

The Chair – Alain Lamassoure

1. *Have you found that the tax authorities of certain countries have room for negotiation on the amount of tax owed by your customer, while in other countries the administration strictly enforces the legislation? Has it happened to you that you get in contact with tax administrations on several countries to help your client to optimize its tax, thus taking advantage of the different possibilities in different countries regarding exemptions or deductions?*

Even though there is *administrative* discretion under both civil law and common law as to how advance tax rulings are issued, we generally find that there is no room for negotiation of the amount of tax owed by the client. Some tax administrations are more willing than others to grant advance tax rulings as to how the law applies to a particular situation, but these administrations base those rulings on applicable tax law.

The interpretation of tax legislation is not always clear and that is where there can be differences of opinion. We strive to assist our clients to obtain advance tax agreements whenever those are available and appropriate, in order to prevent future disputes. Certainty is important for our clients' businesses. We assist clients to be aware of and factor into their commercial decision-making favourable tax regimes or incentives offered by governments, but always within the boundaries of applicable tax law and – additionally – certainty of the application of that law is an important consideration for them.

2. *How do you optimize the tax treatment of your own group? Is full fiscal transparency, including a CBCR, actually part or could it be part of the code of conduct of your group or profession?*

PwC is a network of separate and independent firms covering more than 150 countries. PwC firms are privately owned businesses – owned by the partners of each firm. In each country the network firm has its own legal structure, and adheres to the local tax laws and regulations. In some countries partners file and pay taxes at their individual level based on a share of the country partnership's activities. In other countries, the firm is in a form considered corporate locally and the firm pays taxes on its income after compensating all employees, including the partners, and employees and partners pay taxes on their employment earnings. In rare cases firms co-operate or co-invest in specific projects, service centres or entities in the same way as with other commercial joint ventures.

The PwC network has a general Code of Conduct and a Tax Code of Conduct. Firms and partners must annually confirm that they are acting in all respects, including on tax matters, in accordance with these two codes of conduct.

Currently CBCR is not performed as these firms are generally single country enterprises. Each independent firm in the PwC network is required to follow their local laws and regulations regarding public reporting of financial information.

3. *If the EU was to establish a CCTB, how could we ensure that the same tax basis is interpreted (so to rulings) identically in all the Member States concerned?*

This is a very broad question, but essentially we believe that the best solution would be to have a central appellate body, with appropriate powers and governance agreed by Member States, in order to ascertain uniform interpretation.

4. *Can the digital economy be treated for tax purposes in the same way as other activities? The OECD thinks so, but in parliamentary hearings leaders of large digital groups have said that, given the nature of their business, they had no real tax residence. Given your experience, what is your analysis of this assertion?*

One of the big realities of the digital economy is that a “digital presence” in a country does not necessarily give rise to a “taxable presence” for the purpose of income tax treaties that follow the OECD model income tax convention. But even if there is a taxable presence in the form of a permanent establishment, the profit attributable to such a permanent establishment – under current principles – would not necessarily be significant. If the digital economy continues to be taxed based on traditional concepts of the drivers of value, it is unlikely that significant *corporate income tax* will be collected in the countries of the customers of the digital groups. This is understandable, as the intellectual property and product development investment is elsewhere. As is clear from their report on the digital economy, the OECD is also struggling with this issue. The division of taxing rights between source and residence states is a fundamental question and is certainly an area for further and thorough analysis for the OECD. Of course, where intellectual property and other drivers of value are held in the EU, then under the current system this gives rise to profit attribution and resulting corporate income tax revenues *for* the EU.

5. *Which lessons do you draw from your experience on how federal states settle their internal tax competition issues (USA, Canada, Switzerland ...)?*

It is clear that federal states have eliminated internal tax competition to the extent the federal tax is concerned, but the state and local taxes are still instruments used to compete with other states in the federation. A good example is the United States, where states do compete with each other for business using a wide variety of tax levers and "incentives". The corporate and personal tax rates are just one component. In addition, states utilize different methods to apportion income to their jurisdictions. They also use other types of taxes, including sales and use taxes (consumption based taxes), property taxes, as well as corporate tax credits to incentivize businesses to locate or increase their presence in a particular state or locality.

