Controversy Trends

EMA Tax Summit

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Controversy Trends

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Agenda

Global Trends and Issues-OECD
  – Increased aggressive enforcement activity
  – Increased information sharing and exchange activities
  – Impact of the Forum on Tax Administration (OECD) and increased revenue authority collaboration

BEPS impact and Action Item 14 (Dispute Resolution)

European Union – Disputes Update
  – Specificities of EU Tax Litigation Landscape
  – Anticipated Increase in Litigation
  – The EU Double Taxation Dispute Resolution Mechanism
Global Trends and Issues - OECD
Global Trends and Issues

Enhanced International Collaboration as a Result of BEPS Actions
— Consistent application of standards in areas of, e.g:
  - Treaty shopping
  - Country-by-country reporting
  - Improving dispute resolution
— Inclusive framework to monitor implementation

Forum on Tax Administration (FTA)
— Collaborative working group of revenue authorities from 46 countries
— Enhance tax administration and transparency
— Recent focus on BEPS and increased international cooperation
  - MAP Working Group

Tax Inspectors without Borders
Global Trends and Issues (cont.)

Information Exchange on the Rise
— Increased use of treaty exchange requests
— Common Reporting Standard (CRS)
— Multilateral Competent Authority Agreement (automatic exchange of country-by-country reports)

Expansion of Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)
— From jitsic to JITSIC
  - Currently composed of 36 member countries; previously four (plus a few observer countries)
— Forum of FTA members to address cross-border issues
— Develop best practices for effective exchanges of information
— Much greater scope for tax administrations to exchange information
BEPS Action Item 14: Making Dispute Resolution Mechanisms More Effective
BEPS Action 14: Making Dispute Resolution Mechanisms More Effective

“Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.”
Three Prong Approach

(1) Adoption of “minimum standard” for timely, effective, and efficient resolution of treaty-based disputes

(2) Complementary Best Practices

(3) Monitoring mechanism for the effective implementation of the minimum standard

— In addition, 20 countries* have committed to include mandatory binding MAP arbitration provision in bilateral tax treaties

* Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, U.K., U.S.
BEPS Focus on Dispute Resolution

Action 14: Minimum Standards

Implement Article 25 Mutual Agreement Procedures independent of local law requirements and provide access to MAP including for transfer pricing cases and treaty anti-abuse rule cases.

Resolve MAP cases within average of 24 months; ensure sufficient resources to meet this goal.

Publish procedures/guidelines on MAP process, including profile of contact information, etc.

Evaluate MAP cases independently based on treaty not on revenue considerations; competent authority staff performance not measured by revenue considerations.

Ensure audit settlement process does not preclude MAP.

Establish procedures to notify other country if determine taxpayer MAP request is not justified.

If not adopt mandatory arbitration be transparent about reasons why.
BEPS Focus on Dispute Resolution

**Action 14: Best Practices**

Adopt mandatory arbitration.

Provide clear acceptance of transfer pricing adjustments under Article 9(2); make unilateral adjustments where appropriate.

Promote treaty interpretation process and publish agreements on interpretative issues.

Implement bilateral APA program, and publish guidance on multilateral as well as bilateral APAs.

Permit multiyear MAP resolution of recurring issues.

Suspend collection efforts during MAP process notwithstanding local law; provide guidance on interest and penalties.

Publish guidance outlining any limits on competent authority’s ability to deviate from domestic law, policy or practice.
BEPS Focus on Dispute Resolution

**Action 14: Framework for Monitoring**

Minimum standard includes joining the Forum for Tax Administration (FTA) MAP Forum. FTA MAP Forum to develop peer review monitoring mechanism in conjunction with working Party 1 of CFA. Peer review to monitor compliance with minimum standards after developing:

— Terms of Reference
— Assessment Methodology

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European Union - Disputes Update
Specificities of EU Tax Litigation Landscape

The specificities of the EU tax litigation landscape

— EU tax jurisdictions (European Court of Justice)
— EU alternative dispute resolution mechanism (European Arbitration Convention dated July 23, 1990), in parallel of the MAP included in DTT
— EU Directives which must be transposed in all EU Member State’s Tax legislation
— CCCTB as the ultimate goal

New international tax common rules recently enacted in a BEPS environment:
ATAD / Anti-abuse provisions for the Parent/Subsidiary Directive

For several years an increase of tax disputes and litigations within the EU countries
Anticipated Increase in Litigation

Recently-enacted EU Tax Directives, in the BEPS environment, will probably generate more tax litigations in the future

— Necessity of having a consistent interpretation of the new international tax rules introduced by ATAD/Anti-abuse provisions

— EUCJ has to rule on domestic situations governed by a local tax legislation derived from EU Directives

— Local tax jurisdictions will probably directly use other EU countries’ case law when ruling on their own domestic cases
The EU Double Taxation Dispute Resolution Mechanism

In this context, EU Commission wants to improve the double taxation dispute resolution mechanism (The June 2015 Action Plan for Fair and Efficient Corporate Taxation in the EU)

- The existing EU Arbitration Convention
- What are the weaknesses? How could it be improved?

In an environment of increasing cooperation between the EU Tax Authorities...

- Exchange of information (Ruling, CBCR, etc.)
- Evolving trends of tax raids
- EU Joint Tax Audit
Thank you
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Fragmentation and controversy

Tax in a post-BEPS world