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Dbriefs Bytes Transcript

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For comments on Action 2, see **the highlighted text below**.

BEPS

1. **BEPS 2014 Deliverables**

Well, a lot of trees have been sacrificed this week in the name of BEPS.

On Tuesday, the OECD released its 2014 deliverables.

Here is the list of 7 deliverables which were released:

- A final report on Action 1: "Addressing the Tax Challenges of the Digital Economy" – this is 200 pages in length.
- A final report on Action 15: "Developing a Multilateral Instrument to Modify Bilateral Tax Treaties" – 64 pages
- An interim report on Action 5: "Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance" – 68 pages
- Draft rules (the OECD's term) on Action 2: "Neutralising the Effects of Hybrid Mismatch Arrangements" – 100 pages
- Draft rules on Action 6: "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" – 109 pages
- Draft rules on Action 8: "Guidance on Transfer Pricing Aspects of Intangibles" – 132 pages
- And, finally, draft rules on Action 13: "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting" – 46 pages

And the OECD also released some other useful BEPS documents :

- An Information Brief – 6 pages
- An Explanatory Statement – 8 pages
- Frequently Asked Questions – 65 questions in 18 pages
- And probably the most important document : Executive Summaries of all of the seven 2014 Deliverables – 29 pages

So, altogether, the OECD released 780 pages on Tuesday.

If you would like to read some or all of those documents, please go to BEPS Central – they're all there.

In this Dbriefs Bytes, I'm going to take you through the highlights of each of the 7 deliverables, spending only a few minutes on each. In regard to the 5 deliverables which have been previously issued in "discussion draft" form, I will focus on the major changes from the discussion draft (or, in the case of

Action 8, the most recent discussion draft).

But before I start, let me briefly refer to the fact that none of the seven 2014 deliverables is completely finished :

If you look at the Deliverables on Actions 2, 6, 8 and 13, the OECD calls these "draft rules". It says this in the Explanatory Statement:

> "Given the Action Plan's aim of providing comprehensive and coherent solutions to BEPS, the proposed measures, while agreed, are not yet formally finalized as they may be impacted by some of the decisions taken with respect to the 2015 deliverables with which they interact. They do reflect consensus on a number of solutions to put an end to BEPS."

And later it says this:

> "….the 2014 deliverables are closely connected to 2015 deliverables. Indeed, the Action Plan was conceived to provide solutions in a holistic and comprehensive manner. Sequencing the Actions should not hamper the comprehensiveness of the solutions to BEPS. The first set of deliverables must be seen in that context. **As a result the recommendations will remain in draft form so that the potential impact of the 2015 deliverables can be incorporated before finalizing them.** For example, the work on the transfer pricing aspects of intangibles includes sections still bracketed as they cannot be finalized before Actions 9 and 10 are delivered."

- Also, for some of the deliverables, there are some specific issues which have yet to be worked out. I will point these out when I discuss each deliverable.

- The Action 5 deliverable is an interim report, so that's obviously not complete. But even Action 1, which is called a "final report", is not even close to being the last word on that topic.

OK, let me now start my review of the highlights of each deliverable.

And I'll start with my favourite topic: double tax treaties.

2. Action 6 : Prevent Treaty Abuse

PPT

Let me ask you this: what's the difference between "one of the main purposes" and "one of the principal purposes"? The answer, of course, is "nothing", at least in the English language: "main" and "principal" are synonyms. Nevertheless, the OECD has seen fit to change the purpose test from "main" (which was used in the March discussion draft for Action 6) to "principal" (which is used in the 2014 deliverable).

Unfortunately, they have not seen fit to change the test to "the principal purpose". We still have this slippery formulation: "one of the principal purposes".

The OECD has created an acronym to refer to this test: it's "PPT".

Range of options

However, the most important change in the 2014 deliverable (when compared with the March discussion draft) concerns the range of options which the deliverable allows in regard to the LOB rule and PPT.

There are three possible options:

- The first option is that both the LOB rule and the PPT are included in the treaty.
- The second option is that only the PPT is included in the treaty – the LOB rule is excluded.
- And the third option is that the LOB rule is included, but it must be supplemented by a rule which would deal with conduit arrangements.

The fact that the deliverable contains a range of three options is, of course, reflective of the strong negotiations, within the OECD, between the US on one side (which wanted the LOB rule only), and essentially the rest of the OECD on the other (which wanted a PPT).
It's been claimed by some commentators that the range of options shows that the US won this debate. Maybe. But it's interesting to note that the second option allows PPT only - whereas the third option allows the LOB rule, not on its own, but supplemented by a "conduit arrangement" rule. Which reflects the inherent limitations of an LOB rule.

