Winter 2021
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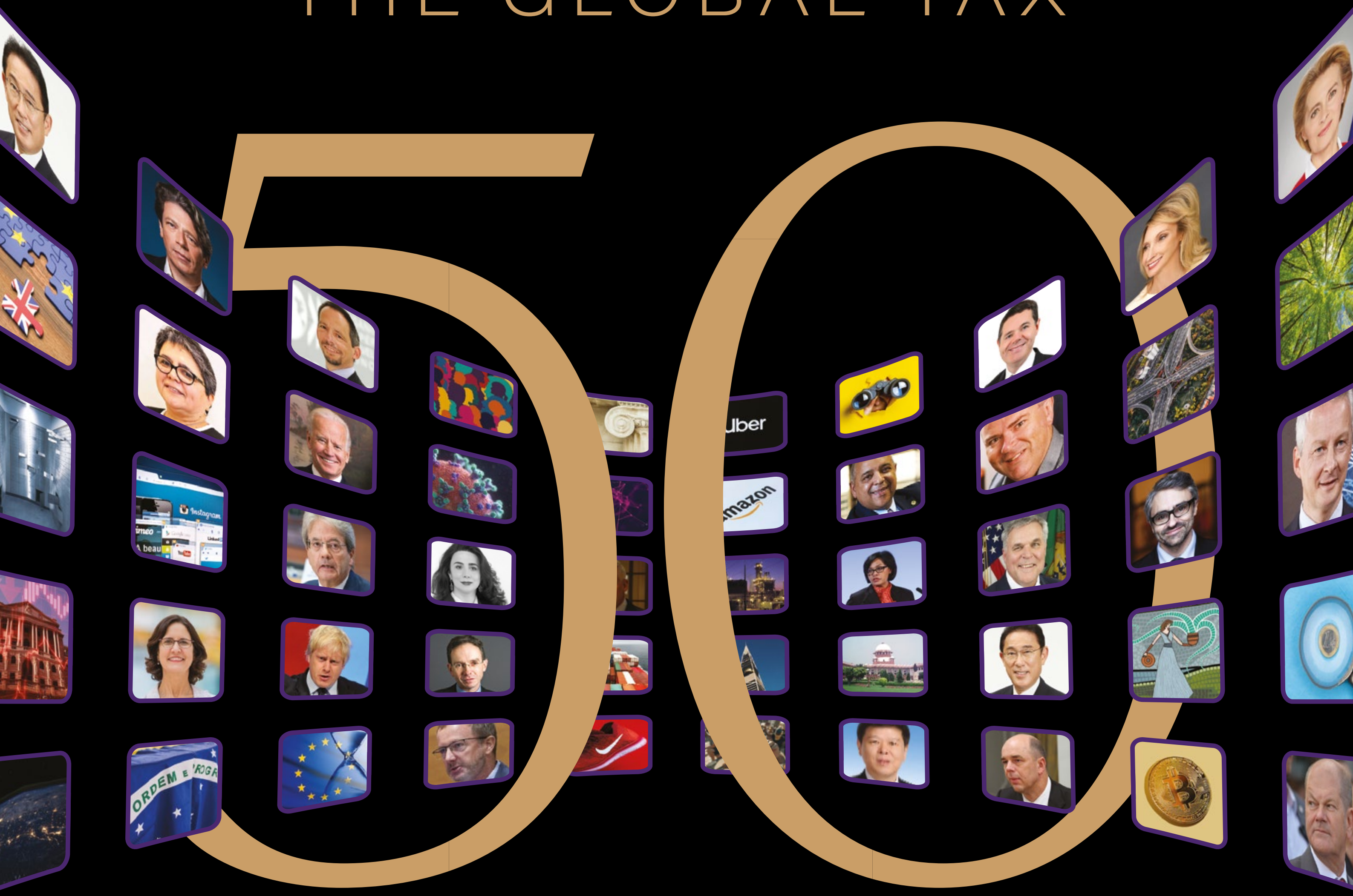

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ITR is published four times a year by Euromoney Trading Limited.

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ISSN 0958-7594

Customer services +44 20 7779 8610
UK subscription hotline +44 20 7779 8999
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Times of crisis

As the Russia-Ukraine war sends shockwaves around the world, businesses around the world are facing more economic disarray than they have for decades. This is the worst crisis in post-WW2 European history, and the world has still not fully recovered from COVID-19.

Although the COVID-19 virus has been contained in many countries, the pandemic is still not over. What is certain is that the economic impact of the virus will outlast its variants. Tax policy will never be the same again.

At the same time, governments are preparing to implement a historic shift in international tax. Following an OECD-brokered agreement on tax reform, the world will be moving to implement the plan for a global minimum tax rate of 15%. US lawmakers are battling to get the proposal through Congress.

The Biden administration has tied the global minimum rate to its Build Back Better (BBB) infrastructure bill. This may prove to be a brilliant tactic or a terrible error. Failing to implement the rate would be a disaster since US support was so crucial to securing the global deal.

Meanwhile, the European Commission is pushing ahead with plans for a directive to make the plan reality. This comes at the same time as the EU is embarking on its 'unshell' directive and launching a consultation on VAT rules.

The pace of change is not limited to the global north. The Indian

Josh White

government is committed to plans to reform how cryptocurrency transactions are taxed. However, many reform proposals in the country have stalled in the past.

The OECD may have got support from 137 countries, but the roadmap for implementation is far from certain. The EU and the US are not the only parties whose support is integral to the success of the deal. As global economies, Brazil, China, and India will play a key part in whether the reform plan succeeds.

Much like the past few years, 2022 will be another year of struggle over global tax reform and implementation. The international tax system is undergoing the most important changes it has faced in a century, but the global system looks shakier than ever amid the Russia-Ukraine war.

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Market insight

Andersen continues global expansion in Africa, Asia and South America

International tax network Andersen Global has continued to expand its presence with addition of offices in several locations.

In Botswana, the group entered into a collaboration agreement with AccPro Accountants. The company was founded by managing director **Craig Granville** and has a presence in four locations around the country: Francistown, Gaborone, Maun and Kasane.

In Cameroon, it combined with collaborating firm Phoenix Advisory. The practice, which provides tax services to individuals, businesses and corporations both domestic and continent-wide, is led by managing partner **Albert Désiré Zang** and includes more than 10 professionals.

In Gabon-based the group entered into a collaboration agreement with tax firm Caudexco, which was established in 2017. With an office in Libreville, it serves companies in industries such as oil and gas, manufacturing, commercial and agriculture and provides tax, bookkeeping, payroll and social declaration services.

In Namibia, entered into a collaboration agreement with Windhoek Accounting and Taxation. The group, founded in 2015, is led by managing partner **Julius David** and is based in Windhoek, though provides services to individuals and businesses operating both in Namibia and internationally.

In Indonesia, the network signed a collaboration agreement with Fajar & Partners, a firm based in Jakarta with three offices operating under the working name of TaxPrime. It was founded in 2012 by senior partner **Soewito** and managing partner **Muhamad Fajar Putranto**, both of whom had previously served as tax officers for Indonesia's Directorate General of Taxes. The team has nine partners, three senior advisors and more than 170 professionals.

In the Philippines it has combined with law firm Cruz Marcelo & Tenefrancia through a collaboration agreement. It has a team that includes 23 partners and more than 160 professionals, serving local and international companies, government units, multilateral organisations and individuals.

Botswana is just one of the latest countries

In Bolivia the network entered into an agreement with Indacochea & Asociados, a firm located in Santa Cruz de la Sierra. Founded in 1991, the firm has six partners and more than 40 professionals.

Schmidt Valois adds partner in São Paulo

Brazilian firm Schmidt Valois Miranda Ferreira Agel Advogados announced the recruitment of a tax partner to work in its office in São Paulo.

Victor Hugo Macedo do Nascimento joins the team having previously spent more than a decade with Veirano Advogados, in addition to working at Trench Rossi Watanabe Advogados, the Brazilian branch of the global Baker McKenzie legal network.

He brings with him more than 12 years of experience in the market working on a wide range of Brazilian tax matters, including those covering both state and local legislation. His work covers a broad selection of industries, including telecoms, food and beverage, energy, and the taxation of import and export operations.

Pellerano Nadal appoints partner and head of tax practice

Dominican Republic law firm Pellerano Nadal announced the addition of a partner to head its tax practice in Santo Domingo.

Caroline Bono joins the practice from fellow Costa Rican firm Pellerano & Herrera, where she had been for more than four years. Prior to that she spent more than 12 years with PwC.

She brings with her more than 15 years of experience in the market, and serves on the National Council of Tax Consultants, the Bar Association of the Dominican Republic and the Board of Directors of REMAX Dominicana.

Sheppard Mullin strengthens tax practice on both coasts

US law firm Sheppard Mullin Richter & Hampton announced the appointment of tax partners in both its New York and Orange County offices.

The firm welcomed **Josh McLane**, based in the firm's California practice, and **Niya Tang** in New York. McLane's work is focused on the tax aspects of transactions and reorganisations, including M&A, private equity investments, divestitures, joint ventures, financings, restructurings and bankruptcies. He joins the firm from Kirkland & Ellis, where he had spent more than ten years in two spells over the last 12 years.

Tang's experience includes transactional tax matters, including private equity funds, hedge funds, M&A, divestitures, partnerships and joint ventures, corporate restructurings and financing transactions, and represents clients on a range of tax matters relating to both inbound and outbound investments. Prior to joining the firm she spent almost three years as a shareholder at Greenberg Traurig. Before that, she had roles with Kramer Levin Naftalis & Frankel, Akin Gump Strauss Hauer & Feld and Davis Polk & Wardwell.

The two hires are just the latest in the firm's expansion, as Sheppard Mullin added more than 20 lateral partners in 2021.

Davis Polk makes addition of tax partner to its New York office

The New York office of international law firm Davis Polk & Wardwell announced that it has added a partner to strengthen its tax offering in New York.

Corey Goodman joins the firm from Cleary Gottlieb Steen & Hamilton, where he had been for more than 14 years, most recently serving as partner for almost six years. Prior to that, he worked for four years as a senior analyst at NERA Economic Consulting.

Thanks to his almost-two decades of experience in the market, he brings with him a wealth of experience to his new role, where his focus will be on federal income tax matters, including US and international M&A, joint ventures, spinoffs, bankruptcy reorganisations, refinancings and cross-border and internal restructurings.

DLA Piper strengthens tax practice in Chile

The Santiago office of international law firm DLA Piper announced the addition of a partner to its tax practice.

Amory Heine has joined the firm from Rojas y Cia, where she had served for almost a decade. Previously she had held roles Baraona

Marré Abogados, Carey y Cia and PwC, as well as a brief stint in academia teaching at the Pontificia Universidad Católica de Chile.

With more than 17 years of experience in market, Heine is able to advise clients, both in Chile and globally, on corporate and personal tax planning, including providing guidance related to inbound and outbound matters and advising on the structuring of businesses, both domestic and internationa.

Heine also has experience in audits and litigation with the Servicio de Impuestos Internos and before the Tax and Customs Courts, the Court of Appeals and the Supreme Court of Chile.

Gibson Dunn promotes tax partner in latest round of elections

International law firm Gibson Dunn & Crutcher has announced that one of those included in its latest round of promotions to partner is part of the tax team.

Michael Cannon, who works in the firm's Dallas office, has a broad transactional tax practice, which has a particular emphasis on infrastructure and project finance tax, M&A and investment funds tax. He has been with the firm for more than seven years, having previously served as a clerk for the US Court of Appeals for the District of Columbia Circuit and Justice Thomas Lee of the Utah Supreme Court.

CBLM Advogados appoints new partner

Brazilian law firm CBLM Advogados announced the addition of a partner to its practice based in São Paulo.

Marcelo Rocha dos Santos joins the team from Demarest Advogados, where he had been for more than 12 years.

As a recently established boutique tax firm, Rocha strengthens CBLM's offering in the market, bringing with him experience in the automotive, construction, insurance, oil and gas, and food and beverage sectors. His practice is focused on tax litigation, particularly tax recovery, compliance with inspections of the Brazilian Federal Revenue, administrative and judicial proceedings before the Administrative Council of Tax Appeals and the Superior Chamber of Tax Resources, both at state and federal levels.

