BRUSSELS | 27 NOVEMBER 2023

UN Approves Africa Initiative for United Nations Tax Leadership

The Second Committee of the UN General Assembly voted in favour of bringing international tax cooperation at the United Nations, directly challenging the G20-mandated OECD leadership in international tax matters. Last week's vote on a resolution filed by Nigeria saw a clear divide between developed countries, such as the EU, US, UK and Japan, and the rest of the world.

The resolution was carried by 125 countries in favour to 48 against, with 9 abstentions. Votes in favour or abstentions included Columbia, Chile, Iceland, Mexico and Norway, who are OECD members. Nigeria's diplomats at the United Nations, who introduced the draft resolution on behalf of Africa, said it represents "a beacon of hope for developing nations." “The decades-long fight of Global South countries to establish a fully inclusive process at the United Nations to participate in agenda setting and norm setting on international tax is now a reality. The African Union looks forward to agreeing an effective UN Framework Convention on International Tax Cooperation to urgently mobilise resources for our development”, the African Union stated.

Norway's Foreign Minister Espen Barth Eide told the Financial Times that Norway did not vote against the UN resolution on order to “send a signal” about building bridges with the Global South: “The world is unfortunately becoming more polarised and we are seeing an unhelpful division forming between the west and the rest. We want to connect through a more global agenda. We don't want to contribute to the divide, and we salute the Africa Group for raising the issue as a global issue", Norway's FM stated. The EU and UK have been criticised for attempting to block progress on the proposed UN-led tax cooperation.

Following last week's meeting at the United Nations in New York to discuss the Africa Group's call for a UN Tax Convention, the matter was discussed under the UN General Assembly Second Committee Draft Resolution on Promotion of Inclusive and Effective International Tax Cooperation at the United Nations. The UN General Assembly is aiming for the "establishment of a Member State-led, open-ended ad hoc intergovernmental committee to elaborate a comprehensive UN Tax Convention". The matter is being approached as one of high priority, with a tentative deadline to finish the UN Tax Convention by June 2025. The proposed international cooperation is to have a "comprehensive UN Tax Convention with a holistic scope and sufficient flexibility and resilience to continuously ensure equitable results as the international tax cooperation landscape evolves, establishing clear links between international taxation and other key UN agendas and ensuring the full and effective participation of civil society in the intergovernmental UN tax process to develop a new UN Tax Convention". A concept note setting out international support for the UN Tax Convention can be found here.

It is anticipated that the new ad hoc intergovernmental body would be open to participation to all UN member states, supported by a bureau. The options offered are based on a compulsory and voluntary model, including the drafting of a framework convention.

OECD Statement on International Tax Reform Developments

The OECD issued a statement related to the UN developments in which the Secretary General said they are proud of OECD's record on addressing tax evasion and tax avoidance and supporting developing countries. The statement reads:

"The OECD is proud of its record of achieving consensus-based solutions to address tax evasion and avoidance, stabilise the international tax system and support developing countries. The BEPS Inclusive Framework, now consisting of 145 countries and jurisdictions, has agreed a consensus-based groundbreaking international tax agreement – to make international tax arrangements fairer and work better in a digitalised and globalised world economy. The Two-Pillar solution is designed to help prevent tax avoidance, protect against the erosion of domestic tax bases and tackle illicit financial flows. The OECD remains committed to completing this critically important work and to ensuring the broad and effective implementation of this agreement. The OECD was born from a spirit of cooperation among nations. Building on the widely shared benefits achieved in ending bank secrecy, reducing tax evasion and avoidance and tackling illicit financial flows, we are committed to continue to collaborate with global partners – including at the UN – to strengthen inclusivity and continue to deliver a better and fairer international tax system."

OECD: MNEs Continue Reporting Low-Taxed Profits Even In High-Tax Jurisdictions

---

OECD Report on corporate tax rates indicates that tax incentives and other concessions in jurisdictions with high statutory and average tax rates enable some MNEs to continue paying low effective tax rates (ETRs). The OECD's latest *Corporate Tax Statistics* report and accompanying working paper, *Effective Tax Rates of MNEs: New evidence on global low-taxed profit*, provide new data on global low-taxed profit, a key issue for determining the impact of the global minimum tax. According to the OECD, "the findings highlight how the introduction of a global minimum tax rate would create new opportunities for domestic resource mobilisation for high-tax and low-jurisdictions alike." The Corporate Tax Statistics Report, however, estimates that high-tax jurisdictions – jurisdictions with statutory and average tax rates above 15% – account for more than half (56.8%) of all global profits currently taxed below 15%. High-tax jurisdictions even account for more than 20% of very low-taxed profits – those with an ETR below 5%. These low-taxed profits in jurisdictions with high tax rates, are likely the result of tax incentives and other targeted advantages, the OECD report finds, highlighting the need for further measures like global minimum tax.

European Parliament ECON Report on BEFIT

The European Parliament Economic and Monetary Affairs Committee (ECON) adopted a draft report on the European Commission proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), submitted by Evelyn Regner MEP. The report includes a number of key amendments to the Commission text regarding the threshold of application of the rules, notably by suggesting a lower threshold after the transition period has lapsed: "*The Committee proposes that the common framework of rules should be mandatory for groups with a taxable presence in the Union provided that they have annual combined revenues of EUR 750 000 000 or more based on their consolidated financial statements. Once the transition period lapses, such threshold should be set at EUR 40 000 000 or more, in line with the definition of large groups within the meaning of Directive 2013/34/EU of the European Parliament and of the Council1a . In this way, the scope would thus be targeted at businesses that are most likely to have cross-border activities and, thereby, can benefit from the simplification which a common legal framework would offer. The threshold would also provide alignment with Directive (EU) 2022/2523 for a consistent approach in the Union."*

The amendments also propose introduction of interest limitation rules applicable to the BEFIT group members in an attempt "to reduce the debt-equity bias that can occur via an over-reliance to intra-group debt financing and to reduce the scope for base erosion and profit shifting through excessive interest payments." To guarantee a minimal level of taxation of royalties, a royalties limitation rule for BEFIT group members should be introduced in accordance with the Subject to Tax Rule, as proposed by the OECD/G20 Inclusive Framework in Pillar II, the draft observes. The Commission proposal allows Member States to adjust their allocated share without a ceiling to ensure national policy choices (post-allocation adjustment). The European Parliament, on the other hand, wishes to see introduction of measures that would require Member states to refrain from offering output-based tax incentives such as patent boxes and other IP regimes.

It is expected that the BEFIT proposal, as well as the Transfer-Pricing Directive, would be tabled for discussion under the Belgian presidency of the EU which starts on 1 January 2024.

Next Meeting of the European Parliament Taxation Subcommittee

---

The next meeting of the FISC Subcommittee of the European Parliament will take place on 30 November 2023 from 09:00 to 10:00 CET. The Subcommittee will host an exchange of views with Ms María José Garde, Chair of the Code of Conduct Group on Business Taxation. The exchange of views will address the revision of the Code of Conduct of 8 November 2022, which broadened its scope to include not only preferential tax measures but also 'tax features of general application' and the effectiveness of the Code of Conduct for the EU's work to fight tax evasion and avoidance. Furthermore, it aims to deepen the institutional cooperation between the Code of Conduct Group for Business Taxation and the FISC Subcommittee. The meeting will be livestreamed here.

The Subcommittee also recently published a calendar of meetings for 2024, currently containing dates for Q1 meetings in 2024. Further information on the topics will be made available in due course.

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