BRUSSELS I **JUNE 2019**

1. OECD Programme on Digital Taxation

The OECD has published the work programme on the next steps on taxation of the digital economy. The document sets out the organisation of the OECD work for the next while as well as modified proposals for profit allocation and nexus rules that take into account tax challenges of the digital economy.

Crucially, the OECD acknowledges the political imperative on reaching an early consensus, considering that the rules will have an impact on revenues and the overall balance of taxing rights among jurisdictions. In recognition of the difficulties in reaching such a consensus, the OECD highlights that the pathway forward will require “an early political steer”. The document further sets out that in addition to the technical work, a political engagement and endorsement would be required as the interests at stake for members go beyond technical issues.

Regarding the profit allocation methods, the document no longer operates with the proposals set out in the early- 2019 report, i.e. marketing intangibles and users contribution approach, introducing three similar concepts instead:

- Residual profit splits (modified residual profit split method)
- Fractional apportionment method
- Distribution-based approaches.

On the new nexus rules, the programme indicates that the OECD is considering new Permanent Establishment rules to take into account digital presence, hence potential modifications to articles 5 & 7 of the OECD Model Tax Convention. The second pillar of residual BEPS issues aims to address further corporate base-eroding practices, with establishment of income inclusion rule and tax on base-eroding payments.

The document was approved by 99 member countries and jurisdictions and 10 observer organisations of the Inclusive Framework and was agreed at the plenary on 28-29 May. It will be presented by OECD Secretary-General Angel Gurría to the G20 ministers in Japan on 8-9 June. “For a solution to be delivered in 2020, the outlines of the architecture will need to be agreed by January 2020”, the document states.

Commenting, Mr Gurría said of the developments: "Important progress has been made through the adoption of this new Programme of Work, but there is still a tremendous amount of work to do as we seek to reach, by the end of 2020, a unified long-term solution to the tax challenges posed by digitalisation of the economy. Today's broad agreement on the technical roadmap must be followed by a strong political support toward a solution that maintains, reinforces and improves the international tax system. The health of all our economies depends on it."

2. Kenya to Tax the Digital Economy

On 13 June, the National Treasury of Kenya published the country's Budget Statement for the fiscal year 2019 - 2020. In the statement, the National Treasury reflects on the challenges facing Kenya's economy and sets out the priorities for the upcoming years, such as creating more job opportunities, being more efficient managing the country's budget, reducing the fiscal deficit and enhancing economic competitiveness.

Regarding the taxation of the digital economy, Kenya aims to widen the definition of income to include the income deriving from a digital market place. The challenge for the Kenyan Revenue Agency is how to determine value-creation for online services.

Regarding the challenges of the digital economy, the Cabinet Secretary for the National Treasury stated: *"(…) the Kenyan economy, and the world economy at large, is fast changing to keep up with technological advancements. In particular, the digital economy is fast evolving thereby posing challenges to taxation. This (…), is due to the unparalleled reliance on intangibles, the massive use of data, the widespread adoption of multi-sided business models and the difficulty of determining the jurisdiction in which value creation occurs. This has led to erosion of our tax base hence low tax revenue since the existing system is not equipped to deal with these emerging challenges. In this regard, (…), I have proposed a raft of tax measures that are aimed at providing the platform for taxation of income generated from the digital economy so as to boost our revenues for inclusive economic development."*

3. OECD Released Note on Exchange of Information Collected Under the MDRs

On 27 June, the OECD released the International Exchange Framework for Mandatory Disclosure Rules on CRS Avoidance Arrangements and Opaque Offshore Structures. The note sets out an international framework to govern MDR exchanges, from a legal and an operational perspective.

The publication also contains a draft of the Multilateral Competent Authority Agreement (MCAA), which will enable jurisdictions that receives information about a CRS Avoidance Arrangement or Opaque Offshore Structure under the MDRs to exchange such information with relevant jurisdictions where the concerned taxpayers are resident.

4. Argentine Tax Incentives

On 10 June, the government of Argentina published in its Official Gazette the Law 27. 506, the so-called Regime for the Promotion of the Knowledge Economy (*Régimen de Promoción de la Economía del Conocimiento*), which enacts tax incentives for high tech businesses.

The law aims to promote economic activities that apply the use of knowledge and the digitization of information supported by advances in science and technology to obtain goods, to provide services and/or to process improvements.

Companies meeting the law's requirements will benefit from several tax incentives, such as: tax stability; a reduction in social security contributions; a one-time transferable tax credit, equivalent to 1.6 times the amount of employer contributions, which could be used to pay VAT and income tax; and a 15% income tax rate. The beneficiaries of the regime will not be subject to withholdings and they will be granted with an exemption from VAT.

5. Brazil and Uruguay Signed Tax Treaty

On June 7, Brazil and Uruguay signed in Brasilia a tax treaty that aims to fight double taxation and prevent tax evasion. The treaty reflects Brazil's efforts to commit to the OECD BEPS minimum standards, namely Actions 5 (Harmful Tax Practices), 6 (Treaty Shopping), 13 (Country-by-Country Reporting) and 14 (Dispute Resolution).

