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“Seeing Like a Taxman” A BEPS Commentary by Guest Blogger Dr. Andrew Morrisey

William Byrnes (Texas A&M University Law) · Monday, June 22nd, 2015

Dr. Andrew Morrisey, Dean of Texas A&M University School of Law

The rapidly shifting world of international financial and tax regulation – from the OECD’s BEPS to FATCA – is reshaping the world. Many of these policies are being adopted without regard to whether they produce net benefits (e.g. revenue in excess of the costs they impose), which raises the question: why?

One way to answer that question is to adopt the perspective of a state. Using Yale anthropologist and political scientist James C. Scott’s analysis from his books, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale 1998) and *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (Yale 2009), we can get a valuable perspective.

Scott has 4 key insights. First, states like “legible” activities – i.e. when people do things they can enumerate and track. Legibility facilitates getting resources for the state. Second, making things legible to the state changes them. Scott points out that Prussian forest managers in the early 19th century determined to count only revenue-producing trees. By the end of the century, Prussian forests were orderly rows of just those types of trees, maximizing production of revenue but not doing much for biodiversity. Third, the development of what he terms the “high modernist ideology”, in which scientific and technical models are applied uncritically to societies, encourages government actors to think that they can remake societies in pursuit of legibility. Finally, connecting that ideology to the power of a modern state and a civil society unable to resist the state can get you bad results.

Why pay attention to Scott’s approach? It gives us three key insights. First, Scott gives a clear analysis of the incentives of state actors that transcends his examples from precolonial Southeast Asia. Much of the drive for additional anti-avoidance measures today is easily characterized as a quest for legibility. Second, it helps explain how we got where we are. Just as the hill people of Scott’s precolonial “shatter zones” fled to avoid taxes and forced labor, so companies and individuals fled high taxes to low tax jurisdictions. Just as those escaping the valley states adopted subsistence life styles built around hard-to-tax activities, modern firms are shifting into intangible assets. Third, anti-tax avoidance measures are like the Prussian forestors – they will change the nature of the entities they seek to make legible. That didn’t work out well the first time. Why do we expect it to do so this time?

Read the full article, compliments of Wolters Kluwer CCH Global-Tax-Weekly_Seeing_Like_A_Taxman

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