Abusive tax arrangements

Following Tuesday's panel discussing recent attacks against bank secrecy, tax havens and abusive arrangements, **Jack Grocott** outlines the steps governments have taken to tackle these problems

A significant increase in public spending after the onset of the global economic downturn left many pointing the finger at tax as the root of the problem. Banking secrecy, tax havens and abusive arrangements were all targeted as contributors to the world's woes.

As government across the world look to protect their own tax revenues, the Global Trends in Direct Taxation: Part One panel discussed international trends with respect to the view of certain jurisdictions' trends for tax avoidance.

One of the definite buzz-words of the last 12 months has been tax. After countries began their recovery from the global economic slowdown, politicians and officials started to ask questions about what had caused the turmoil. Tax was not the number one suspect but it certainly made the line-up.

"Governments wanted someone to blame and so tax avoidance was an obvious target," says Olga Boltenko, of Hogan & Hartson in the UK, and session chairwoman. "Companies have losses and will have losses for a number of years to come and so they are an unlikely source of income.

"Three clear tactics have been adopted: international agreements, amnesties and compulsory disclosure agreements. All have, and will, vary in their success rates," Boltenko says.

International effort

The most popular method at improving tax transparency and cooperation has been the increased signing of treaties and information exchange agreements, after the OECD and world leaders put pressure on reluctant jurisdictions to increase transparency.

At a speech on the presidential campaign trail in the US, Barack Obama proclaimed that "there's a building in the Cayman Islands that supposedly houses 18,000 corporations. That's either the biggest building or the biggest tax scam in the world." Obama's desire to rid the world of tax havens dates back to 2007, when he co-sponsored the Stop Tax Haven Abuse Act, aimed at preventing the use of offshore financial centres and improving tax transparency.

Then, at the G20 meeting in London in April, world leaders echoed Obama and warned that action would be taken against those that did not comply with international tax standards. After the meeting, the OECD identified four tax havens – Uruguay, Costa Rica, Malaysia and the Philippines.

The Organisation's progress report on adherence to global standards on the exchange of tax information had an immediate effect. Within a matter of days the four tax havens had been removed from the OECD's blacklist of uncooperative tax jurisdictions. Speaking at a press conference only five days after the report was published, Angel Gurria, OECD Secretary-General, said: "I am very happy to share with you today that those four jurisdictions have now made a full commitment to exchange information according to the OECD standard. We congratulate all the jurisdictions who took this decision, they are brave decisions and they are correct decisions."

The OECD also announced it would scrutinise each jurisdiction's efforts to improve their information exchange. It said that each one had to sign at least 12 tax information exchange agreements (TIEAs) to become a fully compliant jurisdiction.

This list sparked a flurry of activity from the world's tax havens, all looking to improve their image. Now a week barely goes by without another TIEA being signed or a tax treaty renegotiated to strengthen its provisions on information exchange. Russia renegotiated its double tax treaty with

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Olga Boltenko, Hogan & Hartson

Cyprus recently, while Switzerland signed similar treaties with France and the UK.

However, the Organisation's tax chief said information exchange and transparency were not only about the number of agreements a jurisdiction signed. Jeffrey Owens, director of the OECD's Centre on Tax Policy and Administration, said: "It is not a numbers game; we will not accept second-rate commitments."

The report, published the evening the G20 meeting ended, also included a separate grey list of countries that have agreed to improve transparency standards, but who have failed to implement any measures substantially. The list included Belgium, the Cayman Islands and Switzerland.

Switzerland's President, Hans-Rudolf Merz, said: "Switzerland is not a tax haven. It always meets its obligations and is always ready to engage in dialogue. The fact that Switzerland, as a founding member of the OECD, was never included in the discussions on drawing up lists is particularly strange."

The grey list includes jurisdictions that agreed to the OECD standard a number of years ago but who have yet to sign any agreements that would allow for the exchange of tax information. However, opinions are split as to whether TIEAs are an effective method for creating greater tax transparency.

The rest of the report outlined the white list of countries that have substantially implemented the international tax standard. The list includes the UK, US and China. However, the list also contained the UK Crown Dependencies: Jersey, Guernsey and the Isle of Man. These islands have been subject to much criticism in recent months for their low-tax regimes and the perception that they do not supply tax information readily.

Alternative agreements

Despite the concerted effort by the OECD to improve transparency, critics have described the target of 12 TIEAs as arbitrary and ineffective. To rectify this, tax havens have begun drafting their own agreements with jurisdictions to improve tax cooperation. The panel at the IBA confernce will discuss the different approaches to these agreements to see how effective they can be.

Liechtenstein has stepped forward and has signed an agreement with the UK that will allow UK taxpayers to disclose, without fear of prosecution, any accounts that they have in Liechtenstein banks. This acts as a tax amnesty. The money will only be backdated 10 years and will be subject to standard UK taxation. This is in contrast to previous attempts by the UK government to recover revenue held in tax havens.

Opened on September 1, HM Revenue and Customs' New Disclosure Opportunity allows funds from offshore accounts to be repatriated to the UK. However, details of taxpayers that have deliberately understated more than £25,000 ($36,000) of tax will be published as part of a wider "name and shame" tactic as outlined by Chancellor Alistair Darling in the UK budget in April. Liechtenstein's foray into automatic exchange is likely to put pressure on other tax havens, including Switzerland. It is still unknown how effective these two steps will be in generating extra tax revenue for the UK.

Tuesday's panel sparked much debate between speakers that discussed the virtues of each country's approaches to tackling banking secrecy and fighting against tax havens.

Temperatures rose, partly due to ineffective air conditioning, as tax advisers from the US and Switzerland batted questions back and forth over the exchange of tax information between the two countries.

Panelists also outlined the varying interpretations of tax evasion in different jurisdictions, ranging from tax evasion not being a crime in Panama to the threat of criminal proceedings in the UK and US.

Discussions continued on the approaches taken by governments to eliminate secrecy. Speaking about the efforts by politicians to increase transparency, Boltenko said: "They [politicians] are like the wind. They say one thing and then change their mind."

So we will have to see how much progress is made in this new era of tax disclosure and improved international tax cooperation.

Part two of the panel takes place this afternoon in the Berlin room