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Raising Tax Certainty

Prof. Dr. Stefano Grilli | Advisory Board | ITALY

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What do we mean for "*Tax Certainty*" and *Why* it is essential

✓ *WHAT*

Tax Certainty should be understood as a common framework of rules and procedural standards.

✓ *WHY*

Tax Certainty refers to the **creation** and **maintenance** of **stable regulatory** and **policy frameworks** both for **tax administration** and **taxpayers** to **generate a level playing field** between them.

Tax Certainty is **crucial to stimulate economic growth and job opportunities**.

- From the **taxpayer's perspective**, reliable and stable tax policies, tax statutes and a predictable behavior of tax administrations are important factors for doing business in a country ➔
- From the **tax administrations' perspective**, *Tax Certainty* is an important driver to help and induce the companies to pay their [fair] share of taxes to finance public expenditures.

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What are the goals of "Tax Certainty"

(a) Avoiding double taxation and the uncertainty arising from a company's interaction with different tax systems.

(b) Avoiding double non-taxation through aggressive tax planning strategies, the use of secrecy, the exploitation of regulatory loopholes and the excessive reliance on ad-hoc and opaque rulings

(c) Providing shared and transparent standards for mechanisms that seek to avoid conflicts between tax authorities and taxpayers

(d) Interaction and cooperation between taxpayers and tax administrations in the implementation of international rules and standards and in the evolutions of tax systems to changing business landscape and environment.

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What are the tools of achieve "*Tax Certainty*"

- ✓ **The Toolbox to achieve *Tax Certainty* is quite diverse and the relevant instruments may be placed in the cells of a matrix built along two directions:**
  (a) time
  (b) parties involved

- ✓ **The *Tax Certainty applicable tools* may be divided between:**
  - ➢ actions that may take place in advance (*ex ante*);
  - ➢ actions that may take place after (*ex post*);
  - ➢ actions that may be developed and implemented by the States unilaterally; and
  - ➢ actions that must be developed and implemented by the States bi-(or multi) laterally;

✓ ***Ex ante* Actions** (“***Early Tax Certainty***”)

(a) Rulings issued by the competent tax authorities to clarify the interpretation and application of a domestic law provision or of an international agreement.

(b) Coordinated Risk Assessments amongst the competent tax authorities.

(c) Early consultation among competent authorities.

✓ The common rationale of such tools it that they aim to ensure (i) an early coordination between tax authorities (ii) to reduce the compliance costs for MNE Groups and (iii) to improve efficiency in the allocation of resources to tax audits

➔ **Dispute Prevention** focuses on early intervention to avoid potential conflicts ➔ *To prevent is always better than to cure!*

- ✓ *Ex post* Actions

  (a) Mutual Agreement Procedure

  (b) Dispute Resolution Mechanisms

- ✓ The common rationale of such tools it that they aim to ensure (i) an early settlement of the litigations with the aim of (ii) reducing litigation costs and improving efficiency for both MNE Groups and tax authorities

✓ **<u>Unilateral Actions</u>**

(a) **To align domestic tax rules with international standards and bilateral treaties (*e.g.* TP rules, PE definition, FTC rules, Hybrid Mismatch rules)**

(b) **<u>Enhanced Engagement Schemes</u>** ***e.g. cooperative compliance programmes / public advance rulings / Compulsory dialogue with taxpayers before issuing notice of assessment***

(c) **To provide <u>domestic alternative tax disputes resolutions mechanism</u>**

✓ Bi-(or Multi-)lateral Actions

They are preferable over unilateral Actions since they provide more certainty to the taxpayers.

(a) Mutual Agreement Procedure

(b) Bilateral and Multilateral Advance Pricing Arrangements

(c) The International Compliance Assurance Programme

(d) Joint Audits

(e) Country-by-Country Reporting

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Call to Action

"*EARLY TAX CERTAINTY*" and "ALTERNATIVE TAX DISPUTE RESOLUTIONS BINDING MECHANISM"

- ✓ BRI Member States (and possibly also Observer States) should consider to introduce in their domestic law provisions which would provide taxpayers with "early tax certainty" tools (bilateral and multilateral rulings / coordinated risk assessments and preliminary consultation between tax authorities).

- ✓ BRITACOM technical committees could develop model rules of domestic legislation to ease the internal legislative process of the States involved and to promote a consistent legal environment for taxpayers.

"Early Tax Certainty" and "*Alternative Tax Dispute Resolutions Binding Mechanism*"

- ✓ BRI Member States (and possibly also Observer States) should sign a multilateral convention providing for a mandatory dispute resolution mechanism and not only a best effort

Alternative Tax Dispute Resolutions Binding Mechanism: Source of Inspiration

- ✓ The language and the mechanics of BRI mandatory dispute resolution mechanism could be inspired by the EU Council Directive 2017/1852 of 10 October 2017.

- ✓ 5 Core Principles:

  (a) Scope: each taxation not in accordance with DTT or any other tax agreement (including investment treaty) in force between the participating jurisdictions

  (b) Mandatory obligation of the participating jurisdictions to resolve the dispute

  (c) Clear and definitive timeline

  (d) Ability of the taxpayers to recourse to national course to unblock the procedure

  (e) Publication of the final decisions