OECD business survey invites views on tax certainty and investment, trade and balanced growth

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In brief

The OECD has launched a **Business Survey on Taxation,** inviting senior tax specialists to contribute their views on tax certainty, as part of a wider project. Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, described it as "a unique opportunity for businesses to share their views and experiences related to tax certainty". He also said that tax administrations and policy makers, as well as civil society organisations would have a chance to comment on the findings. There are questions in the survey that filter comments according to the respondent's characteristics.

The G20 Leaders and Finance Ministers gave the OECD and IMF a strong endorsement to find solutions that support certainty in the tax system. The aim is to promote investment, trade and balanced growth.

The survey will run until 16 December 2016, and will also provide an opportunity to identify specific tax policy issues for the future G20 tax agenda and to shape practical and concrete solutions for a more certain and predictable tax system.

The OECD has specified that this survey is strictly confidential and anonymous: no individual or organisation-specific information will be disclosed. Results will only be made available in aggregated format and presented to the G20 in 2017.

Widespread business participation in the survey – by size, location and sector – could be extremely useful and important for developing practical and concrete policy options aimed at fostering certainty in the tax system.

In detail

Survey background

Tax certainty has long been promoted among policy makers as a key component of good tax policy. It has received renewed attention over the last year or so, as tax professionals have addressed the need for a greater focus on inclusive growth and the role that tax plays within that.

One could look back to July 2015 and the landmark Addis Tax Initiative with the expressed need to "strengthen policies that support inclusive development". In that Initiative, seven case studies showed that building local capacity – at the level of the individual, the organisation, and the enabling environment – contributed to institutional sustainability. The accompanying discussion document stated that reducing corruption helps increase a government's tax revenue and benefits the taxpayer who is less exposed to unscrupulous actions by officials and unfair competition, key elements of tax certainty.

In addition to broad-based capacity building, the Initiative's participating providers of international support committed to stand ready to expand cooperation in a wide range of tax areas. G20 Finance Ministers and Central Bank Governors encouraged G20 members to consider committing to the Initiative's principles, while welcoming the collective and continuous efforts by countries and international organizations to build capacity on tax matters for developing economies (see Communique, 14-15 April 2016 Washington DC). They made a commitment to "making tax policy and public expenditure more growth-friendly, including by prioritizing high-quality investment".

The approach was analysed at the 6-7 June 2016 USCIB's OECD International Tax Conference 2016. Pam Olson, PwC's US Deputy Tax Leader & Washington National Tax Services Leader noted "Business doesn't exist for the purpose of paying taxes ... In the long term, tax policies that encourage businesses to invest rather than simply seize revenue will be better for inclusive growth". Further, James Karanja, head of the joint OECD/ UN Tax Inspectors Without Borders initiative to assist developing countries, specified that it aimed to "ensure greater consistency in application of rules creating greater certainty for taxpayers".

A discussion entitled "Increasing tax certainty to promote investment and trade in a world where value creation is changing" was chaired by Angel Gurría, Secretary-General OECD, at the G20 Chengdu High-Level Tax Symposium 23 July 2016. He introduced tax certainty in three particular ways:

- developing countries frequently report the need to implement measures designed to balance protecting their tax base whilst creating a transparent and predictable investment climate to create certainty and consistency for business
- recognising that the actions to counter BEPS must be complemented with actions that ensure certainty and predictability for business. For example, Action 14 calls for effective dispute resolution mechanisms to resolve tax treaty-related disputes, and
- on the Multilateral Instrument for the 96 or more (at that time) negotiating countries quickly to implement the tax treaty-related BEPS measures by updating their network of bilateral agreements. This would be another example of an inclusive process of global tax reform that will enhance tax certainty and transparency.

He concluded that the challenge, therefore, is to design tax policies to enhance tax certainty. At the heart of this challenge is the need to understand the sources of tax uncertainty, as well as to identify what strategies and specific approaches are the most effective in increasing tax certainty.

This was endorsed in the G20 Leaders' Communique Hangzhou Summit, September 2016. It stated that members were determined to use all policy tools – monetary, fiscal and structural – individually and collectively to achieve the goal of strong, sustainable, balanced and inclusive growth.

