

Podcast transcript

8 important trends on the EU tax agenda – a paradigm shift or evolution?

Podcast with Vinod Kalloe, Head of International Tax Policy, at KPMG Meijburg & Co, KPMG in the Netherlands, and Robert Van der Jagt, Chairman, at KPMG's EU Tax Centre and Partner at KPMG Meijburg & Co, KPMG in the Netherlands

Musical intro

Announcer:

Hello and welcome to another episode of the KPMG podcast series for tax leaders. For today's episode, I spoke to Vinod Kalloe, Head of International Tax Policy, at KPMG Meijburg & Co, KPMG in the Netherlands, and Robert Van der Jagt, Chairman, at KPMG's EU Tax Centre and Partner at KPMG Meijburg & Co, KPMG in the Netherlands. Vinod and Robert, as we know, tax matters are at the top of the EU's agenda and, with an unprecedented array of new and proposed measures coming on stream at the member state, EU and OECD levels, taxation is expected to remain a priority for years to come.

You both recently wrote an article entitled: *EU tax agenda: Paradigm shift or evolution*, which discusses eight of the most important trends and developments affecting international companies in Europe today, perhaps you could highlight some of those trends for us? Robert, can we start with you?

Robert:

Yeah, sure. An important topic at the moment is Mandatory Disclosure Rules, which is the BEPS 12, Action Point Number 12 implementation of the – of the EU, which requires intermediaries in certain – certain circumstances, also taxpayers, to disclose to the tax authorities certain cross-border arrangements, which are listed in – in hallmarks, in the directive.

These rules will become effective July first of this year, so in 2020. The rules are complex and what makes it even more complex is that there are very subtle differences in the implementation of this directive in domestic law of each of the 28 member states.

So, it is – it is very difficult to – to comply with these rules. So the administrator ability and trying to create a – a control framework to be in compliance with these new rules is going to be a challenge for both intermediaries like tax advisors, but also for – for taxpayers such as multinational companies.

The second item is public country-by-country reporting. That is an item which is already on the agenda for quite – quite a long time in the EU. We have country-by-country reporting to the tax authorities already for a number of years in place. And now, politicians are trying to achieve that multinational companies are also forced to do public country-by-country reporting. An attempt is being made at an EU level to get legislation in place. However, there is a dispute between a number of countries at an EU level to reach an agreement. And that basically has to do with the fact that a number of countries do regard this as a tax proposal which requires unanimity. So, my expectation is that in the coming 6 months, we will not see an agreement on public CbCR.

The other important item is the role of the European Court of Justice. We've obviously seen that the policymakers in the various countries, and also at an OECD level, that they have been working really hard to introduce new legislation to combat aggressive tax avoidance. And also entering into that arena is the European Court of Justice. In February of 2019, they've issued important milestone judgments with respect to the application of the parent subsidiary directive and the avoidance of dividend withholding tax.

So, in – in – in that respect, we – we could say that the European Court of Justice has gone BEPS. By that I mean to say that the European Court of Justice also is putting more emphasis on the abuse of law doctrine and also – is also applying that in – in a more strict way with respect to using the benefits of, for example, the parent subsidiary directive.

The next item that is important on the agenda is an attempt of the European Commission to – to change the voting in tax matters. At the moment, if the European Commission tries to get something changed, for example the adoption of a new directive, if it concerns taxation, the unanimity of all member states is required, which basically means that each of the member states has a veto to block something.

Already since 2011, the European Commission is trying to change this from unanimity to qualified majority. But, obviously, member states are concerned to giving away this veto right. So, my expectation also with respect to this topic is that in the course of this year, we – we don't see a – an – an agreement.

Announcer:

Thanks Robert, Vinod, what important European tax developments are you seeing?

Vinod:

So, important European developments include number one the EU tax haven blacklisting where the European Commission and the EU member states have taken it upon themselves to become their global tax watchdog and reviewing the whole world according to EU and OECD standards of fair tax competition and tax transparency. And in the past 3 to 4 years, you have seen that more than 600 taxations have been reviewed and countries have been assessed along these lines, starting in 2017 where the European Union came out with a blacklist of 17 jurisdictions. And that – that list is in constant amendment and changes and evaluation. And I think for companies out there, the key messages here is that we need to be aware that many preferential tax regimes worldwide are disappearing or are being amended significantly reducing the benefits that can be obtained.

