Stephen Quest and Dan Neidle at the Institute of Directors, Pall Mall

In conversation

In conversation with the EC's Stephen Quest

Dan Neidle speaks with Stephen Quest, the European Commission's director general for tax, about digital taxation, tax havens and Twitter.

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Stephen Quest has a tough job. It's challenging enough being the European Commission's director-general for taxation at a time of unprecedented political and public interest in the tax system. But he is also British, and so finds himself in the centre of the spotlight just as Britain is about to exit stage left.

This, it turns out, is not a new experience. Stephen was working on social policy when the UK got its opt-out, working on the budget when the UK was renegotiating its rebate, and then found himself at the Directorate-General for Taxation and Customs Union (DG-TAXUD) working on corporate tax proposals at a time of deep UK scepticism. So for much of his career, Stephen has found himself going one way, whilst the UK is going the other.

Engaging through Twitter

Stephen and I met on Twitter. The Commission was proposing rules for the mandatory reporting by advisers and other intermediaries of certain 'cross-border schemes'. Clearly inspired by the UK's DOTAS rules, 'Euro DOTAS' went rather further, requiring the reporting of some types of cross-border scheme even if in no way motivated by the avoidance of tax. I wasn't sure if this was a quirk of drafting, but Stephen had quickly made clear it was in fact the intention (our Twitter exchange can be read at bit.ly/2BI30wh.) Whilst I was disappointed by his answer, I'd been surprised and impressed that Stephen and his colleagues used Twitter, not just as a means of circulating press releases, but as a way of engaging with advisers and the wider public. It was, I suggested, unthinkable that an HM Treasury official or HMRC officer would do that. Stephen clearly takes a different approach, viewing engagement with the public as important: 'It gives us a window into what our diverse stakeholders are thinking.' Other national tax authorities are beginning to take the same approach. According to Stephen, the Finnish tax authorities are 'very active' on social media, with the French not far behind.

The changing dynamics of taxation

So it's appropriate that the digital world permeated our discussion. As far as the EU is concerned, digital taxation is 'the hottest topic in town'. I rather churlishly complain that I see more populist polemics than detailed analyses, and that sooner or later hard choices will have to be made. Stephen does not disagree – but it was right to question whether traditional tax approaches were still appropriate at a time when digitalisation was fundamentally changing the dynamics of the global economy, facilitating the emergence of novel ways of doing business. Stephen rejects the idea that there was an element of protectionism in the digital tax agenda. He saw an overriding need to ensure fairness and a level playing field. Clearly designing a tax system able to deliver on that objective is easier said than done. And I can't help but note that the word 'fairness' has a habit of meaning different things to different people.

My hope was that taxpayers, advisers and tax authorities could come together and agree on one thing: it was all the Americans' fault. It was, after all, the dysfunctionality of the US tax system which, on the one hand, imposed a high headline tax rate on US tech groups' worldwide income; but on the other hand, was so riddled with loopholes that most had an effective worldwide tax rate in the single digits. There was broad agreement, Stephen conceded diplomatically, that the US tax system needed reform. Negotiations in Washington were ongoing as we spoke, and Stephen was guardedly optimistic. It's now a month since US tax reform was inked, and still too soon to reach conclusions on how it will play out. My tentative view is that Stephen will find US tax reform has made his job harder, and some of the EU's proposed fixes less effective: CCCTB, in particular.

Digital taxation seemed set to form the policy agenda for 2018, but the last few months of 2017 had been dominated by the Paradise Papers.

Paradise Papers: increased scrutiny

I – and I suspect many other professionals – found it frustrating that the Paradise Papers coverage frequently blurred the lines between tax evasion, tax avoidance and mere gossip. For me, the low point was when Nicole Kidman was attacked for avoiding tax by not using an offshore company. At that point, the debate seemed to me to have eaten itself. Stephen would not be drawn on any particular case. But his view was plainly that what the Paradise Papers have exposed – beyond the juicy details of how politicians, celebrities and the British monarch structured their tax affairs – were the limits of what the public is willing to accept as moral or ethical behaviour.

The public debate on taxation is hardly novel, but the Paradise Papers leaks have brought the legal profession under increased scrutiny. That great jurist Homer Simpson observed that beer was the cause and solution to all life's problems. I suggested to the DG that he would be forgiven for thinking that the tax profession is the cause and solution of all the problems in the tax sphere. Stephen resisted taking the bait. He considers that 'the vast majority of tax professionals are working in a purely professional way'. Lawyers, he recognises, have a 'professional duty' to advise their client to optimise their situation. For Stephen, the key questions are: 'where are the grey zones and are the grey zones being exploited in a way that is legal or moral or ethical?'; and, crucially 'where do you draw those lines?'

