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The Minimum Rate Tax of Corporate Tax: The Deal of G7

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Abstract

This article aims to show some important aspects over the deals of countries of G7 regarding a minimum corporate tax of 15% or similar percentage. In an ideal stage, it can be an interesting approach but there are several aspects, treaties, special taxes law, taxes sovereignties, etc. which collide with that project. For that reason, this article tries to show a modest exposure over some obstacles that this proposal will find without trying to limit the matter and casuistry that the study will represent in its entire dimension by the experts in the field

Keywords: Minimum Rate of Corporate Tax; Minimum Corporate Tax; Offshore Tax Regime; Offshore Companies; Specific Tax Regime; Taxes Sovereignties; G7

Introduction

Last June countries of G7 subscribed a deal to implement a minimum percentage of 15% in the corporate tax in the world [1]. Firstly, it can seem a good and laudable initiative but really it's more difficult than the appearance showed for public opinion. In fact, the first and more important question is how this agreement can be implemented. In this context, BBC news exposed this question and the answer affirming that "The rules on making multinationals pay taxes where they operate -known as "pillar one" of the agreement-would apply to global companies with at least a 10% profit margin. Twenty percent of any profit above that would be reallocated and taxed in the countries where they operate, according to the G7 communiqué. In the case of the UK, for example, more tax revenue would be raised from large multinationals and would help pay for public services. The second "pillar" of the agreement commits states to a global minimum corporate tax rate of 15% to avoid countries undercutting each other. In the UK, corporation tax is already 19% and is set to rise to 25% by 2023 in response to spending during the pandemic. Ms Yellen said there was an understanding that national digital services taxes such as those levied by the UK and EU countries would be scrapped and replaced by the new agreement. Such taxes are regarded by the US as unfairly targeting American technology giants. US challenges 'unfair' tech taxes in the UK and EU "The timing remains to be worked out exactly but there is broad agreement that these two things go hand in hand," the treasury secretary said. Asked whether Amazon and Facebook would fall under the new proposals for a global minimum corporation tax, she replied: "It will include large profitable firms and those firms, I believe, will qualify by almost any definition". Separately, the G7 also agreed to give a commitment to make it mandatory for firms to report the climate impact of their investment decisions".

Obviously, the following question is which the next step is and BBC news informed that "The agreement will be discussed in detail at a meeting of G20 finance ministers in July in Venice. Paolo Gentiloni, the EU commissioner for the economy, described Saturday's agreement as a "big step towards an unprecedented global agreement on tax reform" and promised the EU would "contribute actively to making that happen" in Venice. But Irish Finance Minister Paschal Donohoe, whose country offers a low 12.5% corporate tax rate, tweeted any agreement would have to "meet the needs of small and large countries, developed and developing". He referred to the Organization for Economic Co-operation

and Development (OECD), an intergovernmental economic Organization with 38 member countries, which promotes world trade and has been also working on updating global tax rules".

So it's knowledge of experts in this field that this challenge will not be easy to implement, amen to the will of many countries. Over this approach, I ask several questions to clarify the real framework which will be drawn but in this manuscript I formulate three essentials:

- Will be the minimum rate tax the same for all companies?
- Will it affect to all singular tax treatments and special tax regimes?
- Will be possible to persuade to all or the majority of taxes sovereignties in the world?

From these questions, we take next epigraphs to expose some important aspects which will be complicate to adopt that ambitious measure, but without the intention of limiting all the real subject and casuistry that is going to be found.

Financial and Investment Entities

In this section, we are taking as example some financial and investment entities that normally don't pay taxes or the tax burden is very low.

One first example, are investment funds. For better understanding over this entity it's necessary to distinguish between investment fund and investors. Normally, investment fund doesn't pay taxes in the corporate tax or the tax burden is minimum but investors pay taxes when they rescue the investment with profits. For example, in Spain, the article 29.4.b of Law 27/2014, of November 27, on Corporation Tax provides investment funds taxed at 1% [2]. This entity is regulated in the Law 35/2003, of November 4, on Collective Investment Institutions with other special companies which we could quote but the brief extension of this article doesn't get to board them [3]. As comparative, in German, investment funds were exempt from taxation until 2018. From this year, these companies pay 15% in the corporate tax [4].

Other companies with privileged taxation are real estate investment funds (FII). In Spain, the corporate tax taxed also to 1% (article 29.4.d)). These companies also are regulated in the Law 35/2003, of November 4, on Collective Investment Institutions. Here it's necessary to distinguish also between investment fund and investors like last example. One similar example, in Singapore, a similar company is exempt of taxation but not the investor [5].

