Tackling aggressive tax planning through improved transparency and disclosure

Oliver Biernat

Practice Group International Taxation - Geneva Group International
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Agenda

A) An example for international tax planning

B) Limitation: How countries are tackling aggressive tax planning shown in new OECD report

C) Limitation: How Europe | EU wants to enforce Information Exchange between Fiscal authorities

D) Question for discussion: Under which conditions reducing tax burden by e.g. installing holding companies in offshore centres can be effective and acceptable?

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A) An example for international tax planning (1)

- The case is taken from the GGI-ITPG International Tax and Business Guide 2010, page 57, but updated in March 2011
- A corporation in Germany plans to install a 100% subsidiary in Japan. The Japanese company will be financed mainly by an intercompany loan from the German mother company. High profits are expected and shall be repatriated as interest on the loan to the mother company in Germany. What would be the job of the international tax planner in this case?

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A) An example for international tax planning (2)

- First of all his job is to avoid surprises and calculate the tax burden before the Japanese subsidiary is installed. In this case only 33.7% (!) of the interest payments in Japan would be available in Germany as a total of 66.3% will have to be spent for corporate taxes and withholding taxes in Japan and Germany (including thin capitalisation rules in Japan).

A) An example for international tax planning (3)

- The second job for the international tax planner will be to find better alternatives and reduce the tax burden for profit-repatriation to Germany.
- One possibility could be to finance the Japanese subsidiary mainly via equity. Dividends paid to the German mother would result in a tax burden of only 49.6%.

A) An example for international tax planning (4)

- If the mother company would provide services to the Japanese subsidiary and charge fees, the tax burden would be 35.1%.
- Another possibility would be to charge royalties to the Japanese subsidiary for using a licence owned by the mother company. In this case the total tax burden would be reduced to 30.9%.

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A) An example for international tax planning (5)

- More sophisticated models would probably integrate an additional intermediate company in another country such as a holding, finance or service company.
- An example would be to finance the Japanese subsidiary through, for example, a Russian finance company. If the Russian company receives interest from Japan and pays dividends to the German mother the total tax burden is reduced to only 25.2%.

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A) An example for international tax planning (6)

- If an active IBC company seated in the Bahamas provided services to the Japanese subsidiary and paid the fee income as dividends to the German mother company, the total tax burden could even be reduced to 21,2%.
- Even better would be to install a Belgium coordination centre which receives royalties from the Japanese subsidiary and pays dividends to the German mother company. In this case only an 11.4% overall tax burden would arise.

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A) An example for international tax planning (7)

- As you can see international tax planning can be decisive for the profitability of a group and in our example could triple the profits after taxes.
- The question arises: Is it enough to have a letter box company in the Bahamas or in Belgium, which is run by a professional who takes care of 300 other letter box companies as well?

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B) The new OECD report (1) Press Release dated 01.02.11

- The report shows how some countries are tackling aggressive tax planning through improved transparency and disclosure. It covers a range of approaches from mandatory disclosure rules to forms of cooperative compliance.
- The report provides a toolkit for those concerned with aggressive tax planning and recommends a careful review of the different approaches to inform both tax policy and compliance.

  Full text can be found on the OECD official website.
- The report concludes that disclosure initiatives can help fill the gap between the creation/promotion of aggressive tax planning schemes and their identification by the authorities, therefore enabling governments to proceed immediately to an assessment of the issue and its resolution.

Source: http://www.oecd.org/dataoecd/7/29/47020506.pdf

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B) The new OECD report (2) Press Release dated 01.02.11

- Aggressive tax planning is a major risk to the revenue base of many countries. As shown by some recent cases and settlements, numbers are vast. Countries have developed a number of strategies to deal with aggressive tax planning.
- The underpinning of any such strategy is to ensure the availability of timely, targeted and comprehensive information, which traditional audits alone can no longer deliver.
- The availability of such information is important to allow governments to identify risk areas in a timely manner and be able to quickly decide whether and how to respond, thus providing increased certainty to taxpayers.

Source: http://www.oecd.org/dataoecd/7/29/47020506.pdf

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B) The new OECD report (3) Press Release dated 01.02.11

- To be effective, tax administrations are moving closer to working in real time. Several countries have therefore introduced complementary disclosure initiatives aimed at improving their capability to identify and quickly respond to aggressive tax planning.
- Such early detection and resolution benefits both the taxpayer and governments, including in terms of fewer routine audits, increased transparency and a positive impact on compliance culture in general.
- For instance, based on its disclosure rules for tax avoidance transactions, the UK was able to cut off GBP 12 billion in avoidance opportunities.

Source: http://www.oecd.org/dataoecd/7/29/47020506.pdf

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C) Europe | EU wants to enforce Information Exchange between Fiscal authorities (1) Press Release as of 23.02.2011

- The EU wants to proceed more consequently against tax fraud. According to the new directive, which was passed on 15 February 2011 in Brussels, in the future the member states should exchange information more systematicly.
- Background: In the domestic market it happens more often, that taxpayers relocate to another country, have earnings in several countries or perform cross-border transactions. As a result, for the tax authorities it becomes more difficult, to get an overview of the taxes due.

Source: http://consilium.europa.eu/showFocus.aspx?id=1&focusid=558&lang=deconsilium.europa.eu

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C) Europe | EU wants to enforce Information Exchange between Fiscal authorities (2) Press Release as of 23.02.2011

- Through the new clauses, which will come into effect in 2013, it will become easier for member states to detect earnings of the taxpayers in other EU countries. This will facilitate tax assessments and contribute more efficiently to combating tax fraud.
- Furthermore through the directive the application of the OECD-standard for the exchange of information will be ensured. In practice this means, that the member states will no longer be able to quote on the banking secrecy, if they want to refuse information.

Source: http://consilium.europa.eu/showFocus.aspx?id=1&focusid=558&lang=deconsilium.europa.eu

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C) Europe | EU wants to enforce Information Exchange between Fiscal authorities (3) Press Release as of 23.02.2011

- Starting from 2015 member states will automatically exchange information about certain types of earnings and property, e.g. income from dependent employment or pension income.
- The directive is a part of a EU-strategy against tax fraud. It is true for all kind of taxes, except VAT and consumption taxes, which are already considered by other legislation.

Source: http://consilium.europa.eu/showFocus.aspx?id=1&focusid=558&lang=deconsilium.europa.eu

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Summary of A-C

A) Since consequences of recent global crisis asked for extraordinary financial efforts by governments with increased needs of additional resources, tax planning became a subject of great interest for all countries in past years.

B) OECD in a new report approved by all members shows how countries are tackling aggressive tax planning through improved transparency and disclosure.

C) Europe | EU wants to enforce Information Exchange between Fiscal authorities

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D) Question to the audience

- On the basis of this background under which conditions reducing tax burden by e.g. installing holding companies in offshore centres can be effective and acceptable?

Thank you for your attention!

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Contact us:

Oliver Biernat

Benefitax GmbH

Steuerberatungsgesellschaft Wirtschaftsprüfungsgesellschaft

Darmstädter Landstraße 125

60598 Frankfurt am Main

Tel. 069 – 25 62 27 60

Fax 069 – 25 62 27 611

info@benefitax.de

www.benefitax.de

Benefitax GmbH ▪ Tax Consulting and Public Audit Company ▪ Frankfurt am Main (Germany)