

Corporate Income Taxation, CSR and the UN's 2030 Agenda for Sustainable Development

Kluwer International Tax Blog

May 14, 2018

Axel Hilling (Lund University) and Daniel T. Ostas (University of Oklahoma)

Please refer to this post as: Axel Hilling and Daniel T. Ostas, 'Corporate Income Taxation, CSR and the UN's 2030 Agenda for Sustainable Development', Kluwer International Tax Blog, May 14 2018, <http://kluwertaxblog.com/2018/05/14/corporate-income-taxation-csr-uns-2030-agenda-sustainable-development/>

On 25 September 2015, the UN General Assembly adopted the historic resolution Transforming our world: The 2030 Agenda for Sustainable Development. The agenda calls upon all 193 UN member states to strive to achieve a socially, environmentally and economically sustainable world by 2030. The agenda contains 17 goals and 169 sub-objectives – Sustainable Development Goals (SDGs). The primary responsibility to achieve the SDGs falls on governments, although support is needed from civic society, industry, and society at large. As the successor of the UN's Millennium Development Goals, the 2030 Agenda is becoming a vital guideline in defining corporations' corporate social responsibly (CSR) strategies. According to the 2030 Agenda, sustainability goes beyond the environmental issues of climate change, sustainable use of oceans and forests, and availability of water for all (Goals 6, 13-15). The SDGs also call for a sustainable social environment, including ending poverty and hunger, ensuring education, gender equality and healthy lives, and reducing inequality within and among societies (Goals 1-5 and 10). Needless to say, in order to properly address the 169 SDGs, governments need both economic funding and political tools including adequate taxation.

In accordance with the UN's Addis Ababa Action Agenda, developing countries will be supported in improving their tax systems in order to get resources and

instruments to effectively work with the 169 SDGs. Thus, a well-functioning tax system is not only a prerequisite for any modern society, it is an imperative instrument for the success of achieving a sustainable global society – to fulfil the UN’s 2030 Agenda.

Most tax systems identify three democratically-determined reasons to tax: (1) to raise revenue to fund public goods and services, (2) to redirect social and economic behavior toward the public good, and (3) to redistribute wealth from the richer to the poorer taxpayers. These economic-policy goals animate the spirit of most tax codes worldwide. In regard to CSR, a commitment to these democratically-determined policies needs to be respected and embraced in both tax practice and judicial interpretation.

We emphasize the moral equivalence between tax evasion and tax avoidance, and we denounce each. A political anarchist, of course, would see nothing wrong with tax evasion. In an illegitimate state, one pays tax only under threat of force as there is no ethical duty to obey the law. Robert Nozick offered: “Taxation of earnings from labor is on par with forced labor.”^[fn]Nozick, Robert (1974), *Anarchy, State, and Utopia*, p. 169.^[/fn] Yet, if one can avoid the rhetorical excesses of political anarchism and simply recognize a duty to obey law in reasonably just societies, then our argument regarding tax avoidance follows. We contend that asserting literal interpretations of tax provisions so as to knowingly circumvent the economic-policy goals underlying the legislation is morally equivalent to evading the law outright. This, in turn, limits governments in addressing 2030 goals.

Taxpayers owe a duty to obey the law, including tax law. Tethering this duty to a prediction of what the courts are likely to decide simply will not suffice. Too often, the judicial outcome is driven by the legal strategies taken by the taxpayer. Like all complex sets of regulations, tax law is replete with linguistic imperfections. Tax laws can be conflicted, ambiguous, gap-riddled, overly-complex, vague, underenforced, and subject to regulatory capture. These imperfections generate economic temptations. Respect for the rule of law requires self-restraint and a professionally-honest interpretation of the regulations including due deference to plain meaning, but also to legislative purpose, prior interpretations, and maxims of statutory construction.

In 2011, the OECD published guidelines regarding the impropriety of overly aggressive tax interpretations and the corresponding duty to cooperate with the

spirit of tax law, stating:

*Corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate, co-operate with authorities and make information that is relevant or required by law available to them. An enterprise complies with the spirit of the tax laws and regulations if it takes reasonable steps to determine the intention of the legislature **and interprets those tax rules consistent with that intention in light of the statutory language and relevant, contemporaneous legislative history.***^[fn]Org. Econ. Co-Operation & Dev., OECD Guidelines for Multinational Enterprises 60 (2011) (emphasis added).^[/fn]

Hence, pursuant to OECD guidelines, the law-obeying taxpayer must exercise self-restraint and abide by a professionally-honest interpretation of the tax code, resisting the temptation to stretch that interpretation solely for private gain. Moreover, this fidelity to the spirit of the law applies regardless of how the taxpayer believes a tax court is likely to rule. Pursuant to OECD guidelines, the normative talisman comes from parliament, not from the courts. The idea is that the normative aspects of law must remain immune both from judicial bias and from corporate legal strategies designed to affect legal outcomes. Thus, the responsible taxpayer must be prepared to defend any tax positions, not only in relation to the letter of the law, but also in relation to any relevant policy goals, of which the UN's 2030 Agenda might be one.

Overly aggressive tax interpretations derail economic policy and sustainable development in at least three ways. To the extent that such interpretations reduce tax revenues that the legislature had intended to collect, fiscal deficits worsen, which is a problem for any government but especially for governments in developing countries. To the extent that aggressive tax planning is predominately used by wealthy people and multi-national enterprises, concerns of income polarization exacerbate which causes social and economic challenges nationally and globally, and is in direct conflict with several of the goals in the 2030 Agenda (e.g. Goal 10: Reduce inequality within and among countries). Perhaps most importantly, to the extent that aggressive tax planning and tax avoidance schemes are seen as manipulations of one's legal obligations, general cynicism rises and voluntary compliance erodes.

Solving these policy dilemmas requires a shift in attitude. First, courts must play a role by breathing life into anti-avoidance doctrine. Second, tax advisors must respect the rule of law and offer professionally-honest interpretations, rather than seek ways to exploit legal loopholes and underenforced laws. Third, and perhaps most importantly, corporate executives must embrace the ethical obligation to cooperate with the creation, implementation, and reform of business regulations in local, national, and global arenas. This includes the obligation to comply with corporate taxation.

*To make sure you do not miss out on posts from the Kluwer International Tax Blog, please subscribe to the blog **here**.*