



International Fiscal Association



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OUTLINE

TAX DIRECTORS SEMINAR - CORPORATE OFFICERS' DUTIES TO TAX PLANNING VS. TAX MORALITY AND COMPLIANCE

SEMINAR B | Monday, 5 September 2022 | 13.30 – 15.30

Chair

Wilhelm Haarmann (Germany)

Panel Members

Alan McLean (UK)

Christine Osterloh-Konrad (Germany)

Grace Perez Navarro (OECD)

Gustavo Scravaglieri (Argentina)

Secretary

Ezgi Arik (Turkey)



A. Introduction

B. The Discussion Points:

1. Law and Morality

The law and morality divide (including rule of law, democracy, philosophical background, but also practical issues)

2. The View of the OECD

The view of the OECD; Corporate Governance, ESG, CSR as starting point, The papers and recommendations and the main points of their recommendations, made by the OECD. What is the „Spirit of tax law“?, Necessity of tax risk management; Involvement of the Board in case of aggressive tax planning.

3. Corporate Law requires Tax Planning

Taxes are cost for an enterprise. The obligation of Corporate Officers is to reduce cost, this means also the reduction of tax (as far as legally possible). There is a right and even an obligation to tax planning. The cost saving by tax savings is in the favor of all stakeholders, the employees, the suppliers, the customers and even the government and only at the end the owners/shareholders. The focus on corporate taxes neglects the relatively unimportance of corporate taxes in many countries.

4. The View of the Big Company

Big companies have their own view on tax moral and compliance. There is a necessity for a big company to have a functioning relationship with the governments of the countries in which they operate. Therefore, there is not a pure (short term) profit thinking. A big company has to see the permission to operate and has to gain the recognition of the country. The state is a stakeholder. It is a strategic and political decision by the board of the company whether the company wants to make aggressive tax planning or not. A company typically does not want to be too often at a court.

5. Are Answers different dependent on the Size of the Company and the Country affected?

Does one have to differentiate?

a) *Are the answers with respect to tax planning and aggressivity the same for MNEs as for SMEs. Can an SME „risk“ more than an MNE? An SME is not so much in the focus of the public media. Therefore, the reputation risk for an SME is lower than for an MNE. Gives the amount of 750 Mio. EURO which is the threshold where public country-by-country reporting starts under EU law, an indication, where tax planning starts to have a different flavour than for groups below this threshold?*

b) *Does it make a difference whether we talk about tax planning in country A or in country B? Are there different answers as to the acceptance of tax planning in different countries?*



6. Investments in Low Tax Countries

Are investments in low tax countries legitimate? MNEs use low tax countries as finance hubs and for (captive) insurance operations. Production companies use low tax jurisdiction for the production of parts in order to save labor cost. Ireland was developed in the 70s, 80s and 90s of the last century on the basis of the offer of low corporate taxes. Is it not even helpful for the world economy if MNEs invest in emerging markets with low taxes in order to develop such areas. The feature will certainly remain even if a global Minimum Tax will be introduced.

7. Definition of legal and illegal, legitimate and illegitimate

The difference between legal and illegal and between legitimate and illegitimate? What is illegitimate? Who decides what illegitimate is? Is aggressive always illegitimate? What is a case of tax immorality? What are the sanctions? Are sanctions legal? What is the role of the government and of the tax authorities and the courts in this respect?

8. Definition and Consequences of Aggressive Tax Structuring

What is aggressive tax structuring? Is everything which is disliked by the authorities at the same time aggressive? Is a structure which is not known in the tax market, an aggressive structure? Or is it the amount at stake which makes a structure aggressive? What is the task and is there a task of countries dealing with the phenomenon of disliked but legal tax structuring? Which position shall the state take? A neutral position? A counter-aggressive position (e.g. aggressive tax audits, companies black-listed at the revenue office).

Can also tax laws be legal but immoral? What shall countries in the opinion of the OECD do if countries apply tax laws against the spirit of the respective law?

Countries with low tax rates and countries advising companies to use certain tax structures („immoral structures“) in favor of these countries, are also members of the OECD. How can the OECD fight against these structures although such fight is not in the interest of certain OECD member countries.

C. Resumée