Event report

Towards Fairer Corporate Taxation: Is Europe getting the policy mix right?

23 May 2018 | 13:15 to 14:30 | Place du Congrès 1, Brussels 1000

The EU has stepped up its efforts in recent years to combat tax avoidance and evasion, following revelations of tax avoidance schemes, such as the LuxLeaks and Panama scandals. These sharp practices are facilitated by gaps and differences in national tax systems in the EU and third countries, which are then exploited by large and footloose corporations and high-wealth individuals, leading to an unfair distribution of the burden across EU citizens and companies.

Speakers:

Pascal Saint-Amans, Director, Centre for Tax Policy and Administration, OECD
Tara Rivers, Minister of Financial Services and Home Affairs, Cayman Islands
Jeppe Kofod, Member of the European Parliament (S&D, DK)

Moderator: **Karel Lannoo,** CEO, CEPS

Summary: Until the financial crisis hit in 2008, taxation was rarely a matter of international discussion, as it was linked to sovereignty. Countries were at liberty to decide on their own what to do with their tax system, without interference from international bodies or organisations. For example, all tax decisions taken at European level are subject to the principle of unanimity; similarly, decision-making in the OECD attaches importance to the general principle of consensus. On top of that, and up until recently, tax rules were largely limited to the elimination of double taxation through bilateral tax treaties and other technical rules.

Everything changed dramatically, however, with the massive bail-out of banks. The international agenda gained political momentum and was translated into two main work streams at global level. The first was the introduction of new standards for the automatic exchange of tax and financial information (such as the Common Reporting Standards, the Foreign Account Tax Compliance Act (FATCA) and the Country-by-Country (CbC) reporting).

Note: This report was drafted by Dr. Apostolos Thomadakis (Researcher, European Capital Markets Institute). This event report is not a transcript of the speakers' interventions; rather, it should be understood as an interpretation of their views by the author.

The second initiative, called Base Erosion and Profit Shifting (BEPS), aimed at levelling the playing field by harmonising the tax planning strategies used by multinational companies.

Against this background, CEPS invited Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration at the OECD; Tara Rivers, Minister of Financial Services and Home Affairs of the Cayman Islands and Jeppe Kofod, Member of the European Parliament (S&D, DK) to a panel discussion, chaired CEO Karel Lannoo, on corporate taxation in Europe on May 23rd. This Event Report highlights the main ideas expressed by the guest speakers on reforming corporate taxation with a view to a fairer distribution of the burden across EU citizens and companies.

While the EU is the world's most attractive and interconnected single market, in the view of Jeppe Kofod, it should do much more and lead by example. To this end, the EU has a special responsibility to ensure the proper implementation of BEPS, as well as to guarantee complete transparency (via e.g. publication of detailed minutes, official positions of member states and working documents) and accountability for its own members' actions. Furthermore, the inclusion of legal instruments should be envisaged in tax laws/treaties to counter aggressive tax planning and to ensure automatic exchange of information and country-by-country report. Linking trade and investment to taxation policy is also fundamental.

At international level, a way forward could be the establishment of a UN tax body that will ensure proper representation and inclusion of developing nations in the formulation of international taxation standards. A first step towards in direction could be to call for a world summit on fairer taxation. Furthermore, there should also be a provision towards global registers of all financial assets, so as to account for the global wealth level.

While acknowledging that everyone agrees that there is a problem of tax avoidance and evasion, Pascal Saint-Amans also noted that there is no agreement on the solution. The aim to find a durable, long-term and sustainable solution is currently delayed due to dividing lines and divergent views among countries. The digitalisation of the economy raises issues related to the exacerbation of BEPS (in the context of both direct and indirect taxation), the collection of VAT (where should VAT be levied?) and the allocation of profits (where should profits be taxed?). These issues arise from the fact that the digital economy: i) relies on intangibles, ii) uses personal data and iii) adopts multi-sided business models. Thus, any effort to ring-fence the digital economy would be unrealistic.1

Cooperative and non-cooperative jurisdictions should continue the dialogue with EU, according to Tara Rivers, and take proper action to address and meet the EU's fair tax criterion,

[1] OECD Secretary-General Report to G20 Finance Ministers and Central Bank Governors, March 2018.

which stipulates that a jurisdiction should not facilitate offshore structures that attract profits without real economic substance. Economic substance is vitally important for tax and it is the single-most significant factor in determining taxable profits. Ensuring that tax liabilities reflect and align with the economic substance of a corporation has been the main focus of tax authorities. However, the variation of substance requirements among the EU member states emphasises the absence of a globally accepted definition. Any effort to develop such standards should take into account the various business types and tax systems that exist.

Generally speaking, progress has been made in this area, thanks to the introduction of real and substantive changes. For example, it is already known, to a large extent, which individuals, companies, countries and jurisdictions are involved in illicit international tax practices. It is also known which legislative, diplomatic, economic and administrative tools can be used in order to detect innovations in international tax avoidance and even to prevent it in the first place. What is sorely missing, however, is the recognition of the need for increased formalised international cooperation.

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