

## **Meeting with Paul Morton (Head of Group Tax, Reed Elsevier) on Balance of Competences on the Free Movement of Capital, 23 January 2014**

- **General EU environment**

- Sound environment for business in the EU. Cost of capital generally lowered as a result of EU measures.
- Still some way to go. For instance, recent measures introduced in France (with retroactive effect) restrict the tax deductibility of costs of financing in some circumstances.

- **Balance of competences**

- Balance of competences broadly appropriate from a business perspective. Capital can be moved very freely in the EU and feel far less constrained than in some parts of the world. It was also helpful that the UK still has extensive competence in direct taxation (i.e. corporate taxes) and is therefore able to implement a patent box (to encourage investment). Looking forward, there was scope for the EU to catch up with digital developments, for example to address distortions in the imposition of VAT on e-books.
- Country-by-country reporting issue is an example of where the balance of competences with and between EU institutions is important. European Council, advised by national experts and informed by representations from large corporates, reflected widely held concerns that some of the European Parliament's suggestions were not workable.
- "Common Consolidated Corporate Tax Base" was generally considered by some informed stakeholders to be a complex option for global multinationals which might increase rather than reduce administrative burdens but this regime might be suitable for others, particularly less global enterprises.
- There are still problems with current tax regime. For example, the difference in VAT rates paid on paper books (zero) and e-books (standard rate). Reed Elsevier has advocated that this distortion should be addressed. However, whilst the Commission have not been willing to act on this, it is not clear that UK competence in this area would achieve a different outcome.

- **ECJ judgements**

- Some discontent over how the ECJ had arrived at certain decisions. But on balance, the ECJ has had a positive impact on the tax regime in the EU and the scope of its competence is broadly appropriate from a business perspective. ECJ judgements can ensure that EU firms operate on a consistent platform, and have helped the EU create a corporate tax regime which in many respects is more coherent with respect to the taxation of activities in the rest of the world, than, for example, the US tax system.

- The Marks and Spencer group relief case provides a good example. The ECJ ruled that losses incurred by Marks and Spencer in other Member States, which could not be relieved elsewhere, could be deducted from UK profits before tax. This brought the UK regime more in line with other Member States. This was seen as a positive step by multinational firms, although arguably smaller UK firms (domestic only) could not benefit from this. There were other examples of areas where the ECJ had, perhaps, tended to increase uncertainty.
- Particular ECJ rulings do not *immediately* translate into uniformity across the EU in the relevant area, insofar that all member states do not always adapt their domestic legislation to reflect the ECJ ruling. In some cases this may increase differences in tax systems and business uncertainty in the *medium term*.
- The ECJ process is very different to the UK's judicial process. The processes in court are shorter than in the UK system, and are quicker. However outcomes are less easy to forecast, and thus it can give rise to uncertainty for firms whilst a case is being considered (the outcome might have considerable impact on earnings per share and therefore affect valuations). There is also a certain bias towards firms joining action against the tax authorities in the ECJ process, as if you do not join an action, you may not be able to benefit from it.
- **UK staff in EU institutions**
  - UK representation in EU institutions has had a positive impact both for the UK and in terms of the quality of outcomes for the EU as a whole.