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EU Information Exchange on Tax Rulings: Another aspect of tax haven behaviour?

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The suggestion

- Creating tax rulings without telling the other jurisdiction involved is typical tax haven – or secrecy jurisdiction - behaviour

- The failure to exchange, even when required by law, confirms that constructive non-compliance with the requirements of the law is going on

Secrecy jurisdiction behaviour

- Tax havens are better called secrecy jurisdictions

- Secrecy jurisdictions create economic opportunities for themselves by exploiting their power to legislate AND regulate (as in tax rulings);

- The legislation secrecy jurisdictions create is not primarily intended for the benefit of those resident in their jurisdiction;

- The legislation in question is designed to help those using it avoid some aspect of the regulation of the state where they have the substance of their residence i.e. where they are in common sense terms really located;

- To assist those making use of these laws that tax havens create those tax havens also put in place a deliberate veil of secrecy that makes it harder for the users of their tax haven laws to be identified.

The big thing about secrecy jurisdictions

- The big thing about secrecy jurisdictions is almost nothing happens there

- Secrecy jurisdictions are used to record transactions that have their impact 'elsewhere'

The secrecy space: where regulation does & doesn't happen

- 'Here'. This happens when an entity transacts in the location where it is regulated;

- 'Somewhere': the entity transacts in one location but is regulated somewhere else that can, however, be identified;

- **'Elsewhere':** the entity is registered in a location (a secrecy jurisdiction) that deliberately only seeks to regulate the transactions recorded in that jurisdiction knowing that the sole purpose of many of the entities that they register is to transact 'elsewhere' i.e. in another jurisdiction, about which they ask no questions, creating the deliberate and foreseeable possibility that much of what an entity does and the transactions it undertakes may not be regulated at all;

- 'Nowhere': the entity may or may not transact, but where it does and where it might be regulated cannot be identified.

Conditions for tax abuse

- The existence of secrecy jurisdictions

- The availability of financial services providers in those locations to service the transactions that are recorded within them, but which actually have economic consequence elsewhere

- An attitude of what I call 'constructive non-compliance' on the part of the regulatory authorities within the secrecy jurisdiction

- The availability of opacity that the secrecy jurisdiction user can use to help prevent their identification

Constructive non-compliance

- Constructive non-compliance: an appearance of one thing happening whilst another is actually occurring.

Examples of constructive non-compliance

- Impeding automatic information exchange

- Saying you'll create registers of beneficial ownership but not really doing so

- Turning a blind eye to what happens outside your own jurisdiction

- Failing to ask for tax returns from non-resident companies

- Supporting country-by-country reporting, but not on public record

- Not exchanging tax rulings when required to do so

Secrecy

- Within secrecy jurisdictions

- Within consolidated accounts of multinational corporations

- Put them together and the combined secrecy is a gift to corporate tax abusers

A systemically flawed tax system

- Multinational corporations think as single entities, act as single entities, report their affairs as single entities, and should therefore be taxed as single entities

- It is precisely because of the failure to tax on this basis of what they really are that so many opportunities for tax arbitrage exist within the current EU and worldwide tax system.

What can be done?

- Public country-by-country reporting to help identify who is being abused

- Public country-by-country reporting to change corporate behaviour

- Full beneficial ownership registers so beneficiaries of rulings can be identified

- A revised EU Code of Conduct on Business Taxation

- CCCTB

- Reconsideration of the free right of incorporation