

## OECD BEPS project on track to meet 2014 deadlines, says official

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The OECD is confident that it will meet the September 2014 deadlines for developing measures envisaged by its base erosion and profit-shifting action plan, according to Pascal Saint-Amans, head of the OECD Centre for Tax Policy and Administration (CTPA).

Saint-Amans said during a 23 January 2014 OECD webcast update on the progress of the BEPS action plan that the OECD was working at a "frantic pace" and that working parties would release several discussion drafts in February and March, with public consultations shortly thereafter. The quick pace of the BEPS project is necessary to discourage the adoption of unilateral measures to address BEPS issues, he explained.

Saint-Amans stressed that the goal of the OECD has been, and remains, the elimination of double taxation but that its success on that issue has led to gaps that have resulted in double non-taxation.

"If we want to remain in the position of eliminating double taxation we'd better have strong and robust rules which do not give ground to double non-taxation. Otherwise what would happen is that countries might walk away from the consensus or might not join the OECD consensus," Saint-Amans said. Without action, he said, countries could adopt uncoordinated unilateral actions that could be harmful.

Saint-Amans said it is too easy to blame companies for achieving double non-taxation when the transactions in which they engage are legal. "If the governments are not happy with something which is legal, it is their responsibility to change the law," said Saint-Amans.

Raffaele Russo, CTPA head of the BEPS project, added that the OECD work in engaging developing countries is also very important and there are a number of mechanisms they are using to do so. He said the OECD is organising three regional consultations in Asia, Africa, and Latin America so they can hear from developing countries to determine what BEPS issues they have experienced. Such issues are discussed and their findings will be presented at the Global Transfer Pricing Forum in March 2014 and a Global Forum on Value Added Tax in April 2014.

### **Digital economy**

Russo said the task force must address the problem of the digital economy by conducting an analysis of digital economy business models and identifying its special features such as the mobility of customers and employees and the network effect. He said an analysis of these effects and whether they exacerbate existing issues, including issues of nexus and income characterisation, is required so the task force can identify the actions needed to tackle the issues.

Russo also reiterated the OECD plea for the input of stakeholders and noted that it published a number of requests for early input on the work to date, including input on the tax challenges of the digital economy and the issues of artificial avoidance of the permanent establishment classification.

The task force is scheduled to hold its second meeting on the digital economy in February, issue a discussion draft in March, begin a public consultation in April, and finalise a report in September.

### **Tax treaty abuse**

Marlies de Ruiters, CTPA head of the tax treaty, transfer pricing, and financial transactions division, discussed progress on the tax treaty abuse action item. She said the purpose of the task force is to "restore the full effects and benefits of the international standard – the model tax convention." The OECD group will look at antiabuse provisions in domestic laws, it will clarify that tax treaties are not intended to facilitate double non-taxation, and it will clarify certain policy considerations before entering a bilateral treaty, de Ruiters said. The group plans to hold its first full discussion in February or March, so it can release a draft in March and begin a public consultation in April.

### **Hybrid mismatch arrangements**

Achim Pross, CTPA head of the international cooperation and tax administration division, updated the status of hybrid mismatch arrangements, emphasising that the goal was to neutralise the effect of hybrid instruments and entities, because they are a prime source of double non-taxation. The division plans to hold a meeting on hybrid mismatch arrangements in February, issue a discussion draft in April, and start a public consultation in May.

### **Intangibles**

De Ruiter updated the status of the work on intangibles, saying that "replacing the [arm's-length price (ALP)] is not the solution but special measures may be necessary – maybe inside or outside the ALP to really address the issues." The ALP is an instrument, it is not inflexible – "not carved in stone" – and it should be used to come to the right result, she said. "The outcome must be aligned with value creation."

The consensus of Working Party 6 is that "legal ownership alone and funding should drive generating the intangible return. It should be value creation," de Ruiter said.

The release of the 2012 intangibles discussion draft generated more than 1,000 pages of comments from practitioners and other interested parties, de Ruiter said. The working party plans to meet in March and May to discuss and finalise its work plan.

### **Harmful tax practices**

Pross also updated the status of the harmful tax practices action item. He said the main challenge of the working party is to "articulate an expression of substantial activity that recognises the desire to encourage research and development as the engine of economic growth and job creation but at the same time to avoid a situation where regimes are designed to erode or shift the tax base of other countries."

Pross said the second challenge deals with transparency issues. He said the working group is trying to develop a framework within which information about preferential regimes will be provided, spontaneously, to those that need that information to apply their domestic rules. Pross added that the OECD must make sure that the information is balanced and targeted and that the right information and right level of information goes to those countries.

The working party first met on harmful tax practices last December and plans to next meet in February. The group will meet to finalise its report in May and June and deliver its final report to the OECD Committee on Fiscal Affairs in September.

### **Transfer pricing documentation**

De Ruiter said the goal of the working group is to develop rules for transfer pricing documentation that enhance transparency for tax authorities while also taking into consideration the compliance costs for businesses. Working Party 6 plans to approve draft guidance later this month, release guidance in February, open a public consultation in March, and issue a final report in May.

### **Multilateral instruments**

Regarding multilateral instruments, the purpose is to "avoid changing 3,000 bilateral treaties," Saint-Amans said. He added that the working group was "tasked with generating a report on the feasibility of a multilateral convention, and it has asked for input from distinguished tax practitioners to facilitate this goal." The group will generate a report identifying relevant public international law and tax issues by September 2014.

### **Addressing audience concerns**

Pross addressed an audience member question on why the OECD is not seeking a full inclusion system recommendation for the BEPS project. He explained that the action plan calls for recommendations on changes to controlled foreign corporation taxation in its 2015 deliverables. He said the OECD is assessing approaches taken by member states to CFC income and taking a "holistic" and "comprehensive" review of CFC taxation that includes examining systems that use full inclusion.

Asked about the structures that currently give rise to stateless income, Russo said the aim of the BEPS project is to render those methods ineffective.

Responding to a question on the participation of developing countries, Saint-Amans explained that under the BEPS project, the OECD has implemented mechanisms "to make sure that the views of developing countries will be fully taken into account." He noted that the OECD is holding a series of regional meetings to take in the views of non-member states.

"It is absolutely key that all the stakeholders participate," Saint-Amans said. He noted that the time for consultations will necessarily be short in order to meet the deadlines and that the OECD is giving stakeholders a heads up on when to expect the consultations.

"I think we do need positive, constructive contributions so that we don't deteriorate the system, but that we come up with a set of rules which will improve the system [and] put an end to double non-taxation, to consolidate the rules so that we have a framework which is accepted by a growing number of countries, and which is properly implemented by these countries," Saint-Amans said.

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