Walkers announces tax partner as next managing partner

Irish firm Walkers has announced that its next managing partner will be a tax partner.

Jonathan Sheehan will take over from Garry Ferguson who completed his nine-year term as managing partner of at the end of 2021. He will remain client-facing, however, and will also continue in his role as head of tax for the firm.

Sheehan has been a partner at the firm for more than seven years. He was previously with Arthur Cox, where he worked for more than 14 years. His work covers tax and legal advice to clients on a range of areas that includes structured finance and capital markets, investment funds, financial services, corporate, banking and real estate.

Two partners part of latest round of promotions by Demarest

Brazilian law firm Demarest announced that two tax practitioners were included in its latest round of promotions to partner.

André Novaski has experience in tax consultancy and federal administrative litigation, especially with regard to the tax aspects of M&A, financial and capital market taxation, electricity sector taxation, wealth planning, international tax law and third sector taxation. He has been with the firm for more than five years and previously had roles Soares Bumachar Soares Bumachar Advogados, Mayer Brown and Pinheiro Neto Advogados.

Roberto Pinatti Casarini has a focus on M&A and financial and capital markets work, especially in tax planning, structured transactions, international taxation, corporate reorganisations and private equity. His previous work experience included stints with Soares Bumachar Chagas Barros Advogados, Tauil & Chequer Advogados and Pinheiro Neto Advogados, as well as several years in academia at the Instituto Brasileiro de Direito Tributário.

Gibson Dunn adds tax controversy group in US capital

International firm Gibson Dunn & Crutcher announced the addition of a tax controversy group to its Washington DC practice.

The team includes **Sanford Stark**, **Saul Mezei** and **C Terrell Ussing** and joins

Gibson Dunn & Crutcher expands its Washington DC practice

the firm from Morgan Lewis & Bockius. Stark will serve as co-chair of the firm's newly formed global Tax Controversy and Litigation Practice Group, along with **Michael Desmond**, who joined it earlier in 2021.

Brigard Urrutia Strengthens its tax team

Colombian firm Brigard Urrutia announced the addition of a partner to bolster the offering of its tax practice

Adrián Rodríguez joined the firm from Lewin & Wills, where he had spent more than 26 years. Prior to that he also spent more than four years working for firms in the US, including Sidley Austin in New York and Baker McKenzie in Chicago. He will co-lead the tax team alongside partners **María Catalina Jaramillo**, **Andrés Hernández** and director **Daniel Duque**.

Rodríguez brings with him extensive experience advising companies and individuals in multiple industries and projects, including international and national corporate taxation, foreign investment and matters related to business reorganisations, M&A and all tax matters related to corporate and commercial law.

Demarest bolsters tax litigation practice

Brazilian law firm Demarest announced the addition of a partner in its Brasilia office who will be focused especially on superior court matters

Angela Cignachi Baeta Neves joins the team from private, where she had spent more than 14 years. Prior to that she had served more than six years with Eduardo Ferrão e Baeta Neves Advogados Associados. She will serve as the head of the firm's Brasilia office.

Neves brings with her more than 19 years of experience in in the market and will concentrate her practice in the tax and litigation areas, particularly in pending cases before the Superior Court of Justice and Federal Supreme Court.

Tax World 2022

Global tax trends in the leadership acropolis

Oleg Rak of Mason Rak explains why, now more than ever, there is an immediate and pressing need for tax leaders to re-imagine growth and inspire.

2022 may be a portal to pecuniary Elysian Fields. The tax market has highly competitive conditions. There is a hunger for strategic tax talent. There is also a brimming pool of extraordinarily qualified senior tax professionals, who are ready to explore new ways of working and relocate overseas part of the Great Resignation movement. Revolutionised leadership that recognises the need for change.

Market optimism in 2021 has shaped different realities for 2022. All strategic growth trends that we took as standard in the pre-pandemic have evolved. We are now witnessing a fascinating and winning blend between the old and the new that makes progress an irresistible and impending direction in 2022.

Like never before, there is an immediate and pressing need for tax leaders to re-imagine growth and inspire. If in 2019 and 2020, time was not usually putting pressure in decision-making on strategic hires, now we clearly see an expedite and intense client demand.

Global tax trends: Vertical growth and our role in strategic recruiting

As a specialist tax search firm, our quintessential role pre-COVID-19 was to act as a strategic advisor that adds value by thinking outside the box to find different and diverse talent to drive in particular horizontal growth. End of 2021 defined by market optimism shifted our role into a catapult for vertical growth of the business in already established tax areas. The last two years' economy knighted as most in-demand tax specialities, M&A tax, transfer pricing (TP) and indirect tax, alongside the undisputable demand for tax and TP technology.

Tax changes sparked a flurry of M&A activity and the need for experienced transaction tax professionals worldwide. In the US market especially, new tax proposals anticipate two waves of M&A deal activity before and after legislative implementation. These will impact the level of M&A activity in 2022, the value and structure of transactions, making the US an attractive destination for M&A tax professionals up for a challenge.

Alongside higher demand for specialised skillsets like M&A tax, there are specific expectations regarding the generalist skillset for tax leaders, especially technology related. The new data infrastructure of the post-COVID-19 world and the bold new global minimum tax framework, where the future of tax is defined equally by automation and transformation, unequivocally demands all tax leaders to integrate strong and prominent data technology architecture in their tax acropolis. Upskilling becomes a given in the context where new global policies and local budget announcements press to reassess, and possibly revamp, entire tax strategies.

Global tax trends: Tech skillset demand and the robust appetite for ESG

The foxtrot between 'technology first' and 'tax data first' demands leaders to step up, be tech-savvy and creative to develop voguish operating models. Amongst many particularities, 'blockchain' knowledge demands accelerated in the last year,

Market optimism in 2021 shaped different realities for 2022

with clients specifically asking strong technology acumen in tax leaders' profiles.

Entire practices are rethinking the relationship between tax, people and technology and tax leaders are looking to acquire tax technology teams and build revenue-generating businesses. For example, we are now witnessing a stronger predisposition towards digitalisation in areas such as tax arbitration, with the WTO Dispute Settlement Practice that promotes a gradual evolution of the international tax dispute resolution system. The technological wave also seems to shape the future of Transfer Pricing Controls via proposals of uniform methodologies for coding advance pricing agreements (APAs) into smart contracts.

2022 will continue the demand for ESG and indirect tax talent to support proposals in the realm of value-added tax and environmental taxes across the EU and US. Environmental tax incentives attract multinational tech-companies in jurisdictions like Sweden, Denmark and Finland where the ESG tax regime becomes a logical international tax competition tool. Carbon tax remains a highly debated topic, with jurisdictions like the UK implementing its own UK Emissions Trading Scheme (UK ETS) following Brexit.

Global tax trends: The war for talent and building strong teams

The war for talent for the above capabilities will carry on in 2022. A common saying is that best people are rarely 'looking' for a job, yet with the 'Great Resignation' movement that started in 2021, we learnt that in the recent times, people's priorities have changed, and they are becoming more and more flexible about their career choices, whether it is local or moving overseas.

Tax teams that are not focused on nurturing their talent and look after their people innovatively, by paying attention and asking transparently what their actual needs are, are due to lose out in only a matter of months. For example, overseas mobility and talent acquisitions we were part of increased by almost 100% in Q4/21 when compared to the same time last year. Flexibility and experience became new drivers for tax professionals worldwide who see change as an opportunity to achieve upside potential and gain a competitive advantage.

The bottom line is: for tax leaders looking into strategic direction for next year, the 2022 global trends regarding hiring, technology and automation demand and strong ESG appetite represent good indicators into where your tax function is headed. For leaders thinking about making a move, the global tax trends should give you an understanding of how important a winning personal leadership brand is and that a career move is natural for your progression on a professional but also personal level.

2022 is the year when the old and the new ways will blend beautifully, with the characteristic speed of change that we are used to in tax. The finish line is never where you think it is.

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CHILE

PwC Chile

Rodrigo Winter Salgado and
Patricio Treuquemil Carimán

Issues new regulation on residence, domicile and loss of domicile

In Chile, a tax resident or domiciled is subject to Chilean taxation on a worldwide income basis which means both local and foreign sourced. Pursuant to Law No. 21.210/2020, residence and domicile definitions were substantially changed and some other clarifications on acquisition and loss of residence were made by means of circular letter No. 63/2021 and exempt resolution No. 133/2021 both issued by Chilean IRS.

Prior to 2020, the Chilean Tax Code defined resident as any individual who remains in Chile for a period of six months within a calendar year, or more than six months in total within two consecutive years.

From 2020 onwards, the law provides that residency will be acquired by any individual who remains in Chile, either permanently or not for a period not exceeding from 183 days within a 12-month period. This is an objective test.

Please note that domicile concept is not included in a tax law but instead in the Chilean Civil Code which defines domicile as the residence attached with the *animus* to remain within the country. This is a subjective test.

Please note that the Chilean Civil Code mentions that the domicile is not lost if two joint requirements are met: (i) the individual preserves its family; and (ii) the main source of income in Chile. Prior to 2020, the Chilean IRS interpreted that the domicile was not lost only if the individual preserved its main source of income in Chile without referring to the family part of the test which, in our opinion, was arguable.

> "These changes will help Chile to comply with OECD standards and help to provide more certainty on the loss of domicile from a taxpayer and tax authority standpoint"

Due to the above, from 2020 the tax law was amended stating that a Chilean individual will not lose domicile if its main source of income remains in Chile without mentioning the family part of the test. In our opinion this change was made in order to provide a more robust legal support to the argument of the main source of income in Chile without considering the family part of the test.

Article 103 of the Chilean Income Tax Law provides that the Chilean resident or domiciled losing such status is obliged to file a tax return before leaving the country on the proportion of income earned within the year.

The compliance of this provision was in fact impossible since the Chilean IRS did not have a procedure to file a tax return before the normal tax period (April). Thus, in practice, taxpayers used to file the tax return after leaving the country in April of the subsequent year considering only the proportion of the income earned while they were residents or domiciled.

Exempt resolution No. 133/2021 provides that taxpayers losing domicile should make a filing to the Chilean IRS, prior to leaving the country, explaining the arguments to support this tax condition and filing a tax return with the proportion of the taxes to be paid in Chile. It is important to bear in mind that this filing does not exempt taxpayers to review their tax situation and file an annual tax return in April of the next year and subsequent periods depending on the tax residency test.

In our opinion, these changes to residence and domicile concepts will help Chile to comply with OECD standards and help to provide more certainty on the loss of domicile from a taxpayer and tax authority standpoint.

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US OUTBOUND

KPMG in the US

Mark Martin and Thomas Bettge

Pillar one's Amount A – a revolution in TP controversy

As far as tax certainty is concerned, the October 8 statement from the OECD/G20 Inclusive Framework on BEPS (IF) does not at first glance seem to contain much. Only two paragraphs are devoted to the topic, and the bulk of these are taken verbatim from the earlier July 1 statement. Yet unpacking these paragraphs reveals a vision for dispute prevention and resolution that will upend how taxpayers within the scope of Amount A handle controversy.

> "The October statement outlines a vision for tax certainty that would completely change how in-scope taxpayers deal with cross-border controversy"

The pillar one blueprint of 2020 contained a detailed proposal on tax certainty. As we detailed in a previous article, that proposal envisioned a two-stage panel process in which a quasi-arbitral determination panel would provide a mandatory and binding backstop to an initial review panel recommendation.

The July statement (also covered in a previous article) did not endorse design details, restricting itself instead to a high-level commitment to mandatory and binding dispute resolution, and it remains unclear what form the Amount A process will take. Details such as timing and panel composition, as well as a more fundamental question of whether the blueprint's two-tier panel system will be retained, have yet to be addressed. Finding the best answers to these open issues is crucial to helping ensure the administrability of Amount A.

What the October statement does tell us can be summarised as follows:

- There will be mandatory binding dispute prevention and resolution mechanisms for Amount A;
- Those mechanisms will cover core Amount A issues (e.g., revenue sourcing, identification of relieving jurisdictions, etc.) and 'related issues', which include transfer pricing (TP) and permanent establishment disputes; and
- There will be a limited opt-out for certain developing countries.

