

Dbriefs Bytes Transcript

17 January 2014

For comments on Action 1, see [the highlighted text below](#).

BEPS

I have a number of BEPS developments this week.

[\(i\) Digital Economy : OECD publishes comments](#)

Firstly, the OECD's task force on the digital economy has published all of the public comments which have been given to it. You will remember that a request for input was made by the OECD on 22 November, with a deadline of 22 December.

Well, 17 organizations made comments. The organizations range from:

- Professional advisers like Deloitte and Baker & McKenzie, to
- Associations such as the International Bar Association and the UK's Chartered Institute of Taxation, to
- Corporations such as Informa Group plc and an anonymous Japanese company, and to
- NGOs such as the BEPS Monitoring Group.

Let me go through some of the comments.

And, of course, I'll start with [Deloitte](#) – our comments were submitted by Bill Dodwell and Alison Lobb from London.

We addressed our comments to three different business models in the digital economy:

- High frequency financial trading;
- Cloud computing services; and
- Advertising models.

With [high frequency financial trading](#), complex algorithms run on servers located remotely from traders and the algorithm developers. Key profit drivers would include:

- The algorithm development;
- The provision of capital; and
- The location of the server. [Because of the importance of speed in making the trades, the location of the server conducting the high frequency trading adds significantly to the value of the business. For trading, the closer the server is to the relevant Exchange, the smaller the time gap (so-called "latency") for completion of transactions.]

With [cloud computing services](#), server space is provided to a customer, who conducts business through the server. The location of the servers might also be a very important profit driver here, but the importance might vary from business to business. Other key profit drivers would include:

- Availability of space and associated facilities (such as temperature control);
- Access to infrastructure (for example, power supply and fibre optic cables); and
- Depending on the type of cloud services offered, an important profit driver might be software programs.

With [advertising models](#), we see websites and information or tools which are provided free to consumers over the internet, and income is received from third parties in the form of advertising revenues. An important point to note with the advertising model is that there are two transactions : one that is free between

unrelated parties (consumer and the global business), and one that is paid for between unrelated parties (the global business and advertisers). Often, the advertisers, and the consumers they wish to access, will be in the same country.

The [Baker & McKenzie](#) comments give a very good description of the different forms of business model which are currently used in the digital economy, including numerous named examples. The submission argues that the public perception that digital companies are a U.S. phenomenon is just not correct. For example, the submission says this:

“The China-based Alibaba Group owns China’s two largest e-commerce platforms, Taobao Marketplace and Tmall. In 2012, Taobao and Tmall handled 153 billion US dollars in transactions. If Tmall sustains its growth, Tmall is expected to overtake Amazon in 2015 to become the world’s largest internet retailer.”

There are two key issues which a number of commentators addressed:

- The first concerns the value to be placed on data collection.

For example, Deloitte said this:

“It is also important to recognize the value produced, for some digital business models, by the interaction between the business and the consumer, referred to as the “network effect” in some discussions.”

Baker & McKenzie were more forthright:

“Enterprises with access to such user data will endeavor to structure and analyze such data to maximize their business opportunities. In this example, the enterprise creates value in those jurisdictions in which the enterprise’s personnel structure and analyze the data, not in the jurisdiction from which the data originates.”

- The second key issue is the definition of the digital economy: does it encompass traditional business which uses digital communication (internally and / or externally), or is it limited to so-called “pure play digital companies”?

To obtain a copy of all of the comments, please follow the link in the summary slides at the end of the video.

(ii) Digital Economy: EU expert group

Also in regard to the digital economy, the EU’s expert group has published a number of papers following its first meeting in December. Apart from procedural issues, there are three interesting papers:

- A so-called “general issues” paper;
- A “scoping the work” paper; and
- A timetable, which is called a “roadmap”.

There’s one particularly interesting comment in the “general issues” paper, in regard to the “source versus residence country” debate. After referring to the fact that the traditional OECD position is to minimize source country taxation, the paper then says:

“It is useful to recall that in the digital tax debate, the EU is generally rather a source rather than a residence country. One therefore should realize that strengthening the taxing rights of the EU in the digital economy, may imply or trigger stronger taxing rights for source countries generally, with potential adverse consequence for the EU’s entitlement to tax the revenues of the traditional economy.”

We’ve also given you a link (in the summary slides at the end of this video), to obtain a copy of the expert group’s papers.

(iii) OECD webcast

Next Thursday, 23 January, the OECD will be presenting a BEPS webcast. According to the OECD, it will give us the latest update on the BEPS project. From the OECD’s description, it’s difficult to work out whether the OECD will be giving us any new information. Anyway, it’s scheduled for 3pm Central European time, and it should last for one hour.

All of the speakers are OECD officials, including Pascal Saint-Amans.

If you would like to register for the webcast, please follow the link in the summary slides at the end of this video.

(iv) Netherlands hesitates on country-by-country reporting

The Netherlands government has indicated that it is reluctant to support the country-by-country reporting proposal, which is part of Action 13. It hasn't said "no", but it has said that it wants the impact of country-by-country reporting to be fully researched before it will support the proposal.

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