

Dbriefs Bytes Transcript

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BEPS

(i) Webcast

Well, let's start with yesterday's BEPS webcast from the OECD. There were four presenters from the OECD : Pascal Saint-Amans, Raffaele Russo, Marlies de Ruitter, and Achim Pross.

The webcast was structured in five parts :

(i) firstly, introductory comments by Pascal (this lasted for about 10 minutes), during which he identified the 6 BEPS actions which have a deadline of September 2014;

(ii) the second part was an update on each of those 6 actions - these updates were presented by Raffa, Marlies and Achim. This second part went for about 30 minutes.

(iii) the third part was a brief update (5 minutes) by Pascal on Action 15 : the multilateral instrument.

(iv) the fourth part consisted of some brief overall comments by Pascal.

(v) and the final part was Q&A, and this lasted for about 15 minutes.

The 6 actions which have a September 2014 deadline are: Action 1 on the digital economy, Action 6 on treaty abuse, Action 2 on hybrid mismatch arrangements, Action 8 on the transfer pricing aspects of intangibles, Action 5 on harmful tax practices, and Action 13 on transfer pricing documentation. And to be frank, there was very little new information given on any of these actions.

One thing I found intriguing, however, was what was not said in regard to Action 1, the digital economy

This update was presented by Raffa. He described the process to date (the first meeting of the task force in October 2013), and then the plan for the future, culminating in a final report in September 2014.

Strangely, he didn't say anything about the story which was reported in the press earlier this week that the task force has decided that it is not appropriate to have specific rules for "pure play digital companies", in view of the high level of digitisation in the traditional economy. Instead, the same set of rules should apply to both pure play digital companies and traditional companies. Pascal was quoted in those news reports, so it seems strange to me that no-one on the panel referred to this aspect. Presumably, we'll have to wait for the discussion draft in March.

In regard to Pascal's overall comments, he basically made three points : (i) the BEPS project is currently on track; (ii) the outputs will be recommendations; and (iii) the digital economy report will be quite critical in setting out the way forward.

The Q&A session had some interesting questions, such as :

1. Will there be recommendations for a so-called full-inclusion system? Answer given : this will be considered, in the context of the action on CFC rules.

2. Does the "intangible related return" approach conflict with the separate entity principle? Answer given : no, it does not. However, it does emphasise the conduct of the parties, in addition to the legal position.

3. Is the OECD concerned about unilateral BEPS actions by some countries? Answer given : yes, because "we're all about multilateralism".

4. Is the OECD concerned about erosion of political will as the economy improves? Answer given by Pascal : Ah, a new acronym, EBEPS : Erosion of BEPS.

But his serious answer was : We have strong political support. And the Australian government, which is currently the president of the G20, is strongly pushing the BEPS project.

The OECD did say that a recording of the webcast will be available on the OECD website.

(ii) Submission re PE avoidance schemes

Remember the OECD's request in October to send in your favourite "PE avoidance scheme", so that it may be considered by the BEPS Action 7 focus group?

Well, there was only one submission made. It was made by an accountant in India, and it has been published by the OECD.

The submission, by a Mr. Shah, makes a number of points, including these:

Some of the exceptions in Article 5(4) should be deleted - notably, paragraphs (a) and (b) (which deal with the use of facilities for the purpose of storage, display or delivery of goods), and paragraph (c) (which deals with the maintenance of goods for the purposes of processing - in other words, toll manufacturing).

The "agency PE" provision, Article 5(5), should be amended to lower the condition, which is currently set as the habitual exercise of an authority to conclude contracts.

The "fixed place of business" PE in Article 5(1) can be easily avoided due to its requirements for there to be a specific geographic place which is at the disposal of the foreign enterprise for a sufficiently long period of time. In Mr Shah's view, this formulation has not kept pace with the digital economy, or indeed with professionals who fly in to source countries for short periods of time.

If you would like to obtain a copy of Mr Shah's submission, please follow the link in the summary slides at the end of this video.

(iii) Canada: OTIP

Last week, the Canadian tax authorities launched their Offshore Tax Informant Program. Under this program, informants or whistleblowers will be entitled to payments from the tax authorities in return for the provision of information on international tax non-compliance.

A very important point to note is that is that this program is not limited to tax evasion - illegal non-disclosure. It also applies to tax avoidance schemes that involve offshore transactions, which widens the scope enormously.

The Canadian tax authorities will enter into a contract with the informant if the potential additional Canadian Federal tax, excluding interest and penalties, exceeds \$100,000.

The financial reward will be between 5 per cent and 15 per cent of the Federal tax collected (excluding interest and penalties). The actual percentage will be based on various factors such as the quality and relevance of the information and the cooperation of the informant.

Importantly, some folks are disqualified from receiving any reward. Notably : individuals involved in the non-compliance activity or authorised representatives of a taxpayer involved in the non-compliance. So, fortunately, a company's tax director and its external tax adviser can't claim a reward. Imagine where we

would be if they could.

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