There are some interesting comments made by the OECD in regard to these options:

- Firstly, in regard to the PPT, the OECD says :

  > "…some countries may have domestic anti-abuse rules, or the courts of some countries may have developed various interpretative tools (e.g. economic substance or substance-over-form), that effectively address various forms of domestic law and treaty abuses and these countries might not require the [PPT] or might prefer a more restricted form of that provision."

- And secondly, in regard to the LOB rule, the OECD says that it will need to be adapted to reflect constitutional or EU law restrictions.

<u>LOB rule</u>

In regard to the LOB rule, this is largely unchanged from the version in the March discussion draft. But I did notice some small changes:

- The version in the March discussion draft, in the definition of "qualified person", did not allow tracing through subsidiaries in third countries. The 2014 deliverable leaves that issue open for negotiation between the two treaty countries.

- "Dual listed company arrangements" are now dealt with.

- The LOB rule envisages that the two treaty countries might want to include a specific rule on collective investment vehicles.

- And the "derivative benefits" provision, which was included in the March discussion draft as an optional extra, is now included in the main body of the LOB rule – but within square brackets. This presumably means that the inclusion of the "derivative benefits" provision is an issue which is open for negotiation between the two treaty countries.

<u>Commentary</u>

One notable feature of the 2014 deliverable is the inclusion of draft Commentary. This is the main reason why the 29 pages of the March discussion draft became 109 pages in the deliverable.

The Commentary on the LOB rule, particularly on the active business test, is substantially copied from the Technical Explanation to the 2006 US model treaty – there is very little original OECD work.

<u>Work still to be done</u>

Action 6 is unfinished.

According to the OECD's Explanatory Statement:

> "….policy considerations will be addressed to make sure that these rules do not unduly impact collective investment vehicles (CIVs) and non-CIV funds in cases where countries do not intend to deprive them of treaty benefits. Finally, additional work is needed with respect to the contents of the model provisions and the relevant Commentary, in particular the limitation on benefits rule. [All of this further work] will be finalized by September 2015."

3. Action 15 : Developing a Multilateral Instrument

Well, if the Action 6 deliverable is going to have any short-term impact in the real world of double tax treaties, it will have to be via a multilateral instrument.

The Action 15 deliverable is a report which:

- argues the case for a multilateral instrument in regard to double tax treaties,

- gives numerous examples of multilateral treaties in other branches of international law,

- and concludes that a multilateral, legally binding instrument is feasible and could be developed soon to at least incorporate tax treaty related BEPS measures.

In regard to arguing the case for a multilateral instrument, there are some interesting points made, including these:

- Some issues are much easier to address multilaterally than in bilateral treaties. The example given is that of a multilateral mutual agreement procedure (MAP) to give a legal platform on which to resolve multi-country tax disputes.

- A multilateral instrument can increase the consistency of the international tax treaty network. The example given is that a single text, instead of thousands of similar but slightly varying texts, would be more likely to produce consistent interpretation across jurisdictional boundaries.

The OECD's proposal is that the multilateral instrument would co-exist with existing bilateral double tax treaties. It would modify some of the provisions of those bilateral treaties, but those treaties would otherwise continue to apply.

In terms of next steps, the OECD proposes a mandate would be issued by the OECD in January 2015 for the convening of an international conference to negotiate the multilateral instrument over the course of the following two years.

4. Action 13 : Transfer Pricing Documentation

The deliverable on Action 13 sets out the new text of chapter V (called "Documentation") of the OECD Transfer Pricing Guidelines.

The new chapter V adopts a three-tier approach to transfer pricing documentation:

- The first tier is the Master file
- The second tier is the Local file
- And the third tier is the Country-by-country report

The new chapter V also includes three annexes which set out the information to be included in the three documents (Annex 1 for the master file, Annex 2 for the local file, and Annex 3 for the country-by-country report).

Of greatest interest, of course, is the template for the country-by-country report, which is also set out in Annex 3.

The template is shown in three tables.

This is table 1, which shows that, for each tax jurisdiction, the following 9 (or 10, depending on how you count) data points need to be given for each fiscal year:

- Revenue from unrelated parties
- Revenue from related parties
- Then total revenue (which is not really a separate data point)

- Profit (or loss) before income tax
- Income tax paid (on a cash basis)
- Income tax accrued – current year
- Stated capital
- Accumulated earnings
- Number of employees
- And finally, tangible assets other than cash and cash equivalents.

