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Base Erosion and Profit Shifting
The biggest shake-up in international tax rules in a generation is here

The Organisation for Economic Co-operation and Development (OECD) is set this week to unveil a radical overhaul of international taxation. According to our latest International Business Report (IBR), a quarterly survey of 2,580 businesses in 35 economies, 74% of businesses would welcome more global cooperation and guidance from tax authorities. They'd like to know what's acceptable and unacceptable tax planning, even if this provided less opportunity to reduce tax liabilities. So will the Base Erosion and Profit Shifting (BEPS) Action Plan result in a tax system that's fairer, more efficient and more understandable? What are the risks and opportunities that may arise?

The recommendations have been born out of the increasing public and political furore over corporate taxation. The main aim is to get countries to collaborate more closely on eliminating controversial loopholes in the international tax system. But as tax becomes an ever more public and emotive issue, the remit now touches almost every area of international taxation.

Damaging uncertainty

The increasingly high level nature of international taxation has in turn generated a lot of uncertainty within board rooms. As long as businesses operate within regulatory boundaries, they have a responsibility to their investors to keep costs down; and this includes tax. But it's when executives are called up to answer legislative committees' questions that we see the extent of the shift in scrutiny. It's not whether companies are acting within the law but whether they ought to pay more.

The problem is that there are no firm guardrails to help decision making. Simply telling businesses to pay their 'fair share' is not a viable alternative to a clear set of rules or principles. What constitutes a fair share? Businesses need things to be black and white, but what they are getting is a lot of grey.

Disparities remain

So will BEPS deliver greater clarity on what is both legal and acceptable? We'll know what the OECD expects, which is a start. The OECD deserves credit for its readiness to consult and for getting so far, so quickly. Yet these recommendations come with a large caveat: the OECD doesn't set laws or sign tax treaties – governments do. The effectiveness of the project will be determined by its widespread and consistent implementation, but there is bound to be a significant variation in the timing of implementation and interpretation of how the rules are applied. Less than a quarter of the business leaders interviewed for our IBR survey believe there will be a global agreement on BEPS.

Some countries, notably the UK and Australia, have jumped the gun by announcing legislation that covers some of the BEPS actions. Other major economies, notably the US, may take longer. The US is planning to bring in country-by-country reporting in 2016. But the wider reforms are unlikely to get into the legislative agenda this side of the 2016 Presidential election. In turn, countries outside the OECD, including China and India are already indicating that they want to introduce certain elements.

The big question is therefore how much harmonisation will be achieved? We need a tax system that keeps pace with an increasingly borderless digital economy. Rather than a patchwork of local rules, the G20, UN and OECD should take the lead in ensuring the tax system is sufficiently clear and consistent to allow businesses to manage tax with certainty. The results would be good for businesses, consumers and governments. Anything less will simply create more anomalies, more loopholes and more uncertainty.

Standing up to scrutiny

The immediate priority for businesses is to consider how their current tax arrangements will come across under the much greater level of transparency ushered in by BEPS and judge whether they are comfortable with this. The way the reporting rules are set up means that even companies with relatively straightforward tax affairs could find themselves in the firing line. The broad scope of BEPS also means significant implementation headaches ahead.

There will also be some opportunities. In particular, the new rules are likely to create a more even playing field over tax strategy and cost. Greater international harmonisation would in turn mean fewer cross-border issues to contend with.

Charting difficult waters

So is BEPS a step in the right direction? International tax rules clearly need to be stripped down and rebuilt for the world we live in and this is BEPS' aim. But there are a lot of tricky waters to navigate. It may be some time before genuine clarity over acceptable tax planning emerges, so it is vital that businesses understand the potential risks and are able to justify their decisions.

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