The July statement acknowledged that an opt-out was being considered, and the October statement reflects a compromise: it confirms that an opt-out will be allowed, but places guardrails around it.

First and most significantly, the opt-out applies only with respect to 'related issues': even developing countries will be subject to mandatory and binding dispute resolution for core Amount A issues.

Second, the opt-out is limited to developing countries with minimal bilateral treaty disputes that are eligible for deferral of peer review under BEPS Action 14. Eligibility for the opt-out will be reviewed regularly, and once a jurisdiction becomes ineligible, it loses its eligibility going forward. In other words, once a developing country has enough bilateral dispute resolution experience, it is permanently within the scope of the mandatory Amount A procedures.

More significant for multinational enterprises is the fact that the mandatory process covers related issues as well as Amount A. Although this formulation was included in the July statement, its significance has generally been underappreciated.

Due to the operation of the marketing and distribution safe harbour and the rules to eliminate double tax, it would appear that most cross-border TP adjustments could affect the allocation of Amount A and thus should be regarded as 'related issues'. As a result, practically all TP and permanent establishment issues would be covered by the Amount A process.

"The opt-out applies only with respect to 'related issues'"

For in-scope taxpayers, the ability to obtain certainty for often contentious TP and permanent establishment issues would be an enormous boon, allowing these taxpayers to avoid double taxation and potentially streamline the traditional controversy process.

Of course, making the process workable will require careful design choices and a prevailing spirit of cooperation. For instance, the IRS compliance assurance process (CAP) is a pre-filing dispute prevention programme that may serve as a model for the Amount A process, but the IRS's experience with CAP has been that TP issues are often difficult to address on a pre-filing basis, and the IRS may require that CAP participants instead pursue an advance pricing agreement (APA).

In the US, bilateral APAs take on average 38.5 months to complete, though completion times for renewals are somewhat better at 32.8 months. Developing a dispute resolution process to cover a much broader swathe of transactions, and securing an agreement that is binding across a much larger group of countries, will certainly be challenging.

Significant technical work remains to be done to create a dispute prevention process that is both effective and timely. Still, the October statement outlines a vision for tax certainty that would completely change how in-scope taxpayers deal with cross-border controversy. It is an admirable goal, and one that the IF clearly envisions will benefit in-scope Amount A taxpayers.

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Global Transfer Pricing Forum

Tax directors gathered at ITR's Transfer Pricing (TP) Forum to discuss the most pressing issues they face and solutions they have found.

Automation offers many transfer pricing opportunities for businesses, including benchmark data, compliance procedures and risk management. Here *ITR* Reporter **Alice Jones** looks at how tax teams are exploring technological solutions to transfer pricing problems.

At the same time, businesses continue to manage the impact of COVID-19 on transfer pricing arrangements around the world. The majority of TP structures have withstood the test of the pandemic, but the pace of change has been accelerated. Here **Josh White** analyses the poll taken at the *ITR* conference.

Most TP structures have survived the COVID-19 crisis

Most companies have managed to keep their transfer pricing (TP) structure and value chains the same despite the impact of the COVID-19 pandemic, according to polls conducted at ITR's Global Transfer Pricing Forum.

Josh White

TP directors at ITR's Global Transfer Pricing Forum said that the impact of COVID-19 had not forced their companies to overhaul transfer pricing structures or alter their value chains. Out of 221 TP professionals, 71% said their company's value chain and TP structures had been unchanged.

However, there were TP directors who expect changes will have to be made in the near future.

A fifth (20%) of respondents anticipate making changes in the future and possibly moving operations to different jurisdictions. A slim minority, just 9%, had already seen their company "near-shore" operations. However, the pandemic has forced changes to how TP teams work.

"COVID-19 has accelerated the digitalisation of the tax and legal function," said David Linke, global head of tax and legal at KPMG International.

"Multinationals now require a digitally enabled solution to global compliance. It has to be globally and regionally consistent in the transfer pricing space," said Linke. "This is not solely a tax and legal trend, it's a business-wide trend."

The importance of automation and technology

The poll found that the pandemic has made technology much more important to the way TP professionals work. Out of 109 respondents, 72% said they use more communications technologies as part of work.

Yet the figures declined sharply when it came to documentation and transparency. Just 21% said they use technology to increase the transparency of their reporting and only 19% said they are using more automation for TP documentation.

This could be because taxpayers were already automating before the pandemic. So the change has not been in the use of new technologies, but pushing companies to rely more on such tools.

Dealing with the consequences of COVID

At the same time, most businesses have had to adjust to the reality of their professionals working remotely. This has created problems for taxpayers in terms of permanent establishment risks and tax residency.

"Businesses have to take a people-first strategy given the health risks of the pandemic," said Linke.

"When you've got people operating out of jurisdictions that they aren't actually doing business in, this could become a presence issue or even a tax residency issue for the company," he explained.

COVID-19 has forced many governments to 'improvise' new rules and guidance to ease the uncertainty businesses face. This has been a positive for many companies, but a lot of businesses have struggled to navigate the uneven TP landscape.

Most TP professionals said that keeping up with changes in different jurisdictions was their main focus. Out of 67 respondents, the majority (51%) said local TP standards cause them the most difficulty, whereas 25% of respondents were more preoccupied with implementing new technology.

Just 24% of respondents said adapting their TP structure for a post-pandemic future was the biggest difficulty they face. The world has yet to enter a recovery phase from the pandemic and will no doubt need to pass new laws and regulations following this crisis.

This is likely to happen on issues such as corporate tax residency rules, where the pandemic has exposed the weaknesses of old standards. As such, national governments and the OECD may have to rethink such rules for the post-COVID era.

"A lot of the residency rules, and the judicial commentary on those rules, are quite old and do not deal with a COVID-19 or post-COVID environment," said Linke. "Those issues have to be addressed within a new paradigm."

Even though TP structures and value chains have been largely unaltered, the COVID-19 crisis has accelerated existing trends and exposed the weaknesses of the international tax system. Nevertheless, taxpayers have weathered this storm for now.

Every crisis has winners and losers

TP technology is reaching new capabilities

Transfer pricing (TP) teams at multinational enterprises (MNEs) are increasingly automating complex compliance projects such as managing country-specific risks, as the technology evolves.

Alice Jones

TP directors are relying on technology to automate increasingly complex processes

Businesses are increasingly relying on TP technology to carry out more comprehensive and complex processes than the simple, repetitive tasks that it has been used for until now.

This marks a step forward for MNE tax teams, although obstacles to adopting the technology remain, as in-house TP specialists at *ITR*'s Global Transfer Pricing Forum explained.

"We are moving away from just automating our repetitive tasks, where we were rolling forward reports or automating our benchmark searches," said one tax director.

"Now we have started to work with bigger compliance items like managing our country-by-country risk or understanding our exposure around the world," they added.

TP teams at MNEs are using a combination of outsourced and in-house solutions to manage tasks including day-to-day operations, tax transparency reporting, and benchmarking. This is an important exercise to improve efficiency but it is also necessitated by the demands of tax authorities.

Tax administrations around the world are becoming more sophisticated and placing a greater emphasis on data and analytics, explained a second tax director and TP specialist.

A third panellist gave an example of how using technology – in this case, from Swiss-based Optravis – helps their team to complete calculations for operational TP for tangible goods. The team use what the panellist termed a "basket approach" with the transactional net margin method (TNMM).

The profit margins for a business unit are identified and transferred into the enterprise resource planning (ERP) system – in this case, SAP – via a condition table. This allows the SAP system to refer to this profit table whenever a tangible good is sold between affiliated companies, to draw the respective profit markup.

While this can produce varying results depending on the profit contribution of individual articles, the tool is still able to calculate in total the overall profit contribution for the articles, and to deliver the target margin corridor.

Obstacles and difficulties

There can be obstacles to investing in TP automation as an MNE. Tax teams, and particularly TP-specific teams, can be relatively small compared to the size of an MNE, and corporate executives can be resistant to investing time and money into tax technology, as the third panellist explained.

"The approval processes we have to undergo, as a comparatively small part of the organisation, to introduce a new system like an operational TP management tool, which is drawing on confidential data… is not easy and may take months," said the TP expert.

Tax teams are sometimes required to provide documentation and even audit reports, as well as investing time and energy into persuasive discussions with senior management.

"This should not be underestimated by companies when they embark on the journey to a fancy-looking management tool or IT tool to steer or control their transfer prices," said the panellist.

Involving IT colleagues at an early stage of the project can allow them to raise concerns and offer advice before too much time has been invested.

A second difficulty that panellists raised is that the speed at which TP automation is evolving is significantly slower than the speed at which international legislation is evolving. This includes the OECD's BEPS project, country-by-country reporting (CbCR), and the Directive on Administrative Cooperation (DAC6).

Panellists emphasised the importance of future-proofing technological investments, ensuring they are flexible and offer the opportunity for further expansion. Planning ahead is the key to success in this area.

What can help?

Panellists agreed that the best place to start with technology is by automating simple and repetitive processes, such as local files. Meanwhile, a fourth in-house TP specialist advised that tax directors should consider two points: the scope of the project, and any synergies that could exist.

The scope refers to being clear on the objective of the technology, before shopping around or building a business case. In some cases, this could mean learning about other areas of the business to ensure the solution works holistically.

"I needed to learn about the accounting processes, about the controlling processes, first before I was able to define what it is that I would like to get out of my solution," said the TP specialist.

This could also help with the TP specialist's second piece of advice, which is that tax directors should look for synergies with other areas of the business such as the treasury or accounting departments. It could be easier to acquire a budget and approval if multiple areas of the company would benefit from the technology.

The scope of automation to complete TP functions remains limited. For example, the technology cannot automate benchmarking for TP teams, although it can help with the process.

However, tax directors hope this will come in time. "I see the future as us adding more and more technology," said the fifth speaker on the panel.

Another item on tax directors' wish-lists is a tool or software that can integrate the different pieces of technology that TP teams use for processes such as the operational cycle, or benchmarking.

All this is yet to come, but panellists at *ITR*'s event were optimistic that technological advances will continue to ease the burden on TP teams. Yet, as progress will be incremental, MNEs will benefit from a future-proofing approach when investing in technology.

GERMANY

NERA Economic Consulting

Yves Hervé, Philip de Homont and Salem Saljanin

TP of manufacturing entities in automotive supplier industry – New approaches

Two contradictory TP models in the automotive supplier industry

Original equipment manufacturer (OEM) customers generally request to be invoiced by their suppliers from manufacturing sites geographically close to the OEM's own plants. For the transfer pricing (TP) of automotive suppliers, this means the relationship between the headquarter entity (HQ) and local manufacturing entities is of paramount importance. However, in practice, different companies have developed two very different – even contradictory – approaches.

The first approach is a decentralised operating model in which the local manufacturers are considered the entrepreneurial entities. They license the technology for a (typically low) royalty rate and source certain central support services from the HQ on a (also low) cost-plus basis. Typically, both transactions will be benchmarked through traditional plain-vanilla database searches. Consequently, most business upside chances and downside risks accrue to the manufacturing entities, which, according to this model, also supposedly control the pursuant risks.

The opposite approach is a centralised operating model in which the local manufacturer is effectively considered a (low-risk) contract manufacturer, while the HQ company earns the bulk of the residual profit. This is achieved by flexible royalty payments and service charges such that the manufacturer is left with benchmarked low-risk contract manufacturing returns, irrespective of local market developments and risks such as capacity utilisation. This implies that the HQ is presumed to control the entrepreneurial risks that impact the business development of the manufacturer.

Increasing tax risks due to the DEMPE analytical framework

Tax auditors in countries with a strong automotive industry often find both approaches in the various groups they audit—even between competing groups with similar business models and similar decision-making by the respective HQ and local manufacturer. Such inconsistencies suggest that the TP must be flawed in one group or the other – or both.