You will notice that the data points on table 1 are for each tax jurisdiction – the data points are not on a "per entity" basis.

On table 2, you are required to list the names of all of the entities which are resident in each tax jurisdiction. However, for each entity, the only information which is required to be given on table 2, is:

- Firstly, its jurisdiction of organization or incorporation (if that is different from its tax residence jurisdiction).
- And secondly, its type of main business activity.

And table 3 is very brief: it allows a space to provide any further information.

The rest of Annex 3 provides general and specific instructions on how to complete the country-by-country report.

Payments

The data points in the template of the country-by-country report represent a significant simplification from the first draft which was issued early this year.

Not all countries within the BEPS project agreed with that simplification. In fact, the deliverable states that 8 emerging market countries (Argentina, Brazil, China, Colombia, India, Mexico, South Africa, and Turkey) all wanted the retention of information on related party interest payments, royalty payments, and service fees.

As the simplification has been made, those 8 countries lost that argument, but they did achieve this concession:

> "Taking all these views into account, it is mandated that countries participating in the BEPS project will carefully review the implementation of these new standards and will reassess no later than the end of 2020 whether modifications to the content of these reports should be made to require reporting of additional or different data."

Filing process

If you have been following the debate on Action 13, you will know that the biggest issue in the last few months has been in regard to the filing process, having regard to a number of factors (including confidentiality). Well, that issue has not been resolved.

This is what the new chapter V says on this topic:

> "It is the view of the OECD / G20 Project that taxpayers should deliver the local file directly to tax administrations in the relevant local jurisdiction. There are, however, different views about the filing process for the master file and the country-by-country report, and consequently about the mechanisms by which the information is to be made available to tax administrations in all relevant countries.
>
> "During the next several months, Working Party No. 6 of the Committee on Fiscal Affairs will undertake an analysis of potential mechanisms for filing and disseminating the master file and the country-by-country report."

If you would like to obtain our Global Transfer Pricing Alert on the Action 13 deliverable, please go to BEPS Central.

5. Action 8 : Transfer Pricing Aspects of Intangibles

The deliverable on Action 8 consists of amendments to various parts of the OECD's Transfer Pricing Guidelines.

Notably, there are amendments to chapter I (which is titled, "The Arm's Length Principle"), on these three topics:

- Location savings and other local market features
- Assembled workforce
- And MNE group synergies

And there is a new chapter VI titled, "Special considerations for intangibles".

The new chapter VI is similar to the most recent discussion draft, which was released in July 2013.

It has the same basic structure:

- Section A : Identifying intangibles
- Section B: Ownership of intangibles and transactions involving the development, enhancement, maintenance, protection and exploitation of intangibles.
- Section C: Transactions involving the use or transfer of intangibles.
- And section D: Supplemental guidance for determining arm's length conditions in cases involving intangibles.

  And then an Annex with 33 examples, which is an increase of 6 from the discussion draft.

  But the most striking thing about the new chapter VI is that parts of it are still in draft form.

Specifically, the following have been placed in square brackets and shaded grey (indicating draft text):

- Three large parts of section B :
  - The introduction
  - B.1 : Intangible ownership and contractual terms relating to intangibles
  - B.2 : Functions, assets, and risks related to intangibles
- Two parts of section D :
  - A segment on "application of profit split methods"
  - D.3 : Arm's length pricing when valuation is highly uncertain at the time of transaction
- And 13 of the examples.

Action 8 is closely related to two other "transfer pricing" BEPS Actions : Action 9 (risks and capital) and Action 10 (other high-risk transactions). Both of those Actions are September 2015 deliverables.

The high level of interactivity between Actions 8, 9 and 10 is the reason, according to the OECD, for the square brackets and shaded grey areas in the new chapter VI.

According to the OECD:

> "Because the interactions between work on ownership of intangibles, hard to value intangibles, risk and recharacterisation are particularly pronounced, a decision has been made not to finalise the work on some sections of this document at this time. Accordingly, bracketed and shaded portions of this document should be viewed as interim drafts of guidance, not yet fully agreed by delegates, that will be finalised in 2015 in connection with other related BEPS work."

