MAZARS INTERNATIONAL TAX CONFERENCE 2018

4 October 2018
Welcome to King’s College London
Programme

MORNING SESSION:
08:00–09:00 | Registration and breakfast
09:00–09:10 | Anita de Casparis – Global Head of Tax, Mazars
             | Welcoming and opening remarks
09:10–13:00 | Panel discussion 1
             | Panel discussion 2
13:00–14:00 | Lunch break

AFTERNOON SESSION:
14:00–16:45 | Break-out sessions
• The evolving tax landscape in Europe
• The evolving tax landscape in the Asia-Pacific Region
• The evolving tax landscape in Africa
• The evolving tax landscape in the North and South America
• Financial Services – How to face recent changes and what is next

Each session will last 75 minutes with a 15 minute break and will be repeated to allow delegates to attend two different sessions. The second session starts at 15:30.

16:45–17:45 | Closing remarks and champagne reception

Panel discussions

1. How digital tax and technology will embrace and evolve in the future, what we need to know in order to be one step ahead and get ready for the changes?
   - Christer Tander Bell – Lego
     Vice President, Global Strategic Tax & Customs
   - Georg Geberth – Siemens
     Director, Global Tax Policy
   - Caroline Malcolm – OECD
     Tax and Digitalisation
   - Tim Power – HMRC
     HMRC Deputy Director, Corporate Tax

2. Tax challenges around the Globe, what is next?
   - Clive Baxter – Maersk Group
     Global Head of Tax Governance and Policy
   - Cory Hillier – International Monetary Fund
     Counsel, Tax Law, Legal Department, Financial and Fiscal Law Unit
   - Jonathan Schwarz – King’s College London
     Dickson Poon School of Law, International Tax Law LLM Programme

There will be a coffee break at 10:45 during this session.
TAX CHALLENGES AROUND THE GLOBE, WHAT IS NEXT?
PANELISTS

- Cory Hillier – International Monetary Fund
  - Counsel, Tax Law, Legal Department, Financial and Fiscal Law Unit

- Professor Jonathan Schwarz – King’s College London
  - Barrister at Temple Tax Chambers

- Clive Baxter – A.P. Moller - Maersk Group
  - Head of Tax Governance and Policy
PANEL CHAIR

- Clive Baxter – A.P. Moller - Maersk Group
  - Head of Tax Governance and Policy
PROGRAMME

- Tax challenges around the globe – a business perspective, Clive Baxter
- Future trends in dispute resolution and some recent decisions in international tax, Professor Jonathan Schwarz
- IMF and its role in the international tax agenda, Cory Hillier
TAX CHALLENGES AROUND THE GLOBE – A BUSINESS PERSPECTIVE

- The Invasion of the Acronyms
- BEPS implementation
- Pressure points
- The MLI timetable
THE INVASION OF THE ACRONYMS – WINTER IS COMING
BEPS IMPLEMENTATION ISSUES – A STORM OF SWORDS

- Pre-implementation of BEPs measures – domestic/unilateral measures
- Enhanced domestic implementation of BEPS measures in the EU etc
- Fragmentation of international tax policy?
- Capacity Building and developing countries – are we trying to take them from basic electrics to advanced theoretical physics too quickly?
PRESSURE POINTS – A DANCE WITH DRAGONS

- Transfer Pricing and PEs – moving from art and science to philosophy
- GAAR’s – will they lead to arbitrary taxation?
- What is going to come out of CBCR?
- Fair taxation as an operative principle
- Arbitration – will it ever materialise?
“In November 2016, over 100 jurisdictions concluded negotiations on the Multilateral Instrument" or "MLI“…. that will swiftly implement a series of tax treaty measures to update ….. The MLI already covers over 75 jurisdictions and will enter into force on 1st July 2018. Signatories include jurisdictions from all continents and all levels of development.”

THE MLI TIMETABLE – A GAME OF THRONES?

- Gap between “spin” and reality
- MLI signed November 2016
- MLI entry into force July 2017
- MLI only enters into force for each country after ratification – a couple of examples:
- We are looking at anything up to 30 years for all countries to ratify!
SLIDO QUESTION 1
A BUSINESS PERSPECTIVE

1. Do you think that BEPS will make a difference to the behaviour of multinational enterprises?
   - Yes
   - No
CURRENT INTERNATIONAL TAX CASES

Jonathan Schwarz
www.taxbarristers.com
MCDONALDS EUROPE FRANCHISING, S.À.R.L.

