

Prepared remarks by prof.dr. Stef van Weeghel (PwC)

In preparing for this meeting I have carefully focused on the mandate of your committee and your invitation letter that referred to the expertise in corporate taxation of PwC. Given the magnitude of the subject matter in its broader context, 10 minutes is no more than an elevator pitch in a two-story building, but I note that PwC is more than willing to contribute to the work of your committee beyond today's meeting.

Your mandate as I understand it: how do rulings hold up in the context of EU state aid rules, has there been exchange of information with respect to rulings, what roles do Member States play in aggressive tax planning, and finally what is the third country dimension?

On the first two themes I can be very short: the state aid rules have been applied in tax matters for decades, but their application in the context of tax rulings is relatively new. In its recent formal investigations the Commission has arrived in uncharted territory and will see whether its analytical framework – that in these cases largely builds on the latest OECD transfer pricing guidelines – will stand when tested in court. The short term tangible result is that Member States will be reluctant to grant tax rulings and in the cases where these rulings will be granted, the transfer pricing analysis will be performed with the Commission's analytical framework in mind. While rigour in the process is good, the recent investigations have caught by surprise taxpayers that thought they had a binding agreement with the relevant tax authority. The fact that Member States cannot create legitimate expectations that a tax ruling will not be state aid is not well understood by taxpayers. Also not understood by taxpayers is that the state granting the illegal state aid gets the money back from taxpayers after recovery - a perverse bonus for non-compliance by states, according to some.

Even when rulings comply rigorously with transfer pricing standards, that does not mean that revenue in EU Member States will go up. Much of the planning already relies on application of the OECD transfer pricing standards and limited tax in the EU may rather result from disparities in tax systems, tax incentives and the fact that value creation takes place outside the EU.

Regarding rulings as such I submit for your consideration that rulings are indeed used as confirmation for situations of low or no taxation, but they are not bad per se. To me they are appropriate instruments in an era where revenue authorities and taxpayers cooperate in the spirit of horizontal monitoring and cooperative compliance. They create certainty for taxpayers and tax authorities. One direction would be to stop granting rulings where the result would be low or no taxation, but it needs to be thought through what that means. With rulings there is at least the advantage that the tax authorities know the tax planning conducted and can then exchange that information.

It seems clear that currently there is no meaningful exchange of information with respect to tax rulings within the EU. The proposed transparency package with mandatory automatic exchange in my mind is a very positive development: if this system would function well it would encourage rigour in the ruling process and a level playing field within the EU. I would even suggest to take it one step further and think about publication of ruling statistics, types of ruling granted, anticipated effect on revenue and the like. It will be very important to think hard about an effective system for automatic exchange of information with 28 Member States, many different languages, and thousands of rulings per year to be processed. Perhaps a central database with smart translation and analytical tools could result in meaningful information.

I now come to the broader context. We are confronted with a crisis in the international tax system. OECD's Pascal Saint-Amans told us that the system is broken and I agree with him that the system has not kept up with the current globalization of the economy. Differences in tax systems, disparities, can result in double taxation and double non-taxation for multinational enterprises. The general assumption seems to be that multinationals are able to avoid the double taxation and then go on to exploit the opportunities for double non-taxation. Add to that the use of tax incentives offered by governments in the context of tax competition and the fact that the digital economy allows an multinationals to have billions of sales in a country without a relevant taxable presence for corporate taxation, and the frictions in the system become very visible. Many tax systems incentivise avoidance and deferral of taxes and are often used as means to compete for business. Taxation in accordance with the goal and purpose of the tax laws may have intuitive appeal, but in fact often does not

address the international disparities, because existing anti-avoidance rules are designed for the relevant country's tax system only.

It is clear that this situation cannot continue, but the resolution will require enormous cooperation between all parties -- governments, international institutions, multinational enterprises and organizations such as the Big Four. So on behalf of PwC I would endorse and encourage the work of your committee, also suggest that you continue to work beyond your 6-month mandate, and I would also like to offer a few recommendations. The first relates to the facts. I recommend that an in-depth study be undertaken by an independent institute in order to obtain a report about the effective tax rates of multinationals and SMEs in the EU and perhaps also beyond. By focusing on tax rulings from specific countries the notion has arisen that multinationals pay very little tax. Existing studies, also mentioned in the BEPS report by the OECD, show that the multiyear effective tax rates of multinational enterprises move within a relatively small bandwidth around the average statutory corporate tax rates in the OECD. It is also true that while multinationals have the possibilities to exploit disparities and tax incentives, part of that advantage is undone as a result of double taxation caused by non-deductible items, non-creditable withholding taxes, unused losses, transfer pricing disputes, etc. and SMEs do not have those disadvantages to the same extent. In some countries, the taxation of SMEs is in fact quite advantageous when compared to larger enterprises. The second point relates to the tax gap. The numbers that are mentioned by the European Commission and in the press are very big and no distinction is made between tax fraud and tax avoidance. I believe that it is really important to also commission a study in this respect. While there is a big responsibility for multinationals and their advisors to play a constructive role in the reconstruction of the international tax system, trust in the international system is not served when large companies are portrayed as engaging in fraud.

Nothing of what I just stated is meant to downplay the gravity of the current situation. The legitimacy of the international tax system is at stake, nothing less. In the world that we strive for, the tax system should be efficient and perceived as equitable. It is always a trade off between these two elements. Economists would perhaps say that corporate taxation is not efficient per se and that corporate income tax better be abolished. But that would clearly not be perceived as equitable. On the other hand, very high corporate taxes would in the end be passed on to individual citizens, in the economic ecosystem in which we live. In that ecosystem stakeholders include shareholders (often pension funds and mutual funds, both representing citizens), employees and consumers and every euro of revenue raised from the corporation ends up being borne by these stakeholders.

Restoring the legitimacy of international taxation necessarily means international coordination, giving up national fiscal sovereignty to an extent, removing disparities, and reassessing the current division of taxing powers between residence and source states. The BEPS project undertaken by the OECD makes clear how vast the task is that we have in front of us. That task is even more complicated within the EU, as some of the BEPS measures may conflict with the Fundamental Freedoms. Perhaps in the EU that means that the CCCTB project must be relaunched. Also, from an EU perspective we have to keep in mind that the tax system should be conducive to furthering the goals of the EU, including economic prosperity, and that means a robust and competitive tax system, not a fortress Europe to be avoided by other trading blocs in the world.