Tax authorities interested in high local tax revenues can be biased towards certain outcomes. Tax inspectors who audit outbound HQ companies may consider central entrepreneurial models to be more appropriate, while tax inspectors who audit inbound manufacturing companies may have a bias for decentralised license manufacturing structures. These conflicting views invite cherry-picking by tax authorities and makes dispute resolution challenging, as tax authorities will clash with fundamentally opposite views.

The challenge presented by these conflicting models is increased by the recent developments in TP legislation that give tax authorities more powers to reassess the taxpayer's methodology (see previous article on the new German TP Guidelines). In particular, the so-called DEMPE concept implies TP should be based on contributions by entities to the development, enhancement, maintenance, protection, and exploitation of the business value drivers. Since these contributions can be interpreted relatively broadly, it becomes easier to challenge either of the opposite approaches that are so prevalent in practice.

A realistic TP framework

The pragmatic solution is to recognise that, in a post-BEPS world where potential DEMPE contributions could be legitimately suspected to come from entities across the value chain, having an arbitrary black-and-white view about decision-making and risk control functions is not a sustainable or realistic position to achieve dispute resolution and prevent double taxation of multinational corporations (MNCs).

Even for companies where decisions are predominantly concentrated at the HQ level, value creation is, to a significant degree, the outcome of cooperative cross-fertilisation of functions across countries. For example, central research and development (R&D) at HQ benefits from ongoing interfaces, technical know-how and data provision from manufacturing operations in different territories.

A new technological innovation from HQ is pointless if it cannot be embedded into efficient mass manufacturing processes; local manufacturing engineers contribute with their know-how and experience to such efficient integration of technologies. Risks can be controlled centrally at HQ levels through appropriate contracts but, in the end, risk must also be mitigated at the local level. In increasingly globalised virtual functional leadership teams, local managers are often able to influence decisions made at the HQ, and they do not just execute central orders.

Conversely, local manufacturers often critically rely on centrally provided technology, which generally cannot simply be relegated to a secondary 'routine intangible' role. Moreover, the central HQ in practice does not usually provide only routine services, but is deeply involved in managing central value creation activities and key risk-taking decisions.

Therefore, entrepreneurial value results not only from intangible assets in the traditional narrow sense (i.e., protected rights like patents or trademarks), but from synergetic collaboration between functions. The value creation principle embedded in the 2017 OECD TP Guidelines suggests that synergetic benefits should be shared in proportions to the marginal contributions to the respective contributing parties (i.e., the HQ and the local manufacturers). It remains to be determined how such relative marginal contributions can be assessed in practice.

A practical solution approach

Literature on industrial economics and applied practice across a wide range of industries show that concepts from cooperative game theory provide useful tools for fair economic profit allocation in synergetic cooperation settings. Based on the individual case at hand, cooperative game theory can help determine royalty payments and service charges that provide consensual middle ground in comparison to the two extreme solutions usually observed in practice and described at the beginning of this article.

By such solutions, which are firmly aligned by OECD principles to consider DEMPE contributions, MNCs can occupy a middle ground that makes it much easier for tax authorities to agree in tax controversy. An innovative form of applied game theoretical analysis dramatically reduces the costs of subsequent tax controversy for an MNC.

The authors have successfully adopted the 'Shapley Value' concept as a cooperative game theoretical application in several cases to solve tax controversies in Germany. While the approach is innovative, German tax authorities have appreciated the sound balance from such economic analysis and were willing to settle based on the results of the submitted analysis.

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Digital nomad visa – a tax perspective

The digital nomad visa, introduced by virtue of Article 11 of Law 4825/2021, provides a viable immigration option for foreigners to reside in and work remotely from Greece. However, the new legislation does not include any tax provisions, thus its implementation raises questions in relation to tax risks.

The immigration framework

In accordance with the new provisions of the Greek Immigration Code, third country (i.e. non-EU/EEA) citizens who are self-employed, freelancers or dependent employees, working remotely using information and communication technologies with employers or clients outside Greece (digital nomads), may apply for a visa to Greece with a validity period of up to 12 months. The applicants may be accompanied by their family members.

It is important to note that the digital nomad visa does not provide the right to dependent employment or independent business activities in Greece. In practice, this means that holders of a digital nomad visa may only provide services to employers and/or clients established outside Greece.

The digital nomad visa is issued by the Greek consular authority of the place of origin or the place of main residence of the applicant, on a fast-track process. Specifically, the competent consular authority is obliged to respond within 10 days of the relevant request and, on condition that the full documentation has been submitted, to complete the process for the issuance of the visa in one sitting.

The applicant is required to document that they shall provide remote work for clients or employers outside Greece. Additionally, the applicant is required to provide evidence that they have sufficient resources as a stable income, to cover their living expenses during their stay in Greece. The amount of sufficient resources is set at €3,500 per month. If the above-mentioned sufficient resources derive from dependent employment, provision of services or contractor work, the above minimum amount refers to the net income after the payment of the required taxes in the country where the employment or services are provided. The above minimum amount is increased by 20% for the spouse or cohabitant and by 15% for each child.

If the holder of the digital nomad visa estimates that they shall remain in Greece after its validity period lapses, they may apply for a respective two-year residence permit, provided that the prerequisites for the issuance of the digital nomad visa continue to apply. The respective residence permit is issued by the competent authority of the Greek Ministry of Migration and may be renewed for a period of two years, for each renewal. The family members of the main applicant may also issue a respective residence permit.

In both cases, the respective residence permits do not provide the right to dependent employment or independent business activity in Greece.

Taxation of the digital nomad in Greece

In accordance with the Income Taxation Code (Law 4172/2013) (ITC), taxpayers who have their tax residence in Greece, are subject to tax in Greece on their taxable income that arises both in Greece and abroad (i.e. their global income), earned within a tax year.

A natural person is considered a tax resident of Greece if they maintain their permanent or main residence in Greece or their habitual residence or the center of their vital interests, i.e. their personal and financial ties.

Furthermore, a natural person who resides in Greece for a period exceeding 183 days, cumulatively, over a 12-month period, is considered as a tax resident of Greece, retrospectively from the first day of his presence in Greece. This provision does not apply in the case of natural persons who reside in Greece exclusively for tourist, medical, therapeutic, or similar private purposes and their stay does not exceed 365 days, including short stays abroad.

As per the current legal provisions, taking into consideration that the initial digital nomad visa may be issued for a validity period of one year, with the possibility of extension of stay, the holder of the digital nomad visa is liable to taxation in Greece for income arising abroad, if their residence in Greece exceeds the limits set by the ITC.

The Greek tax authorities currently have not provided any clarifications on whether the respective legal provisions shall be amended to exempt holders of the digital nomad visa from being considered as tax residents of Greece.

Permanent establishment risk

As per the ITC, as a permanent establishment is considered the specific place of business through which the entity carries out all or part of its business activities.

Furthermore, in the event where a person acts on behalf of the entity and is authorised to enter into agreements on its behalf, then said entity shall be considered to have its permanent establishment in Greece as regards the business activities that such a person undertakes on its behalf, with the exception of those activities that are set out as exemptions by the ITC.

Depending on the circumstances, there is a considerable risk for a digital nomad to 'trigger' a permanent establishment in Greece for the company by which they are employed or which they represent.

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How is the tax function leveraging automation technologies, and why does it matter?

Tax automation: No longer the future

During 2020, the Luxembourg tax authorities received a total of 317,944 files for natural persons, 306,506 files for legal entities, and 1,329,808 tax forms, and they exchanged more than three million reports with other tax authorities around the world (Rapport d'activité du Ministère des finances Exercice 2020).

Needless to say, in order to process this massive amount of information, tax authorities around the globe are beefing up their automation technologies, focusing on a range of different resources, such as the intensive use of robotic process automation (RPA), extract, transform, and load (ETL), and machine learning (ML).

What are these technologies?

RPA is the use of software to automate high-volume, repetitive tasks. In tax, RPA refers to software used to create automations, or robots (bots), that are configured to execute repetitive processes, such as submitting filings to tax authorities' web portals. RPA is best suited to processes that are transactional and repetitive in nature, high in volume, time-consuming, and well-documented, have low error rates or process variations and have decision-making processes that can be codified, and use structured electronic data (Deloitte, *RPA for Tax*. 2021.).

ETL is the process by which data is extracted from different sources, transformed into a usable and trusted resource, and subsequently loaded onto systems that end-users can access and use downstream to solve relevant business problems.

ML is a technology associated with artificial intelligence (AI). The concept was coined by Arthur Samuel in 1959 and refers to the study of computer algorithms that can improve automatically through experience and use of data. ML algorithms build a model based on sample data, known as training data, in order to make predictions or decisions without being explicitly programmed to do so.

How are they used?

Have you or your company recently received a communication from your tax authorities? Chances are that it was drafted using RPA. Indeed, RPA has already been used by both tax authorities and tax practitioners for some time. For instance, tax preparers often receive pertinent financial information, including tax reporting forms, in a PDF format. Traditionally, preparers spent a significant amount of time manually extracting data from these PDFs and loading it into spreadsheets and systems.

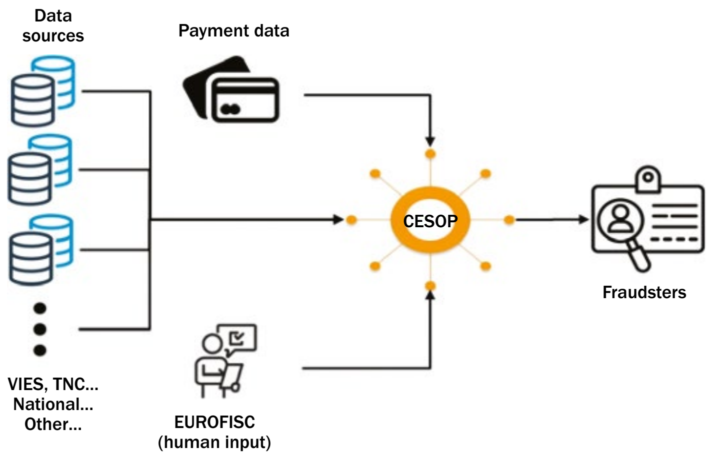
Now, there are already bots in place that automatically read and extract data from such PDF files, freeing up time for more strategic, valuable activities such as review and analysis. The impact of this improved process can quickly be translated into hours saved, enhanced quality, and reduced risk of manual errors. It is a simple yet powerful example of how RPA can streamline a structured process, creating efficiencies for the tax function.

Many tax practitioners will relate to the use of spreadsheets or macros with a high risk of manual error and running time-intensive calculations multiple times. However, greatly advanced tax teams are already applying ETL to the tax function, aiming to minimise or even eliminate manual data input.

Most compliance tax advisors have experienced how data is one of the biggest pain points during compliance season. The process for gathering data can be cumbersome and manual processes are often required to obtain calculation-ready data (Deloitte, *Tax Analytics: Why is Mastery of Tax Data More Important Than Ownership?* 2016.). ETL solutions are already in place to extract data from disparate sources and aggregate it into the format required to complete tax return calculations, potentially resulting in real-time, calculation-ready data with less risk as well as modeling capabilities that allow the technology to re-run calculations in real time. Indeed, an ETL solution that accounts for complexities and interdependencies can bring agility to the tax function in an ever-changing tax environment.

A further example of the use of new technologies in the tax environment is the European Commission's 2020 legislative proposal aimed at enhancing data collection about e-commercial transactions. In order to fight e-commerce VAT fraud, payment service providers (e.g. banks and e-wallets) now transfer information to EU member states about cross-border payments received by economic operators. This information will then be centralised in a European database, the Central European System of Payment information (CESOP).

Figure 1: Central European System of Payment information (CESOP)



Source: IOTA (2020)

The objective of this new measure is to give member states' tax authorities the right instruments to detect possible e-commerce VAT fraud carried out by sellers established in another member state or a non-EU country. CESOP will offer tax administrations a unified and evolving platform that allows advanced analytics operations on available data sources to detect VAT fraud. CESOP will receive billions of payments per quarter and will process this information meaningfully, providing new self-learned indicators, predictive analysis, and future fraud trend forecasting (see Figure 1).

