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For comments on Action 8, see **the highlighted text below**.

BEPS

Washington conference

Well, the centre of the BEPS world this week has been the US east coast.

Firstly, on Monday and Tuesday the OECD conducted its International Tax Conference in Washington, D.C.. BEPS, of course, was the main topic.

And then there were further conferences later in the week : a transfer pricing conference in Washington on Wednesday, and a couple of UN meetings in New York on Wednesday and Thursday.

Obviously, there was a lot of repetition of stuff we already knew.

But this is what I learnt:

- In regard to the **multilateral instrument** (which is BEPS Action 15), Pascal Saint-Amans stated that not all countries need to be part of the exercise – with a specific reference to the US.

He said:

"The beauty of the exercise is you don't need all the countries to be there. We do understand that the U.S. has some difficulties with multilateral instruments."

- Which you could interpret as a polite reminder that the US does not have a veto on the BEPS project.

- On **intangibles** (BEPS Action 8), Marlies de Ruiter of the OECD indicated that the final report will contain all the section B material, but it will be in square brackets. She explained that the square brackets should not be interpreted as indicating that section B is non-final or lacking consensus. Instead, it will show that there is an interaction between section B and the future work on risk and re-characterization – and thus the OECD will come back to section B after they have completed that other work.

Well, to my mind, that sounds like non-final.

- In regard to hybrid mismatch arrangements (BEPS Action 2), two members of the OECD's hybrids committee provided some interesting news :
- Firstly, they said that they would support an ownership threshold of 25 percent for the definition of related party. You will remember that, in the March discussion draft, the ownership threshold was set at a very low 10 percent.
- Secondly, they said that they would support a "bottom-up" approach in identifying the scope of the new rules.
- And thirdly, they indicated that the committee is considering an extension of the proposed rules to cover some mismatches caused by timing differences. In the March discussion draft, the OECD expressly said that timing differences were out of scope. The inference is that the committee is concerned with extreme timing differences.

- In regard to the digital economy (BEPS Action 1), there were several very interesting comments:
- Firstly, there was a very explicit reference by an OECD official to the elephant in the room, as far as BEPS Action 1 is concerned : the division of taxing rights between source and residence countries, which is not strictly part of the BEPS project, but which has invited itself to dinner anyway.

Jesse Eggert of the OECD said this :

"In addition to concerns about BEPS, there are deeper questions about allocation of taxing rights, source-residence disputes, that are very much raised by questions about the digital economy."

- Secondly, and perhaps as a reflection of this issue, Director Liao from the China SAT again gave everyone an economics lesson. He said :

"In a digital economy, there is no physical nexus in your country. But that doesn't mean we have nowhere to go. No, we have somewhere to go – let us go back to traditional economics. It is the supply and the demand that interact to complete the economic activity….The recipient side needs to be taken into consideration, so that the supply and demand are remunerated in a way that strike the balance."

- And thirdly, there was the familiar dispute about whether the collection of data alone can create a taxable nexus. Director Liao from the SAT described such data as a raw material in a manufacturing process. He said :

"Some people do not agree with me that data is a raw material. It has value, but how you value the data is a tricky issue."

- In regard to **country-by-country reporting** (which is part of BEPS Action 13), Joe Andrus from the OECD acknowledged that the whole question of how to file and share the information is proving to be a difficult issue.

He indicated that the working party is considering asking for more time (another 6 months beyond the September 2014 deadline), in order to figure out the right "filing and sharing" mechanism, which must address three key objectives:

- Protect confidentiality of the information
- Ensure that all countries which need the information can get it
- And ensure that the mechanism does not impose unnecessary administrative burdens on governments.

As you probably know, the preferred mechanism of the private sector, and of the US government, is for the reports to be filed with the parent company's home tax authority, which would then share the information with the local country tax authorities under the exchange of information article in treaties. Which really made the luncheon address by the IRS Commissioner quite ironic. Commissioner John Koskinen referred to the fact that the IRS is operating with 10,000 fewer employees and $850 million less funding than in 2010. And he is quite worried about all these reports being filed with the IRS by US parent companies, and then the IRS having to deal with countless "exchange of information" requests from the local country tax authorities. The US government does not appear to be aligned on this issue.

- Pascal Saint-Amans said that it will be important to introduce a **post-implementation monitoring system**, to ensure that inconsistent implementation of the BEPS changes by individual countries does not result in double taxation.
- And, finally, in regard to **timing,** the OECD officials stated :
- That all of the seven 2014 deliverables will be considered, and voted on, by the Committee on Fiscal Affairs in late June.
- And none of the final reports will be publicly released until the G-20 Finance Ministers meeting in September.

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