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Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

The First Session of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation is currently being held in New York, from 26 April to 8 May. The Ad Hoc Committee's Organisational Session was held from 20-22 February 2024. A second substantive session will be held in New York from 29 July to 16 August 2024.

Input on the work of the Committee was invited by the Chair of the Committee from Member States and other stakeholders, particularly concerning the substantive items in the Advance unedited version provisional agenda. The input received can be viewed here.

In December 2023, seeking a greater role for the United Nations, the UN General Assembly voted in favour of a Draft Resolution on the Promotion of Inclusive and Effective International Tax Cooperation at the United Nations, directly challenging the OECD leadership in international tax matters. The vote on a resolution filed by Nigeria and other developing countries saw a clear divide between developed countries, such as the EU, US, UK and Japan, and the rest of the world.

The UN vote followed an earlier Report from the UN Secretary General, calling for a greater role of the UN in setting the international tax affairs in order to achieve a "fully inclusive" international tax agenda. The report "Promotion of inclusive and effective international tax cooperation at the United Nations - Report of the Secretary-General", Antonio Guterres, UN Secretary-General, contended that enhancing the UN's role in tax-norm shaping and rule setting would make international tax cooperation "fully inclusive and more effective". The Report also noted that the rules developed at the OECD do not adequately address the needs and priorities of developing countries and/or are beyond their capacities to implement.

CFE Forum | Sharing the Tax Pie | 18 April 2024 | Brussels

The CFE Forum took place on 18 April 2024 in Brussels, where attendees were welcomed by CFE President, Ian Hayes, who opened the conference which this year focused on the topic of *"Sharing the Tax Pie: Revisiting the Role of the UN, EU & OECD in Tax Policy; and Taxable Presence Threshold (Fixed Establishment) in Indirect Taxation"*. The Forum brought together two excellent panels of speakers to discuss the allocation of tax base from a direct and indirect tax perspective, examining issues on dividing the tax pie in a digital world and international tax reform.

Keynote Interview with Pascal Saint-Amans

Director of Tax Policy at CFE Tax Advisers Europe, Aleksandar Ivanovski, held a keynote interview with Pascal Saint-Amans to open the Forum, reflecting on the complexities of internal tax reform and negotiations in fiscal policy, and the future direction for tax cooperation.

In particular, Aleksandar Ivanovski and Pascal Saint-Amans discussed the implementation of Pillar 2 and the complexities of negotiation involving multiple countries, the aim of stopping tax competition, particularly for highly mobile activities and intellectual property income. Pillar 1's uncertainty was explored, especially regarding US ratification, with alternative scenarios discussed, including a UN solution and the potential consequences of implementing unilateral Digital Services Taxes (DSTs).

The discussion also touched on the EU's response and the shift in positions of Global South jurisdictions, addressing the needs of developing countries. Mr Saint-Amans expressed concerns over negotiation fragmentation, political dimensions, and the need for certain OECD countries to be more generous and for developing countries to have more realism in negotiations. Mr Saint-Amans also emphasised the importance of tax as a force for good, focusing on tax certainty, pro-growth policies, and addressing inequalities through appropriate regulation.

Direct Taxes Panel - Sharing the Tax Pie

Bruno Gouthière, Chair of CFE's Fiscal Committee, introduced the direct taxes panel and the focus of the panel discussions as being the contemporary challenges surrounding international taxation, the developments at the UN, OECD's Two-Pillar solution, unilateral Digital Services Taxes, the EU Commission's stance in the context of UN-level discussions and the necessity for globally coherent tax governance mechanisms. The purpose of discussions was to explore the status quo of international direct tax issues.

Speakers on the direct tax panel included: Mr. Benjamin Angel Director, European Commission DG TAXUD; Professor Philip Baker, KC, OBE, Barrister and Professor of Law at Oxford University; Ms. Olivia Long, Head of Tax Policy at Matheson LLP (Ireland); and Professor Irma Mosquera Valderrama, Professor of Tax Governance at University of Leiden Law School. The panel discussion was moderated by Mr. Bruno Gouthière, Partner at CMS Francis Lefebvre Avocats and Chair of CFE Tax Advisers Europe Fiscal Committee.