One other interesting point made by the OECD is an indication of the types of "special measures" that will be considered during the course of 2015. Four examples of “special measures” have been given:

- “Providing tax administrations with authority in appropriate circumstances to apply rules based on actual results to price transfers of hard to value intangibles and potentially other assets” – in other words, a “commensurate with income” rule.
- “Limiting the return to entities whose activities are limited to providing funding for the development of intangibles, and potentially other activities, for example by treating such entities as lenders rather than equity investors under some circumstances”.
- “Requiring contingent payment terms and/or the application of profit split methods for certain transfers of hard to value intangibles”.
- And “Requiring application of rules analogous to those applied under Article 7 and the Authorised OECD Approach to certain situations involving excessive capitalization of low function entities”.

6. Action 2 : Hybrid Mismatch Arrangements

The deliverable on Action 2, hybrid mismatch arrangements, has only a small number of changes versus the March discussion draft.

Let me start with the big picture.

This is the summary chart which is included in the deliverable. You might remember that there was a similar summary chart in the March discussion draft. When you try to reconcile the two, you will find that the OECD has changed the formatting – in particular, it has placed together all of the D/NI situations (that’s deductible / no inclusion), and also it has placed together the two DD situations (that’s double deduction).

Apart from that reformatting, there are several substantive changes in the chart – for example:

- If you look at the first arrangement (“hybrid financial instrument”), the “scope” in the March discussion draft was stated to be “under consideration”. Well, as you can see, it now says : “Related parties and structured arrangements”.

Part I of the deliverable includes 12 recommendations for changes to the domestic tax laws of the respective countries. These recommendations are set out in 12 boxes throughout the document.

Here’s an example of one – I’ve tried to pick the smallest box. This is Recommendation 2: special recommendations for the tax treatment of financial instruments.

There has been some tightening of the definitions, as compared with the March discussion draft. In particular, the definition of “related person” has changed from an ownership threshold of 10 percent to 25 percent.

Part II of the deliverable contains a discussion on treaty issues.

Here you will find the proposed new Article 1(2) on income derived by or through fiscally transparent entities or arrangements, plus a proposed Commentary. There’s also a discussion on whether the Part I recommendations on domestic law changes would breach existing treaty provisions – for example, Article 24 (the non-discrimination article). The general conclusion is “no”: no breach of existing treaty provisions.

Further work needs to be done by the OECD in a number of areas – for example:

- Intra-group regulatory capital
- On-market stock lending and repos
- Imported hybrid mismatches
- The question of whether or not income taxed under a CFC regime should be treated as included in ordinary income
- And preparation of a Commentary for the 12 domestic law recommendations, including practical examples.

7. Action 5 : Countering Harmful Tax Practices

The Action 5 deliverable is an interim report on the review of harmful tax practices, currently within OECD member and associate countries, and then eventually other countries. By the way, “OECD associate countries” are those which are on the cusp of OECD membership (for example, Colombia), as well as G20 members which are not OECD members (for example, China).

The current focus has been on so-called IP regimes.

Essentially, the OECD is developing rules by which to assess whether existing IP regimes of particular countries constitute harmful tax practices.

The interim report does not indicate what the sanction would be if a particular IP regime was declared to be a harmful tax practice – but, at the minimum, I would guess that there would be a "naming and shaming" exercise.

The proposed assessment rules fall into two categories:

- Firstly, a requirement that there be "substantial activity" undertaken by any taxpayer which enjoys the favourable tax regime.
- And secondly, a requirement that the country undertake compulsory, spontaneous exchange of information on rulings given under that regime.

Let me briefly talk about each of these.

Firstly, in regard to the "substantial activity" requirement, the OECD states that it has not yet finalized the test it will use – but there's a strong hint that it will be the so-called "nexus approach".

Under the "nexus approach":

- Only IP regimes in regard to patents (and other IP assets that are functionally equivalent to patents) can possibly qualify – thus, marketing-related IP assets such as trademarks cannot qualify for tax benefits under an IP regime.
- And a taxpayer will be entitled to benefit from an IP regime in regard to a patent only if, and to the extent, that it has incurred the R&D expenditure which resulted in the patent.

So, for example, if 100 percent of the R&D expenditure which resulted in the patent was incurred by company X, then company X is entitled to 100 percent of the benefit of the IP regime in regard to that patent – for example, a low tax rate on the income which flows from exploitation of the patent.

Alternatively, if company X incurred only 50 percent of the R&D expenditure which resulted in that patent, then it would be entitled to only 50 percent of the tax benefit in regard to the income which flows from exploitation of the patent. If, in this situation, company X actually receives 100 percent of the tax benefit, then that IP regime would be classed as harmful by the OECD.

