



FIELD COURT TAX CHAMBERS

STEP Israel Annual Conference Tel Aviv – 19th June 2018

Panel 2: Competition and Cooperation Amongst Nations - An Individual Perspective on Individuals

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Outline

- Cooperation
 - BEPS and its impact on individuals
 - The MLI and tax treaties
 - Disclosure and transparency – Common Reporting Standard and AEOI
- Competition
 - Regimes to attract mobile individuals
- A speculation about the future
 - Growing inequality and the fairness agenda
 - Progressive taxation and taxation of wealth
 - Cooperation to ensure fair taxation of all wealth and income



Cooperation

“An era of unprecedented international cooperation on tax matters is now underway”

Platform for Collaboration on Tax, 2016

- Key concepts:
 - Fairness
 - Transparency
 - Effective tax systems
 - ? Collaboration (and not competition)



BEPS and the impact on individuals

- The main target of BEPS was the tax planning of multinational enterprises (e.g. digital economy; interest limitations; cfc legislation; transfer pricing)
- BUT there was collateral impact on individuals
- E.g. Action Point 6 – Preventing the Granting of Treaty Benefits in Inappropriate Circumstances
 - See the discussion of the Multilateral Instrument below
- E.g. Action Point 12 – Mandatory Disclosure Rules (globalised DOTAS)
 - Disclosure of cross-border arrangements for aggressive tax avoidance
- BUT also
- E.g. Action Point 14 – Dispute Resolution (Mandatory Binding Arbitration)



The Multilateral Instrument (MLI) and Individuals

- ***Article 6 – Purpose of a Covered Tax Agreement***

1. A Covered Tax Agreement shall be modified to include the following preamble text:

“Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),”.

- What does this mean for individuals?
- E.g. an individual who enjoys a 10-year tax exemption on foreign-source income seeks to claim the benefits of a tax treaty with another state



The Multilateral Instrument (MLI) and Individuals

- ***Article 7 – Prevention of Treaty Abuse (Principal Purpose test)***

1. Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

- What does this mean for individuals?
- E.g. a trust establishes a company to hold investments in a jurisdiction that has a good network of tax treaties, but allows the deduction of distributions to beneficiaries



The Multilateral Instrument (MLI) and Individuals

- ***Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents (the generalized savings clause)***
 1. A Covered Tax Agreement shall not affect the taxation by a Contracting Jurisdiction of its residents, except with respect to the benefits granted under provisions of the Covered Tax Agreement: (various exceptions)
- What does this mean for individuals?
- E.g. legislation attributes to a resident individual the income of an overseas entity – the income is treaty-protected
- E.g. a dual resident individual claims the benefit of a treaty with respect to income arising in the country which loses on the tie-breaker
- (see OECD Comm, Art 1, para 21 – may resolve this)



The Multilateral Instrument (MLI) and Individuals

- Was there a deliberate but undisclosed policy of undermining the ability of taxpayers to rely on double taxation conventions for any form of planning?
- How much reliance can be placed (by individuals and companies) on the network of tax treaties going forward?



Cooperation – Disclosure and transparency

- Was BEPS really a cover for the work going on in relation to disclosure of personal information to tax authorities?
- FATCA; the Common Reporting Standard (CRS); the Directive on Administrative Cooperation (DAC 1-6)
- Note: the failure of the OECD to respect privacy and data protection, and the potential for enormous losses of personal data.



Cooperation – Disclosure and transparency

- What is the real purpose for Automatic Exchange of Account Information for Tax Purposes / beneficial ownership registers?
 - To circumvent the procedural guarantees and delays with regard to exchange of information on request?
 - To root out tax evasion?
 - To combat illicit financial flows - corruption and money laundering?
 - To satisfy public demand for more tax transparency?
 - To provide data for pre-populated tax returns?
 - To provide the ground work for the introduction of wealth taxes and other taxes on capital?
- Note the principle of purpose limitation in the processing of personal data



Competition

- The continuing existence of regimes to attract high net wealth individuals
- E.g. the UK non-dom regime – still alive (but limited to 15 years)
- E.g. the Italian Substitute Tax regime



Competition

Recall:

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL - An Action Plan to strengthen the fight against tax fraud and tax evasion (Brussels, 6.12.2012 COM(2012) 722 final), p. 7
- “In addition, in cases where existing Directives are found to provide opportunities for aggressive tax planning or prevent appropriate solutions by allowing double non taxation, the Commission will act. **Work should also intensify on special tax regimes for expatriates and for wealthy individuals, which are harmful for the operation of the internal market and reduce overall tax revenues.**”



A Speculation about the Future

- Growing inequality and the fairness agenda
 - “In January 2017, Oxfam revealed that just eight men own the same amount of wealth as the 3.6 billion people who form the poorest half of the world's population.”
 - “The richest 0.1% of the world’s population have increased their combined wealth by as much as the poorest 50% – or 3.8 billion people – since 1980, according to a report detailing the widening gap between the very rich and poor.
 - The World Inequality Report, published [in Dec 2017] by French economist Thomas Piketty, warned that inequality had ballooned to “extreme levels” in some countries and said the problem would only get worse unless governments took coordinated action to increase taxes and prevent tax avoidance.”



A Speculation about the Future

Progressive taxation and taxation of wealth

**Report of the UN Special Rapporteur on extreme poverty and human rights,
Philip Alston**

Implementing fiscal policies to reduce inequality

52. **States should reduce inequality by adopting taxation policies that are instrumental to achieving that aim.** While preparations for the Third International Conference on Financing for Development Conference, to be held in 2015, and the post-2015 development agenda have brought fiscal policies to prominence in international development debates, the basic principle that tax and development policies go together was already recognized over half a century ago ...

53. There is greater awareness of this principle today, as reflected, for example, in **the Secretary-General's observation that progressive tax policies can play an important role in addressing inequality and poverty** and in his exhortation that Governments consider a combination of progressive income taxes and highly redistributive transfers to decrease income inequality



A Speculation about the Future

Progressive taxation and taxation of wealth

- OECD, May 2018, *The Role and Design of Net Wealth Taxes in the OECD*



A Speculation about the Future

Cooperation to ensure fair taxation of all wealth and income

- The need to recognise that all income / wealth accretions need to bear a fair level of taxation
- The single-tax principle (Avi-Yonah) applied to individuals
- For many, double non-taxation is no longer an acceptable outcome



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