6. *You work in all Member States. What is your assessment of the capacity of tax administrations of our European States? Have you participated in one way or another, in the FISCALIS program or other community programs to improving the training and information of tax administrations in the Union?*

We have been involved in the FISCALIS program (please see http://ec.europa.eu/budget/fts/index_en.htm for more details) and we are in constant contact with tax administrations around the world, including those in the European Union, in the course of our work. This question touches upon a very important topic that does not always get the attention it deserves in our view. New (international) rules will be more effective if there is a willingness to cooperate at the level of the taxpayer (which is much more likely where the rules are understandable and

transparent) and sufficient strength of tax administrations to enforce compliant behaviour on the minority of taxpayers that do not comply voluntarily. What we see in practice is that tax administrations sometimes struggle with finding the right balance between 'repressive' and 'responsive' compliance enforcement, and overall having an effective enforcement strategy, and therefore they can make sub-optimal decisions on the allocation of scarce resources.

We believe that with the implementation of the OECD BEPS-package and the multiple reporting and documentation requirements and available data gathering, the demands on tax administrations to use that data effectively will be even greater. The risk is that there is an explosion of inter-territory disputes without an effective international dispute resolution mechanism in place. We would be in favour to revamp the EU Arbitration Convention, or maybe even replace it by an EU Arbitration Directive that can be legally enforced.

It is our strong belief that disputes can be prevented by a co-operative compliance model whereby taxpayers and tax administrations mutually accept, and if needed legally enforce, their responsibility in the tax compliance chain. If a taxpayer has a functioning internal fiscal validation system in place on which the tax administration can justifiably put its trust we have a far more reliable and comprehensive compliance enforcement model. The OECD's Forum on Tax Administrations (FTA) has for 6 years been working on this "Co-Operative Compliance" model. This good work deserves more public attention and international standards on this concept should be further developed in order to create an optimal functioning tax compliance ecosystem benefitting both tax administrations and business. The contours of the way forward are clear: certainty and predictable behaviour of the tax administration in exchange for transparency and proper data provided by the tax payer.

A (regulated) co-operative compliance program in the EU will minimise the cost of compliance. We strongly advise this Committee to work closely together with the FTA on this and investigate a coordinated approach within the EU. It is not about taxing rights but about operational effectiveness and tackling non-compliance in the EU, and hence about the solidity and sustainability of the system.

Elisa Ferreira – co-rapporteur

7. *Can you explain in detail the role of offshores - including in special territories like the UK Crown Dependencies of Jersey, Guernsey and the Isle of Man, and Gibraltar - in European tax optimization? Concretely, which are the offshore jurisdictions that are useful for the tax optimization practices of European based companies?*

When undertaking any cross border transactions, including but not limited to sales, M&A, financing etc., European based multinational companies will need to evaluate the tax implications of what they do in the territories they operate in and in the territories they are located in. Often they are faced with choices of how to effect a transaction that would result in different tax outcomes. Making those choices can result in the use of group finance companies in countries that have an attractive financing regime, the use of tax incentives such as patent boxes, or making different location decisions as a result of different tax rates or tax regimes more generally.

8. *How do you guarantee internally, in your organisations, that there are no conflicts of interest when on the same tax matters, you give advice to companies that want to minimize the tax bill, and to Members States that want to guarantee a certain tax income, to the European Commission or to the European Central Bank?*

Each of the member firms that form part of the PwC Network adhere to the Network Conflicts Policy client and matter acceptance procedures. These procedures operate to prevent situations in which a PwC firm would act at the same time for a government or government institution and a taxpayer in the same specific tax matter or dispute.

This said, in many cases the work that is done for Member States or for any of the European institutions will be quite separate from work done for business clients. For instance, impact assessments, assistance in the design of tax control frameworks, the organization of the revenue service, etc. are generally not prone to causing conflict.

The PwC network has great depth of experience and knowledge. The same is true for the other Big 4 networks. We genuinely believe that society is better served when these resources are deployed for its benefit – with appropriate procedures for conflict of interest – rather than excluding these organizations from rendering services to governments and the European Institutions when requested.

