US official says OECD reporting draft asks for too much specificity

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The OECD's draft country-by-country reporting standards call for too much information from multinationals, said Robert Stack, US Treasury deputy assistant secretary (international tax affairs), on 20 February 2014. The standards are part of the OECD's base erosion and profit-shifting project. For prior coverage, see OECD discussion draft on transfer pricing documentation and CbC reporting and Deloitte *Arm's Length Standard*, Special Edition.

"My own instinct is that the template that came out is probably too many columns for what the risk assessment needs to be," Stack said, adding that tax authorities are just trying to get at a few high-level data points, namely income, taxes, and revenues, and maybe the number of employees and the property, plant, and equipment in a particular country.

Speaking at the Tax Council Policy Institute's annual Tax Policy and Practice Symposium in Washington, Stack said the second big issue with the reporting standards is how the information gets transmitted. "We tend to favour the government-to-government exchange for reasons of confidentiality," Stack said.

Philip D. Morrison of Deloitte Tax LLP asked whether there's a chance Congress would pass a law adopting a country-by-country template that would be shared in any way other than government to government. Stack said that whether Congress even needs to get involved will depend on what's in the template.

Morrison also asked whether Stack thought tax authorities would really be satisfied with overall, high-level numbers that don't drill down to individual transactions, and whether they would use the information for inappropriate purposes at the audit level.

"There is that risk," Stack said, adding that safeguards could be implemented so that tax authorities that stray from the template rules would be subject to consequences.

Arm's-length standard

Stack said applying the arm's-length standard can sometimes lead to results that "we [at Treasury] don't like as a policy matter."

He said that in order to prevent disproportionate profit from showing up in a no-tax jurisdiction where few people are based or little economic activity is taking place, tax authorities may need a tool that lets them step in and possibly make adjustments in open years when the results of the application of the arm's-length standard over time are out of whack with the bargain struck on day one.

"The beauty of that approach is it's a special measure" designed to fix the BEPS problem that leaves "the core rules of the arm's-length standard intact," Stack said.

He touched on the likelihood that the mutual agreement procedures will be amended to include mandatory arbitration rights as part of the BEPS project. He suggested that the idea of requiring tax administrators to grant those rights as a condition of signing on to the BEPS action plan is still in its infancy. "We'll have to see where that goes," Stack said, adding that in some quarters, there is enormous resistance to arbitration.

Revised BEPS timeline

On the same day, the OECD released a revised BEPS project timeline with two major deadlines for comments – on the discussion drafts dealing with the tax challenges of the digital economy and hybrid mismatch arrangements – coming up in April and May, respectively.

Morrison said the biggest takeaway from the revised timeline "is that there is generally only three weeks for public comment on most of the work product that will be coming out."