And other important financial entities are pension funds. In Spain, these funds taxed to 0% (article 29.5). This entity is regulated in the Royal Legislative Decree 1/2002, of November 29, approving the revised text of the Law for the Regulation of Pension Plans and Funds [6]. In German, Spezialfonds, alternative investment funds to the common fund whose shareholders and participants are insurance companies and pension funds, are exempt of corporate tax but not their shareholders and participants [4].

Last financial and investments entities are few examples alone about several entities as important financial instruments. Normally, their low taxation is justified by the profitability of shareholders and participants who will pay taxes when the rescue profits and being this figure as entities without legal persons.

In conclusion, over this financial instruments the imposition of minimum rate tax (15% or more) in the corporate tax will request an important revolution over this economic sector of companies. All it if we interpret the G7 proposal in literal terms.

Special Tax Regimes

It's general knowledge fiscal policy is an important instrument of economic policy. It's used to assist or to encourage some economic sectors. For that reason, we can observe in different countries special tax regimes for these proposals.

For example, in Madeira (Portugal), in the free zone, with compliance with certain requirements and income limits, companies pay 5% corporate tax [7].

In Spain, for Canary Island, the Law 19/1994, of July 6, modifying the Economic and Fiscal Regime of the Canary Islands [8]. BOE of July 7, 1994 and BOCA of August 17 provides for companies operating in ZEC territory a rate of 4% having to assume certain operational and investment requirements.

In Uruguay, in its free zone, entities that operate in said territory are exempt from corporate tax, in addition to other taxes [9].

Thus, the importance of these special fiscal regimes could be other important obstacle for the Project of G7 because these regimes constitute an important instrument to attract investments for the countries which got difficulties to compete in other aspects with the high and important countries.

Offshore Entity Regime

Probably, the most controversial issue over this subject is the field about offshore company. This is because the

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offshore tax regime is very common in many countries in the world including high and important tax jurisdictions.

One important consideration to know offshore tax regime is the tax connection points. In this context, since the 19th century, personal taxation points became in the major criteria to pay direct taxes by the world profits. Before, common criteria were taxation points based on the territory that is taxpayers paid by the income wan in specific territory. Offshore tax regime reactivated the territory as the critea to taxed profits over these companies.

For example, one company created in Marshall Island with offshore tax regime will not pay taxes in Marshall Island by the income obtained in some country in the world (German, Ireland, Spain, etc.), except earned benefits in Marshall Island. In this last case, the profits will be taxed.

Notwithstanding the foregoing, in every fiscal sovereignty may be some variations in the offshore tax regime.

In this stage, as we pointed out before, many important countries provide offshore tax regime. For example, in Nevada (USA), LLCs are not taxed profits or ownership shares; no franchise, admissions, unitary, estate, or gift taxes; and shareholders are not a matter of public record [10]. In Delaware (USA), Delaware Limited Liability Company (LLC) doesn't pay US state or government income tax when owners are not residents in USA; its workplaces are located outside of the US, and the LLC does no business in the US. LLC is not subject to Federal income tax in the US when it is claimed by non-occupant investors who are not managing the business activity in the United States, and they don't obtain a wellspring of salary in USA [11].

In Cayman Island, legal firm Mourant affirms "The Cayman Islands is one of the world's leading offshore jurisdictions. Although particularly renowned for the establishment of investment funds (both hedge funds and private equity funds), Cayman Islands entities are customarily used for transactions of all types including equity, debt and insurance capital markets transactions, in mergers and acquisitions and in joint ventures […]. The Cayman Islands have no direct taxes of any kind. There are no corporations, capital gains, income, profits or withholding taxes. Under the terms of the relevant legislation, it is possible for exempted companies, unit trusts and limited partnerships to register with and apply to the Cayman Islands government for a written undertaking that they will remain tax-free for a minimum period (20 years in the case of exempted companies and 50 years in the case of unit trusts and limited partnerships)" [12].

Over Bermudas Island, Foster Swiss law firm informs that this is "an offshore jurisdiction, located in the Sargasso Sea off the east coast of the United States. Although its territory is British, its geographical location makes it a privileged place for all kinds of tax, administrative and leisure activities. Due to its tax advantages, it offers a wide repertoire of facilities to be able to make investments, bank transfers, save our assets and money in an offshore bank account and protect our assets. The tax advantages that make Bermuda an ideal place to open an offshore company are the following:

- There are no taxes on profits, income or dividends or withholding tax on sales.
- Investors can enter the market and buy and sell stocks without being taxed.
- The trusts (several companies that produce the same product are joined to form a single company) are exempt from taxation" [13].

In the same line, Canada regules an offshore company without taxes when the economic activity is made outside of the country [14]; or Gibraltar between numerous examples in different countries in the world [15].

So, it's notorious that the offshore tax regime is much extended in different countries in the world essentially to attrack investors and capital. Although we could observe the news over a minimum of rate tax 15% in the corporate tax in the world, reasons of strategy and economic policy, geopolitics, attraction of financial resources, employment, etc. invites us to postulate that this regime will continue applying in many taxes sovereignty.

