Global Counsel

Information is power for the 21st century taxman

Blog post by Adviser Tom White, 23 June 2016

EU countries agreed last night a set of common anti-avoidance principles for corporate taxation, incorporating the OECD's Base Erosion and Profit Shifting principles into law. This is seen by many as a watershed for co-operation on the design and base of business taxes, going far beyond earlier commitments to exchange information and co-operate in the enforcement of tax rulings.

By 2018 the new agreement means EU Member States will all introduce legislation to limit interest deductions, strengthen 'exit taxation' rules and limit the use of transfer pricing to exploit mismatches between national rules. Perhaps most significantly, they will introduce General Anti Avoidance Rules to give tax authorities wide discretion in assessing tax planning arrangements.

It is now several years since politicians recognised the urgent need for reforms to raise revenue and allay public concerns about fairness in tax. So it is an interesting question why this is only happening now. The reason why is linked to information. And for the same reason this may mean that BEPS is only the beginning.

The technocrats' conventional explanation for their caution has been that policy must be careful not to introduce excessive barriers to cross-border trade by re-introducing 'double-taxation'. However a more practical answer is revealed by a closer look at the interaction between various EU tax policy initiatives of the last 15 years, specifically cross-border access to taxpayers' information and the potential for anti-avoidance measures. In the first wave of EU tax transparency measures – such as the 2003 taxation of savings directive – the main value of information on revenues and taxes was in enforcement actions against those suspected of tax evasion, whether through additional withholding taxes or prosecution.

But significant strides in multi-lateral transparency and reporting requirements have now handed a huge new cache of data to authorities. This has enabled tax authorities to design business taxes to target areas of revenue leakage without hindering investment. This has been most notable in the UK's Diverted Profits Tax, generally dubbed the 'Google Tax' when introduced in 2015, and the OECD's work on BEPS has also relied on this evidence base of where abuses have occurred.

Access to information about corporate tax payments, through the new Administrative Co-operation Framework, has therefore been a big driver in building administrative capacity and political support for the new standards on tax avoidance agreed this week. Further steps towards transparency – notably the country-by-country reporting requirements in the recently agreed Accountancy Directive – should also be raising expectations of further 'targeted' tax initiatives in coming years, both by individual countries and on a multilateral basis through the OECD and the European Commission. With the cover of the BEPS and general avoidance rules and a lot more information to work with, this is almost certainly just the start.