Many zero-rate jurisdictions the so-called countries which do not have corporate tax, or only a nominal corporate tax have to introduce new substance requirements. So, if you have a legal presence in those jurisdictions, you would need to abide to the so-called core income generating activities test.

Number three is that significant reputational risks have to be taken into account because if you're a company with a legal entity in a blacklisted jurisdiction, you have something to explain to the outside world. And just recently in December 2019, the European Union agreed on so-called defensive measures to be introduced targeting the blacklisted jurisdiction. So, from first of Jan 2021, the EU member states agreed to use a set of defensive measure such as denying of deduction of payments to a blacklisted jurisdiction or introducing conditional withholding tax or amended CoC legislation. And on top of that, monitoring and auditing of all the transactions with blacklisted jurisdictions. So, this is something that we have to be aware of and have to monitor in the years to come.

The second interesting topic is again where the European Union is taking a frontrunner's approach is the field of EU State Aid. The European Commission has decided to use the State Aid instrument that they have from the European Treaty and start to attack what they perceive aggressive tax planning arrangements of individual companies with individual EU member states. And in the past 5 years, we've seen the opening of 12 cases against high profile multinational companies with complex tax arrangements in many EU jurisdictions. And in many cases, the European Commission came to the conclusion that there was illegal State Aid that had to be recovered from the taxpayer.

A key message here is that it seems clear that the European Commission does have the mandate to review individual tax arrangements and can test an so-called overarching EU arm's length principle when reviewing those regimes.

However, on the other hand, the courts also seem to indicate that there's a very strict and high burden of proof at the European Commission level to prove that there was indeed illegal State Aid granted. So, for any type of transfer pricing arrangement, profit allocation, or potential inconsistent application of domestic law

relating to a certain level of discretionary power of tax officers, we need to be aware of those type of arrangements.

The third topic that is very interesting is of course the everlasting EU common consolidated corporate tax base that was launched already in 2011 and re-launched in 2016. What is clear is that at present there still is not sufficient EU momentum for EU member states to agree on a far-reaching approach like this. It means harmonizing tax basis across the EU including consolidation of the corporate tax base. And the Finnish EU presidency by the end of 2019 concluded that there's consensus on a broad tax base including some consensus on some technical elements including, for example, super reduction for research and development or the so-called allowance for growth and investment.

But on the other hand, there are still widely diverging views on many other aspect of the common corporate tax base, which means that to me the key message will be monitor from afar but keep it as a low priority for at least the upcoming 3 to 4 years.

And then, the final topic that I would flag here is the new EU whistleblower protection directive that was adopted in 2019. This new directive will apply from the beginning of 2022 and will introduce new safeguards for whistleblowers that have found a breach of EU Law and want to report it either in-house, inside the company, and perhaps even report that outside the company to government officials. And what the whistleblower protection directive does, it introduces specific safeguards for this whistleblower for companies with more than 50 employees and a turnover of 10 million. And any type of breach of EU Law is included. So, it not only covers, for example, money laundering or data protection, but also a wide range of topics related to corporate tax avoidance and tax evasion. And this means that companies need to be aware that they will have to introduce either in their legal or HR standards a certain process to make sure that they will include a new reporting system in-house that employees feel safeguarded to come forward with potential breaches of EU Law.

Announcer:

And how are you both seeing these trends and developments affecting the tax function?

Robert:

Yeah, let me take Brexit as an example, which is a very important geopolitical development obviously in – in Europe. If you look at Brexit and how companies have prepared for that especially also the tax function, I think one of the first movers were companies in the financial services sector because they are obviously heavily regulated. And if you want to do business in the EU, you need to have a – a so called EU passport. And if you're not a member of the EU, that is – that is – that is a problem. So, many companies in the financial services sector have explored the various alternatives how they can serve their EU client base after Brexit has become a reality.

So, as I said financial services companies being the first movers. But, also companies involved in obviously – you know – trading, manufacturers, they have to reconsider and reshape and reevaluate their – their value-chain, that companies still have some time, but I think it is important that – you know – looking at

changes coming ahead that – that companies will – will use the year 2010 – 20 really to become fully Brexit – Brexit proof.

