Kluwer International Tax Blog

To engage or not to engage, is that the question?

Johann Müller (International tax professional) · Friday, August 28th, 2015

This is another lone voice cry in the wilderness – I am getting used to that.

By 9 September 2015, anyone who has an opinion about further corporate tax transparency in Europe, are invited to file it (or forever hold their peace?). Those opinions must not be filed with DG-Taxud, but the EU General Directorate for Banking and Finance at (http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index_en.htm). This may come as a surprise to many, but may simply have to do with the fact that tax is a relative newcomer in corporate transparency and that there has been company reporting requirements in place for the banking and extractive industries in Europe already. Off course the banking industry has proven the need for more transparency and oversight in abundance.

Be it as it may, DG Banking and Finance is running a public consultation on transparency for non-banking corporates and it is in the interest of all those corporates to let their opinions be heard as well. The risk of not doing so varies from being hushed later for not using the opportunity when given, to the outcome of this survey being completely lopsided, biased and used and quoted whenever convenient. Responses can be submitted anonymously.

The questions focus on whether to make more data available to tax authorities only, or to the public as well. I want to comment on the usefulness of numerical data without details. I will spoil the story, by starting with the punch line: such data provides leads which typically prove useful in 2% or less of the cases looked at. I.e. if you look at 10,000 companies and find 100 with suspicious numbers, 2 of those may lead to significant revelations of real tax fraud/evasion/abuse/aggressive avoidance. I base this on my own experiences as consultant, in-house tax professional and government employee:

- even with access to all data, when I ran various simple tests to measure the effective tax rates of hundreds of companies in a group in order to "spot the problems", tax rates rates swung from -2.000% to +60.000%. Explanations were often as simple as tax losses carried forward;
- we gave up trying to identify the indirect tax burden of a particular division, because of the different ways in which indirect taxes were treated across countries e.g. booking tax as part of the underlying items purchased where obtaining refunds were deemed impossible; treating tax sometimes as an operational cost, and sometimes not; differentiating between being a taxpayer and a mere withholding agent in different ways across countries; and because having companies in 100 countries often means 100 different accounting software packages, with 100 different account numbers for essentially the same thing;

- we tried to verify the appropriate payments of a specialised notional tax levied in various countries, only to discover that the reason why the total amount paid differed vastly from the expected one, was that since no non-tax expert really knew what this tax was about, it often became a dump post for all uncertain entries, especially those with the word “tax” in it;
- I experienced extensively with the conclusions that could be reached from all the data available in Orbis, a global database with detailed balance sheet and income statement items per company in many countries for the past 10 years. Though it was extremely easy to compile 1 page overviews of effective tax rates per company or per country, from high to low and vice versa; or to calculate earnings per employee and EBT per employee; the outcomes were rarely clear and always required further information; and
- the same outcome as the above bullet has been confirmed to me by the risk management team of a tax authority outside Denmark. They used slightly different methodologies and different databases, but they too felt that only 2% of the cases that looked “suspicious” at first, lead to any significant finding.

In short, lots of numbers without a detailed background helps very little. Making those numbers available to people who are not experts in international corporate taxation or transfer pricing seems dangerous. It will provide false proof for sensationalist NGO’s to make public claims about particular companies which rarely will be balanced or accurate.

Does this mean that business should not be transparent? No, it does not. But business needs to be transparent to the right people: we should trust tax authorities to do their jobs without having the public ordering them to witch-hunts, which politicians – in an everlasting need for cheap votes – would be happy to support. This brings me to the other side of the coin: politicians and the public sector.

Europe can do with more economic growth. That growth can realised by getting more tax revenues to spend on growth enhancing projects (such as good infrastructure, better education and a good health system). However, growth can also be realised through spending less on non-growth enhancing things such as corruption, nepotism, mismanagement of funds and useless pet projects; none of these can thrive in transparency. Therefore, what I find disappointing, is the lack of insistence on more transparency in government. What cost compensations do our politicians and administrators receive? (remember the 8 British parliamentarians that were sent to jail after British members of parliament had to come clean on their costs (https://en.wikipedia.org/wiki/United_Kingdom_parliamentary_expenses_scandal)) Why is not all government spending (other than defence and national security) available online for public scrutiny? No one should have to ask for – leave alone fight for – this information: it should uploaded in detail in real time. On average companies are expected to work between 2 and 3 months a year before they get their “tax freedom day” and average wage earners anything from 3 to 5 months (https://en.wikipedia.org/wiki/Tax_Freedom_Day). We have the right to be shown in detail that government is spending our hard earned money prudently.

It is ironic that Switzerland is tarred as a corporate tax haven, and yet, it provides one of the highest standards of living in the world, some of the lowest personal income tax rates, the most public consultations through referendums, and institutionalised annual town hall meetings in which local government explains and defends their past spending and future plans to the local taxpayers. I.e. a transparent, inclusive democracy, with low taxes for all – why does the Commission not run a public consultation asking Europe’s citizens if they want that?

That so many NGO's do not fight for government transparency, makes them biased and thus irrelevant. They are not fighting for better lives for people, they're fighting business because they do not like it. How else can you explain going after foreign investors for "milking the country dry" while doing nothing against the millions of dollars being transferred from local tax revenues to local politicians' offshore bank accounts?

And business. Why is business not demanding as much transparency from government, as government demands from them? There may be various reasons, from the cynical: they are too afraid; to the practical: they are not given the opportunity. Either way: the time has a come again in which everyone can tell government how transparent they want business to be. I believe that it is important that business is an active participant in this discussion and that they give pushback by demanding the same transparency from government as government requires from them. Make that part of your CSR. Dare to fill in the form and ask why so much taxpayer money is being spent on implementing a 2CTB, before a 3CTB* which will reduce the volume of data looked for in this survey by 28:1.

* See http://www.kluwertaxlawblog.com/blog/2015/07/20/why-europe-needs-3ctb-to-get-ahead/

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