



Tax Director's Discussion: Impact on Multinational Companies

**Chair: Kris Bodson | Senior Director EMEA
Taxation and Policy at Jonson & Jonson**

Report by: Eter Burkadze | Transfer Pricing Manager at PVH Europe BV

Tax Directors' discussion session initiated with a debate on the distinctions among various terms used in the international tax world such as tax evasion, tax abuse, tax avoidance and the (aggressive) tax planning. Panel members tried to provide their perspectives on these ever-evolving concepts. Panel pointed out that the lines among these terms are blur and it is even getting blurrier. Panel provided a list of questions to ask yourself when analyzing a specific situation to understand whether you are dealing with a tax evasion, tax abuse, tax avoidance or the (aggressive) tax planning. Hence, you should ask yourself whether:

- a. It is legal with the matter of the law.
- b. It is in the spirit of the law.
- c. the sole purpose of the arrangement is obtaining the tax benefit.

While it is easy to define the extremes, the distinctions with the terms in between are thin. Multinational companies have various stakeholders, and they need to meet their expectations. MNEs are accountable to the shareholders as well as the society in general. They would like to be good citizens, though the constant changing regulatory environment creates significant hindrances to do so. Some MNEs would prefer to pay more taxes for increased certainty, rather than face future unexpected circumstances and a potential reputational damage.

The mentioned terms evolved significantly over the couple of years. If we go back to history, key driver used to be a real economic activity. Now looking at the Pillar 2 developments, effective tax rate is the driver. The shift in understanding these terms is enormous, contributing to a more future uncertainty.

MNEs believe tax avoidance and avoiding taxes are not the same. Governments use fiscal policy tools to intentionally encourage or deter certain behavior. When MNEs are directly responding to such measures, this is not a tax avoidance but simply responding to the fiscal policy.

The discussion continued to address whether the rules introduced to tackle the undesirable behavior are effective; are adequate and enforceable; and how do they impact the certainty for the MNEs.

Panel indicated that nowadays there is a shift to "morality" when trying to define the tax abuse and hence, this term is becoming less technical. Such a tendency increases the uncertainty for the multinationals, as morality is a relative term, and it has a different meaning for everyone.



The most effective way to introduce new rules or legislation is to initially analyze the existing rules and to identify why these rules are inefficient. Once the inefficiencies are detected, policy makers can then propose the best way to address them. However, the procedure of introducing new rules and legislations is currently different. That is, the process of introducing new legislation lacks the democratic process, involvement of the policy makers and other stakeholders is rather limited. It seems like the new proposals are initiated by the tax administrations; these proposals are then discussed on during the meetings at OECD; OECD issues a recommendation document; European Commission prepares a Directive with a new legislative proposal; when the Directive is approved, Member States have an obligation to transpose the rules in their domestic legislation. This process leaves a very limited space for various stakeholders to provide the feedback on the proposals, which technically reduces the efficiency of the rules in general.

Panel also touched upon on the amount of the data requested by various new rules implemented across Europe as well as the rest of the world and argued whether they consider it to be the best way of working with the tax authorities.

Over the years MNEs have been investing a significant amount of money in systems to be able to collect the information requested under the different rules, such as CbCR. There is evidence that in many instances tax administrations do not even look at the CbCR reports they receive. MNEs spend substantial amount of time and resources to create these reports, and they do expect that these reports are looked at and used for meaningful purpose.

The new DAC7 requirement requires MNEs to collect a very detailed information on their users. Not only they have to collect this information, but MNEs are requested to verify its correctness. Some companies, like Booking.com, have over million users which further complicates this exercise. Platform owners do not have all the information requested by the legislation and do not have a capacity to check such information when collected. DAC7 technically converts some MNEs into tax auditors. For instance, Booking.com must collect information on the transactions between the property owner and the traveler. Where the property owner is not registered for VAT, it needs to apply tax on their behalf.

Collaboration between tax and IT departments increased heavily in the last couple of years. Tax departments necessitate people with deep knowledge of the systems in addition to the tax rules and legislation to be able to translate what these systems can do for the tax function. Such skills are rare on the market. MNEs started to hire non-tax people to streamline the tax function within their organizations. At the same time tax administrations are not digital enough to make use of the reports they receive.



MNEs consider their involvement in the law-making process crucial. This process should be inclusive, and tax administration should seek the input from MNEs when drafting the laws. Looking at the current developments, new rules and regulations are piling up; existing regulations are not made redundant but are applied in parallel; the rules and regulations are becoming more complex. Consequently, MNEs must deal with a lot of bureaucracy and compliance. Purpose of the new regulations should be clear, and it is essential to balance the compliance burden versus the efficiency of the law itself. Now, it seems like that tax authorities request more information, but still, it is never enough. Countries interpret and consequently, implement the new rules differently. Such a differing implementation of the rules, for instance, can be due to the intrinsic differences in the domestic legislations as well as language differences. Said implementation of the rules creates another layer of complexity for MNEs. These companies are operating across the world, and they do need to comply with the same set rules, though, keeping track of the nuances in the implementation.

MNEs believe that relation between tax authorities and MNEs should rely on trust and cooperation. Tax authorities should have faith that MNEs know where their tax risks are. Hence, the tax administrations should base their analysis on the tax risk frameworks of the MNEs.

At the end of the session, the panel was requested to provide their wish list for the policy makers. MNEs wish list is as follows:

- Currently the feedback period for the new proposals are short and external stakeholders do not have enough time to react. MNEs wish to have a longer feedback period, for them to review the proposals and provide the comments.
- Effective dispute resolution system; improved access to MAP and APA; effective peer review process.
- Cooperative compliance and building trust between MNEs and the tax administrations; increased transparency between the parties.
- Open communication between MNEs and tax authorities. It does not matter for the MNEs where they pay taxes, they do not want to pay twice.

Panel members:

- Christian Kaeser | Global Head of Tax at Siemens
- David Murray | Head of Tax Policy & Sustainability at Anglo American
- Karine Halimi-Guez | Vice President – Head of Tax at Booking.com
- Ralf Thelosen | Transfer Pricing and Tax Risk Management at Citco