"We will continue our support for international tax cooperation to achieve a globally fair and modern international tax system and to foster growth, including advancing on-going cooperation on base erosion and profit shifting (BEPS), exchange of tax information, tax capacity-building of developing countries and tax policies to promote growth and tax certainty."

There was also emphasis on the effectiveness of tax policy tools in supply-side structural reform for "promoting innovation-driven, inclusive growth, as well as the benefits of tax certainty to promote investment and trade". This culminated in a specific request for the OECD and IMF to continue working on the issues of pro-growth tax policies and tax certainty.

However, this focus is not confined to the OECD and IMF. At the Twelfth Session of the Committee of Experts on International Cooperation in Tax Matters, 14-16 October 2016, the Report of the UN subcommittee on the Mutual Agreement Procedure discussed two approaches that could provide greater certainty to taxpayers and tax administrations and thereby reduce the risk of cross-border tax disputes.

Against this backdrop the OECD would like businesses to participate in a survey regarding tax certainty, the main elements of which are discussed below. The OECD requests that the survey be completed by staff within a business that have been involved in investment and location decisions and their tax implications. Ideally this would mean senior level staff, such as the tax director. The survey should take approximately 15 to 20 minutes to complete, if the respondents have the information readily available or choose to omit some questions (use the save button as you go along and save/exit if you wish to complete later).

Characteristics of the respondent

The respondent's personal details requested in the survey include the person's:

- role
- area of tax expertise, and

- position and responsibilities.

Characteristics of the business

Questions regarding details of the respondent's enterprise specifically refer to:

- global size in 2015 (turnover, assets, employees)
- main sector(s)
- whether domestic, small MNE or large MNE (more than 10 jurisdictions), and
- location of regional headquarters.

Overall importance of business factors in investment and location decision

Based on experience, the survey asks for:

- the importance of 20 listed non-tax factors, with the ability to submit two additional factors
- the importance of 12 tax factors, again with the ability to submit two additional factors, and
- ways in which tax uncertainty has affected business operations, from a multi-choice list of 14 points together with a box to specify other ways.

Sources of tax uncertainty

Selecting potentially up to four countries, preferably including some in which the respondent's business has invested and others in which it has not, the respondent is asked, in relation to each:

- how uncertain is the tax system
- how frequently has uncertainty in the tax system had a serious impact on business decisions
- how has tax uncertainty changed in the last five years, and
- how important specified factors have been in increasing the overall uncertainty on tax issues (covering the legal system, tax administration, dispute resolution and the international dimension, with the ability to add two additional factors).

Solutions for enhanced tax certainty

The respondent is asked to comment on measures that could enhance tax certainty as follows:

- the merits of a number of specified factors (covering the legal system, tax administration, dispute resolution and the international dimension, with the ability to add two additional factors), and
- other specific examples of measures that have increased or decreased tax certainty.

Other questions

The respondent may add further comments on tax certainty and its effects, and/or on measures to enhance certainty in the tax system.

In addition, respondents could stress the level of importance to them of particular things that contribute to certainty. For example, they could build on the ability to rate, in the earlier sections, things like the need for, and advantages of, advance pricing agreements (APAs), tax rulings and cooperative compliance practices. Such comments or ratings could be general or for specific countries.

The takeaway

A number of business organisations and trade associations have been encouraging members to participate in the survey. We endorse that encouragement and believe that widespread business participation in the survey could be extremely useful.

Some NGOs have questioned the benefits of tax certainty and whether increases in tax certainty contribute to inclusive growth. While input from business will not be the only source of evidence in this debate, it may be an important component. A dearth of responses to this survey may, in particular, not help business with any arguments later put forward.

Some stakeholders have been particularly critical of tax rulings, APAs and the 'ill-termed' cosy relationships between taxpayers and tax administrations. This is an opportunity for businesses to state the importance of the factors in investment and other commercial decisions.

We also look forward to later stages of this debate, when tax administrations, policy makers and others, including, we trust, tax advisers alongside civil society organisations, will have a chance to comment on the findings.

Let's talk

For a deeper discussion of how this might impact your business, please call your usual PwC contact. If you do not have a contact or would prefer to speak to one of our global specialists, please contact one of the individuals below:

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