In determining whether a company is considered to incur R&D expenditure which resulted in the patent, the OECD is proposing to use some special rules, such as these:

- Expenditure on outsourced R&D activities can be counted, but only if the R&D contractor is an unrelated party. Expenditure on outsourced R&D activities performed by related parties, even those in the same country, will not qualify. A significant point, because there seems to be an inconsistency here with Action 8 (on the transfer pricing aspects of intangibles). A company which funds the R&D activities of a related party R&D contractor will be entitled to intangible related returns if it performs the substantial decision-making functions. It does not need to perform all of the R&D activities itself. However, for purposes of applying the "nexus approach" under Action 5, it will be required to perform all of the R&D activities itself.
- A second special rule is this: expenditure on acquired patents or IP (such as expenditure on outright purchase or royalties paid for a license) will not qualify.

So that's the "nexus approach", which seems to be the favoured approach to apply the "substantial activity" requirement.

The other requirement by which to assess existing IP regimes is in regard to compulsory, spontaneous exchange of information.

This will cover taxpayer-specific rulings, such as unilateral or bilateral APAs, or general rulings which apply to groups or types of taxpayers.

The OECD has started to review the IP regimes in these 15 jurisdictions. [See the table on page 59 of

Action 5 deliverable.]

8. **<u>Action 1 : Digital Economy</u>**

The Action 1 deliverable, which was produced by the OECD's Task Force on the Digital Economy, is a longer version of the discussion draft which was released in March.

You might remember that the March discussion draft created a few waves:

- Firstly, it gave various hints of what will be contained in the September 2015 deliverables on, for example, Action 4 (interest deductions), Action 7 (PE definition), and Actions 9 and 10 (transfer pricing). Some of those hints were very interesting – for example, in regard to global caps or formulas to limit interest deductions, greater use of the profit split method in global value chains, and the application of a "commensurate with income" method for intangible transfers. Well, all of those hints are still there in the September 2014 deliverable.
- Secondly, it described the broader tax challenges raised by the digital economy : nexus, data, characterization, and VAT collection. Those same four challenges are also in the September 2014 deliverable, but now there's a much deeper discussion of each.

Importantly, the September 2014 deliverable contains specific references to the "source versus residence country" debate in regard to allocation of taxing rights – there was no specific reference to this in the March discussion draft.

Here is one statement in the deliverable. I won't read it out, but if you would like to study it, please hit the pause button.

> ["These challenges raise questions as to whether the current international tax framework continues to be appropriate to deal with the changes brought about by the digital economy and the business models that it makes possible, and also relate to the allocation of taxing rights between source and residence jurisdictions. These challenges also raise questions regarding the paradigm used to determine where economic activities are carried out and value is created for tax purposes, which is based on an analysis of the functions performed, assets used and risks assumed."]

And here's another statement. Again, hit the pause button if you would like to read it.

> ["The changing relationship of businesses with users / customers in the digital economy may raise other challenges as well. The current tax rules for allocating income among different parts of the same MNE require an analysis of functions performed, assets used, and risks assumed. This raises questions in relation to some digital business models where part of the value creation may lie in the contribution of users or customers in a jurisdiction. As noted above, the increased importance of users / customers therefore relates to the core question of how to determine where economic activities are carried out and value is created for tax purposes."]

The September 2014 deliverable makes some changes to the list of potential tax options. Here is the list of options in the deliverable:

- o Modifications to Article 5(4), which deals with exceptions from PE status. This option was in the discussion draft.
- o A new nexus based on "fully dematerialized digital activities" and "significant digital presence". This option was also in the discussion draft.
- o Replacing the existing PE concept with a "significant presence" test for nexus. This is a new option. This is how it is described in the deliverable - I won't read it out, but please hit the pause button if you would like to study it.

Replacing PE with significant presence
September 2014 deliverable (Para. 8.2.1.3)

- "One potential option proposed in public comments would be to replace the existing PE concept with a "significant presence" test intended to respond to the changing nature of customer relationships in the digital economy while continuing to rely in part on physical presence. The criteria for this test intend to reflect the contribution to value of these closer, more interactive customer relationships and would include

        - Relationships with customers or users extending over six months, combined with some physical presence in the country, directly or via a dependent agent
        - Sale of goods or services by means involving a close relationship with customers in the country, including (i) through a website in the local language, (ii) offering delivery from suppliers in the jurisdiction, (iii) using banking and other facilities from suppliers in the country, or (iv) offering goods or services sourced from suppliers in the country
        - Supplying goods or services to customers in the country resulting from or involving systematic data-gathering or contributions of content from persons in the country."