9. *How much of your business represents the advice you give to private firms, on the one hand, and to European institutions – the European Commission, the European Central Bank and EU Governments, on the other?*

The total revenue for EU PwC firms from services to the European Institutions amounted to a little over € 13m in 2013 (latest available year) which is less than 0.1% of their total Tax revenue. It should also be noted that these services are not all tax services. In particular, services provided in 2013 to the Commission include IT consulting in relation to tax (but not tax policy advice, see the 6 granted projects for DG TAXUD in 2013), and otherwise impact assessments, evaluations, financial audit, accounting support and cost-benefit analyses outside the tax area. A full breakdown of this figure can be viewed on the EC website for financial transparency:

http://ec.europa.eu/budget/fts/index_en.htm.

10. *Under which precise conditions do you consider that tax rulings that confer special advantages to specific firms should not be considered as state aid by the European Commission?*

Tax rulings that confirm the application of the relevant tax law and that would be available to all taxpayers in comparable conditions should not be considered as state aid by the European Commission. That includes those cases where there is a range of different interpretations and different transfer prices considered, provided that the interpretation/transfer price agreed upon is within a bandwidth that is reasonably based on the applicable law and applicable transfer pricing rules.

11. *What kind of adjustments have your institutions made in the follow up of the recent revelations – better known as LuxLeaks, SwissLeaks, OffshoreLeaks, etc.?*

It is a fundamental principle of law in the jurisdictions in which the PwC network operates that information relating to an individual taxpayer is kept confidential by tax administrations and by tax advisors. We take breaches of that confidentiality very seriously. We are greatly focused on the security of our clients' and firms' information. These security measures are under continuous review and improvement.

12. *As you have not answered the question I've addressed you during the hearing on the 5th of May, I take it that you confirm the figures and practices that were described in the revelations better known as LuxLeaks I and LuxLeaks II? If you diverge with their conclusions, can you explain?*

With regard to the figures and practices that were described in this media coverage, within the EU thousands of advance tax rulings – giving taxpayers certainty on the application of relevant law – are granted by tax administrations in Member States every year. The rulings that were published on the website of the International Consortium of Investigative Journalism (ICIJ) are only a very small part of all tax rulings, whilst being representative of the type of rulings granted by the Luxembourg tax administration.

13. *What kind of recommendations would you address the European Union and the Euro Zone in order to ensure a fair, just and transparent tax system that would prevent Members States from dodging tax revenues from neighbours through the creation of artificial tax administrative advantages?*

The fundamental reality here is one of tax competition between EU Member States (and between the EU and the rest of the world) and not the “creation of artificial tax administrative advantages.”

PwC generally supports the OECD/G20 BEPS process in this regard. A thorough study relating to base erosion and profit shifting within the EU may also be appropriate. Many ask the question whether the current disparities in tax systems and the use of tax incentives leads to reduction of taxes in the EU or, on the contrary, of countries outside the EU. In any event, rigorous transparency amongst Member States with smart data analysis is important if the aim is to create a level playing field.

Peter Simon

14. *Please describe past incidents - in as much detail as possible - when your company advised public entities such as national or regional governments, tax authorities or even the European Commission on the improvement of taxation systems regarding corporate taxation whilst - simultaneously or at a later point in time - advising companies on these or related issues, possibly advising them on how to structure their companies in order to achieve lower levels of taxation. At these occasions, did you use the knowledge you obtained while working for public entities, also to the advantage of your private-sector clients?*

As of today we are not aware of incidents of the nature we assume you are concerned about. While in a network that comprises almost 200,000 professionals it is likely that companies in general terms may be advised on matters that are related to issues in

respect of which governments, tax authorities or the European Commission may have been advised, no incidents are known where “inside information” was used to the detriment of the government and for the benefit of a business client.

It is also important to recognise that, if a government makes a policy decision to introduce a particular tax incentive, then in order to achieve their policy objectives for that incentive they want taxpayers to know about it and use it. Tax advisors play a key part in this process. The more that can be understood about the intent of the tax incentive in question and how it is intended to apply, the better informed the advice to taxpayers. Equally, governments want to be informed on the likely response of taxpayers and will engage with businesses direct, and through the tax advisory community, to gain that insight.