Certain models are already in place helping tax authorities to check tax compliance at the individual level, such as by detecting changes in residence and jurisdiction. For example, it has been publicly acknowledged that the Norwegian tax administration formulated an ML model so that it can automatically detect Norwegian residents who have emigrated from the country without notifying the tax administration and the central government. The model was built using 200 anonymised variables for pre-processing, and the test model achieves a 68% confidence level in identifying those who did leave Norway (true positives) and a 99.5% confidence level in identifying those who did not leave (true negatives). This proof of concept resulted in a list of 23,000 people whom the model estimates would have left Norway without paying their annual taxes.

Why does it matter?

Automation technologies are already a reality of the taxpaying landscape. Although there is no doubt of the benefits that RPA, ETL, and ML are bringing to the table for organisations to optimise the use of their resources and leverage technology for their processes, the fact that tax authorities are already heavily investing and leveraging these technologies has moved them from a 'nice to have' to a 'must have'.

To help CFOs and tax managers navigate through those challenges, Deloitte Luxembourg's Tax Digital Factory has developed tax-specific digital solutions for alternative investment fund (AIF) reports, standard audit file for tax (FAIA or SAF-T), DAC6, and many other tax compliance requirements. These technologies are the stepping-stones to future tax application developments, something for which taxpayers and tax authorities alike should be preparing – starting with the use of RPA, ETL, and ML.

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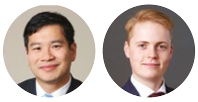

Jian-Cheng Ku and Rhys Bane

2022 Dutch Tax Plan – few policies proposed

The Dutch government noted that the Tax Plan did not contain significant policy proposals, as the current government is defunct and a new government is currently being formed.

The proposals included a proposal to change the moment of withholding of Dutch wage tax for the exercising of employee stock options for non-tradeable shares, a limitation to the amount of dividend withholding tax credits that can be utilised, the abolishment of unilateral downwards transfer pricing (TP) adjustments where there is no corresponding upward adjustment and the implementation of the last leg of the EU Anti-Tax Avoidance Directive II.

On November 11 2021, the Dutch government withdrew the employee stock option proposal and the Dutch House of Representatives voted on proposed amendments to the legislative proposals and the amended legislative proposals themselves. Currently, the legislative proposals were debated by the Dutch Senate (*Eerste Kamer der Staten-Generaal*) on December 13 and 14 2021, with the votes expected to take place on December 21 2021. It is expected that the legislative proposals will be passed by the Dutch Senate.

Utilisation of dividend withholding tax credits

Following a ruling from the Court of Justice of the European Union in a case against France on the discriminatory tax treatment of non-resident taxpayers in the utilisation of withholding tax credits, the Dutch government initially published a decree allowing non-resident taxpayers to obtain a refund of Dutch dividend withholding tax withheld on distributions to these non-resident taxpayers.

The Dutch government proposes to change the rules for Dutch resident taxpayers to align the tax treatment of these taxpayers with the pre-decree treatment of non-resident taxpayers. This means that any withheld Dutch dividend withholding tax can be credited against Dutch corporate income tax payable only up to the amount of Dutch corporate income tax payable. This means if more Dutch dividend withholding tax was withheld than Dutch corporate income tax is payable, this no longer results in a refund. The non-utilised tax credits can be carried forward.

Unilateral downward TP adjustments

The Netherlands has traditionally allowed unilateral downward TP adjustments, without requiring a corresponding upward adjustment. Abolishing such unilateral downward TP adjustments was part of a package of anti-tax avoidance measures proposed by a government committee that investigated the taxation of multinational companies in the Netherlands.

The proposal would see unilateral downwards TP adjustments limited to situations where the taxpayer can substantiate that there was also a corresponding adjustment on the other end of the transaction.

The rules would also apply to distributions and contributions of assets where the state of the transferor does not tax the capital gain upon distribution or contribution, the result being that the assets will only be taken into account in the books of the Dutch taxpayer for the value it was given in the transaction (generally book value).

Following an amendment proposed in the Dutch House of Representatives, legal mergers and demergers, which fell outside of the scope of the original proposal, fall within the scope of the rules as well.

Anti-hybrid rules

The Netherlands has already implemented the majority of the anti-hybrid rules that EU member states have to implemented under the EU Anti-Tax Avoidance Directive II (the ATAD II Directive). The ATAD II Directive requires EU member states to implement the so-called 'reverse hybrid taxpayer rule' as of January 1 2022.

The legislative proposal implements this reverse hybrid taxpayer rule and introduces additional measures in other legislation, such as the Dutch Conditional Withholding Tax Act and the Dutch Dividend Withholding Tax Act, in order to prevent new tax planning possibilities.

Under the proposal, reverse hybrid entities will become fully liable to tax in the Netherlands, with a deduction for income that is taxed in the hands of the participants of the reverse hybrid entity. Entities that may be impacted by these rules are entities that are residents of the Netherlands, but also entities that were established under Dutch law (and are no longer Dutch residents).

Conclusion

Although the 2022 Dutch Tax Plan is not full of policy proposals, it does contain several policy choices that could have been different. In particular, the full utilisation of Dutch dividend withholding tax credits for non-resident taxpayers could have been kept and the Dutch government could have waited with the unilateral downward TP adjustment rules until the development of the OECD's pillar two.

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NORWAY

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Assessing the interest deduction limitation rule with EU/EEA law

The EFTA case concerns the Norwegian interest deduction limitation rule, in force from 2014 to 2019, and whether it is in breach of the freedom of establishment. The outcome is also relevant for the new interest limitation rule introduced in 2019.

Background

The EFTA Surveillance Authority (ESA) concluded in its reasoned opinion dated October 25 2016 that the Norwegian interest deduction limitation rule from 2014 was in breach of EU/EEA law.

The Norwegian government did not agree and maintained that the rule was in line with the EEA Agreement. Due to the introduction of the new interest deduction limitation rule in 2019, ESA closed the infringement case against Norway.

Based on ESA's reasoned opinion, several taxpayers who had been subject to interest limitation (including the plaintiff in the EFTA Court case), requested a reassessment. This was denied by the tax office and eventually, for some taxpayers, by the Tax Appeal Board. The plaintiff in the EFTA Court case therefore brought the case to the Oslo District Court and argued for a referral of the EEA questions to the EFTA Court.

Relevant Norwegian tax law and discriminatory effect

The relevant Norwegian law is section 6-41 of the Tax Act (the TA), which in 2014 limited the right to deduct net interest expenses above 5 million kroner (approximately $583,308) to 30% of the company's taxable EBIDTA (earnings before interest, taxes, depreciation and amortisation).

The rule applies both to national and cross-border group companies. Thus, it is not this rule itself that creates the discriminatory effect. The difference in treatment emerges due to interaction with the group contribution rules.

These rules enable Norwegian companies in a group to reduce the interest limitation (entirely or partly) because the 30% EBIDTA rule is affected by group contributions received. A possibility that is not available to EEA-based group companies. This makes it more beneficial to establish a group company in Norway rather than in another EEA country.

It is established in the ECJ *Oy AA* case (C-231/05) that restricting the possibility to make and receive group contributions to domestic group companies constitutes a restriction on the freedom of establishment. The same should therefore apply when the rules on group contributions affect the interest deduction limitation rule. Furthermore, the restriction (to deny interest deductions) cannot be justified by overriding reasons in the public interest.

Firstly, the consideration of preventing tax avoidance cannot be used as justification because the interest deduction limitation rule also covers interest on loans made on commercial terms and not only wholly artificial arrangements.

Secondly, the consideration of a balancing allocation right between members states cannot justify why a deduction shall be denied in the national and not the cross-border situation. Such a difference is treatment has only been accepted by the ECJ for tax consolidation rules, not for other tax rules such as interest limitation rules. On this basis, the Norwegian interest deduction limitation rule is in our view contrary to the freedom of establishment.

This view is supported by the two recent ECJ cases, X and X (C-398/16 and C-399/16) and Lexel (C-484/19). In both cases the discriminatory effect was due to the interaction between group consolidation rules and interest limitation rules.

Possible consequences of the judgment

The Oslo District Court is not obliged to follow the ruling from the EFTA Court but Norwegian courts normally do if the conclusion is that the interest deduction limitation rule from 2014–2019 is in contrary to the freedom of establishment, the Norwegian government may choose to appeal the case to the Court of Appeal. If not, the plaintiff will be entitled to a reduced interest limitation. Furthermore, other taxpayers that have been denied interest deductions in these years, may request a reassessment.

The EFTA Court case will also be relevant for the current rules, under which group contributions can still be used to limit interest limitation. From 2019, an equity escape clause was introduced which in effect exempts 100% Norwegian based groups from interest limitation. This feature could also be in breach of EU/EEA law as it makes it more beneficial to invest in Norwegian subsidiaries compared to foreign subsidiaries.

The overriding reasons discussed above would in our view not defend restrictions caused by the interaction with the group contribution rules and the equity escape clause that effectively exempt 100% Norwegian-based groups. The EFTA Court would hopefully give guidance that could answer some of these questions too.

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POLAND

MDDP Poland

Monika Dziedzic

Challenging times ahead for taxpayers

The Polish tax system is subject to a wide range of reform affecting both international groups as well as local businesses (known as the 'Polish Deal') from January 2022. The adverse changes were attempted to be balanced by new reliefs. All should be prepared for new procedures, calculations and reporting obligations.

Minimum income tax

Minimum income tax is the most far-reaching 2022 change. The new tax will affect most Polish corporate payers: incurring operating tax loss or with operating profitability below 1%.

Start-ups are exempt from minimum income tax in the first three years. Companies which suffered qualifying extraordinary (30%) decline in revenue, financial and some regulated business, some transport companies, and companies owned by individuals will be exempt from minimum income tax.

The minimum tax rate is 10% of the tax base and will be deductible from the regular corporate income tax (CIT).

The tax base is the sum of:

- 4% of operating income; and
- Related party expenses such as debt financing costs (interest on loans) exceeding 30% of taxable earnings before interest, taxes, depreciation and amortisation (EBITDA) and intangible services and licence fees exceeding PLN 3 million ($756,631) and 5% of taxable EBITDA; and
- The value of deferred income tax resulting from the recognition in tax accounts of intangible assets not yet subject to depreciation to the extent that it results in an increase in gross profit or a decrease in gross loss, decreased by
- Qualifying tax allowances, for example R&D or special economic zone allowances.

Polish holding company capital gain exemption

Polish CIT payers are exempt from tax on gains from the disposal of shares in subsidiaries and in 95% exempt from CIT on dividends received from subsidiaries (the remaining 5% is taxed at 19%), if they hold at least 10% of shares in the subsidiary for at least one year generating the capital gain or dividend. The exemption applies to companies with no shareholders from tax havens and those running a genuine economic activity.

For the exemption to apply, the disposed subsidiary should not be a real estate company and does not own more than 5% of shares in the capital of another company or benefit from tax exemption in special economic zones/Polish investment zone.

So-called Estonian system – less requirements

From 2022 it will be easier to apply the deferral of CIT to the moment of distribution of dividends in companies having no subsidiaries, wholly owned by individuals. The aggregate taxation of both CIT and personal taxation may be in the range of 20–25% depending on turnover.

Flat rate tax on turnover for private entrepreneurs and some partnerships

The amendments make the flat rate taxation based on turnover even more attractive than before. Tax rates from 3% for trading, or 15%, for example, management advisory for turnover up to the equivalent of €2 million.

Tax allowances

The reform introduces several new allowances, for example, robotics/automation, sport and culture, marketing of new products or capital expansion allowances. The allowances allow the deduction of qualifying expenditure more than once. Some of them are limited with an amount.

The standard R&D allowance deduction was also increased to 200% of the qualifying expenditure with no limit. It will also be possible to apply R&D relief to IP box profit.

Using the available allowances may significantly reduce the CIT burden, so it is highly advisable to introduce relevant activities and apply them.

The above changes, together with a set of system changes to personal income taxation, make 2022 very challenging for Polish companies, employees and entrepreneurs.

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ROMANIA

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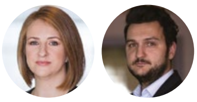

Corina Mîndoiu and Iulian Pasniciuc

To attract digital nomads – how will it work?

