Consequences of BEPS for the investment climate in each of the Benelux Counties

Chair: Machiel Lambooij

IFA Trilateral Liège
12 June 2015

International Fiscal Association

Program

- 10:15-11:30 Introductions
  - Sandra Knaepen (FOD Financiën) - Belgium
  - Louis Thomas (KPMG) – Luxembourg
  - Hans van den Hurk (Maastricht University, Quantera Global) & Sven Huyben (Akzo Nobel) – The Netherlands
- 11:30-11:45 Coffee break
- 11:45-13:00 Forum discussion

International Fiscal Association

Forum discussion

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- All statements made are personal views and not necessarily representing the views of the relevant organisation.
- Statements on the screen are intended to open a debate and not necessarily the views of the person proposing them.
- Participation by the audience is welcome.

International Fiscal Association

BEPS is intended to ultimately ensure that tax payers pay their fair share. On a macro economic scale this is good for our societies. Short term negative impact of BEPS based measures for specific sectors or specific companies is the price to pay for this and not a reason to stop BEPS from being implemented.

International Fiscal Association

BEPS is to a large extent also challenging “abuse” that is being condoned by US tax policies. European OECD members and their politicians should publicly recognize so in the public debate, rather than only pointing to the multinationals and “facilitators”.

International Fiscal Association

BEPS project found its justification and support in combating aggressive tax planning, but has evolved into a plan that reshapes the international tax rules. Many of the (draft) action plans provide optionality (as many documents are non-consensus documents). This leads to governments making their own selections. Also multinationals with a sustainable approach towards tax will be confronted with uncertainty and double taxation. Companies will focus more than ever on effective dispute resolution mechanisms. It is expected that the measures under BEPS action 14 will not be very effective though. This is a barrier to international trade.

International Fiscal Association

Although the expected impact of BEPS is to achieve an overall fair taxation system through at least 44 countries (OECD, G20, etc), the result is an inconsistent accumulation of unilateral (i.e. national) measures such as in the UK with the diverted profit tax and more recently in Australia. This is driven by a budget pressure and political context. The issue with this approach is divergent interpretation and implementation leading to increased uncertainty and double taxation cases.

International Fiscal Association

BEPS created a system to prevent base erosion and profit shifting but as it looks now the only result is that some states want a change and don't believe in the outcome of BEPS and therefor start unilateral action. For example: UK DPT, Germany Royalty legislation; Austria Interest deduction limitation etc.

International Fiscal Association

Should there be a statement by all OECD members that they will only implement certain BEPS measures as long as they will be implemented worldwide <u>and in connection with other measures?</u>

International Fiscal Association

The LoB and PPT approach (BEPS Action 6 Treaty Abuse) is very detrimental to the smaller countries in the EU, for all types of businesses. They are better off with effective management tests and perhaps some substance requirements.

International Fiscal Association

Given the potentially substantial impact of BEPS on businesses in the Benelux countries, the Benelux governments should make it a priority - and take the lead - in trying to ensure accelerated and effective Mutual Agreement Procedures (including binding arbitration), preferably through the multilateral instrument approach.

International Fiscal Association

Full - good faith - transparency by the smaller countries towards source countries is much more preferable than agreeing to change local laws and practices. The source countries should primarily take the action to end the perceived erosion of their tax base.

International Fiscal Association

Country by country reporting will not just be used as a high level risk assessment tool, but as a formula apportionment tool on the basis of which the level of audit adjustments will be pre-determined.

International Fiscal Association

BEPS will lead to a shift to more profits being taxed at source and more in larger economies. In particular smaller countries should rethink their tax investment climate strategy. What BEPS proof options are available to them?

International Fiscal Association

Action 1 (Challenges of the Digital Economy) risks leading to increased taxation on the basis of market presence and that will affect all enterprises doing business abroad, also non-digital businesses; it will further strengthen the position of BRIC countries in their attempts to tax businesses located in OECD member states.

International Fiscal Association

Another important impact for investment climate is (and will be) the EU tax policy and EU regulation, including state aid aspects. Some of these rules may decrease the competitiveness of the EU industry vis a vis the USA or Asian countries.

International Fiscal Association

BEPS is not our worst enemy since major countries like the US and Canada won't be able to implement these actions. Does this mean the business is out of trouble? Probably not. The main danger comes from the inside, the European Union.....

International Fiscal Association

International tax planning using Benelux vehicles without realistic substance on the ground will be dead in 5 years from now.

International Fiscal Association

The overall interests of the Benelux countries are the same in the BEPS debate and the EU Action Plan and they therefore should co-ordinate responses and positions.

International Fiscal Association