We further refer to our answers under 8 and 9.

15. *Please provide us with the rules/procedures or code(s) of conduct, that your company adheres to and that are designed to*
- a) keep you from advising clients on aggressive tax planning*
 - b) avoid conflicts of interest including of the nature mentioned in the previous question*

If such rules do not exist in writing or cannot be shared, please provide us with a detailed description. If such rules do not exist at all, please explain the reason for their absence and whether their introduction was ever considered.

PwC has a Global Code of Conduct for the entire network and a Global Tax Code of Conduct. Copies of both, as they are currently worded, can be accessed through the following internet link, respectively, <http://www.pwc.com/gx/en/ethics-business-conduct/code-of-conduct.jhtml>; and <http://www.pwc.com/gx/en/tax/global-tax-practice/code-of-conduct.jhtml>. We also refer you to our answer to question 18 below.

Both codes are reviewed and amended from time to time in order to keep up with relevant developments impacting the way we do business.

PwC also has extensive client and engagement acceptability and acceptance procedures to ensure that the clients we work with and the matters for which we provide services are consistent with our Codes of Conduct.

16. *As you know, the recently revised 'audit regulation' (Nr. 537/2014) foresees that auditors are limited in offering certain services to certain clients in order to avoid conflicts of interest. For example, in accordance with Article 5 of this Regulation auditing companies cannot simultaneously audit a company of public interest and offer tax advice. Where do you see advantages and disadvantages, if the legislators of the European Union would enact legislative proposals, which address the avoidance of conflicts of interests arising from advice provided to companies and public authorities on tax matters?*

In respect of this question we refer to the response to question 8. A firm should refrain from advising a party if there would be a direct conflict of interest on a specific matter. However, in many cases there is no conflict and it would be a lost opportunity

if the collective expertise and experience of the relevant firms was not used for the benefit of governments and the European Institutions.

Ana Gomes

17. Could you put in a percentage point an estimative of the income your firm makes from selling tax consulting products?

Of the total PwC Network combined revenue of 34bn\$ in FY2014, approximately 8,8bn\$ relates to services delivered by the “tax” lines of service of member firms. The “tax” line of service of member firms however is very broad and diverse. It is currently not possible to give a meaningful breakdown of that tax revenue that corresponds to your question as we don’t view our business in that way. What we do know is that well over half of the PwC Network’s “tax services” revenue is from tax compliance, i.e., assisting taxpayers with preparation of accurate tax returns under applicable law and regulation. The remainder relates to consulting and advice, but on a broad range of subjects. We do not regard our tax advisory services as “products.” Our Global Annual Review, which might help you put this into context, can be viewed on:

<http://www.pwc.com/gx/en/global-annual-review/index.jhtml>

18. Would you say that paying of democratically agreed taxes is included in your notion of corporate social responsibility, and what concrete measures have your firms taken to ensure that your compliance and corporate ethics departments have a say concerning the tax consulting services which you sell and in your own tax compliance policy? Do they reach the higher level, how does it work?

We wish to note that paying of democratically agreed taxes is first and foremost, a legal responsibility, as well as increasingly being seen by many as a corporate and social responsibility.

We also refer to earlier responses regarding the fundamental principles of our global tax code of conduct, which go much further than advising solely on the letter of the law. In essence the core principles are:

- A. Tax advice which results in positions taken in a client’s tax return must be supported by a credible basis in tax law.
- B. No tax advice relies for its effectiveness on any tax authority having less than the relevant facts.
- C. Tax advice is given in the context of the specific facts and circumstances as provided by the client concerned and is appropriate to those facts and circumstances.
- D. Tax advice involves discussion of the wider considerations involved, as appropriate in the circumstances, including economic, commercial and

reputational risks and consequences arising from the way stakeholders might view a particular course of action.

19. *What measures have you taken since past scandals to ensure transparency of your own corporate organisation, your lobbying activities, and the transparency of the products which you sell?*

Improving internal processes, controls, and transparency, while ensuring confidentiality for our clients, is a continuous effort in the PwC network. Reference is made to the answers to earlier questions.

