarding VAT on electronic services to which Business at OECD members responded directly. A taxpayer workshop is planned to be hosted by National Treasury in South Africa to which Business at OECD members have been invited.

International Outreach

The BIAC Tax Committee continues to reach out beyond OECD member countries to increase the understanding of the global tax framework, hoping to provide more consistent adoption of international tax rules. With introduction of the Inclusive Framework it has become a critical part of Business at OECD's mandate, extending outreach to over 110 jurisdictions.

Brazil TP Conference

- On 28 February, the OECD and Brazil launched a joint project to "examine the similarities and gaps between the Brazilian and OECD approaches to valuing cross-border transactions between associated firms for tax purposes." The programme will assess the potential for Brazil to move closer to the OECD's TP standard, which is a critical benchmark for OECD member countries and will be critical to the potential accession process.
- The 15-month programme kicked-off at a conference in Brasilia co-hosted by CNI (Business at OECD's Brazilian Observer Organization), OECD, and Federal Revenue of Brazil. At the conference, the Brazil Minister of Finance was explicit that Brazil is open to the changes required to get on an OECD-like TP standard, and the Brazilian Revenue Authority emphasized Brazil's engagement and collaboration with the OECD technical teams in seeking a path forward.
- The general sentiment of the commentary – whether it was from business, government or academia – was generally positive. However, all parties acknowledged that it would be a lengthy process, and yet convergence and conformity was openly affirmed by all parties as an overriding goal.
- The general approach for such convergence is based on a technical assessment and proposal developed by CNI, aiming at both, enhancing the current Brazilian rules in key technical aspects viewed as distortionary whilst converting the current rules into "safe harbours" taxpayers could opt into. CNI's proposal was supported not only by all

companies and academics engaged in the debate, but seemed to be well received by the authorities.

- Ilona Tangey (Sony Corp) represented Business at OECD on multiple panels, providing first-hand experiences with the complexities that MNEs face under the current tax legislation governing cross border related party transactions in Brazil.
- Business at OECD will continue to be involved in the OECD's review process by gathering empirical evidence and providing commentary.

Upcoming Meetings/Continued Engagement

The BIAC Tax Committee intends on being closely engaged with the OECD on BEPS implementation measures and other OECD related activity this year. The schedule below shows Business at OECD conferences as well as other supplemental conferences where Business at OECD will participate.

23 April 2018 – *TIWB's Side Event at the ECOSOC Forum on Financing for Development* – **New York**

2 May 2018 – *Preparatory Consultation for OECD Ministerial Council Meeting* – **Paris**

3 May 2018 – *Business at OECD Taxation and Fiscal Policy Bureau Meeting* – **Paris**

4 May 2018 – *Business at OECD Taxation and Fiscal Policy Committee Meeting* – **Paris**

14-15 May 2018 – *Business at OECD Taxation and Fiscal Policy "TAG" Meeting (VAT/GST)* – **Paris**

29-31 May 2018 – *International Tax Conference* – **Stockholm (hosted by the Swedish government)**

30-31 May 2018 – *OECD Ministerial Council Meeting* – **Paris**

4-5 June 2018 – *June 2018 – USCIB / OECD / Business at OECD Tax Conference* – **Washington D.C.**

29 June 2018 – *Business at OECD/ICC/BusinessEurope Int'l Tax Conference on Digitalization* – **Munich**

5 November 2018 – *Business at OECD Taxation and Fiscal Policy Bureau Meeting* – **Berlin**

6 November 2018 – *Business at OECD/BDI Joint Tax Conference* – **Berlin**

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Deputy Chair

Mr. Alan McLean (Shell, Netherlands)

Vice Chairs

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Ms. Carol Doran Klein, USCIB (United States)

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Mr. Yoshiyasu Okada, PwC Tax Japan (Japan)

Mr. William Sample, Microsoft Corporation (United States)

Mr. Giorgio Bigoni, Enl spa (Italy)

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