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For comments on Action 9, see **the highlighted text below**.

BEPS

1. BEPS : New timetable

Well, the OECD released this week it's new timetable for stakeholder input.

As the OECD says : "the timeline is extremely ambitious".

I will quickly run through the timetable. If you want to closely study any part of it, please hit the pause button.

1. The first part of the timetable tells us that there will be nine discussion drafts released between now and the end of 2014:

1.1 Four discussion drafts will be on different aspects of Actions 8 to 10 (that's transfer pricing) : one in mid-October (on low-value adding services) and three in mid-December (on risk and recharacterisation, commodity transactions, and profit splits).

1.2 The other five discussion drafts will be on specific BEPS Actions : Action 7 (PE status) by the end of October; another discussion draft on Action 6 (treaty abuse) in mid-November; VAT B2C guidelines within Action 1 in early-December; Action 4 (interest deductions) in mid-December; and finally Action 14 (dispute resolution) in December as well.

1.3. Each of those nine discussion drafts will call for public comments.

2. Moving to the second part of the timetable: from 21 January through to 27 March 2015, there will be a series of public consultation meetings on all of those nine discussion drafts.

3. And on to the third part of the timetable: there will then be a second tranche of four discussion drafts issued in late March or early April:

3.1 One on Action 12 (disclosure rules), another on Action 3 (CFC rules), and two discussion drafts on the transfer pricing Actions 8 to 10 (cost contribution arrangements, and intangibles - ownership issues and "hard to value" intangibles).

3.2 Followed by public consultation meetings in May or July.

If you would like to access the timetable, please go to BEPS Central.

2. BEPS : UN questionnaire

You might remember that, about 6 months ago, the UN issued a questionnaire on BEPS, and requested responses from developing countries.

The initial response was poor: after 3 months, I reported that responses had been received from only three countries (Singapore, Mexico and Brazil), plus some civil society groups.

Well, the UN has recently published on its website all of the responses which have been received to date. Now there are responses from 11 countries: Brazil, Chile, China, Ghana, India, Malaysia, Mexico, Singapore, Thailand, Tonga, and Zambia.

A diverse group.

Let me briefly talk about the responses from China and India.

Firstly, China. China's most important issue is transfer pricing.

It says that the most common BEPS practices encountered by it are:

- Firstly, "MNE groups adopt transfer pricing principles and methodologies in such intra-group dealings as purchase [and] sale transactions, financing transactions, equity transfer transactions and service provision transactions, in order to lower the profits of their subsidiaries in China."

- And secondly, "MNE groups set up shell companies with no genuine economic substance in the low-tax jurisdictions and tax havens, in order to shift the profits."

Now let me turn to India.

The Indian government's response is written in its usual "straight talking" style.

Here are a few interesting extracts:

> "Though there is criticism that Transfer Pricing Officers (TPOs) in India have gone overboard at times, the fact remains that this aggressive approach by the TPOs has actually resulted in higher profits being declared in India now as compared to a few years ago. Moreover, the Indian judicial system and the alternative dispute resolution mechanisms [APAs, Safe Harbours, etc.] are there to ensure moderation and reasonableness in transfer pricing outcomes."
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> "India is of the strong belief that the BEPS issues must be addressed in a manner that result in breaking down all such structures or practices that promote or protect base erosion and profit shifting. For example, if the problem is a leaking bucket then steps must be taken to swiftly plug that leak or replace the bucket instead of debating how to calibrate the speed of inflow of water into the leaking bucket." - an interesting turn of phrase.
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> And finally, this one : "In many of the discussions and decisions at the OECD, India gathers the impression that the real issues are being swept under the carpet and the superficial ones are sought to be addressed. That approach is not going to significantly impact BEPS.
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> "Besides, the approach of expecting developing countries to implement all of the decisions made by the developed countries appears to be somewhat patronising and should be avoided. Steps must be taken to involve the developing countries in all decisions that are made."

As I said: straight talking.

If you would like to obtain a copy of all of the responses, please go to BEPS Central.

3. BEPS : Special measures and country-by-country reporting

Bob Stack from the US Treasury gave some interesting insights at a conference in Toronto this week.

Firstly, in regard to transfer pricing special measures and the infamous Bermudan cash box example, he stressed that the answer should lie in stronger CFC rules in the ultimate residence country, and not in a profit allocation which does not satisfy the arm's length principle.

In fact, he said that the CFC rules should themselves be considered to be a transfer pricing special measure.

Which you might think would put him on a collision course with developing countries.

But no, he said. BEPS activities at the level of the source country are frequently dependent on the lack of effective CFC rules at the level of the ultimate parent. If those CFC rules are strengthened, there would be less incentive to erode the tax base of the source country - and thus, a higher level of profits would be reported in the source country.

A second interesting insight was in respect of country-by-country reporting.

He said that he is concerned about the misuse, by tax authorities, of information which is given to them pursuant to country-by-country reporting. He gave two examples of possible misuse : leaking information to the public, and using the information as the basis for tax claims based on formulary apportionment principles. Remember, it's meant to be a risk assessment tool.

In order to prevent such misuse, he is advocating what he calls "serious policing" in regard to the use of information obtained by country-by-country reporting - with the penalty being the relevant country is cut off from the provision of future information.

My comment is : The threat of such penalties is presumably one of the reasons why the filing process for country-by-country reporting has not yet been agreed.

4. BEPS: Other developments

<u>Australian report</u>

Newspapers in Australia this week have given extensive coverage to a report which has been issued on the tax practices of the top 200 companies listed on the Australian stock exchange.

The report was prepared by two civil society groups, and it purports to show that Australia has a significant tax avoidance problem with these 200 companies.

Some of the newspaper coverage has been quite critical of the report. For example, the Australian newspaper has called the report "shambolic and misleading analysis".

Despite that comment, if you would like to obtain a copy of the report, please follow the link in the summary slides at the end of this video.

<u>Apple & Fiat</u>

And also in the press this week has been the ongoing issue concerning the EU review of tax incentives which have been given to Apple and Fiat, in Ireland and Luxembourg respectively.

On Tuesday, the EU released documents which explain the reasoning behind its decision to open formal tax investigations in June.

If you would like to obtain a copy of those documents, please go to BEPS Central.