Public Consultation

BEPS ACTION 3:
STRENGTHENING CFC RULES

AGENDA

12 May 2015
OECD Conference Centre
<table>
<thead>
<tr>
<th>Time</th>
<th>Event Description</th>
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| 10:00 – 11:30| **PUBLIC CONSULTATION MEETING**<br>1. Introduction by Co-Chairs, Focus Group on Controlled Foreign Company Rules<br>2. Initial remarks by BIAC<br>3. Discussion on questions provided prior to meeting<br>  | See Annex
|              | Definition of a CFC<br>  |
|              | Threshold requirements<br>  |
|              | Definition of control<br>  |
| 11:30 – 12:00| **COFFEE BREAK**<br>  |
| 12:00 – 13:00| **PUBLIC CONSULTATION MEETING (continued)**<br>3. Discussion on questions provided prior to meeting<br>  | See Annex
|              | Definition of CFC income<br>  |
| 13:00 – 14:30| **LUNCH**<br>  |
| 14:30 – 16:00| **PUBLIC CONSULTATION MEETING (continued)**<br>3. Discussion on questions provided prior to meeting<br>  | See Annex
|              | Definition of CFC income (continued)<br>  |
| 16:00 – 16:30| **COFFEE BREAK**<br>  |
| 16:30 – 18:00| **PUBLIC CONSULTATION MEETING (continued)**<br>3. Discussion on questions provided prior to meeting<br>  | See Annex
|              | Rules for computing income<br>  |
|              | Rules for attributing income<br>  |
|              | Rules to prevent or eliminate double taxation<br>  |
|              | 4. Closing remarks by Co-Chairs<br>  |
Public Consultation on Action Item 3:  
Strengthening CFC Rules

Questions for Consultation

Chapter 2: Definition of a CFC

1. Would any particular practical issues arise from treating transparent entities as separate entities in the cases listed above? If so, what are they and how could they be dealt with?

2. Should the recommendations consider any other issues related to determining which entities could be considered to be CFCs?

3. Are there any practical problems with either the narrow or the broad version of the modified hybrid mismatch rule mentioned above?

Chapter 3: Threshold Requirements

4. What practical problems, if any, arise when applying a low-tax threshold based on an effective tax rate calculation?

5. How could these problems be addressed or mitigated?

6. Does the discussion above correctly address the situation of permanent establishments that are subject to a different tax rate than CFCs?

Chapter 4: Definition of control

7. What practical problems, if any, arise when applying a control test?

8. Are there particular practical problems that arise when applying a control test that considers interests held by unrelated or non-resident parties? If so, what are they, and how can they be dealt with?

Chapter 5: Definition of CFC Income

9. What are the practical problems with any of the three substance analyses set out above? How could these practical problems be dealt with?

10. Do you have experience with applying substance analyses in existing CFC rules? If so, how can these be made more mechanical while still accurately attributing income?

11. How can CFC rules accurately attribute income that raises concerns about BEPS (i) in a business that is licensed under an appropriate regulatory body and is market-facing in a particular jurisdiction, (ii) in a reinsurance business carried on by a CFC of a multinational insurance group or (iii) in a “captive” insurance business of a CFC that is not part of an insurance group? Are there practical problems with current rules that distinguish between these two situations? If so, what are they and how can they be dealt with?

12. Are there practical problems with applying the same rule to sales and services income and IP income?

13. Are there existing CFC rules that accurately attribute any or all of these categories of income while also reducing administrative and compliance burdens?

14. Does the discussion above consider all categories of income that should be attributed under CFC rules?

15. Is it clear how the two approaches above would work? If not, what further detail is required to clarify the approach?

16. What practical problems arise with applying the categorical approach and the excess profits approach?

17. How could the practical problems be addressed or mitigated?
18. Which approach is most likely to accurately attribute income that gives rise to BEPS concerns? Is one approach likely to be more effective than the other in terms of dealing with IP income?

19. Could the excess profits approach be applied to income other than IP income and what would be the practical implications of this?

20. What other approaches could be considered for determining excess profits or excess returns?

21. What difficulties or practical problems arise in applying an entity approach or a transactional approach?

22. What concerns arise from the two approaches in terms of administrative burdens and compliance costs?

23. How could these concerns and/or practical problems be dealt with while still ensuring that the CFC rules achieve an accurate result and attribute income that raises BEPS concerns?

Chapter 6: Rules for computing income

24. Do the rules on computing the income of a CFC present any difficulties in practice? If so, what are these and how could they be dealt with?

25. Does this chapter accurately reflect the issues that could arise with losses or are there any other situations that need to be considered?

Chapter 7: Rules for attributing income

26. What difficulties, if any, arise under existing CFC provisions for attributing income?

27. Does the description of a top-up tax set out all the advantages and disadvantages of such an approach?

Chapter 8: Rules to prevent or eliminate double taxation

28. Are there any other double taxation issues that arise in the context of CFC rules that are not dealt with here?

29. What administrative or practical difficulties arise currently in respect of double tax relief rules and how could these be mitigated or dealt with?