The transparency reports of the PwC firms in the 28 EU Member States can be viewed on:

<http://www.pwc.com/gx/en/european-public-affairs/eu-transparency-reports.jhtml>

20. *What is your policy concerning political financing? Do you disclose your political donations and the goals of your lobbying activities?*

PwC member firms are required to adhere to all applicable [local] law and regulation regarding political contributions. In certain countries junior members of staff are seconded to political parties, at their request, to provide limited and fully disclosed technical support (such as research and analysis).

Please also note that PwCIL has registered in the EU Transparency Register on behalf of the network of member firms of PricewaterhouseCoopers International Limited:

<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=60402754518-05>

Alfred Sant

21. *Keeping in mind the significance of tax policy for different Member States and the fact that they are facing very different economic realities, tax policy is one such tool to partly compensate for the natural and permanent disadvantages of certain countries. In this regard, what exactly would you define as "harmful tax competition", given that the current Eurozone is far from being an optimal currency area and in fact economic divergences within it are increasing, not decreasing?*

As a network of professional service firms it is our view that the member states of the European Union should themselves agree on where to draw the line between healthy tax competition and harmful tax competition. One very important element is transparency. Given the dynamics that you describe in your questions it is presumably of primary importance that administrative practices and tax rulings practices are transparent throughout the EU, for all tax authorities concerned.

Pervenche Berès

22. *Why do you need to locate your compensation activities in tax havens? What kind of measures should we take to avoid such a situation?*

We do not understand what is meant by “compensation activities” as stated in your question. Please see though the answers to questions 24 and 25.

23. *Are you ready and how to ensure a swift and proper implementation of BEPS?*

Right from the start of the BEPS project, PwC has engaged with the OECD in respect of the actions that form part of the BEPS Action Plan. For each of the 15 action points PwC has formed specific international teams and these teams have diligently and constructively responded to the discussion drafts published by the OECD. Each of these responses have been published on the OECD website. Although the OECD has not yet completed its project and concrete recommendations have not been made in a number of areas, in the PwC network we are preparing for advice to our clients to anticipate BEPS implementation and to assist in proper compliance in the post BEPS world.

Molly Scot Cato

24. *As I am sure you are aware, precisely defining what we mean by a tax haven, and indeed developing a map of the precise roles and interconnections of the jurisdictions both within and outside the EU that derive a large proportion of their income from tax-related activities is part of the work of our special committee. However, we are already aware of some of the key players in this network and I would like to question you with respect to your activities there. I believe there are at least 60 jurisdictions involved in the network but I would like to focus on just three: the Hong Kong, Jersey and the Cayman Islands. For each of these jurisdictions I would like to ask each of you:*

- *Which are the key shore offshore jurisdictions which have extensive shared activities with the UK/Netherlands?*
- *What is your physical presence there in terms of offices and other infrastructure and how many people work from it?*
- *Could you give me details of the services you provide in each of these jurisdictions and let me know your annual turnover?*
- *Can you explain precisely why these services are better provided there than, say, in Brussels or London?*

In a number of these territories, the financial and regulatory infrastructure has been further developed in order to attract inward investment. Our practices are there to provide services to the businesses and individuals who base themselves or have activities there, both domestic and international. Our local experts provide advice relating to the local law. The countries in and offices from which we operate can be found on our PwC global and country websites, including the services offered in those countries.

Please also refer to the answer to question 25 below.

25. *As a more general question, could you tell me in your judgement whether the world's multinational corporations would use these tax havens if you were not present there? Do you feel that this means you are colluding in the tax abuse that takes place there?*

There are a wide range of consultancy and law firms that provide advice to companies, including in the territories identified above. The main business objective of the tax practices of PwC firms is to support their clients to:

- understand and comply with their legal and regulatory obligations for taxation;
- plan their affairs so as to be tax efficient in the business and other financial decisions they make; and
- understand the tax risks they face and the effectiveness of their organisation's internal controls relating to tax.

A full list of our services, including tax compliance and advice, can be found on <http://www.pwc.com/gx/en/global-business-services/index.jhtml>

We also refer to our answer under question 24. We do not believe that there is a business enterprise anywhere in the world that is somehow dependent on PwC's existence in a particular jurisdiction.