Legal is not necessarily synonymous to morally acceptable – the Paradise Papers are a case in point. Undeterred by the difficult nature of these questions, Stephen encourages a more active participation by the legal profession in the public debate. 'Everybody has a role to play,' he says, whether it is tax professionals, businesses, NGOs or citizens.

Priorities

We ran through the other active DG TAXUD files: the financial transaction tax, the CCCTB, implementation of the Anti-Tax Avoidance Directive (ATAD) and ATAD II, and the ongoing blacklist discussions.

The CCCTB would continue to be one of the Commission's top political priorities. Here, Stephen and I agreed upon little. He sees the CCCTB as a major structural reform of the corporate tax landscape in Europe – a revolutionary change that would be both a simplification and a counter to profit shifting and arbitrage. I see it as an overly bold experiment, with an unknown impact on member state tax yields, but which can't (even in principle) counter profit shifting to outside the EU.

Common reporting standard

Moving the discussion beyond Europe, I raised the issue of the common reporting standard (CRS) and, in particular, its implementation across the world. I saw it as the most important and, most likely, successful counter to tax evasion in recent times. This was not an EU initiative, although of course it was one that many member states had a leading role in developing. Was there a role for the Commission in taking CRS forward? Stephen confirmed this was indeed an area of keen interest. There were two main strands to the Commission's external strategy on taxation, of which CRS formed a significant part. The first was a positive, capacity building strand, involving cooperation with third countries – particularly developing countries – to help them build better tax administrations. And the second? The so-called 'black list'. Needless to say, this listing process was highly political, but whether or not a jurisdiction was implementing CRS would be an important component of the Commission's assessment.

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Few could argue with that, at least when applied to jurisdictions that would plausibly be used by tax evaders. I suggested that we were not far away from the end of tax haven secrecy, given the number of countries that had signed up to CRS, the pressure that was on the others, and the steady series of leaks from tax haven advisers. Stephen was more cautious. Whilst progress had been made on secrecy, and commitments made, the next step was monitoring implementation, so as to be able to demonstrate that everybody is playing by the same rule book.

Of course, the modern transparency agenda went further than CRS and included, for example, the increasingly vocal demand that all countries have open beneficial ownership registers for companies. This seemed to me a slightly unfair demand to make of small jurisdictions given that, before last year, there was no country in the world with such a register. Stephen was phlegmatic: public outrage at recent scandals meant that, fairly or not, there was an unprecedented pressure for change, and the pace of that change was necessarily rapid.

But once one stepped away from transparency and reporting rules, and started looking at the substance of particular tax regimes, it was hard to avoid getting into highly political territory. I asked Stephen if he considered that having no corporate tax was itself a harmful practice. His view was that zero tax rate regimes were not in themselves harmful; it was the extent to which they were used to create offshore structures with no real economic activity behind them. I pointed out that in relation to pure financial instruments, or other instruments that generate passive income, there was no need for economic activity to generate the income. Stephen readily agreed that created additional complication, but – understandably – would not be drawn further.

What's next?

I asked what else was on the horizon. In September 2017, the UK introduced a new UK corporate criminal offence: failing to prevent the facilitation of tax evasion.

Has there been any suggestion that something similar might be taken up at a European level? At least in the foreseeable future, Stephen thinks it is unlikely. There are limits to the competence of European Union institutions, and 'tax sovereignty is something that the member states guard very jealously,' he explains. Reconciling tax sovereignty with harmonisation seems to be an impossible conundrum, but not the only one that legislators face.

DG TAXUD's first priority was to push forward and seek adoption of the initiatives they'd already presented: CCCTB, transparency rules, and so on. But that was not the end of it. The pieces are moving on the digital taxation board: the consultation of the Commission ended in January, so we can expect the Commission to give its verdict in the following months. 'We're committed to coming forward with our thoughts on that.' I remarked uncharitably that the three options all looked very flawed; Stephen was too much of a diplomat to be drawn.

The other key priority was implementation: checking that the member states actually implemented what they had promised. This is particularly important for initiatives such as ATAD, where the measures were highly complex, and even small differences between member states could be arbitraged by the more aggressive taxpayers.

This is probably the moment advocates of unitary taxation have been waiting for. The press and public are more focused on tax than ever before. France and Germany are fully backing CCCTB, when the influence of the US and UK (who have been historically opposed to it) is much diminished. There is clear buy-in at the most senior levels of the Commission, and their plan is more pragmatic than it has been in the past, with staged implementation to persuade waverers that this is not a step into the unknown.

I continue to believe that unitary taxation is deeply flawed, and that CCCTB will likely fail – but if it does, it will not be for want of drive or commitment on the part of Stephen Quest. ■

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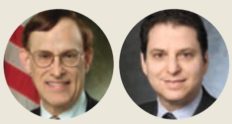

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