



September 16, 2014

VIA EMAIL

Mr. Pascal Saint-Amans
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Re: USCIB response to OECD's Request for Input on BEPS Action 11

Dear Mr. Saint-Amans,

This letter is the response of the United States Council for International Business¹ (USCIB) to the OECD's request for input on Item 11 of the Action Plan on Base Erosion and Profit Shifting (BEPS).

The request seeks suggestions for ways to measure the scale of BEPS and the effectiveness of countermeasures, and guidance regarding the data that would be necessary to implement these measures. The request notes that Working Party No. 2 of the Committee on Fiscal Affairs has reviewed the existing literature on BEPS, including the academic papers and government reports summarized in a 2013 OECD report.²

In view of the highly technical nature of this request, economic researchers in academia and government are likely to be in the best position to provide the input that is being sought. That said, USCIB has several high-level comments and observations that are set forth below.

Among the main objectives of OECD are to promote growth, employment, and rising standards of living among its members and to facilitate international trade and investment. With respect to tax policy, the OECD historically has pursued these objectives through guidelines and model agreements that seek to mitigate double taxation, resolve intergovernmental disputes, and facilitate enforcement of tax laws.

In developing measures of BEPS under Action 11, the OECD's fundamental objectives should not be overlooked. Policies that increase taxes paid by multinational enterprises at the expense of double taxation or reduced standards of living may be viewed as effective in reducing BEPS if a blinkered approach is adopted. For example, special measures that allocate intangible income to the place where

¹ USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

² See Annex B of Chapter 2 of: OECD, *Addressing Base Erosion and Profit Shifting*, 2013.

significant people functions occur may lead companies to relocate activities to low-tax jurisdictions. This ostensibly would reduce BEPS, but may come at the cost of an inefficient allocation of resources.

USCIB appreciates that the request for input recognizes the importance of preserving the confidentiality of taxpayer data and minimizing administrative burden. Based on responses of 260 multinational enterprises in 20 countries to a March 2013 survey, 76% of respondents expect that new systems will be required to comply with new country-by-country reporting standards, and 70% of these expect system costs in excess of \$250,000.³ Large amounts of financial data already are reported to governments and shareholders; thus, Working Party 2 should survey member countries and inventory private sector databases to determine what data already is available before recommending that taxpayers report additional information. A list of some of the private sector databases containing corporate financial statement information for OECD and other countries is attached to this letter.

Working Party 2 also should take note of the additional information that taxpayers will be required to provide as a result of the new transfer pricing documentation guidelines agreed under BEPS Action 13 and the mandatory disclosure of aggressive tax transactions that will be developed under BEPS Action 12. Further, USCIB believes it would be inappropriate to use BEPS Action 11 to undercut decisions made on Action 13; specifically, Action 11 should not require taxpayers to report data that were deleted from the country-by-country reporting template.

The Statistics of Income Division of the Internal Revenue Service routinely edits tax returns of multinational enterprises and this information is used by the U.S. Treasury Department for policy analysis. Apparently, few other OECD member countries utilize tax returns of multinational enterprises for policy analysis. Before requiring taxpayers to provide additional information to tax authorities, consideration should be given to whether governments have adequate resources to utilize this information productively.

USCIB previously commented on the importance of treating taxpayer information in a confidential manner in the context of transfer pricing documentation.⁴ USCIB believes that inter-governmental sharing of taxpayer information should only occur pursuant to exchange of information provisions of tax treaties and other agreements.

BEPS measures will need to be interpreted with appropriate caution for a number of reasons. First, a review of the profit shifting literature by Dhammika Dharmapala shows that BEPS measures based on industry- or country-level data overstate BEPS behavior as compared to measures based on firm-level data.⁵ Second, in the case of transfer pricing, absent a detailed functional analysis that accounts for all

³ See, PwC, “OECD’s Base Erosion and Profit Shifting: Country-by country reporting,” April 2014. Available at: <http://image.edistribution.pwc.com/lib/fe9d13707566057876/m/1/Global+survey+results+-+UK.pdf>

⁴ See, USCIB, “Letter to Pascal Saint-Amans re: Re: USCIB Comments on the OECD Discussion Draft on Transfer Pricing Documentation and Country-by-Country Reporting,” February 19, 2014 and USCIB letter to Secretary Lew, September 5, 2014.

