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In 2018, tax avoidance can be tackled – but not by blacklisting

Alessandro · Wednesday, December 20th, 2017

A year after the Panama Papers revelations, the Paradise Papers leak once again brought light to the murky world of financial and tax secrecy made of opaque corporate structures as well as secret tax arrangements and schemes aimed at lowering large multinationals' tax bills.

Unfortunately, in 2017 we did not see EU legislators find a concrete solution to these issues. The tools to bring business activities and tax payments to the public do exist. One of them is what is referred to as public country-by-country reporting for multinational enterprises, yet EU member states hold this legislative proposal in a stalemate. So far the EU Council has failed to show its support to open the world of corporate taxes to the public.

On 5 December 2017, the EU adopted its first blacklist of tax havens, which, however, did not do much to fill the current legislative gaps. The tax havens list, as of now, remains mostly a tool to name and shame the 17 jurisdictions it includes. Despite the potential it has to encourage listed jurisdictions to adopt transparency reforms in their national legal frameworks, the list currently does not envisage sanctions, neither for the jurisdictions themselves nor for European companies making use of them. The only piece of draft secondary legislation the EU blacklist is currently linked to is precisely the one on public CBCR for multinationals.

According to the European Commission's proposal, multinational companies falling under the scope of the legislation would have to report on their profits and taxes, but only for their operations in EU Member States and countries on the EU's tax havens blacklist. Hence, the only consequence for companies making use of the tax haven industry is that they will have to be more transparent about it. However, full tax transparency must be considered a baseline and should not be a sanction.

As was previously demonstrated, transparency has a strong deterrent function against corruption and tax avoidance. With comprehensive tax transparency, large multinationals will be accountable about the impact of their activities and fiscal contributions to citizens at local level.

Even though this is well-known, why is the EU not acting upon it? The European Commission published its proposal already in April 2016 and the European Parliament adopted its position in July 2017. Ever since, progress on the file has been stalled and the EU has struggled finding an agreement. At the end of 2017 the EU Council has yet to adopt its position before entering into trilogue negotiations with the other two EU institutions.

Some Member States blame it on the Commission for having picked the wrong legal base for the draft legislation, some hide behind the Big Member State – Germany – currently not having a government and some say they want to *‘find the right balance between transparency and protecting companies’ competitiveness’* (despite our 2016 report demonstrating that there is no direct link between the two issues). Others are blatantly opposed to the principle of public disclosure of corporate financial and tax related data. The result is that such a highly political and controversial issue is not driven forward by anyone, and, as a consequence, is lingering in a legislative limbo.

It is unlikely that the revelations in the Paradise Papers will be the last of their kind. Even without yet another leak, it is clear what the main problems that need to be addressed in 2018 are. The tools to solve these issues are there, but a major lack of political will is slowing down the progress. This reluctance to tackle the current system is unsustainable, but EU Member States will have a chance to change this in the upcoming year as public CBCR negotiations continue. It is up to them to step up their game.

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