Digital nomads or 'employees from anywhere', for whom since 2020, countries such as Estonia, Portugal and Croatia have relaxed immigration requirements, encouraging employees to work locally and offering employees work visas to tax exemptions, are now required by Romania as well.

The Senate has recently approved a draft law that would give employees the opportunity to obtain a temporary residence visa, under certain conditions, some more bureaucratic and complicated to fulfil. The project is good news and a step forward, as the current legal regulations do not contain provisions regarding a possible residence of an 'employee from anywhere', for obtaining a work visa; the existence of a Romanian employer or a beneficiary of services is required.

What are the pros and cons of the legislative proposal and what changes should the Chamber of Deputies, the decision-making body in this case, take into account?

The Senate has established that the digital nomad is a foreigner employed with an employment contract with a company registered outside Romania, which provides services through the use of information and communication technology.

A digital nomad is also a foreigner who owns a company registered outside Romania, within which he provides services through the use of information and communications technology and who can work as an employee or carry out the activity within the company, remotely, by using information and communications technology.

Thus, these nomads can obtain a long-stay visa, if they want to travel and stay in Romania, while continuing to obtain income from performing remote activities.

Documents required

In order to obtain a visa, applicants must meet several cumulative conditions including having the means of support obtained from the activity they carry out, amounting to at least three times the gross average monthly salary in Romania for each of the last six months prior to the visa application filing date, as well as for the entire period registered in the visa, and to carry out activities from which they obtain income, remotely, by using information and communication technology.

The draft project of the Senate does not specify, however, how the nomad will prove to be using information technology.

Now comes the tricky part. Because every digital nomad needs a whole list of documents, in order to obtain a visa: an employment contract concluded with a company registered outside Romania, through which to prove the supply of remote services, a document issued by the employing company or the one they hold, through which to present all the identification and contact data, as well as the field of activity, information on the legal representatives of the company.

The nomad also needs a letter of intent, which must include the purpose of the trip to Romania and the activities they intend to carry out here. The series of necessary documents does not stop here.

A certificate is also required that states that, at the date of the visa application, they or, as the case may be, the company they hold, has paid taxes, fees and other up to date compulsory contributions, and that they are not registered with documents and deeds that have or have had the effect of tax evasion and tax fraud.

Also, the reservation of a travel ticket valid to the destination or the driver's license, green card, proof of health insurance for the entire period of visa validity, with coverage of at least €30,000 is required, and a certificate of the means of support obtained from the activity carried out, amounting to at least three times the gross average monthly salary in Romania for each of the last six months prior to the visa application filing date, as well as for the entire period registered in the visa; proof of accommodation conditions.

The nomad also needs a criminal record certificate or other document with the same legal value. Of course, if the competent Romanian authority finds it necessary to request something else, the nomad must present other supporting documents as well.

> **"At the beginning of 2021, the digital nomad index placed Romania in third place"**

If they want to extend the visa, again there is further bureaucracy. Because the nomad needs, once again, the employment contract, proof of remote work, by using, of course, technology, a document from the employer to present all the identification and contact details of the company, as well as proof of an income of at least three times the gross average monthly salary for the period for which the extension of the right of residence is requested (the first extension of the right of temporary residence is granted for a period of six months).

To clarify

Although, as we have seen, the state intends to request all kinds of documents, the draft law does not mention the digital nomad's family members, the conditions under which they can accompany them and how they can enter Romania. In addition, obtaining a visa is not easy, as it can take up to 60 days from the application filing date.

The impact on the employee's tax status must also be taken into account. Remote work in Romania, for any period longer than 183 days, over 12 consecutive months, could, for example, lead to the treatment of the employee as a tax resident in Romania, but also in the country of origin at the same time, which could cause the employee many problems.

The employee may also be subject to local salary income taxes. The conditions of the existing applicable double taxation treaties may repeal local rules depending on individual circumstances; for example, an international tax treaty generally provides for an exemption for income taxes in the host country for periods less than 183 days, subject to certain conditions.

Problems could also arise in the area of social security contributions. Generally, a person must pay social security in the country where they work. Therefore, the foreign employer should check whether it has local social security reporting and collecting obligations and whether special arrangements need to be made in accordance with the relevant regulations in Romania.

The submission of the draft law in Parliament was motivated by "Romania's huge potential in tourism and attracting professionals" – a justification used by other European countries, which saw nomads as the way to counteract the decline of tourism, the visa for digital nomads being seen as a tool that can attract financial resources to the economy.

At the beginning of 2021, the digital nomad index placed Romania in third place, after Canada and the UK at the top of 'attractiveness of working from home' – with an average broadband internet speed of 188 mb/s, an internet cost of €7.5 and a rent of €323.

Yes, there is potential, only that, as approved by the senators, the draft fails to achieve it. In other words, if we intend for Romania to attract digital nomads, the Chamber of Deputies, the decision-making body in this case, should also consider clarifying the problems that may arise in respect of social security contributions.

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SPAIN

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Complexities of participation exemption and the CFC rules

The State Budget Law for 2021 (Law 11/2020), introduced an important change to the participation exemption rules provided in the Spanish corporate income tax legislation, and the Law 11/2021, on measures to prevent tax fraud, among others, amended the controlled foreign companies (CFC) rules in relation to corporate income tax (and individual income tax). These two changes take effect for fiscal years commenced on or after January 1 2021 and they are related to each other.

Spain is implementing participation exemption rules which affect dividends and capital gains coming from investees. Two types of requirements need to be met if the direct or indirect investee is a non-resident entity: relating to 'participation' (namely an ownership interest, at least 5% of the capital or equity must be held, directly or indirectly, for at least a year uninterruptedly); and to 'taxation' (it must be subject to and not exempt from a tax similar to Spanish corporate income tax at a nominal rate of at least 10% or it must be resident in a country with which Spain has signed a tax treaty with an exchange of information provision).

The Spanish CFC rules consist, basically, of making a Spanish company be taxed in Spain on incomes (described in the Corporate Income Tax Law – and referred to below as 'flowable' income) obtained abroad by a foreign subsidiary.

Broadly speaking, this occurs where (i) the Spanish company has at least a 50% interest (individually or jointly with another related individual or entity) in the equity, earnings or voting rights of a non-resident entity; (ii) the amount paid by that non-resident entity on those amounts of income in respect of a similar tax to Spanish corporate income tax is lower than 75% of the tax that would be charged in Spain; and (iii) all 'flowable' amounts of income obtained by the non-resident entity are together equal to or higher than 15% of its aggregate income.

In one change, Law 11/2020 has reduced the exemption allowed for dividends and capital gains obtained by corporate income taxpayers, whereby any taxpayer receiving those amounts of income will have to include in their tax base 5% of the amount obtained. In another, Law 11/2021 has deleted the provision expressly stating that those dividends and capital gains were not treated as income qualifying for the CFC rules (they were not 'flowable' income).

It seems from this that, as a general rule, Spanish companies will have to include in their corporate income tax bases 5% of the dividends and capital gains obtained by their foreign subsidiaries (at least 50% owned) which are holding companies (at least 15% of that subsidiary's aggregate income comes from dividends and capital gains from investees) where those amounts of income benefit from a full exemption from tax in their country of residence (lower therefore than 75% since in Spain, in principle, 1.25% would be charged – the result of multiplying the 5% in the tax base by 25%).

That remark might be questionable, however, in that, because the 5% included in the tax base is in respect of "management costs related to the investments giving rise to those amounts of income", it could be considered that the treatment applicable to dividends and capital gains in Spain, technically continues to be a full exemption and therefore similar to that for a foreign holding company. As mentioned in the preamble to Law 11/2020, Council Directive 2011/96/EU allows the member states to treat management costs as deductible, with a 5% limit in relation to the investment in the subsidiary.

Therefore, in this full exemption scenario, it is not a case of those amounts of income being given 'privileged' treatment in the subsidiary's country of residence or being 'low taxed', as would be expected from the essence of the CFC rules, it is instead a case of the tax cost in Spain on those dividends or capital gains being raised indirectly through the attribution of imputed non-deductible costs.

Law 11/2020 has imposed that 'partial' tax liability on 5% in all dividend distributions, even if they are in a chain in the same group in Spain, including in a consolidated tax group. Nevertheless, the CFC rules state that "a same amount of income may only be attributed once, regardless of the form and the entity in or at which it is disclosed", and there is no provision allowing an exception in the case of these dividends or capital gains.

Therefore, what we would have is that under the provisions in the law, only the dividends received by one of the entities in the chain could be attributed under the CFC rules. However, if it has been made clear in the law, because Law 11/2020 has stated as much, that despite the dividend or capital gain obtained by the non-resident having been attributed, and 5% of the attributed income being included in the tax base of the Spanish parent company, when the parent company receives this income in the form of a dividend, it will again have to include 5% of the received dividend in its tax base.

It could be thought that this second taxation of the dividend is not consistent with the concept of a CFC, because the attribution is considered to take place to cancel the tax effect of 'shifting' those amounts of income abroad, and that income is treated for tax purposes as part of the taxable income of the company from which it was 'shifted', so any later distribution of that income should be irrelevant (i.e. not exist) for these purposes.

Lastly, it should not be forgotten that this is income obtained abroad by foreign companies. Because they expressly state as much, these rules do not apply where the entity is resident in another EU country or is part of the European Economic Area, provided that they carry on 'economic activities'. This last element, involving whether or not the management of the shares conducted by a holding company is an 'economic activity', which may give rise to different interpretations, should be construed in light of how it is treated under EU law.

They also contain a particular scenario, on which Spanish domestic law does not set out a specific limit, involving cases where foreign holding companies reside in countries with which Spain has signed tax treaties. Those treaties contain rules restricting the contracting states' ability to tax certain types of income not obtained in their country, so applying the CFC rules to dividends and capital gains obtained by those companies should be analysed from the standpoint of those rules, which are in a category above the domestic legislation itself.

The comments made above should be seen as a brief introduction to the new scenario created by these recent changes to the legislation and which already applies to Spanish groups with presence abroad or foreign groups with presence in Spain. The complexity of these rules and the implications that may arise might make it advisable to re-examine investment structures abroad.

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SWEDEN

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To impose a 'risk tax' for banks and credit institutions

On October 28 2021, the Swedish government submitted its proposal for a new 'risk tax' aimed at larger banks and credit institutions.

The proposal, although highly criticised by several organisations during the consultation procedures, has been proposed to be incorporated as Swedish legislation as of January 1 2022.

The proposal is aimed at larger banks and credit institutions, with the argument that the business of these institutions compose a major financial risk to the Swedish society, should a new global financial crisis occur.

Risk taxation – the short version

The risk tax will apply to the extent a credit institution (on a group level) has liabilities linked to Swedish operations of more than SEK 150 billion ($15 billion) at the beginning of 2022. The threshold amount will increase annually based on an index. All liabilities within a group should be included, except the following:

- Intra-group debt;
- Provisions and untaxed reserves; and
- Debt which is not attributable to Sweden (i.e. debt in a non-Swedish group company which is not attributable to the business of a Swedish branch/Swedish operations).

The proposed tax rate is 0.05% (0.06% from 2023) imposed on the gross debt linked to Swedish operations. Hence, a group with a gross debt of SEK 150 billion would have a total tax liability of SEK 75 million for 2022, while a group with gross debt of SEK 149 billion would not have any tax liability.

State aid

With reference to the above, a common opinion expressed during the consultation procedures has been that taxation in this form should be considered state aid distorting competition on the credit market within the EU.

State aid is not allowed within the EU without a formal approval from the European commission. The opinion is based on the fact that the taxation is not progressive, but rather targeting larger institutions leaving other actors on the market without tax liability. Furthermore, as stated above, the taxation is proposed to be levied on the full gross debt and not only on gross debt exceeding the proposed threshold amount.

However, the Swedish government is not considering the risk tax as state aid in the sense argued by several organisations providing comments during the consultation procedures. It is possible to argue that the argumentation presented is vague. The content of the argument is that the taxation of, specifically, larger institutions is valid based on the risk these are imposing on the Swedish society in case of a financial crisis. Other credit institutions are not imposing the same risk and therefore are not considered being in a comparable situation.