In terms of the reshaping of the international tax allocation rules, which are currently being discussed at the inclusive framework at an OECD level, that is obviously going to have an impact. Companies really need to consider what the impact is going to be of the new Nexus Rules and the new allocation rules, but also looking at the measures to be taken under Pillar Two relating to income inclusion rules or under the – under the tax payment rules. What is going to be the impact on my – my business model? Also there, we see certain companies taking a very active role in the – in the debate. They do reach out to the – to the OECD Inclusive Framework and they provide their input, which I think is – is – is really very valuable.

Announcer:

And Vinod how are you seeing these trends and developments affecting the Tax function?

Vinod:

I would say that the level of international complexity has significantly increased by all these new policy developments either on a global level or on an EU level. And, of course, this puts an enormous pressure on the tax function in, first of all, trying to monitor all the developments then try to understand the potential impact of these developments for the – the company and its tax affairs.

So, I think what you see is that the complexity has also raised the bar for the tax function as a whole, the people that are involved that are not just the tax people that have to be involved but also the risk assessment people, corporate, social responsibility, public affairs and a wide range of other divisions within a multinational company that have to be engaged in topics like this.

Announcer:

Thanks Vinod, in your work with clients, what common strategies are you seeing leading businesses use to address the geopolitical developments you've described?

Vinod:

Yeah so, perhaps what we can share is that what we are currently seeing in the field of multinational companies, is that they are gathering their resources and grouping and searching for alliances with other modern multinational companies.

What you currently see is that many stakeholders come together and try to engage with policymakers on an even footing rather than being an individual multinational company, in order to provide a counterweight to perhaps civil society and parliaments or members of the press that take a certain position. So, I would say that what we're currently seeing is that indeed the synergies that are being looked for by multinational companies is a very interesting and very useful development.

Announcer:

I think I'm getting an understanding that international companies doing business with and within EU Member states will need to deal with an unsettled and pretty dynamic tax environment for years to come.

Are you seeing leaders turn these geopolitical developments that you've outlined into actual opportunities?

Robert:

I would say the increasing role of technology is something that we – that we see a lot, technology becoming more and more important in – in – in the tax function. And also the – the call and demand for more transparency gives an opportunity in the sense that those companies which have demonstrated a proactive role in this area, I think that has proven to be a, I think, a right – a right decision. So, in other words, the demand from civil society for more transparency can also create an opportunity for multinational companies to react to this in a proactive way rather than to wait for the moment that the legislator is coming with new rules and regulations in this area.

Vinod:

Maybe building on the – on the response of Robert, what we are currently seeing is that multinational companies are openly engaging with policymakers and not only bringing to the table a tax profile of the company, but perhaps a more wider Environment, Social, and Governance perspective. So, ESG standing for sustainability approaches of multinational companies, furthering the idea that multinational companies not only serve the financial purpose, but have a far wider ranging purpose than that. And I think that opportunity for multinational companies is an important one and leads to better and further understanding of the operations of a company and the purposes that they serve. And that is exactly what you see reflected back in the mission and values and the principles that all these companies are now fine-tuning in the context of the pressure of multinational companies nowadays.

Announcer:

That's great, thanks Vinod. Clearly we've covered a great deal today but I wonder if you have one piece of advice for Tax leaders, what would it be?

Robert:

I would say, take an active role in the public tax debate. We see examples where multinational companies and tax leaders have chosen to do that. For example, in the – in the area of the OECD Inclusive Framework regarding the digitalizing economy, a number of companies have been very active. And – and what we see is that they are able to message their thoughts very, very well. They come across very well and we see their input reflected in the direction that the discussions are moving in to.

So, I think that is – that is an incentive and I would encourage tax leaders of other multinational companies also to consider to play an active role in those discussions not only internationally, but

also within the country itself. I think it will be really good if – if we see more companies taking an active role in that – in that debate.

Vinod:

And my final advice would be to truly effectively monitor all the developments worldwide in all of their complexities and then truly understand the potential impact for the company, then engage with stakeholders making sure that your point is taken on-board. And then, finally, prepare in time for the effective implementation of new rules.

Announcer:

Robert, Vinod, thanks for being with us today.

Join us again next time and please, email us with any questions you have about today's episode at tax@kpmg.com and we'd also love to hear from you with any suggestions you have for future episodes.

Thanks for listening.

Musical exit

