World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:15, No:12, 2021

From Shelf to Shell - The Corporate Form in the Era of Over-Regulation

Authors : Chrysthia Papacleovoulou

Abstract : The era of de-regulation, off-shore and tax haven jurisdictions, and shelf companies has come to an end. The usage of complex corporate structures involving trust instruments, special purpose vehicles, holding-subsidiaries in offshore haven jurisdictions, and taking advantage of tax treaties is soaring. States which raced to introduce corporate friendly legislation, tax incentives, and creative international trust law in order to attract greater FDI are now faced with regulatory challenges and are forced to revisit the corporate form and its tax treatment. The fiduciary services industry, which dominated over the last 3 decades, is now striving to keep up with the new regulatory framework as a result of a number of European and international legislative measures. This article considers the challenges to the company and the corporate form as a result of the legislative measures on tax planning and tax avoidance, CRS reporting, FATCA, CFC rules, OECD’s BEPS, the EU Commission's new transparency rules for intermediaries that extends to tax advisors, accountants, banks & lawyers who design and promote tax planning schemes for their clients, new EU rules to block artificial tax arrangements and new transparency requirements for financial accounts, tax rulings and multinationals activities (DAC 6), G20's decision for a global 15% minimum corporate tax and banking regulation. As a result, states are found in a race of over-regulation and compliance. These legislative measures constitute a global up-side down tax-harmonisation. Through the adoption of the OECD’s BEPS, states agreed to an international collaboration to end tax avoidance and reform international taxation rules. Whilst the idea was to ensure that multinationals would pay their fair share of tax everywhere they operate, an indirect result of the aforementioned regulatory measures was to attack private clients-individuals who -over the past 3 decades- used the international tax system and jurisdictions such as Marshal Islands, Cayman Islands, British Virgin Islands, Bermuda, Seychelles, St. Vincent, Jersey, Guernsey, Liechtenstein, Monaco, Cyprus, and Malta, to name but a few, to engage in legitimate tax planning and tax avoidance. Companies can no longer maintain bank accounts without satisfying the real substance test. States override the incorporation doctrine theory and apply a real seat or real substance test in taxing companies and their activities, targeting even the beneficial owners personally with tax liability. Tax authorities in civil law jurisdictions lift the corporate veil through the public registries of UBO Registries and Trust Registries. As a result, the corporate form and the doctrine of limited liability are challenged in their core. Lastly, this article identifies the development of new instruments, such as funds and private placement insurance policies, and the trend of digital nomad workers. The baffling question is whether industry and states can meet somewhere in the middle and exit this over-regulation frenzy.

Keywords : company, regulation, TAX, corporate structure, trust vehicles, real seat
Conference Title : ICCCL 2021 : International Conference on Commercial and Company Law
Conference Location : Barcelona, Spain
Conference Dates : December 16-17, 2021