

Funding the Future

Tax haven UK is on its way

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The [Brexit deal's arrangements with regard to tax](#) are surprisingly limited, unless they relate to VAT and imports and exports. As far as I can see they are this:

Chapter five: Taxation

Article 5.1: Good governance

The Parties recognise and commit to implementing the principles of good governance in the area of taxation, in particular the global standards on tax transparency and exchange of information and fair tax competition. The Parties reiterate their support for the OECD Base Erosion and Profit Shifting (BEPS) Action Plan and affirm their commitment to implementing the OECD minimum standards against BEPS. The Parties will promote good governance in tax matters, improve international cooperation in the area of taxation and facilitate the collection of tax revenues.

Article 5.2: Taxation standards

1. A Party shall not weaken or reduce the level of protection provided for in its legislation at the end of the transition period below the level provided for by the standards and rules which have been agreed in the OECD at the end of the transition period, in relation to:
 - (a) the exchange of information, whether upon request, spontaneously or automatically, concerning financial accounts, cross-border tax rulings, country-by-country reports between tax administrations, and potential cross-border tax planning arrangements;
 - (b) rules on interest limitation, controlled foreign companies and hybrid mismatches.
2. A Party shall not weaken or reduce the level of protection provided for in its legislation at the end of the transition period in respect of public country-by-country reporting by credit institutions and investment firms, other than small and non-interconnected investment firms.

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Article 5.3: Dispute settlement

This Chapter shall not be subject to dispute settlement under Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions].

That really is lowest common denominator stuff (although I can't help but be amused and paled by the references to country-by-country reporting, for obvious reasons).

The UK is already committed (in its own half-hearted manner) to the OECD's Base Erosion and Profits Shifting programme. And automatic information exchange is now

normal. There is nothing in these commitments that goes beyond the obligations of OECD membership.

As I noted on Christmas Eve, the notable absence is any reference to the EU Code of Conduct on Business Taxation. This was created in 1997, and was heavily UK influenced for a long time. The [EU's summary is that it effectively seeks to ban arrangements](#) that are potentially harmful, including:

- * an effective level of taxation which is significantly lower than the general level of taxation in the country concerned;
- * tax benefits reserved for non-residents;
- * tax incentives for activities which are isolated from the domestic economy and therefore have no impact on the national tax base;
- * granting of tax advantages even in the absence of any real economic activity;
- * the basis of profit determination for companies in a multinational group departs from internationally accepted rules, in particular, those approved by the OECD;
- * lack of transparency.

I have written on this [many times in the past](#) and most especially with regard to its application to the UK's Crown Dependencies, and to a lesser extent to the Overseas Territories. This was because I [was engaged by some members of the States of Jersey to write a report on whether Jersey would comply with the Code in 2005](#) and forecast that it would not. In 2010 I was proved right and it had to change its laws, as did the Isle of Man and Guernsey. What they had proposed included ring-fences of classic tax haven type that clearly contravened the Code.

Now it would seem that these ring fences are permitted again, both within the UK's tax havens and within the UK itself. No wonder the government is making such a song and dance about the fact that so-called 'freeports' will be a major part of the post-Brexit UK economic landscape. The aim is to introduce tax havens on the UK mainland now. [I have discussed the dangers, here.](#) I now suspect that these will be much more abusive than the government implied in 2020.

It would seem that tax haven UK is on its way. Lowest common denominator abuse is the stock in trade of this government at a great many levels. It seems that dredging the buck and seeking a return to the old days of tax havens is going to be one of their chosen weapons of aggression. I sincerely hope the EU are ready to retaliate. Blacklisting will not be enough. Tax withholding should be their preferred weapon of choice, making sure financial flows to the UK are taxed before arriving here. Only this might be effective.

This could get very ugly.