⁵ See, Dhammika Dharmapala, “What Do We Know About Base Erosion and Profit Shifting? A Review of the Empirical Literature,” Illinois Public Law and Legal Theory Research Paper no. 14-23, December 2013. Available at: <http://papers.ssrn.com/abstract=2373549>

the facts and circumstances of a transaction, it will be difficult to draw definitive conclusions regarding the extent of BEPS behaviors. Third, measures that indicate the presence of BEPS may reflect the failure of governments to enforce existing rules rather than the need for additional legislation. Fourth, effective tax rate measures based on unconsolidated financial or tax data may show that holding companies have low ex post effective tax rates if the foreign taxes paid with respect to inter-corporate dividends are not taken into account. Fifth, exclusion of companies with losses and differences in the timing of recognition of book and taxable income may artificially cause ex post effective tax rates based on the current tax provision or cash tax payments to appear low.⁶ Sixth, differences in countries' financial accounting rules may make it difficult to compare effective tax rate measures.

The request for input parenthetically defines BEPS behaviors as: "... cases of no or low taxation associated with practices that artificially segregate taxable income from the activities that generate it." Thus, to measure the scale of BEPS, one must posit the activities that generate value and their relative contributions and determine whether discrepancies between the reporting of taxable income and the activities that generate this income are "artificial." These issues are at the heart of BEPS Action 4 (relating to the deduction of related party financial payments) and Actions 8-10 (relating to the application of transfer pricing rules to intangibles, risks and capital, and other high-risk transactions). The deadlines for the reports on Actions 8-10 extend to September 2015 (and to December 2015 for Action 4). Measures of BEPS logically should build upon the reports on Actions 4, 8, 9 and 10 scheduled to be issued next year, and the timetable for Action 11 should be extended accordingly.

We appreciate the opportunity to comment on the development of methodologies to measure BEPS behaviors. We look forward to providing more detailed comments after Working Party 2 develops its initial proposals.

Sincerely,



William J. Sample
Chair, Taxation Committee
United States Council for International Business (USCIB)

⁶ See, Andrew Lyon, "Another Look at Corporate Effective Tax Rates, 2004-2010," *Tax Notes*, October 21, 2013.

APPENDIX

Selected Databases Containing Corporate Financial Information for OECD and Other Countries

1. Oriana (Bureau van Dijk)

Coverage: Oriana covers approaching 10 million companies in 40 countries: Australia, Bahrain, Bangladesh, China, Fiji, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Malaysia, Marshall Islands, Nepal, New Zealand, Oman, Pakistan, Palestinian Territory, Papua New Guinea, Philippines, Qatar, Russian Federation, Saudi Arabia, Singapore, South Korea, Sri Lanka, Syria, Taiwan, Thailand, Turkey, United Arab Emirates, Vanuatu, Vietnam and Yemen.

Features: Standardized company financials searchable by various criteria including:

- Company name
- BvD identification number
- Status (active, dissolved, etc.)
- legal form (public, private, other)
- Date of incorporation
- Location
- Industry code (primary and or secondary SIC, NAJC and NACE industry codes)
- Directors
- Advisors & auditors
- Ownership (including BvD independence indicator)
- Financials (key financials, balance sheet, profit & losses accounts)
- Number of employees
- Ratios (return on capital employed, return on total assets, liquidity ratio, etc.)
- Accounts types (consolidated versus unconsolidated financials)
- Stock data
- Customized data

2. Orbis (Bureau van Dijk)

Coverage: Orbis covers over 85 million companies around the world, including: Europe 46 million companies; North America 23 million companies; South and Central America 7 million companies; Far East and Central Asia 8 million companies.

Features: Standardized company financials searchable by various criteria including most of the features available in Amadeus and Oriana.

3. Osiris (Bureau van Dijk)

Coverage: The database aims to include all publicly listed companies worldwide. Osiris also includes de listed companies and major unlisted companies if they're significant within their sector. Osiris covers around 70,000 companies across the globe.

Features: Standardized company financials searchable by various criteria including most of the features available in Amadeus and Oriana.

4. Amadeus (Bureau van Dijk)

Coverage: Amadeus contains information for the following countries: Albania, Austria, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Rep. of Macedonia, Malta, Rep. of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom.