The new agreement will contribute to the internationalization movement of companies in both countries, in addition to promoting a better environment for investments, bringing greater security to businesses in general and attracting more foreign investors.

6. Belgium and India ratified the OECD Multilateral BEPS Convention

On 25 June, Belgium and India deposited their instruments of ratification for the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The BEPS convention aims to combat tax avoidance by multinational enterprises (MNEs) through prevention of Base Erosion and Profit Shifting (BEPS).

On the same day, Morocco became the 89th jurisdiction to sign the BEPS MLI Convention. The BEPS multilateral instrument was negotiated within the framework of the OECD G20 BEPS project and enables countries and jurisdictions to swiftly modify their bilateral tax treaties to implement some of the measures agreed.

7. 4th International Taxpayers Rights Conference – Minneapolis 23-24 May 2019

The 4th International Conference took place in Minneapolis, United States following the previous annual conferences in Washington, Vienna and Amsterdam. The theme of the conference was taxpayer rights in the digital age and there were panel sessions on Big Data, Whistleblowers and vulnerable taxpayers. The Conference also saw the update of the IBFD Observatory of protection of taxpayer rights. The Observatory has been established to continue the work first begun at the International Fiscal Association Congress in 2015 which monitors the extent to which individual countries observe best practice and minimum standards over a range of interactions between tax authorities and taxpayers in twelve key areas. The annual evaluations are then launched at each year's International Taxpayer Rights Conference. The 12 monitored areas consist of:

- Identifying taxpayers and issuing tax returns
- The issue of tax assessments
- Confidentiality
- Normal audits
- More intensive audits
- Review and appeals
- Criminal and administrative sanctions
- Enforcement of taxes
- Cross-border procedures
- Legislation
- Revenue practice and guidance
- Institutional framework for protecting taxpayers' rights

The first annual IBFD report was published in 2018, covering the two years 2016 and 2017 since the IFA Congress in 2015 and the latest 2019 report covers the next year, 2018. In addition to the country reports there is also a general report, prepared by Philip Baker QC and Pasquale Pistone, which picks out changes over the most recent year, 2018, covered by the reports. Forty countries are covered in the latest reports plus two further reports covering firstly the European Court of Human Rights and the Court of Justice of the European Union and, secondly, the Inter-American Court of Human Rights which operates across South American countries. An article summarising the role of taxpayers' charters and the associated developments was written by Ian Young back in 2017, available to read here: Taxpayer rights and the role of a taxpayer charter.

The country reports and the general report can be accessed by clicking on the links. The 5th International Conference will take place in Pretoria, South Africa in September 2020.

8. IMF – OECD Tax Certainty Report

The International Monetary Fund (IMF) and the OECD published a joint report on the recent work on tax certainty, as presented by the OECD Secretary General on 8 June 2019 at the G20 ministerial meeting in Fukuoka, Japan. The G20 Leaders reaffirmed the importance of prioritising policies that enhance tax certainty, as a follow-up to previous reports published in 2017 and 2018.

This year's report covers matters related to both tax policy and tax administration, highlighting the importance of dispute prevention (as opposed to dispute resolution), focussing on the integrity, efficiency and accountability of tax administrations, as well as on simplicity of tax rules as key elements of tax certainty.

Building on previous OECD work, the report has sought to link tax certainty with tax morale, in particular with reference to developing countries, developments which were recently welcomed in a joint statement of the Global Tax Advisers Platform (GTAP).

9. US Advances Tax Treaties with Japan, Luxembourg, Spain and Switzerland

On 25 June, the US Senate Foreign Relations Committee voted to advance four tax treaties. The protocols would amend existing bilateral United States tax treaties with Japan, Luxembourg, Spain, and Switzerland.

The following tax treaty protocols were voted: the protocol amending the convention between the US and Japan (Treaty Doc. 114-1), between the US and Luxembourg (Treaty Doc. 111-8), between the US and Spain (Treaty Doc. 113-4), and between the US and Switzerland (Treaty Doc. 112-1).
All tax treaties concern the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

10. EU-Vietnam FTA and IPA Agreements

On 30 June 2019, in Hanoi, two agreements are expected to be signed between the European Union and Vietnam: a Free Trade Agreement (FTA) and an Investment Protection Agreement (IPA). The Council adopted and communicated the decision on 25 June.

The free trade agreement foresees 99% elimination of customs duties between the two parties. Once the FTA is signed, 65% of duties on EU exports will be eliminated and the remaining 34% will gradually be phased out within the next 10 years. On Vietnamese exports, 71% of duties will be eliminated and the remaining 28% of duties will also be phased out within the next 7 years.

The investment protection agreement preserves the right of both governments to regulate the interests of their citizens.

Speaking concerning the Guide to the Free Trade Agreement, Commissioner for Trade Cecilia Malmström said: *"The EU-Vietnam trade and investment agreements are the most ambitious and comprehensive ones that the EU has ever concluded with a middle-income country. As such, they set a new benchmark for Europe's engagement with emerging economies. They also represent a great opportunity for European exporters and investors. Vietnam has a vibrant economy of more than 90 million consumers, a growing middle class and a young, dynamic workforce. It is a market with great potential for the EU's agricultural, industrial and services exports."*

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