McD E F Sàrl

US Franchise Branch

Franchise royalties
EQIOM SAS AND ENKA SA V. MINISTRE DES FINANCES ET DES COMPTES PUBLIC (CASE C-6/16)

Parent-Subsidiary Directive:
- No withholding tax on dividends to EU parent co
- Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse
long-term contracts to sell uranium

Guarantee of long-term contracts entered into by Swiss subsidiary to purchase uranium from a third party
Jonathan Schwarz:
Schwarz on Tax Treaties (5th Ed)
http://bit.ly/2BCMZbr
Blog: Kluwer International Tax
http://bit.ly/1Dm2hcZ
Twitter
@SchwarzTax
SLIDO QUESTION 2
FUTURE TRENDS IN DISPUTE RESOLUTION

1. How do you think that future cross border tax disputes will be solved?
   • Litigation
   • MAPs and arbitration
   • Double or triple taxation
QUESTIONS: FUTURE TRENDS IN DISPUTE RESOLUTION

- Are we seeing a different perspective to that of the politicians and tax administrations in judicial decisions?
- Should we expect different decisions when the BEPS rules apply? Has the line for what is legal taxpayer behaviour really moved?
- Tax controversy – where is it going? Are ADR and Arbitration going to replace litigation?
- What will be the role of the taxpayer in country to country arbitration?
The views expressed herein are those of the author and should not be attributed to the IMF, its Executive Board, or its management.
1. IMF - background
2. IMF and its role in the international tax agenda
3. BEPS/domestic revenue mobilization (DRM) – current international tax policy issues and tax law design responses – with a focus on those relating to:
   • Indirect transfer of assets;
   • Tax incentives;
   • Cross-border service arrangements, including challenges presented by the digital economy;
   • Tax treaty shopping;
   • Combatting debt bias; and
   • Transfer pricing and other profit shifting arrangements.
IMF – GLOBAL MEMBERSHIP

189 countries represented
Non-members include: Cuba, North Korea, Andorra, Monaco, Liechtenstein
IMF PURPOSE

- **Mandate**: Global economic and financial stability
- **Surveillance**: Review of countries’ policies and national, regional, and global economic and financial developments
- **Technical assistance**: Provision of assistance and training to help member countries strengthen their capacity to design and implement effective policies, including in the area of tax policy and tax law frameworks
- **Financial assistance (lending)**: IMF financing to correct balance of payment problems
IMF AND ITS ROLE IN THE INTERNATIONAL TAX AGENDA

- IMF has provided technical assistance (TA) to its member countries on fiscal/tax matters for over 50 years

- IMF has an extensive TA program (e.g. has directly resulted in the drafting/enactment of some 200+ laws)

- IMF Initiative to Support Developing Countries in Strengthening Tax Systems (e.g. coverage of DRM and international tax issues in Article IV consultations)

- Platform for Collaboration on Tax established by IMF, OECD, UN and WBG (e.g. toolkits)
**BEPS**

Ultimate Residence Country (High Tax)

- Avoid Taxable Presence, or
- Minimise Assets/Risks

Low Tax Intermediate Country

- Maximise Assets/Risks

High Tax Intermediate Country

- Ineffective/No CFC Rules
- Maximise Deductions
- Minimise Assets/Risks

Market or Production Country (High Tax)

- Avoid Taxable Presence, or
- Minimise Assets/Risks

Local Activity

- Ineffective/No CFC Rules
- Maximise Deductions
- Minimise Assets/Risks

Action 2
- Hybrid Mismatch
- Preferential Regime
- Maximise Deductions

Action 3
- Ineffective/No CFC Rules

Action 4
- Maximise Deductions

Action 5
- Preferential Regime

Action 6
- Low or no withholding tax

Action 7
- Avoid Taxable Presence, or

Action 8-10
- Minimise Assets/Risks

[Slide based on an OECD presentation given by the Head of the BEPS Project on 19 October 2015, available at: http://www.slideshare.net/OECD/overview-of-the-oecd20-beps-project]
BEPS vs DRM