    - Withholding tax on digital transactions. This option was in the discussion draft.
    - Introduce a bandwidth or "Bit" tax. This is a new option. This is how it is described in the deliverable – again, I won't read it out, but please hit the pause button if you would like to study it.

      Introducing a bandwidth or "Bit" tax
      September 2014 deliverable (Para. 8.2.1.5)
        - "Another potential option proposed in public comments would be to tax websites' bandwidth use. Such a tax would be based on the number of bytes used by the website, although in order to introduce an element of progressivity, different tax levels would apply depending on the enterprise size or the turnover. For administrative purposes, such a tax would apply only to businesses that exceed minimum threshold of annual bandwidth used. In order to maintain equity between digital businesses and traditional businesses, the proposed bandwidth tax would be creditable against corporate income tax."

    - And two VAT options: one in regard to exemptions for imports of low valued goods, and the other in regard to remote digital supplies to consumers. Both of these options were in the discussion draft.

The deliverable sets out a plan to fully consider and evaluate most of these options:

- The Article 5(4) modifications will be considered as part of the work on Action 7 (which is a September 2015 deliverable).
- The two VAT options will be considered by OECD working party 9.
- And the Task Force will continue to study and evaluate the two nexus options and the withholding tax option, with that work projected to be completed in 2015.
- Strangely, I can't find a reference to a plan to study the bandwidth or "Bit" tax.

In regard to the two nexus options, the deliverable sets out a list of factors which will be taken into account in the evaluation. Here is the list of factors. I won't read them out – if you would like to study them, please hit the pause button.

Nexus options: list of factors

- How the scope of each option could be tailored in order to address the tax challenges presented by the key features of the digital economy without creating substantial tax incentives for particular ways of doing business
- How to balance the need for a combination of factors broad enough to effectively address the tax challenges of the digital economy with the need to provide clear and objective standards in order to minimise potential dispute and to avoid double taxation
- With respect to options to create a new standard for PE, how profits (including deductions and losses) would be attributed to such a PE, notably with respect to the share of profits attributable to the collection of data, and whether doing so would require the current rules for attribution of profits to PEs to be substantially modified
- How to manage administration and enforcement, particularly where a taxpayer has no or minimal physical presence in a jurisdiction
- How to minimise the compliance burden on businesses that could potentially have a large number of PEs

And in regard to the withholding tax option, the deliverable sets out these factors by which to evaluate that option. Again, I won't read them out – if you would like to study them, please hit the pause button.

Withholding tax option: list of factors

- How to define the scope of payments covered by such a tax in a way that avoids creating substantially different tax results for similar businesses and avoids dispute on the characterisation of payments covered

- How to ensure consistency with trade obligations and other legal constraints
- How to address the challenges of withholding in the case of transactions with individual customers
- If financial institutions were required to withhold the tax in lieu of withholding by individual customers, how to ensure that those financial institutions could reliably determine which transactions were within scope
- To the extent that such a tax would be imposed as a final withholding tax, whether thresholds or other methods could be used to mitigate the impact of gross-basis withholding tax in the context of an enterprise that may incur significant expenses or losses

One final comment to make is in regard to timing.

You might remember that some criticism was directed to the OECD in regard to the March discussion draft, which described a “wait and see” approach in regard to these potential tax options.

This is what the discussion draft said:

> “….if the BEPS issues…are fully addressed through the measures envisaged in the BEPS Action Plan, addressing the challenges described [above] may become less pressing. On the other hand, if BEPS issues are not addressed fully in the context of the digital economy **and extremely low effective tax rates continue to be [the] norm**, then addressing the broader tax challenges of the digital economy becomes a more pressing issue.” [bolding added]

Well, the deliverable still indicates that there is a relationship between the extent of development of anti-BEPS measures in all the other Actions in the BEPS project, and the level of urgency in regard to the potential tax options in the digital economy. However, it excludes the reference to “effective tax rates continue to be the norm”. Now it seems that a final decision on the potential tax options will be taken in 2015.

9. Unfinished Business

Well, 780 pages and yet there are still many areas of unfinished business in these 7 deliverables. 2015 is going to be a very big year. A reminder, if you would like to read all or some of these documents, please go to BEPS Central.