

Kluwer International Tax Blog

No taxation without representation

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Cornerstone of modern tax systems is the somehow forgotten axiom that taxpayers need to consent to the taxes imposed by governments. This may sound peculiar in an era where political correctness dictates that certain taxpayers do not pay their “fair (?) share” of taxes, although they do comply to tax laws in force; in this era, in order to increase pressure on payment of a so-called “fair (?) share” of taxation, another cornerstone of modern economy, tax secrecy, is practically abolished through an apparently innocent, but deeply misleading label “Country by Country Reporting”. Although this idea may today be justified by making use of an implicitly socialist argument (“it is addressed only against the rich”), but can be later very well expanded also towards less rich – it will not be the first time in history for this to happen.

Parliamentarianism may very well suggest that it is enough for the representatives “of the people” to give their consent to tax laws through an ordinary majority vote in the Parliament. This, however, does not tell the whole truth. The maxim “no taxation without representation” does not mean that “any” representatives of “the people” might have the power to unlimitedly decide about taxes that others will pay. If for example a proportion of 23% Greek population currently unemployed decide (with the aid of some other part of the population having similar troubles of simply similar ideas) through a vote of their representatives that “others” should finally pay so many taxes that the former will be able to eternally finance their living through taxes which “others” will pay, this might be very well democratic and OK with constitutional procedures. However, when it comes to these “others” who will finally pay taxes, then these “others” will be obviously of a different view.

The problems for the decision-makers begin when these “others” have very often the means to just do what their own view of things suggest, no matter how many BEPS-Projects will be put in place: Under BEPS-Project, artificial constructions that lead to lower taxation must become ineffective, no matter how consciously governments were tolerating such tax behaviour until very recently. What the BEPS-Project misses is that taxpayers at the end will not pay higher taxes simply because “artificial” constructions are now chased away: Such taxpayers will finally really construct their lives in a different way, so that they pay less taxes. They leave their home countries and go to live in low tax jurisdictions, where they invest their wealth, depriving their ex-residence countries from valuable funds and investment.

Now, how far can taxes be finally imposed without the deeper consent of the taxpayers? No one wants to be deprived from his/her own wealth, but there is to some extent a deeper consent by taxpayers on taxation, because people unconsciously realise and admit that some taxes should be

finally paid. If more taxes are asked than taxpayers really agree with, then they will simply not be paid. This goes beyond law, it is simply reality. Governments should seriously wonder, whether they need “immediate” tax revenue or rather consumption and investments which will naturally generate more wealth and, consequently, also more taxes in the long term.

If one takes a look at the history of “no taxation without representation” maxim, it becomes clear that this maxim was always about the consent of exactly the ones paying the tax and not of others not paying the tax. The English nobility had imposed in year 1215 to the king through the Magna Carta Libertatum an obligation to obtain their consent – of them, of the actual taxpayers – before he imposes new taxes. Also the American revolution was provoked out of the insistence of metropolitan Britain to impose too high taxes on the taxpayers of their North-American colonies. Taxation was imposed according to the constitutional principles in place at that time, but the will of the actual taxpayers was not to pay the taxes. This reached so far consequence, to cause finally even a nation-building process. It was exactly then that the world heard for the first time the sound of the maxim “no taxation without representation”.

In the 1970’s the oil crises, combined with the socialist ideas that were dominating politics at that time, had led governments to adopt extreme increases of nominal tax rates. Did companies really pay such high taxes? What in reality happened, was that they all started seeking tax avoidance solutions with governments perfectly knowing what was happening and tolerating it in most of the cases. So, tax avoidance and, specifically, international tax avoidance, did not happen without the governments implicitly accepting it.

Since it has been so easy in the recent years to impose on low-tax jurisdictions an obligation to abolish tax secrecy and, in addition, to provide automatic exchange of information, then it becomes obvious that the fact that no one had imposed on such jurisdictions an obligation to do much less in the past, namely impose exchange of information upon request, was a conscious choice of most governments.

Obviously only a few years ago the developed world did not really want tax avoidance to be effectively combatted. Obviously now it is wanted. It has to be clear that both decisions are conscious decisions. It was an untold but very real decision in the past to accept lower real tax burden for enterprises, than nominal tax rates were suggesting. The academic community should not avoid discussing, whether the idea of tax avoidance was finally not so wrong. Reservations of political correctness towards the ones who are not called to pay such taxes should not prevent at least discussion.

Governments want now tax avoidance to end. It is however doubtful that have they examined to what extent post-war economic prosperity was based on the possibilities for tax avoidance that were silently guaranteed to bigger and smaller enterprises. Historically, prosperity was always bound to low tax economic environment. If now suddenly Western societies start being a truly high tax environment, in the chase of a non-closer defined “fair” part of taxation, will such prosperity be lost?

Taxation can be defined as “high” or as “low” only if is regarded from the purview of the actual taxpayer. Those who benefit from taxes will naturally never find taxation of others adequate. The axiom “no taxation without representation” cannot refer to representation of the latter.

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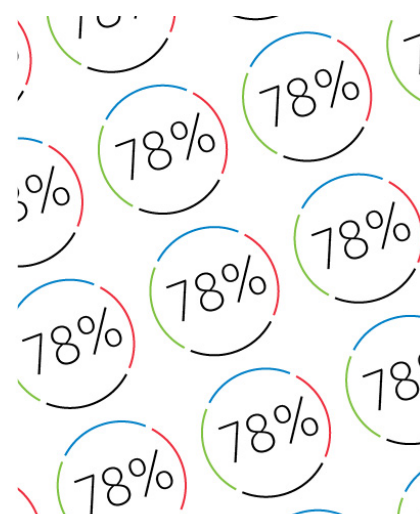
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