Strategic Taxes Sovereignties

The great agreement over the minimum percentage of 15% in the corporation tax requests a first important challenge that is the will of the different fiscal sovereignties. In the inclusive framework of countries, 130 countries had approved to join the negotiation while waiting others as Barbados, Estonia, Hungary, Ireland, Kenya, Nigeria, Peru, Sri Lanka, and Saint Vincent and the Grenadines [16].

In this context, "The European Union is not a member of the G7 but participates in the meetings. Well, the European Union has been unable to generate a consensus to create a lowest common denominator of Corporation Tax and has been tolerating unacceptable tax competition between the countries of the Union for years. Luxembourg, Ireland, Malta, Cyprus or the Netherlands have various legal figures that make up a nucleus of tax havens in the European Union. The process of articulating a common Corporation Tax requires a majority that, at this time, is impossible to achieve. As long as the problem in Luxembourg is not solved, for example, Amazon may continue to pay less than its share. Nor is the European Union developing an active policy against tax havens. It is surprising that in the concise list of 12 territories

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(American Samoa, Anguilla, Dominica, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, American Virgin Islands and Vanuatu), there are, for example, the Cayman Islands, whose tax pressure is 0%" [17].

Recently, Ireland has accepted the minimum rate of 15% in the corporate tax but it will applied to multinationals with revenues of more than 750 million dollars [18]. Then, general rate tax will be 12,5%, except companies with revenues of more than 750 million dollars (15%). At the same time, we must not rule out other bonuses can be deducted to obtain a result of taxation similar to the application of 12,5% or less, Malta is other important and strategic tax jurisdiction in the European Union. The online economic newspaper libremercado exposes an essential and clear over his corporate tax affirming "The key lies in the Corporation Tax of the Mediterranean country. If we look at the general rate, we find a tax of 35 per cent, which comfortably exceeds the OECD average, set at 25 per cent, or the EU, currently at 23 per cent. However, the tax guides of the consulting firm Deloitte detail the complex model of deductions that, in practice, leaves the effective rate at much lower levels. From the outset, Malta does not charge tax on dividends, capital income, royalties ... This is a significant advantage compared to the high rates observed in other European countries. But, in addition, the tax laws of Malta allow shareholders who do not live on the island to request a bonus that reduces the payment of Corporation Tax by 85 percent. So, instead of paying the 35 percent set by the general rate, the effective payment to the Treasury ends up around 5 percent thanks to the reimbursement allowed by the laws of Malta". This bonus is similar but not the same, in Spain, for the established companies in Ceuta and Melilla [19], in the Law 27/2014, of November 27, on Corporation Tax quoted that provides an important bonus of 50% in the corporate tax quota (article 33) after applying the rate tax.

Until this moment, Malta doesn't accept to join to this group of countries. From our modest point of view, it's logical insofar as the geography situation, dimension and infrastructures request an attractive fiscal system to attrack invertors.

The same position holds Hungary whose rate of corporate tax is 9% also by justified circumstances [20]. Finance Minister, Mihaly Varga, affirmed that ""reject any initiative that leads to tax hikes and weakens competitiveness" [21].

Conclusions

The great deal over the minimum rate tax in the corporate tax will be to apply like general rate alone.

This minimum rate doesn't mean the disappearance of tax treatment over special entities or economic sector. So different treatment according the economic sector, corporate figures, etc. will continue being applicable with specific rate of taxation.

This minimum rate doesn't mean either the disappearance of tax treatment over special tax regime by regions, territories or other circumstances by economic policy and another's financial strategies.

It's predictable that many countries will adopte measures in other sections of the structure in the corporate tax to make up for the increase of the rate tax. And at the same time, they solve this deal now.

It's not available a corporate tax unified in the world more far of this proposal. The differences between countries (political, economic, social, cultural, etc.) don't allow this dimesion. In fact, the progress (about tax Directives) in EU have been bit and it took several decades and the problems and breaches by the States to apply and interpretation the laws correctly continue being current.

Samely, this deal will not erase offshore tax régimen applicable in many countries currently. This taxation jurisdiction will regulate a minimum rate tax of the corporate tax for incomes obtained in theirs territories but offshore tax régimen will continue being an alternative to attrack investments.

The increase of taxes, rate of taxation, etc. wili never be the solution for the public finances. Capital attraction is founded in the final virtual profits and the taxes burden is an essential element but not the only one. In front of this position, natural laws provide that there will always be tax systems to allow the flight from harmful tax jurisdictions.

Tax competition, the prestige of the institutions, legal security and the absence of corruption, bureaucracy, high labor costs and State intervention and adequate resources allocation will be the best channel to erase the fraud and tax evasion and aggressive tax planning.

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