Features: Standardized company financials searchable by various criteria including:

- Company name
- BvD identification number
- Status (active, dissolved, etc.)
- Legal form (public, private, other)
- Date of incorporation
- Location
- Industry code (primary and or secondary SIC, NAIC and NACE industry codes)
- Directors
- Advisors & auditors
- Ownership (including BvD independence indicator)
- Financials (key financials, balance sheet, profit & losses accounts)
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- Ratios (return on capital employed, return on total assets, liquidity ratio, etc.)
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5. OneSource (Thompson Reuters):

Coverage: The Reuters Fundamentals database comprises of more than 70,000 companies from over 110 countries. All data is sourced directly from public filings such as annual reports and 10-Ks. This expanded financials database features over 100 line items and data points per company, and lists the original data source. Additionally, users have access to streams of data that are updated daily and display information such as the company's most recent financials, as well as detailed business activities and segmented financial data.

Features: Standardized company financials searchable by various criteria including:

- Lines of business (primary SIC and NAIC industry codes)
- Location
- Summary of financials and other items (sales, sales growth, assets, employment, ownership, auditor)
- Income statement (sales, cost of goods sold, depreciation and amortization, interest expenses, etc.)
- Balance sheet (assets, liabilities, and shareholder's equity accounts)
- Statement of cash flows
- Liquidity ratios (current ratio, quick ratio and working capital)
- Operating ratios (asset turnover, inventory turnover, receivables turnover)
- Profitability ratios (gross margin, operating margin, return on equity, return on assets, sales over number of employees, etc.)
- Leverage ratios (interest coverage, total debt over equity, tax rate, etc.)
- Valuation ratios (price over sales, price over book value, free cash flow over shares, etc.)
- Stock information
- Banking company data (interest income, interest expense, loans, loan loss reserves, etc.)
- Insurance company data (premiums earned, net investment income, etc.)
- Utilities company data (fuel expense, direct operating expenses, utility plant, etc.)
- Select individual companies (search by name or ticket number)

6. Mergent

Coverage: Non-U.S. Fundamental Company Database- more than 35,000 publicly traded non-U.S. companies in nearly 100 countries. Coverage includes companies featured in prominent global indexes such as Morgan Stanley Capital, Dow Jones Global, Wall Street Global, Financial Times, Standard & Poor's Global, Eurotop 300 and many more.

Features: Standardized company financials searchable by various criteria including:

- Company name
- Industry code (primary and 1 or secondary SIC and NAIC industry codes)
- Income statement (sales, cost of goods sold, operating income, etc.)
- Balance sheet (asset and liability accounts)

7. Alibaba.com

Coverage: Worldwide

Features: Brief business description and link to company webpage, if available. However, public companies cannot be filtered so each potential comparable's webpage needs to be visited to determine if public financial data is available. Searchable by various criteria including:

- Keyword
- Country
- Product
- Industrial category (suppliers or buying leads)

- Company type (e.g., manufacturer vs. wholesaler/distributor)

Note: This is a free database.

8. SPARK

Coverage: Russia, Ukraine, Kazakhstan

Features: Standardized company financials searchable by various criteria including:

- Company name
- Search possibilities for consumers of commodities or services
- By ownership

9. DataGuru.in at <http://www.dataguru.in>

Coverage: India

Features: Standardized company financials searchable by various criteria including:

- Company name
- Size of company as determined by number of employees
- Size of company as determined by revenue numbers
- Industry
- Company type (branch, private subsidiary, state owned, public independent, etc.)

10. Microdatabase Direct Investment (MiDi) (Deutsche Bundesbank)

Coverage: Germany

Features: Direct investment stocks of foreign affiliates of German companies and German affiliates of non-German companies.

11. Ruslana (BvD)

Coverage: Russia, Kazakhstan, Ukraine

Features: Standardized financials including:

- National GAAP or IFRS
- 63 profit and loss items
- 74 balance sheet items
- 10 cash flow items
- 28 financial and profitability ratios
- Financial information up to 10 years
- Company name, previous company names, registered numbers
- Registered office address and contact information
- Current and annual stock data and valuations

- Trade description, NAICS and NACE codes, national identification codes, standard peer group
- Names of bankers, advisors, auditors, previous auditors
- Audit details
- Number of employees
- Company type, date of incorporation, filing changes, accounting reference date company status, data on insolvent companies