IFA hears talk of crisis in international tax

The annual OECD update at the IFA congress was going so well. Then, the chairman mentioned 'crisis'.

"We are at nothing less than in a state of crisis in international tax," said Stef van Weeghel, referring to the difficult negotiations in prospect over the allocation of taxing rights, before the OECD finalises its report on tax issues relating to the digitalization of the economy in 2020. He was commenting during the OECD seminar at the International Fiscal Association (IFA)'s annual congress in Seoul today.

The international debate centres on politicians' desire to tax companies, mainly in the technology sector, who make money in their country without requiring a large number of staff and infrastructure to do that, so they may not have a taxable presence there. Questions about what should be taxed - profits, turnover or a combination of both – what criteria should be used, eg, what value should be put on user participation - and who is entitled to any tax that is collected have featured in many of the IFA sessions this week.

Shortly before Van Weeghel's intervention, David Bradbury, head of the OECD's tax policy and statistics division, had explained, during his update on the Task Force on the Digital Economy, which is doing the work on the tax issues relating to the digitalisation of the economy, that the views of the countries involved could be generally put into three groups: those who feel only targeted changes to deal with the tax challenges posed by the digitalization of the economy are required; others who consider that these challenges are "not exclusive or specific to highly digitalised business models"; and another group, who do not want to make significant changes to the tax system because they think it is too early to assess the BEPS Project's attempts to deal with double non-taxation.

"Think about when we get to 2020," said van Weeghel, PwC's global head of tax policy, who chaired the seminar. "Are we going to pay lip service to the arm's-length principle (ALP), despite the problems some have with it, or drop the ALP and go to something like formulary apportionment?

No political consensus

Pascal Saint-Amans, director of the OECD's Centre for Tax Policy and Administration (CTPA), agreed with van Weeghel, saying there was a political crisis in international tax policy making: "At the implementation level, we are fine, but at a political level there is no trust to build consensus". He hit out at what he described as some countries' "upside down" approach to tax cooperation. On the one hand, the US defended the ALP throughout the work on the BEPS Project, but appeared to disregard the standard in the tax reform it enacted at the end of 2017. He was referring in particular to the Base Erosion and Anti-Abuse Tax (BEAT) provision, which limits companies' ability to cut its US tax bill by including deductible payments to foreign related parties, but does not consider whether those payments comply with the ALP.

"The OECD is agnostic on the ALP," Saint-Amans said, "but the largest economy in the world seems to have passed a vote of no confidence in the current system."

The discord is not confined to the US. “European countries are very much divided,” Saint-Amans added. “Some argue that there should be no change in the allocation of taxing rights, while also saying that tax should be paid where the value is created. There is a fascinating debate to come.”

Inclusive Framework

The CTPA director reported to the seminar that the Inclusive Framework, which brings together 116 jurisdictions to work on BEPS implementation, was working well and had produced the second report on its progress, including the peer reviews of the implementation of the four minimum standards – harmful tax practices, treaty abuse, country-by-country reporting, and dispute resolution - for G20 finance ministers in July.

On tax certainty, eight countries - Australia, Canada, Italy, Japan, Netherlands, Spain, UK and US, with France as an observer – launched a pilot in January 2018 to operate the International Compliance Assurance Programme, a voluntary initiative aimed at eliminating double taxation by getting tax administrations and multinational groups to work together to limit audits by identifying tax risks.

The MLI was created to insert the anti-avoidance measures and the dispute resolution minimum standards, including the introduction of arbitration, from the BEPS Project into the more than 3,000 bilateral tax treaties without having to renegotiate each one. It now covers 82 jurisdictions and more than 1,360 agreements have been matched, meaning that the two parties have agreed to modify the treaty between them using the MLI. The MLI enters into effect for 14 tax agreements between the first nine jurisdictions that have ratified it on January 1 2019. The Instrument has also seen 28 jurisdictions opt for arbitration.

Saint-Amans described the development of mandatory disclosure rules to stop non-compliance with the Common Reporting Standard (CRS), which requires financial institutions to report certain information about their non-resident accounts, as aimed at protecting the integrity of the CRS and the use of CRS information.

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