Despite this, on September 3 2021, the Swedish government asked the European Commission for a confirmation of their view in the matter. According to the government, the proposal will not be implemented before a confirmation by the Commission is received. In other cases, the time to receive a decision from the Commission has been over a year (for example C596/19 P and C562/19 P regarding targeted taxation in Hungary and Poland).

Commentary

Whether or not it is possible to receive a confirmation by the Commission and have time to vote and implement the new legislation for it to enter into force on January 1 2022 is hard to predict.

While it is proposed that the legislation will enter into force in less than two months, a conformation by the Commission was applied for as late as in September 2021, and to our understanding, is not likely to be seen in the near future.

Anyway, since it is clear that the government would like the proposal to be a reality as early as January 2022, it is imperative, not to say urgent, for banks and credit institutions to review their gross debt and consider the effects of the new risk tax.

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SWITZERLAND

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A closer look at notional interest deduction in the canton of Zurich

Notional interest deduction (NID) was officially introduced into tax law on January 1 2020. The Swiss tax reform enacted then allowed cantons with a higher tax rate to apply the NID at cantonal and communal level. It is currently only being applied in the canton of Zurich.

The NID qualifies as a tax-deductible expense for cantonal and communal taxes and is calculated by multiplying the so-called safety equity by the imputed interest rate:

Safety equity

Safety equity equals the difference between the total equity according to the Swiss statutory accounts and a minimum equity which is determined by applying a mechanical asset test (i.e. each asset on the balance sheet must be underpinned by a certain equity quota based on its average value during a business year and the resulting values are subsequently aggregated).

Imputed interest rate

For the sake of simplicity, the imputed interest rate shall equal the interest rate on a 10-year Swiss

government bond. A variable interest rate may apply in line with the arm's length principle on the safety equity attributable to intercompany receivables (i.e. including cash pool, short- and long-term receivables but exclusive of trade receivables).

Current environment

In the current interest rate environment, the NID provides a benefit mainly in cases where a company's assets predominantly consist of intercompany receivables, such as in the case of finance companies or finance branches.

The NID should neither be qualified as harmful with regard to anti-hybrid mismatches (BEPS Action 2) nor as a tax practice itself (BEPS Action 5). Furthermore, the EU commission has recently closed the public consultation on the introduction of a debt-equity bias reduction allowance (DEBRA) for tax purposes and intends to adopt a respective directive, underpinning the general acceptance of the NID within the EU and probably the majority of the OECD, too.

For financing in the EU it may therefore be worthwhile to analyse the application of the NID in the canton of Zurich, particularly given that the EU commission has agreed to the introduction of an NID across the EU.

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THAILAND

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MNEs prepare for CbC reporting requirements

On September 30 2021, the Director-General of the Revenue Department released a notification DG 408 (the notification) for the country-by-country report (CbC report), in line with the final recommendations of OECD BEPS Action Plan 13. The notification is based on the model legislation contained in the country-by-country implementation package of the OECD, released in 2015.

The changes have come about as part of Thailand's commitment to implement the OECD/G20 BEPS project outcomes. This is a significant development for Thailand, informing the world that it is serious about tackling BEPS.

This notification guides taxpayers on matters, such as who is impacted by this notification, the filing obligations, the format of the CbC report, the means of filing the CbC report, and the timelines.

Framework for the CbC report

The basic framework of the CbC report is as follows:

Affected entities under the notification

The notification applies to a multinational (MNE) group, required to prepare consolidated financial statements and which has two or more companies related through ownership or control (direct or indirect), having their tax residence in different jurisdictions. The ultimate holding company (UPE) of such MNE group (tax resident in Thailand) or any entities of such MNE group (tax resident in Thailand or outside Thailand) need to comply with the CbC report requirements.

The notification will also cover companies that are resident in Thailand and operate through their permanent establishments outside Thailand, which are subject to tax in the respective jurisdictions. Similarly, companies outside of Thailand and operating through their permanent establishments in Thailand are subject to tax in Thailand.

What is the threshold for preparing the CbC report

Any MNE group that has consolidated group revenues of not less than Baht 28 billion (approx. US$ 839 million) in the immediately preceding accounting period is obligated to prepare and submit a CbC report.

If the accounting period of the preceding year is less than 12 months, the revenue threshold will be calculated proportionally to such an accounting year. For example, if the accounting period of the immediately preceding year was from January 1 2020 to June 30 2020, the revenue threshold would be THB 13,924 million (THB 28 billion x 182/366 days).

Reporting obligation

The notification applies to a Thai UPE or surrogate parent entity (SPE) (known as a reporting entity) of an MNE group. The SPE has been defined as one of the reporting entities in Thailand, appointed by the MNE group as a sole substitute for the UPE to file a CbC report.

> "It is an opportune time for MNEs to evaluate risks in their global tax structures and make desired changes in tackling audits based on CbC report information"

Companies required to provide CbC report together with the corporate income tax return are:

a) Thai headquartered MNE group – an entity registered under Thai law and is the UPE of the group, or the SPE as appointed by the UPE to file the CbC report in its tax jurisdiction, as required;
b) SPE registered under Thai law – as appointed by the MNE group to file the CbC report on behalf of the group.

An entity that does not satisfy conditions a or b but is carrying on business in Thailand (foreign MNE group's subsidiary) and meets one of the following conditions is also obligated to file the CbC report:

- A foreign UPE of the MNE group (located outside of Thailand) that does not require the UPE to file a CbC report in its tax jurisdiction and the UPE does not appoint the SPE in the jurisdiction that requires surrogate parent filing of the CbC report;
- If the foreign UPE of the MNE group or SPE, located outside of Thailand, does not have a multilateral competent authority agreement (MCAA) with Thailand, or such MCAA is not yet effective on the last day of the CbC report submission period; or
- There exists a systematic failure of exchange of information from the residence jurisdiction of the UPE or SPE.

Conditions of appointing Thai entity as SPE

A Thai subsidiary of a foreign UPE can be appointed as the SPE to submit a CbC report in Thailand on behalf of the MNE group, considering the following conditions:

- The country in which the UPE is a tax resident does not require the UPE to file a CbC report;
- A Thai subsidiary has been appointed as an SPE, and this has been notified to the Thai Revenue Department; and
- The accounting period of the Thai SPE corresponds to that of the UPE.

Exemption of reporting the CbC report

A company conducting business in Thailand will be exempted from filing a CbC report if the following conditions are met:

- A foreign UPE has appointed an SPE outside Thailand to provide a CbC report to the authorities where the SPE is a tax resident;
- The SPE outside Thailand of a foreign MNE group required to file the CbC report in its tax jurisdiction has an effective MCAA in place with Thailand before the submission deadline of Thailand and has not reported any exchange system failure;
- The SPE of the foreign UPE has notified the Thai Revenue Department of the appointment of the SPE responsible for

filing the CbC report of its tax residency status; and
- A Thai reporting entity has to notify the Thai Revenue Department of its appointment as an SPE of its MNE group.

Currency of the CbC report

The currency to be used in the CbC report is Baht. However, if the CbC report is reported in a foreign currency; it must be converted into Baht by applying:
- Based on the average rate purchased by commercial banks for transfers announced by the Bank of Thailand (BOT) at the end of the accounting period prior to the accounting period;
- If there is no such rate, the foreign market buy rate announced by the BOT at the end of the accounting period prior to the accounting period which is required to report information under this announcement should be utilised; and
- If the end date of the accounting period does not have the exchange rate announced by the Bank of Thailand, the latest exchange rate announced by the BOT prior to the end of the accounting period shall be used.

Reporting format

The CbC report should be in English and filed electronically. It should follow the CbC report XML Schema as prescribed by the OECD.

Timelines

The notification is effective from the accounting period commencing on or after 1 January 2021. This requires annual CbC report reporting for the reporting financial year to be filed no later than 150 days from the close of the financial year, along with the corporate income tax return.

For example, for the December 31 year-end groups, the deadline for submitting the CbC report will be May 30 2022 (for the reporting financial year 2021) if they met the threshold in 2020.

Our observation

The impact of the CbC reporting requirement in Thailand would be significant. The CbCR will be shared among the countries listed in the report that have agreements for the automatic exchange of information. Thailand has yet to sign a MCAA with any country to date but is expected that this will be done in early 2022.

As a next step, MNE groups should prioritise notifying the Thai Revenue Department of the reporting entity, whether the holding company or the SPE responsible for filing the CbC report on behalf of the MNE group (on or off before the corporate income tax return filing date). We anticipate that the Thai Revenue Department will clarify the format and the department to which the notification is to be made.

Another critical issue is the timeline to file the CbC report. The CbC report filing deadline in Thailand is within 150 days after the end of the accounting period, which is different from the usual time frame provided by other countries, i.e. 12 months from the close of the financial year. As such, the deadline to file the CbC report in Thailand is very stringent, and the MNE groups must make additional efforts to comply with the new requirement. Representations are being made to the Thai Revenue Department to extend the deadline for filing the CbC report.

The announcement of the CbC report has provided the desired framework on the reporting obligations and the compliance which needs to be performed by the eligible MNE groups. Therefore, it is an opportune time for MNEs to evaluate risks in their global tax structures and make desired changes in tackling audits based on CbC report information.

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THE GLOBAL TAX

Global Tax 50 highlights the most influential individuals, organisations and geopolitical events in the tax world. Acting Managing Editor Josh White introduces the 2021-22 edition of the landmark feature.


Josh White

There was tough competition for the top spot this time since 2021 was an intense year and 2022 looks set to be no different. In the end, *ITR* settled on making pillar two number one in our rankings since it was the most significant part of the OECD agreement signed in October 2021. It will be going ahead this year, while the work on pillar one continues.

The fact that the OECD managed to secure a deal on the digital economy, winning over 137 countries to back the two-pillar solution, is historic in itself. This is the most significant tax policy event for several decades. However, we have not lost sight of other international developments.

Tax 50 includes everything from Brexit and the COVID-19 pandemic to diversity initiatives, the most important tax disputes and the most influential tax officials. The top 10 individuals, organisations and trends will be listed at www.ITRInsight.com.

Methodology

There are two criteria for being included in the Global Tax 50: 1) the level of influence the individual, organisation or event has had on tax affairs, over the past year, and; 2) the likelihood that the individual, organisation or event will still be influential in the coming year.

Breaking down the entire 50 individually according to the impact they made would require too granular an approach. Each entry is in alphabetical order as part of categories, i.e. individuals, to make it simpler to navigate.

Amazon state aid case

Amazon's opportunity to enjoy its 2021 win against the European Commission over its tax arrangements in Luxembourg was short-lived. An appeal by the European Commission means the case continues and the debate over ethical tax practices remains high on the agenda.

Amazon's tax battle

There appears to be no end in sight for the multinational enterprises (MNEs) caught up in state aid cases with the European Commission. Almost a decade since the Commission began investigating Amazon's tax rulings with Luxembourg, the tussle continues over legal and ethical tax practices.

The European General Court ruled on May 12 2021 that Amazon's cost-sharing arrangement in Luxembourg did not breach EU competition law. The US company may not have to pay €250 million ($279 million) in back taxes but the EU refuses to give up just yet.

The European Commission launched an appeal in July 2021 against the General Court's ruling. Amazon and the EU have yet another lengthy battle ahead until the Court of Justice of the European Union (CJEU) issues a judgment.

The General Court's ruling

The court, which is a constituent court of the CJEU, said the Commission's 2017 findings following its investigation were "incorrect in several respects".

The European Commission did not prove that Amazon had secured an "undue reduction" in its tax base, according to the May 12 ruling. As a result, the court found that there was "no selective advantage" in favour of Amazon's Luxembourg-based subsidiary.

This is a serious blow to the Commission's efforts to curtail what it sees as abusive tax structures used by MNEs.

However, on the same day as the Commission lost the *Amazon* case, it won a similar state aid case against the French utility company Engie. The conflicting rulings imply there is still hope for the EU, and Margrethe Vestager, executive vice president of the Commission, to eliminate abusive corporate tax strategies and reclaim lost tax revenues.

Companies such as Amazon and Apple have come under intense scrutiny from the European Commission in recent years. Many EU member states, including France, have imposed digital services taxes (DSTs) in response to the tax arrangements that these companies have established in other EU countries with lower corporate rates.

