

CROSSING BORDERS

Ian Young reports on the Faculty's international activities

The current recession, and its spread to every country, has shown how interconnected our world has become.

Globalisation has brought untold benefits to the world economy but now individual countries seem to be reaping a terrible reward.

The Tax Faculty was founded nearly 20 years ago and throughout its existence has been actively involved in international affairs and has fully contributed to the work of all the important transnational organisations that work in the tax field.

EU law takes priority

Whatever some politicians and newspapers may say and do, the UK is part of Europe and our major trading partners are largely within Europe. Our tax system has also been subject to overriding control from Europe in the sense that none of our domestic tax laws can be contrary to the EC Treaty with which all UK domestic tax law must be compliant. So politicians who suggest that we have sovereignty over the UK tax system are being somewhat disingenuous and rather economical with the truth. The final arbiter as to whether our domestic law is compliant with the EC Treaty is the European Court of Justice (ECJ) and it has struck down quite important elements of our domestic law over the past 10 years or so. This has been particularly the case since the Single Market was put in place as a consequence of the Maastricht Treaty in the early 1990s. So in recent times our group loss provisions, CFC rules and cross border dividend rules have all been held to be deficient in some respect or other and have had to be modified.

Our involvement with European tax bodies

The Confédération Fiscale Européenne (CFE) is the pan-European body which represents tax adviser bodies including the Tax Faculty. It has had an ECJ Task Force for a number of years which tracks the major decisions of the ECJ and submits position papers to the Court which are then recorded against the relevant judgments in the official EU list of all such ECJ cases.

The Fédération des Experts-Comptables Européens (FEE) is the equivalent pan-European body that

represents accounting bodies but which also has a tax working group in which we participate. FEE has recently established its own ECJ Task Force, of which I am the Chair, to make its own representations to the ECJ.

The CFE is currently carrying out two surveys, one on the Transfer Pricing documentation provisions throughout all the EU countries. The results of this survey will be presented to the European Commission. The second project is going to consider the way Environmental Emissions Trading Rights are being accounted for in the different EU countries. The European Union Trading Rights scheme is the main means by which the EU is seeking to reduce emissions. Getting a better understanding of how the current scheme is working is very important for the European Commission and they are anxious to see the results of the CFE work.

Each year in April CFE hosts a Forum in Brussels to bring together government officials, practitioners and business people to consider current tax issues. This year's Forum has the title 'Crossing Borders' and it will be examining the recent work of the Organisation for Economic Cooperation and Development (OECD), discussed below, the impact of the EC Treaty and ECJ judgments, plus recent domestic moves made by Germany in trying to preserve the integrity of its own domestic tax system in the light of all these international changes.

Working with OECD

The Tax Faculty has been actively involved in the work of OECD, which is the 'custodian' of transfer pricing rules and of the Model Double Tax Convention. This Convention is used by the UK as the template for the majority of its existing 117 treaties which seek to eliminate double taxation when cross border activities are involved.

As more than 50% of world trade is between companies that are associated, and to which the transfer pricing rules apply, the work of the OECD is absolutely crucial to multi-national business. The Tax Faculty has most recently commented on the OECD

work on transfer pricing when multi-national groups of companies restructure their internal operations, for instance reconfiguring their supply chain.

Seven years ago OECD set up a Forum on Tax Administration to seek to improve the efficiency and effectiveness of tax administrations around the world. Among its most recent work was the project on Tax Advisers, or Tax Intermediaries, on which I commented in the February 2008 issue of *TAXline*. The project had started from the premise that tax advisers were undermining tax systems throughout the world by aiding and abetting their clients to avoid paying tax that was properly due. As a result of our active involvement, and that of others, the final OECD report published a year ago recognised that tax systems are now so complicated that without the help of tax advisers, taxpayers would not have a chance of understanding what they are supposed to do, and pay.

Global Accounting Alliance

The English-speaking countries in the world, and Japan, set up a Global Accounting Alliance three years ago to work together in the best interests of their members and in particular those members who moved from their home country to work in the countries of other members of the Alliance. We have been working on worldwide projects that are of relevance to all our members. The first project was in relation to the OECD Tax Intermediaries project where the GAA submitted two representations.

The United Nations

Finally through the CFE we have even become involved in the work of the United Nations. Four years ago the UN upgraded its tax work by establishing a Committee of Experts in International Co-operation in Tax Matters.

The Tax Faculty was instrumental in getting CFE accepted as an NGO (Non Governmental Organisation) affiliated to the UN. As such CFE attends the meetings of the UN Committee of Experts and, in practice, I am the CFE representative. To date this UN body has concentrated on establishing and updating its equivalent to the OECD Model Double Tax Convention: the UN version is intended for use when developing countries are seeking an agreement with developed countries. But the Committee has a much wider brief and is likely in the future to work on ways

in which tax systems can be used to help the advancement of developing countries and play a role in improving governance in those countries.

Some of the (tax) fallout from the current recession

But perhaps we should end where we started with some consequences of the current recession. It is clear that the public finances are going to be in a terrible state throughout the world and every administration will want to make sure that it doesn't let what should be public money – taxes – slip through its hands.

The OECD has had a programme for a number of years in relation to what it called harmful tax practices but which were in essence inappropriate arrangements in tax havens, issues of particular concern being a lack of transparency or effective exchange of information. It drew up a list of tax havens where it wanted to see changes and got the majority of those tax havens to agree to behave in a more acceptable way. A year or so ago there were only three havens still left which were deemed to be non-compliant: Andorra, Liechtenstein and Monaco. Then came the Liechtenstein scandal last February and there is now pressure for renewed action on this front.

The ICAEW Tax Faculty is absolutely against tax evasion but governments often speak of tax avoidance and tax evasion as if they were one and the same thing. Tax Avoidance has been so tarnished by this verbal abuse that it no longer has the meaning highlighted by the Duke of Westminster case in the 1930s. In my view it would be more acceptable for governments to speak of acceptable, and unacceptable, tax planning as a means of distinguishing activities of which they approve, or disapprove. But business and individuals should be free to organise their affairs, within the law, in the way which they consider to be appropriate. Where that dividing line is to be drawn will be a matter of intense debate over the coming months and years and the Faculty intends to participate fully in that debate.

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