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Tax uncertainty is a certain global risk

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In March 2017, the OECD and the IMF published a report on tax uncertainty (Report) confirming that such uncertainty exists and impacts on business and investment. Similar was the outcome of an earlier survey one year ago by the Oxford University Centre for Business Taxation: Measuring Corporation Tax Uncertainty Across Countries.

The issue is of particular relevance for both countries and business due to its implications for the location of investment and subsequently for national economy. In fact, the tax environment of the potential investment-location is amongst the top 5 factors to be considered, the other 4 being (i) corruption, (ii) political certainty, (iii) current and foreseeable macroeconomic conditions and (iv) labor costs. In an ever-globalized world, countries striving to ensure competitiveness and sustainable growth have no margin to disregard the above factors.

A closer look at the tax scenario reveals that business investors are particularly concerned for: (i) effective corporate income tax (CIT) rates, (ii) expected effective CIT rates, (iii) input tax credits and refunds, (iii) amount and payment of value added tax (VAT) and equivalent taxes (iv) tax treaty network. Uncertainty in these areas may hence be a less than encouraging feature of the potential investment-location.

The Report – compiled on the basis of the results of recent OECD surveys within the business and the tax administration sector – deals mainly with two (2) issues, both viewed from a national and an international perspective.

1. **Tax uncertainty sources**

To begin with, the Report lists certain factors of tax certainty considered all-time classics. Amongst them, tax policy design and tax legislation rank highly and rightly so. Regular and unexpected changes in tax laws, retroactivity of new tax provisions, temporarily introduced tax legislation as well as ambiguous, poor drafting thereof have significant impact on the extent of certainty inspired by a given tax framework. This is multiplied by lack of effective and consistent implementation of tax legislation and/or mismatches between legislation and practice.

The Report verifies and enriches the above-listed sources of tax uncertainty with more recent evidence. In this respect, business stakeholders highlight as source of concern bureaucracy for the fulfillment of tax obligations, including documentation requirements. Bureaucracy is further correlated to high compliance costs. Other causes underlined were taxpayers' inability to achieve clarity and certainty on the tax treatment of given transactions in advance and, anew, incoherent interpretation and application of tax law by national tax authorities as well as by Courts.

Tax uncertainty seems to be even more blatant in an international tax framework, distinguished for its fragmentation. As per the Report, the most important factor of uncertainty in this regard is that international standards are applied differently by different national administrations; hence, what is put in place to smoothen the fragmentation ends up intensifying it. The uncertainty in connection with the implementation of the multilateral convention and its ultimate impact on the existing tax treaty network should be added up to the above.

Beyond the results of the Report, tax uncertainty can be identified at supranational level as well. An illustrating example offers recent decisions in the area of EU fiscal state aid law by the European Commission, which have been challenged for inconsistency with OECD standards as regards transfer pricing.

2. **How to reduce uncertainty**

The Report draws on proposals of business and tax administrations to suggest potential remedies. It is clarified that such remedies are more likely applicable to advanced economies, while for developing ones they should be revised through the lens of the specific challenges arising in the latter's tax frameworks.

From the outset, it is acknowledged that the earlier uncertainty is resolved in the context of a tax relationship, the more the benefits that arise for the parties.

In the national dimension, a well-developed framework for the design and drafting of tax legislation and the subsequent monitoring of its implementation would properly address complexity and lack of clarity in tax laws. To this end, the Report makes reference to specific legislative procedures and drafting standards, stressing the importance of defining principles (e.g. organization, effectiveness and integration) by which legislators should abide. It is worth noting that the importance of a set of such drafting standards has been outlined since 2013 in the Model Taxpayer Charter compiled by CFE, AOTCA and STEP.

In addition, more tax certainty at national level could be pursued through (i) enhanced cooperation between tax administrations and taxpayers, (ii) availability of procedures for the issuance of tax rulings and the conclusion of advance pricing agreements, (iii) regular provision of guidance on the interpretation and application of tax laws and through (iv) ensuring effective tax dispute resolution.

On the international side, responses to tax uncertainty should include close cooperation among countries to ensure harmonized interpretation and application of international standards as well as coherent application of national tax laws and tax treaties. Equal weight should be attached to the promotion of effective international tax dispute resolution through mutual agreement procedures (MAPs). International arbitration for the mandatory resolution of such disputes merits also special consideration in this regard.

In this context, with a view to enhancing the level of tax certainty at national and international level, specific best practices can be drawn also from the Guidelines for A Model for A European Taxpayer's Code recently released by the European Commission. Amongst others, the Commission put forward the importance of taxpayers' education at an early age regarding the function of the tax system, its rationale, the scope of the tax obligations and their proper fulfillment. Thus equipped, taxpayers will be able to better understand tax legislation and be more confident as to its application.

As a final remark, sound tax legislation can be a business driver and investment catalyst in itself. The Report makes such assumption: *uncertainty about each type of tax is generally reported (by and for business) as more important than the level of tax itself*. It is high time that all stakeholders jointly cooperate to this end.

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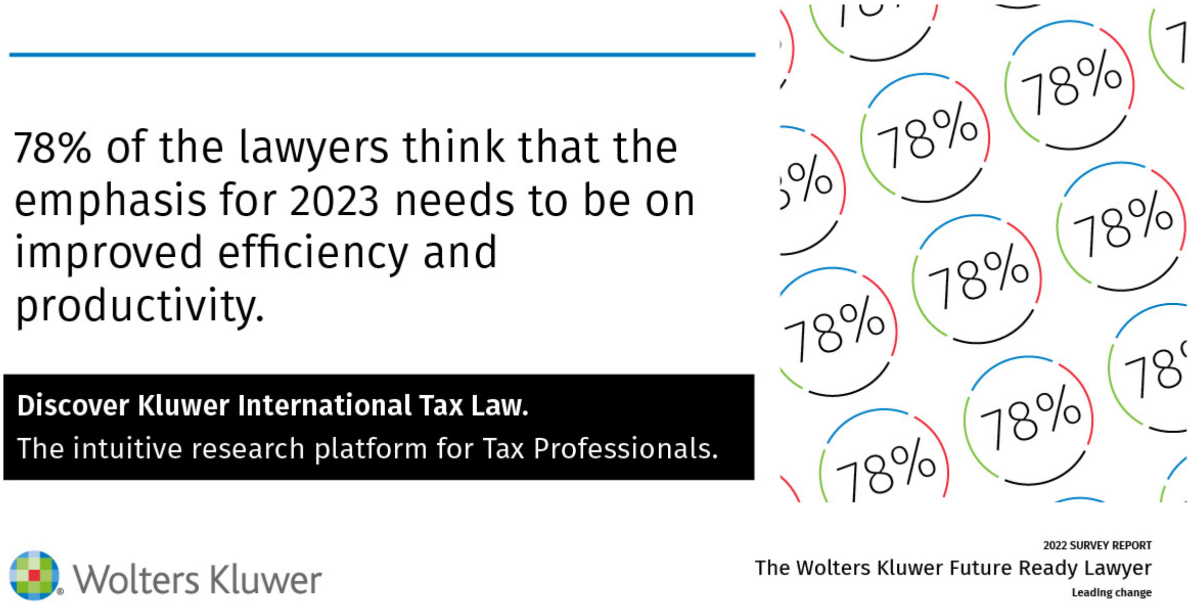

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