

In collaboration with



Conference on: “Developing a Tax Environment for Growth and Competitiveness” Vienna 18th – 19th January 2013

Main conclusions

These conclusions are presented by Rainer Geiger, Philip Kermode and Jeffrey Owens. They represent the personal views of the authors and do not commit the participants at the conference.

1. On 18/19 January the Institute for Austrian and International Tax Law of the WU (Vienna University of Economics and Business) and the Association Internationale de Droit Economique, in cooperation with the European Commission, held a high level conference on the interface between tax policy, growth and competitiveness. It brought together senior policy makers, academics and representatives of business and civil society from more than 40 countries. The purpose of the conference was to engage in a dialogue among participants on the possibilities of achieving more transparency and convergence of national tax systems and developing common principles. It helped deepen analysis of the different forms of taxation and their implication for surmounting the current economic and financial crisis and longer term strategy for growth and sustainable development.

2. The agenda of the meeting, the issue and the background papers are all available on the website of the Institute, as is the Speech by the EU Commissioner¹.

3. In his keynote speech Mr. Algirdas Šemeta, commissioner for Taxation, European Union stressed the importance of taxation as part of the policies needed to stimulate growth and to promote competitiveness in these difficult times. Pro-growth taxation needs to be competitive and fair, aspects that can be mutually reinforcing. He referred to the framework provided in the EU by the state-aid rules and the Code of Conduct on business taxation and the need in the latter case to go further with the building of the substantial progress that has already been achieved. Within the EU the issues are also becoming a central part of the European Semester process where the Member States are working within a common framework on economic policy and where the Commission is putting emphasis on the tax aspects of the individual policies needed for different Member States to reach their respective growth and budgetary targets. This also links with EU level proposals for legislation to create a better business environment and more effective tax systems such as the Consolidated Corporate Tax Base (CCCTB) and the Financial Transaction Tax (FTT).

4. The Commissioner continued by emphasizing the need to tackle tax evasion and avoidance and referred to the Commission's recent publication of an Action Plan and specific recommendations on good tax governance and aggressive tax planning together with the platform to be set up to push forward this debate. He also stressed the need for a wider global coordination through the G8 and G20. Here he underlined the contribution the EU can make and gave as examples the pioneering work on automatic exchange of information and on tackling harmful tax practices.

¹Please see: <http://www.wu.ac.at/taxlaw/events.main/internat.events/taxpolicy/taxandgrowthinformation>

5. The conference then proceeded through interactive panels dealing with main recent trends in tax policies, the role of taxation and good governance in reducing inequalities and in improving fairness in developed and developing countries, tax transparency, the taxation of multinational enterprises and perspectives for providing a framework for policy makers. The following conclusions emerged.
6. Tax policy can help pave the way out of the crisis and build a strong basis for the expansion of productive investment and competitive enterprises. For that purpose tax systems need to be effective in terms of revenue generation, integrated with strategies to stimulate sustainable growth and fair in the distribution of the tax burden.
7. How can this be achieved in an interconnected world dominated by global competition and where multinational enterprises have the capacity to elude national tax rules? Tax law in all countries –developed and developing- has not kept pace with the international business environment. The diversity of national tax systems and the weakness of international cooperation can lead either to economic double taxation or double non taxation. The national tax base of countries in which companies operate can be eroded through complex schemes of transfer pricing, abuse of tax havens and abusive tax avoidance strategies.
8. Over the past decades there have been growing elements of convergence in national tax reform strategies consisting of cutting of the top personal income tax and corporate tax rates and broadening the tax base, the spread of VAT systems and progress in international tax cooperation. The most encouraging fact is the growing network of EOI agreements on information on request, within a framework of international monitoring and peer pressure. There is also growing movements towards automatic exchange of information. On 1st June 2011, an amended Multilateral Convention on Administrative Assistance in Tax Matters came into force and today there are 46 countries that

have either signed the agreement or stated the intention to do so, including all G20 countries. The challenge of creating a framework of multilateral rules providing equality and fairness of the treatment of tax payers and protecting the tax base of countries remains.

9. International business has a strong interest in playing by such rules to the extent they are inspired by fairness and legal certainty. Risky tax schemes lacking economic substance are exposing companies to sanctions, incongruous and conflicting adjustments imposed by tax authorities and loss of reputation. Civil society has become increasingly vigilant and does not hesitate exposing harmful tax practices by enterprises.
10. Tax has several objectives which need to be carefully balanced in order to reach coherent results: Tax revenues are key to budgetary stability and fiscal consolidation which are needed for moving out of the current crisis. But taxpayers also expect that their contribution is used to enhance public investment and services which are necessary to prepare the ground for sustainable growth and increased competitiveness. And they demand that the tax burden is fairly allocated.
11. Tax and expenditure policies taken together can do much to reduce income inequalities which have increased during the last decades. Globalization is often blamed for this but the origins are more profound affecting also relatively closed economies. While non-tax policies such as upgrading of human skills and providing decent job opportunities are important for reducing inequality, tax policies can help as well: through a well-balanced tax mix, through progressive tax rates for high incomes, eliminating tax privileges which benefit mainly higher income brackets and reforming social contribution systems. There is also a role for taxes on property and wealth in reducing inequalities at the high end of the income scale.

12. Inequalities are also striking as far as development is concerned. Many developing countries even if they continue to rely heavily on ODA, remain vulnerable to illicit capital outflows and suffer from institutional deficiencies. In these countries tax administrations often lack the sophistication which is needed to deal with complex transfer pricing practices of multinational corporations. Efforts to introduce efficient and fair tax systems should start by improving governance, respecting the rule of the law and democracy. A dialogue between governments and stakeholders is needed to explain the purpose of tax systems, provide service functions to taxpayers and increase the level of compliance.

