

Dbriefs Bytes Transcript

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

BEPS

This week, we've had a number of interesting BEPS comments from OECD officials. Some of these came during the OECD's BEPS webcast on Wednesday, and others were delivered during various conferences.

Firstly, in regard to country-by-country reporting, the OECD is now telling us this:

- The so-called "transactional reporting" in the template (in other words, the reporting of payments of interest, royalties and service fees) will likely be dropped.
- However, the template will retain reporting of activity measures on a country basis – in other words, number of employees, tangible assets, capital and retained earnings.
- In a major change, entity-by-entity reporting will likely be dropped. Instead, country level reporting will be used. However, you will need to include a list of entities and PEs for each country, with activity codes for each.
- And there will likely be flexibility regarding the sources of financial data for the template, provided there is consistency within a group and from year to year.

And in regard to the related topic of the transfer pricing master file, the OECD has said that there will likely be flexibility as to whether it is prepared on a group-wide basis or by line of business.

Another interesting comment from the OECD has been in regard to a request from the IMF to include indirect transfers into the BEPS project. Pascal Saint-Amans has indicated that this might very well be done.

One further comment I would make is in regard to Action 1 (on the digital economy).

The 24 March discussion draft indicates that the various options which are discussed in section (such as a withholding tax on digital transactions or a nexus rule based on so-called "significant digital activity") will be analysed in the September 2014 final report – but there will be no recommendations.

In other words, we will get the pros and cons of each of these options, but we won't get concrete proposals.

According to section VII, a "wait and see" approach will possibly be adopted, to see whether all the other Actions within the BEPS Action Plan will collectively wipe out BEPS planning in the digital economy – and only if the conclusion is "no, that has not happened", will the OECD then propose a recommended option.

The discussion draft puts it this way:

"In other words, if the BEPS issues outlined in section IV are fully addressed through the measures envisaged in the BEPS Action Plan, addressing the challenges described in section VI 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."

Now, to my mind, that is a recipe for procrastination – perhaps to such an extent that, by the time that you can properly assess whether the other BEPS Actions have been successful in wiping out BEPS planning, the

political will, or indeed the politicians, might have vanished.

I think it's also a recipe for unilateral action by some countries who are not prepared to wait that long.

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