The speakers emphasised the need for greater domestic revenue mobilisation and expressed concerns about the practical effectiveness of current tax measures, particularly the OECD’s Pillar One Multilateral Instrument. Ms Olivia Long provided a high-level overview of the OECD's Multilateral Convention, which assigns new taxing rights to market jurisdictions for large multinational groups with revenues over 20 billion and profit margins over 10%, includes double tax relief and dispute resolution processes, and ongoing political negotiations.

It was agreed that Amount A and withholding taxes present complex challenges in their allocation and implications on international tax fairness. The discussions underscored the complexity of adapting international tax agreements to diverse national tax systems, and the ongoing struggle to find a common ground that respects both sovereign rights and global economic fairness. Pillar 2's implementation poses significant challenges, particularly for developing countries, highlighting the need for clearer guidance and concerns about compatibility with international agreements.

Irma Mosquera Valderrama expressed concerns about the practical implications of the MLI and BEPS measures on businesses, highlighting challenges posed by the MLI, with specific focus on Article 5 (Permanent Establishment) and the principal purpose test, highlighting the disconnect between theory and practice, noting real-life cases where the intended solutions did not materialise as expected.

Benjamin Angel, Director of Direct Tax at the EU Commission discussed the progression of UN talks following divisions between countries, emphasising the importance of not undermining the OECD's two-pillar solution and tax transparency initiatives. He highlighted the EU's agenda to strengthen domestic revenue mobilisation and lessen reliance on corporate income tax, through means such as diversifying tax bases and exploring VAT and wealth taxation.

Unilateral Digital Services Taxes (DSTs) and their implications on international tax agreements were agreed to be of significant concern, with discussions on their potential proliferation, trade wars, and impacts on tax stability if the Multilateral Convention fails. The panel also addressed the utility of functional commissions and subsidiary bodies under the UN for tackling tax issues. Philip Baker argued against the creation of a global tax body, suggesting improvements to the UN structure and better coordination among existing organisations to avoid duplication.

Indirect Taxes Panel: Concepts of Fixed Establishment

Panel 2 focused on the concept of Fixed Establishment (FE) as being central to VAT, but that its scope and definition remain a subject of debate, especially in the digital economy. The speakers discussed that the evolving case law on FE highlights the need for clarity, as businesses face uncertainty despite extensive jurisprudence.

The panel highlighted challenges in practice, including achieving consensus on updates to the FE definition, and the risk of double taxation due to divergent interpretations between Member States. It was agreed that improving dispute resolution mechanisms and preventive methods, rather than legislative changes, may be a more feasible approach to address these issues.

The indirect tax panel featured: Ms. Trudy Perié, Counsel, Loyens & Loeff, Netherlands; Mr. Erik Stessens, Senior Vice President Tax, Mastercard; Dr. Marie Lamensch, Professor of Taxation, Louvain School of Management, UCLouvain; and, Ms. Charlène Herbain from the European Commission. The panel will be moderated by Mr. Jeremy Woolf, Barrister, Pump Court Tax Chambers, United Kingdom, and Chair of the CFE Indirect Taxes Subcommittee.

Ms. Charlène Herbain provided an overview of the concept of FE in VAT, discussing the ongoing debate about the scope and definition of FE, especially in the digital economy. Ms Herbain noted that case law on FE has evolved in waves over time. Businesses highlight uncertainty and need for clarity, despite extensive case law, but Ms Herbain stated that few Member States have raised questions with the Commission about FE interpretation. It was discussed that challenges include achieving consensus among Member States, the binding impact of soft law guidance, and the highly fact-driven nature of FE which may require dispute resolution over rules.

Ms. Trudy Perié and Mr. Erik Stessens jointly presented a comparison of FE vs. Permanent Establishment (PE) in corporate tax, including the requirement for human/technical resources to independently complete transactions for FE, and the higher threshold for establishing an FE compared to a PE. They highlighted concerns about aligning the two concepts, as PE is under pressure in corporate tax, while VAT aims to maintain a high FE threshold. It was agreed that confusion often arises from mixing up the two concepts, which exist for different tax purposes. Various practical examples were presented and discussed by the panellists and conference attendees.

