Are you ready for BEPS?

In Treasury Today

Of all the tax and regulatory changes treasurers are grappling with at present, few have the potential to impact such a broad spectrum of treasury activities as the Organisation for Economic Co-Operation and Development (OECD) Base Erosion and Profit Sharing (BEPS) Action Plan. Here, an expert from Deloitte explains why the initiative is as much a treasury issue as a tax issue, and that addressing it is likely to necessitate much greater cross-functional collaboration.

Later this month, the OECD is expected to submit the final recommendations on the 15 actions of the BEPS project to the G20. And with new reporting rules applying to all multinationals with upwards of €750m in revenue also commencing from January of next year, those treasurers who have not yet begun to consider the implications of the project certainly need to get their skates on.

When they do, the treasurers of some multinational companies might be surprised to learn just how much of what they do day-to-day may be affected. Tax issues, after all, have not traditionally been considered a primary focus of treasury management. But this is no ordinary tax matter. “At the very heart of this is a tax issue, but one that very quickly evolves into a business issue,” says Melissa Cameron, Global Treasury Leader & Deloitte Advisory Principal. “Ultimately, treasurers should expect to see business model enhancements causing the need to revisit liquidity, foreign exchange, and intercompany financing. We are likely to see less centralisation in operating models to support more substance. It really does impact just about everything they do.”

A seismic shift in international tax

The BEPS project is an OECD Action Plan addressing concerns that the profits of multinationals are being allocated to locations different from those where actual business takes place to help them to reduce their overall tax liability. Regulators, evidently, are catching up to the fact that in the age of the digital economy, where companies do not necessarily need a bricks and mortar presence in every jurisdiction, it has become much easier for companies to shift profits away from high tax locations.

Since it is not a regulatory body in its own right, the OECD’s job was to draw up a plan to address the perceived tax evasion by multinational companies - which is now set to be implemented at the national level by the regulators of the countries that have signed up (the number of which is 44, at present).

The OECD’s BEPS Actions cover a number of areas, each of which address particular nuances of international tax law and are subject to different implementation schedules. More detail on each of

these BEPS Actions can be found here. The crucial thing for treasurers to note, however, is that within these the OECD has identified certain cross-border tax strategies which it is not focused on addressing (eg through principal operating companies, financing companies, intellectual property companies and permanent establishment requirements).
"All of these are styled as tax regulatory responses," Cameron points out, "yet they each have cash and currency flows and therefore all touch treasury. BEPS is a global tax reset, but it is also a global treasury reset."

She conjures up an example of a hypothetical US-headquartered multinational to illustrate the point. If this company were, for instance, to have an offshore in-house bank in, say, Dublin, which is operating more-or-less on autopilot, this structure might infringe on the rules set-out for economic substance that demand core decision making functions (people, processes, and responsibility) are made at the location. "Companies are going to have to look very carefully at the location and the value the treasury function is providing," she says. "I think in the long-run, what it may mean is that what may have been done before from one location will now have to be done in three or four locations around the world with clear documentation and risk/reward for services to subsidiary companies."

In addition to the impact on in-house banking entities, the restructuring of intercompany loans and cash pooling arrangements may also be necessary for some multinationals. That is likely to have an operational implication for cash forecasting too. As Cameron notes, while cash inflows will still match projections on an aggregate level subsequent to such changes, if cash is now being received in different locations then treasury's forecasts will need to be refreshed accordingly.

Driving collaboration

Cameron is keen to emphasise that while BEPS will bring wide ranging – in some cases unwelcome – changes in treasury management, it should also be seen as an opportunity for those in the profession.

That may be a difficult message for regulatory-fatigued treasurers to digest at the present time, but given that responding to the changes is likely to necessitate much closer collaboration with other areas of the business – and not just the tax department either – she may well have a point. After all, is the current direction of evolution in the treasury function not all about becoming more of a strategic partner to the business?

"It's a great opportunity for treasury to get closer to the business; companies will have to begin putting more people outside of the centre in those places in the world where it is most difficult to do business, and that means the treasurer can get closer to them, or the manufacturing business or the key sales markets and really be a value adding partner," she says. "It means treasurers can be closer to the VP of Finance, the sales and marketing in these regions and help them with the pricing and profitability and the currency exposures in certain regions."

In the spirit of that, Cameron advises that treasurers now beginning work on a BEPS impact analysis should start by consulting, not just with tax colleagues, but with the CFO, and the sales and marketing teams too. "Get involved and think about how it affects others," she urges. "Get that impact analysis completed very quickly, and then from there, be very thoughtful and engage regularly with tax to come up with a workable solution. Then get to implementation as quickly as possible."