

The EU standard of good governance in tax matters for third (non-EU) countries

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Topics

Standard of good governance in tax matters

The standard as an international standard

Conclusions and recommendations



Good governance in tax matters

May 2008

- Transparency and Exchange of information (on request)
- Fair tax competition means that a third country should not operate harmful tax measures in the area of business taxation

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Transparency, exchange of information (on request and automatic), fair taxation and the minimum standards against Base Erosion and Profit Shifting BEPS (harmful tax regimes, treaty abuse, transfer pricing documentation and making dispute resolution mechanisms more effective: Actions, 5,6, 13 and 14)

Good governance in tax matters

Soft law instruments

- OECD Forum on harmful tax practices
- Code of conduct on business taxation

Hard law instruments

- For third (non-EU countries) strategic partnership agreement: Legally binding framework for cooperation
- For third (non-EU countries) a coordinated tax clause that should be included in free trade agreements that the EU concludes with third countries
- For third (non-EU countries) relevant agreements, without prejudice to their respective competences. Thus trade and strategic partnership but also other areas (aid, cooperation)

Good governance as an international standard

Transparency, exchange of information and the BEPS 4 Minimum Standards

- International standards introduced by the OECD with the political support of the G20. However, not all countries have ratified these standards.
- Hard law: Transparency and Exchange of Information: Adopted in international instruments by countries including developing countries
- Soft law: BEPS 4 Minimum Standards: Endorsed by 116 countries.
 - Only for countries ratifying the MLI (BEPS Action 6 and 14) will be these 2 Standards regarded as hard law.

Good governance as an international standard

Fair Tax Competition

- Not an international standard. Differences in approach
- Internationally: Fairness between companies (equal level playing field) and between states (harmful tax regimes)
- EU: Harmful tax regimes including also BEPS Action 5.

Application of the standard

- Screening Commission and Code of Conduct Group on Business Taxation from the list provided by EU countries
- List of non-cooperative jurisdictions reduced from 17 to 7 countries in less than one year due to commitments and/or lobby by countries.

Scholars

- Standard is vague and application is done in a subjective way (Panayi) .
- Since the list is provided by EU countries: How the standard of fair tax competition is interpreted by EU countries? Fair Tax Competition requires an analysis from a tax and political perspective (Mosquera)

Good governance as an international standard

EU GLOBAL Regulatory Power

Territorial Extension in EU law by J. Scott.

- In other areas; use of international standards countries by the EU to which non-EU countries are compelled to adopt.
- EU contribution to the objectives that have been internationally agreed

However

- EU direct taxation: Unanimity. Long term process for approval EU Directives, and now fast process (e.g. Directive on Administrative Cooperation)
- EU standard goes further than taxation. Introduction of the standard in trade, strategic partnership agreements and as a condition for aid
- Standard introduced differently by the EU in the agreements
- How the BEPS 4 Minimum Standards will become hard law? e.g. Philippines countries who has not endorsed these Standards, but participating in the ASEAN-EU trade negotiations.

Conclusions and Recommendations

- Problems: Standard of good governance in tax matters
 - i. Vagueness of the standard of fair tax competition
 - ii. Condition to implement BEPS 4 Minimum Standards
 - iii. Different use of the standard in the agreements with third (non-EU) countries.
- Further multidisciplinary research in the use of this standard should be carried out (investment, trade and taxation) from a tax law and political science perspective.
- Scholarship (legal and empirical) research GLOBTAXGOV – International tax law making by the OECD, G20 and the EU.

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