13. On exchange of information, an international consensus is being achieved through EU directives and action plans, the OECD Global Forum and the discussions within the G20. The peer review process within the Global Forum is producing encouraging results in terms of availability, accessibility and exchange of relevant information. These international efforts need to be backed up by reforms and administrative change at the national level to make efficient use of the information received while protecting confidentiality. Further progress is desirable in providing a clear definition of harmful tax practices and the cost/benefit assessment of incentive schemes. Bilateral Arrangements which hinder the move to automatic exchanges of information should be avoided.

14. In terms of transparency in the use of natural resource revenues and accountability by both governments and companies the Extractive Industries Directive is an important step forward. The expansion of the initiative beyond natural resources and through contract transparency and information on the use of the payments made is under consideration. Accountability of both Governments and companies may be enhanced through country-by country reporting on the activities of multinational enterprises, although a clearer conceptual framework is required.

15. There was considerable discussion on whether multinational enterprises are paying their fair share of taxes and whether existing rules built on the arms' length principle (ALP) should be replaced by formulary apportionment. It was argued that the existing system may not be allocating the tax base in a way which reflects where the economic activity is taking place. In a highly globalized economy, with global supply chains, it is increasingly difficult to allocate residual profits that arise from the economies of scale that a MNE can produce. The arm's length (separate entity) approach may need to be adapted to make allowance for the reality of global integration among related entities and the fact that comparable pricing levels of independent entities are sometimes difficult to identify. This is an issue common to all countries but developing countries which often lack experienced tax officials, are suffering most.
16. Even if the separate entity concept is maintained, there was broad agreement that transfer pricing rules need to be complemented by simultaneous tax audits, harmonization of accounting concepts and better functioning of the system of corresponding adjustments. There is still no common system of binding arbitration among tax authorities and tax payers' interests are often given short thrift in mutual agreement arrangements among national tax authorities.
17. There was also support for the view that it is the responsibility of Governments to set and enforce clear and stable rules and that often the low effective tax rates of MNEs reflected the existence of tax incentives and other special reliefs. If Governments put in place such provisions it is only natural that companies will use them.
18. Many participants expressed the view that the G20 supported initiative on Base Erosion and Profit Sharing (BEPS) should address the issues focusing not just on transfer pricing (in particular in relation with intangibles) but also look again at some key concepts found in tax

treaties (e.g. the permanent establishment concept) and the issue of what constitutes fair tax competition among countries. It was felt that developing countries should have a strong voice in this debate.

19. Tax avoidance schemes may erode legitimate tax interests of countries if they are tied to artificial legal conduits without reasonable links to the substance of transactions. In such cases the law needs to be applied according to its intent. Anti- avoidance rules have been introduced by a number of countries to encourage companies to review their compliance policies.
20. Taxation needs to become integral part of corporate governance and responsible business conduct where companies should comply not just with the letter but also the spirit of the law. This is increasingly recognized in international instruments such as the OECD Guidelines for multinational enterprises. In addition good tax practice as well as transparent reporting should be considered a board responsibility.
21. A number of innovative ideas for the way forward were identified:
 - a) the strengthening of regional and multilateral arrangements to counter tax evasion and tax avoidance;
 - b) a constructive interaction between tax payers and tax administrations based on principles of transparency, accountability and integrity. Tax compliance would be increased if governments sought the views of tax payers in the ongoing tax reform activities and exercised an effective service function in addition to enforcement activities;
 - c) national, regional and international tax compacts involving a broad range of stakeholders may help enhance coherence of tax measures, international cooperation and provide tools for legal

certainty: national tax councils where the parties concerned are represented could help pave the way to better tax systems with a high level of compliance;

- d) in addition to the traditional approaches to transfer pricing and tax evasion, the work mandated by the G20 on base erosion and profit shifting should be pushed forward with a view of developing new consensus on how profit base methods in the OECD 1995 Guidelines can be applied to intangibles and e-commerce;
- e) country by country reporting by major multinationals, if carefully defined, would increase corporate accountability as well as the accountability of tax administration. The progress reached by EITI was commended. If expanded beyond mineral resources, it could serve as a basis for responsible budget management and sustainable development strategies on a broad range of policies;
- f) moving beyond aid dependency; developing countries need access to knowledge transfer in the management of tax policies and enforcement measures to stop capital flight, economic crime and mobilize the resource basis for productive investment in their economies.

22. The conference also identified areas where further research and stakeholder consultation is needed:

- a) measuring whether tax reforms have achieved their stated objective, the impact of intended tax measures and the provision, and use of information through tax expenditure budgets;
- b) the interaction of taxation and investment policies and a coherent approach to the issues of tax incentives;
- c) taxation and governance looking at the transparency and accountability of government and tax administrations and at the same time promoting good corporate practices;

- d) taxation and the environment in order to mobilize tax policies as one of the tools to promote clean growth dealing with the challenges of climate change;
- e) taxation as a factor of social cohesion and political stability, examining the case for reducing inequalities including as tax measure relating to net wealth, inheritance taxes, land and buildings.

23. While these ideas should find their place in the agendas of regional and international organizations, a multi-stakeholder forum like the present conference may be useful to energize efforts and pave the way to progress within the existing channels. The organizers of the conference, together with a multi-stakeholder forum will give further thought to the organization of research and periodical meetings on the broad economic and societal aspects of taxation.

Details on the conference can be seen at:

<http://www.wu.ac.at/taxlaw/events.main/internat.events/taxpolicy/taxandgrowthinformation>