**Ultimate Residence Country (High Tax)**
- Parent Co
  - Ineffective/No CFC Rules (Action 3)
  - Maximise Deductions (Action 4)
  - Minimise Assets/Risks (Action 8-10)

**Low Tax Intermediate Country**
- Intermediate Co 2
  - Maximise Assets/Risks (Action 8-10)

**High Tax Intermediate Country**
- Intermediate Co 1
  - Local Activity
  - Low or no withholding tax
  - Hybrid Mismatch (Action 2)
  - Preferential Regime (Action 5)
  - Maximise Deductions (Action 4)

**Market or Production Country (High Tax)**
- Low Tax Intermediate Country
  - Action 6
  - Avoid Taxable Presence, or
  - Minimise Assets/Risks (Action 8-10)
DRM – Focus on developing countries

**DRM – FOCUS ON DEVELOPING COUNTRIES**

**Ultimate Residence Country (High Tax)**
- Parent Co

**Intermediate Country (Low Tax)**
- Intermediate Co 1
  - Indirect transfer of assets
  - Treaty shopping (e.g. dependent on existence of Art 13(4))

- Intermediate Co 2
  - Maximise Assets/Risks
  - Treaty shopping (e.g. LOB rule)

**Source Country**
- Local Activity
  - Tax incentives
  - Maximise deductions (e.g. exploit debt bias)
  - Low or no withholding tax (e.g. cross border service fees)
  - Minimise Assets/Risks

- Platform
- Action 8-10
- Action 6
- G-20 DWG
- Action 4
- IMF/UN
- Action 8-10
• Characterization of international tax architecture

• Analysis of spillovers
  - Base (real & financial)
  - Strategic (tax competition)

• Specifics on developing countries
  - Where issues matter more

• Rethinking international tax architecture itself

• Follow-up paper (February 2019)
Modern economy

Ultimate Residence Country (High Tax)

Parent Co

• Low residence based taxation or tax deferral

Low Tax Intermediate Country

Intermediate Co 2

Intermediate Co 1

High Tax Intermediate Country

Market or Production Country (High Tax)

Local Activity

• No Taxable Presence (or otherwise limited taxing rights), or

• Where Taxable Presence, low routine profits - Minimise Assets/Risks

• Maximise Deductions

BEPS VS DRM

High profits (non-routine)
- Maximise Assets/Risks
QUESTIONS: IMF AND ITS ROLE IN THE INTERNATIONAL TAX AGENDA

- What is the nature of the cooperation between the UN, World Bank, IMF and OECD on tax policy – Platform for Collaboration on Tax?
- Who are the other actors on the international stage of tax policy development?
- Some say that the World Bank, IMF and OECD have not looked after the interests of developing countries in the past. Who is looking out for them now?
- Is anyone interested in the views of business: BIAC, ICC?
US INTERNATIONAL TAX REFORM

**GILTI**
- Uses proxy for *above-normal return* (10% return on tangible assets)
- Adopts *minimum tax* (if foreign rate < 13.125%)
- Has some *formulary elements* (taxing 50% of consolidated foreign profit)

**FDII**
- Uses proxy for *above-normal return* (10% return on tangible assets)
- Introduces element of *destination* through export focus

**BEAT**
- Minimum tax when avoidance-prone payments (interest, fees …) large
PLATFORM FOR COLLABORATION ON TAX (PCT)

- **Aim**: The PCT is intended to deepen collaboration and cooperation of the IMF, OECD, UN and World Bank, complementing other initiatives.

- **Objectives**:
  - Produce concrete joint outputs on issues in domestic and international taxation.
  - Strengthen interactions between standard-setting, capacity building and technical assistance.
  - Share information on activities to facilitate collaboration.
PLATFORM FOR COLLABORATION ON TAX (PCT)

- **Previous outputs:**

  - Paper on efficient and effective use of tax incentives in low income countries delivered to G20 in 2015.
  
  - Report on enhancing effectiveness of external support in building tax capacity delivered to G20 in July 2016.
  