Marie Lamensch discussed preventive approaches like cross-border ruling pilots and SOLVIT mediation as alternatives to address the double taxation risk. The risk of double taxation is clearly identified in case law as an issue to prevent through implementing measures, but solutions are limited due to the lack of explicit prohibition on double taxation in the VAT Directive. Ms Lamensch discussed that updating the FE definition faces challenges, such as achieving consensus among Member States, deciding between legislation vs. soft law guidance, and the risk of 'freezing' the concept by codifying it in law. Suggestions to remove the FE concept altogether and rely solely on primary place of supply rules, especially for B2B transactions where VAT is deductible were discussed, and the focus on dispute resolution mechanisms and preventive methods as an alternative approach.

Ian Hayes closed the conference by concluding that the panel discussions above all highlighted the absolute need for clarity and for a simplified tax system.

EU Elections - 6 to 9 June - #UseYourVote

The CFE has concluded a Partnership Agreement with the European Parliament to promote the 2024 EU elections scheduled for 6 - 9 June 2024, and EU citizens with a right to vote can directly elect Members of the European Parliament from their constituencies.

In a few weeks time the European Union will witness the world's second-largest democratic exercise as citizens cast their votes in the 2024 European Elections. This moment is an opportunity for every citizen to shape the future of Europe, while also helping uphold democracy - because the more people vote the stronger democracy becomes.

Today, the EU Parliament has launched its campaign to encourage voter turnout. The emotional campaign is centred around a four minute video featuring senior Europeans who have witnessed first-hand the transformative power of democracy in their lives. These exceptional individuals wanted to pass on their personal stories - whether they lived through times of oppression or experienced the fragility of democracy - to their grandchildren and the next generation more widely. Together, their testimonies paint a story of how voting is not something we should take for granted and urge the viewer to #UseYourVote. Or others will decide for you.

More information on the voting process is available on the EU Elections webpage.

OECD Labour Tax Report

The OECD has published its Taxing Wages 2024 report. The report provides *"cross-country comparisons of labour costs and the overall tax and benefit position across the OECD. It analyses income tax paid by employees, cash benefits received by in-work families and the associated social security contributions and payroll taxes made by employees and employers, which are key factors affecting the workforce participation and hiring decisions of individuals and businesses respectively".*

Notably, the report shows that:

- *Effective tax rates on labour incomes rose in a majority of OECD countries with the post-tax income of single workers earning the average wage declining in 21 out of 38 OECD countries.*

- *In a majority of countries, the increase in labour taxation was primarily driven by increases in personal income tax.*
- *While real wages declined in 18 OECD countries, nominal wages increased in 37 out of 38 OECD countries, as inflation remained above historic levels.*
- *In the absence of automatic indexation of tax systems in many OECD countries, high inflation tends to increase workers' tax liabilities by pushing them into higher tax brackets and erodes the value of the tax reliefs and cash benefits they receive.*
- *For a single worker earning the average wage, the average tax wedge across OECD countries was 34.8%, ranging from 53% in Belgium to 0% in Colombia in 2023.The average tax wedge for this household type increased by 0.13 percentage points from 2022, marking an increase for the second consecutive year.*

The full report can be accessed here.

Tax Inspectors Without Borders Report Published

The 2024 Annual Report of the Tax Inspectors Without Borders, a joint OECD and UN initiative launched in 2015 to assist developing countries with their auditing capacity and in increasing compliance of MNEs worldwide, was published last week.

The report sets out that work of the initiative has resulted in over 2.3 USD billion being collected in additional taxes, and over 6.05 USD billion in tax assessments by developing countries across the globe. The work has also significantly contributed to advancing Sustainable Development Goals (SDGs) by increasing domestic resource mobilisation. The initiative has completed over 71 programmes in Africa, Asia and the Pacific, Eastern Europe and Latin America and the Caribbean, with 59 more projects in development.

OECD Secretary-General Mathias Cormann said of the programme: *"The report* *we are launching today shows that Tax Inspectors Without Borders helped tax administrations in developing countries generate an additional USD 2.3 billion in tax revenues and over USD 6 billion in tax assessments across 62 jurisdictions around the world since its inception in 2015. We are committed to continuing this work to help all countries enhance their tax administration, transparency and global tax coordination, including supporting their effective implementation of the Two Pillar Solution for a more fair, effective global tax system in a globalised, digitalised world."*

The selection of the remitted material has been prepared by: Aleksandar Ivanovski & Brodie McIntosh