  - ‘Toolkits’ for BEPS implementation and on other international tax issues:
    - one completed on use of comparables in transfer pricing;
    - revised version posted for comment on offshore indirect transfers; and
    - others progressing (e.g. TP documentation and tax treaties).
Offshore Indirect Transfers – A Toolkit

**Ultimate Residence Country (High Tax)**
- Parent Co

**Intermediate Country (Low Tax)**
- Intermediate Co 1
  - Advantages:
    - Better preserves separate legal entity distinction (i.e., non-resident seller versus local asset owning company)
    - Better preserves any foreign tax credit relief
  - Disadvantages:
    - Enforcement and collection challenges given liability imposed on non-resident
    - Taxation right can be limited by terms of tax treaty (e.g., absence of Art 13(4))
    - Double taxation issues on other intermediate shareholdings

**Intermediate Country (Low Tax)**
- Intermediate Co 2
  - Advantages:
    - Greater ability to collect and enforce tax liability
    - Better manages risk of double taxation on other intermediate shareholdings
    - Taxing right arguably not limited by tax treaty

**Location Country**
- Local Asset Owning Co (Mining right)
  - Disadvantages:
    - Limited foreign tax credit relief if gain also taxed in Intermediate Country
    - Risk of unfunded tax liability
    - Undermines separate legal entity distinction
    - Requires knowledge of ownership changes

**Model 1**
- Deemed direct sale by Local Asset Owning Co

**Model 2**
- Taxation of Intermediate Co 1
• Report on ‘Tax Certainty’ originally prepared for G20 Finance Ministers by OECD and IMF, under German presidency (March 2017).

• Deals with legislative and other issues giving rise to tax uncertainty, as well as a practical tools section to enhance tax certainty.

• Update prepared by IMF/OECD in July 2018, which outlines initiatives to enhance tax certainty, including in developing countries.
QUESTIONS/COMMENTS

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SLIDO QUESTION 3
IMF AND ITS ROLE IN THE INTERNATIONAL TAX AGENDA

1. Do you think that the interests of developing countries are being adequately taken into account in the development of international tax policy?
   • Yes
   • No
QUESTIONS: THE INTERNATIONAL TAX AGENDA

- MLI - what has been achieved?
- How you see the next steps on BEPS? Who will be driving this? Will the Inclusive Framework continue?
- Is the adoption of the Indian view of gains on indirect transfers a departure from the familiar principles of international tax law marking the demise of the corporate veil or just a logical consequence of the BEPS approach?
- Allocation of Taxing Rights – do the new PE and Transfer Pricing developments and Transfer Pricing give a clear answer or just open the barn door for fragmented interpretation?
- Can the allocation of profits methodology survive without the support of the USA?
PANEL SPEAKERS

Panel Chair
- Georg Geberth – Siemens, Director, Global Tax Policy

Panel Speakers:
- George Barnes – HMT Deputy Director, Corporate Tax
- Cory Hillier – International Monetary Fund, Counsel, Tax Law, Legal Department, Financial and Fiscal Law Unit
- Christer Tønder Bell – Lego, Vice President, Global Strategic Tax & Customs
GEORGE BARNES - PANEL PRESENTATION 1

- What the UK sees as the challenge
- How the UK thinks that challenge could be addressed through reform of the MTC
- How that fits with the discussions taking place at OECD level
- The UK’s assessment of revenue-based taxes and of the EU’s specific proposal
CHRISTER TØNDER BELL

PANEL PRESENTATION 2
How traditional businesses face this challenge
**BEPS VS DRM**

**Ultimate Residence Country (High Tax)**
- Low residence based taxation or tax deferral

**Low Tax Intermediate Country**
- High profits (non-routine) - Maximise Assets/Risks

**High Tax Intermediate Country**

**Market Country (High Tax)**
- No Taxable Presence (or otherwise limited taxing rights), or
- Low routine profits - Minimise Assets/Risks

**General Issues:**
1. Large profits from digitalization?
2. Intensive use of intangible assets?
3. Sales without physical presence
4. User-generated value

**Solutions:**
- Interim?
- Medium term?
- Long term?
PANEL DISCUSSIONS
THANK YOU FOR YOUR ATTENTION AND QUESTIONS