Facts of the case

The US company structured its European operations through Amazon EU Sàrl, a Luxembourg-based operating subsidiary, to shift profits to Amazon Europe Holding Technologies. The latter holding company was a limited partnership with no employees, offices or business activities.

The holding company held the intellectual property (IP) rights under a November 2003 cost-sharing agreement with Amazon US. This arrangement allowed the holding company to grant an exclusive license to Amazon EU and receive royalty payments in return.

These royalty payments were paid to Amazon US to cover the costs of developing the IP. The US company has defended its position by arguing that the IP transfer was conducted at arm's length. In contrast, the European Commission believes that the royalties were inflated to reduce the company's taxable profits.

On the one hand, the Luxembourg authorities and Amazon favoured the comparable uncontrolled price (CUP) method while, on the other hand, the European Commission argued that the residual profit method was "more reliable".

The CUP method was used to calculate the arm's-length range for the royalty rate of 10.6% to 13.6%, whereas the residual profit method reached a different range: 10.1% to 12.3%.

The case relates to the way that Amazon used this structure, with the support of the Luxembourg tax authority, between May 2006 and June 2014. The US multinational group overhauled its European structure in an unsuccessful bid to prevent a clash with the European Commission.

Not only has the Commission challenged Amazon on the structure, the Commission has called into question its tax history in the EU. This kind of arrangement was not unusual, but times have changed since the BEPS project was finalised in 2015.

The European Commission has set its sights on changing the international tax system. Amazon may have won at the General Court, but these kinds of tax arrangements look like they are a part of the past. The upcoming CJEU judgment may place another nail in the coffin for these deals. ■

Engie state aid case

Engie is fighting to overturn the European General Court ruling that found Luxembourg had granted the French utility company a "selective advantage".

It looked like it was all over, but it was far from settled. The European General Court ruled in May 2021 that the Commission was right to determine that the Engie group had gained a "selective advantage" from its tax arrangements in Luxembourg.

It looked as though the European Commission won its state aid case against French utility company Engie. However, the French company and the Luxembourg government waged an appeal in November. This will take the *Engie* case to the European Court of Justice (ECJ).

The *Engie* case has far-reaching implications for businesses operating through Luxembourg. The multinational company is expected to pay €120 million ($136 million) in back taxes should it lose the appeal.

The Commission opened its state aid investigation into the company in 2016 and concluded that Luxembourg had provided Engie with illegal tax benefits through tax rulings. These tax rulings allowed Engie to pay a 0.3% corporate tax rate on certain profits in the country.

Both Engie and the Luxembourg authorities deny that the tax benefits constituted state aid. The case continues.

Background

The *Engie* case goes back Luxembourg tax rulings granted between 2008 and 2014. At the time, the French company was called GDF Suez and the group structured financial transactions through Luxembourg companies.

The tax rulings under scrutiny concern the tax treatment of two similar financial transactions between four companies of the GDF Suez group – GDF Suez Treasury Management, GDF Suez LNG Supply, LNG Luxembourg and Electrabel Invest – all based in Luxembourg.

The parent company transferred its shares to a subsidiary within the Engie group, in which the subsidiary then financed the shares through an interest-free convertible loan with an intermediary. This loan was reimbursed by the subsidiary by issuing shares equal to the amount of the loan, plus a premium involving the profits made.

The intermediary sold shared back to the parent company to finance the loan. If any profit was made, the holding company was entitled the rights of owing the shares issued. The tax rulings also meant that only the subsidiary was taxed on a margin.

Under this structure, the subsidiary paid very little tax by deducting the interest cost while the holding company obtained shares that were not taxable.

These companies mainly acted as intermediaries for intra-group financing transactions within the GDF Suez group. The EU investigation concluded that Luxembourg's treatment of the financing structures "did not reflect economic reality".

Engie and Luxembourg decided to fight the allegations.

The 2021 decision

The General Court upheld the Commission's findings in its 2021 decision. The court ruled that there was a selective advantage due to the "non-application of national provisions relating to the abuse of law". It also rejected pleas "alleging errors of assessment and of law in the identification of selective advantage giving rise to state aid".

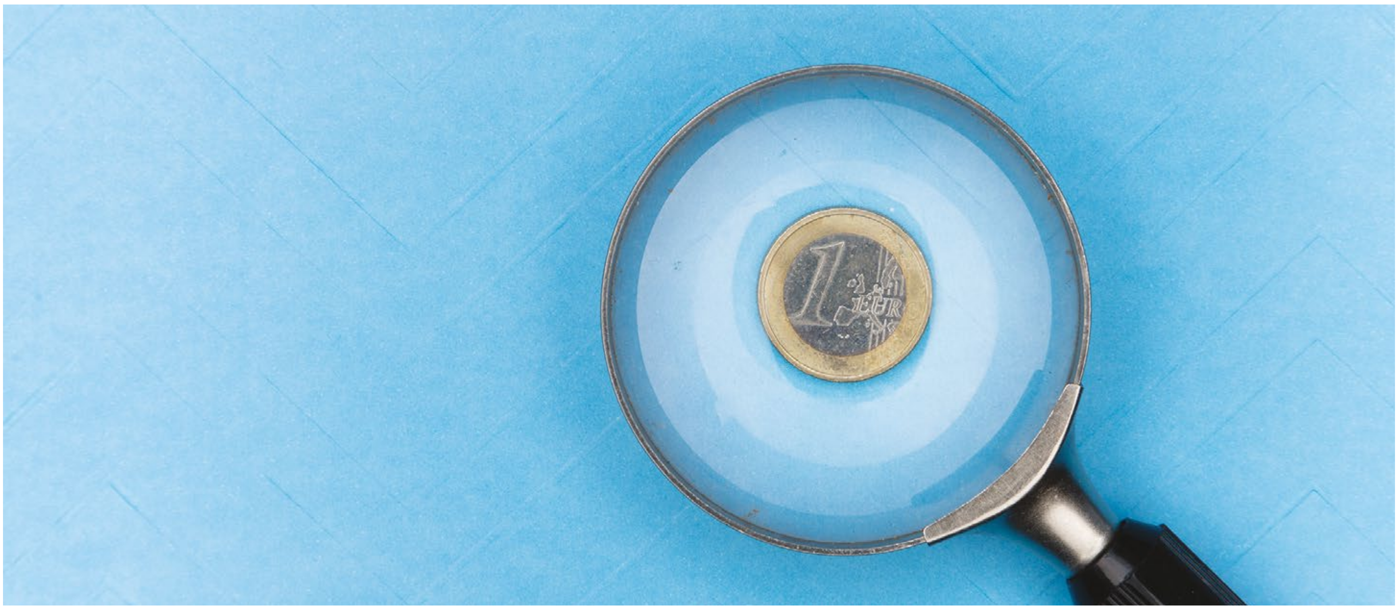
The Commission's investigation, which found that the tax rulings had reduced Engie's tax burden, established a derogation from tax rules that would have been applied to other taxpayers in an equal context, according to the General Court's ruling.

The General Court also rejected arguments related to the absence of a selective advantage at the level of holding companies – referring to article 154 and 166 of Luxembourg's law on income tax.

"The General Court finds that the Commission did not err the law in determining that the participation exemption at the level of a parent company is dependent on the taxation at the level of its subsidiary of profits distributed by that subsidiary," said the EU court.

The EU court supported the Commission's statement, which confirmed the lack of tax being deducted from companies in the Engie group by the Luxembourg tax authorities as part of an intra-group financing structure.

The General Court found that the Engie group had obtained preferential tax treatment. Yet the company is appealing this decision. This case is one to watch in 2022. ■



Taxpayers face yet more EU scrutiny

Nike state aid investigation

Nike is facing an EU state aid investigation into its transfer pricing affairs in the Netherlands. The investigation could become the next big fight in state aid.

Nike lost its appeal in July 2021, before the European General Court, to stop the European Commission investigating its Dutch tax arrangements. The result means Nike joins Apple, Amazon and other multinational enterprises (MNEs) that have faced lengthy investigations resulting in ongoing court disputes.

The Commission suspects that the Dutch tax authority granted the US corporation illegal state aid through tax rulings from 2006, 2010, and 2015. Nike denies these allegations and attempted to prevent the European Commission from investigating further through a General Court ruling but failed.

Nike said in a statement that it believes "the European Commission's investigation is without merit" because it "rigorously ensures that it complies with all the same tax laws as other companies operating in the Netherlands".

The company has claimed that the Commission's preliminary assessment contained legal errors. The company also claimed that the EU failed to provide "sufficient reasons for finding that the contested measures fulfil all elements of state aid". Yet the court dismissed this argument.

The General Court found that the Commission had not breached the principles of good administration and equal treatment. Instead, the court found that the provisional assessment was carried out in a diligent and impartial manner.

The European Commission has opened investigations into many MNEs over taxes, but with mixed results. No taxpayer wants to be the one company to lose out and set a precedent for other businesses.This investigation adds Nike to the growing list of multinationals disputing the findings of EU state aid investigations. The company may be preparing to fight another day in court if the Commission deems the tax rulings constituted unlawful state aid.

Nike faces EU tax questions

Facts of the case

The EU Competition Commission is examining five tax rulings issued by the Dutch government between 2006 and 2015 concerning Nike's royalty payments. The case concerns the company's subsidiaries Nike European Operations Netherlands BV (NEON) and Converse Netherlands BV (CN).

The operating companies, NEON and CN, develop, market and record the sales of Nike and Converse products in Europe, the Middle East, and Africa. They obtained licenses to use intellectual property (IP) rights relating to Nike and Converse products in return for a tax-deductible royalty payment.

However, the IP rights were obtained from two other Dutch Nike group entities that are transparent for tax purposes, meaning they are not taxable in the Netherlands. Moreover, the EU Commission has said that Nike group's corporate structure itself is outside the remit of EU state aid rules.

The Commission's initial findings suggested that Nike's tax-deductible royalty payments to other group entities for IP rights do not reflect economic reality, warranting a full investigation over suspected illegal state aid.

"[The royalty payments] appear to be higher than what independent companies negotiating on market terms would have agreed between themselves in accordance with the arm's-length principle," said the European Commission when it launched its preliminary investigation in January 2019.

Margrethe Vestager, the EU commissioner in charge of competition policy at the time, said the Commission will "investigate carefully the tax treatment of Nike in the Netherlands, to assess whether it is in line with EU state aid rules".

The investigation means that Nike must make a large repayment to the Netherlands, if any of the benefits it has received since 2006 are deemed illegal state aid. But further court proceedings will likely follow if Nike decides to fight such findings.

The company might well be cleared by the investigation. On the other hand, Nike may be walking the same course as other multinationals and is unlikely to gain any certain for a long time. ■

UK Supreme Court ruling on Uber

The ride-hailing company Uber suffered a blow in February 2021, when the UK Supreme Court ruled that its drivers are not independent contractors. Uber was left to manage increased worker rights and VAT.

In a case that has significant implications for the gig economy, Uber lost a high-profile UK Supreme Court ruling in February 2021 over the classification of its drivers. The ruling has implications for the company's responsibilities towards its drivers, as well as its tax liability.

As government authorities begin work to bring the gig economy under regulation, the Uber ruling sets a precedent that could affect a whole swathe of the economy – not just in the UK, but worldwide.

The Supreme Court judgment, reached on February 19 2021, came as the result of a dispute between Uber, which wanted to avoid being classified as a formal employer, and its drivers, who were fighting for increased workplace benefits.

Uber argued that it operates as a facilitator of rides rather than a taxi company. Uber sees itself as a mediator between drivers and customers, while drivers act as independent contractors. This allowed the company to avoid the obligations faced by most employers, including paying employment taxes and national insurance contributions (NICs), and providing a workplace pension.

However, the claimants, Yaseen Aslam and James Farrar, who led a five-year campaign against Uber, contented that drivers for Uber are 'workers' for the company, rather than independent entities who contract directly with their customers. This would mean drivers are eligible for workers' rights including holiday pay and minimum wage.

The Supreme Court ruling in February dismissed Uber's appeal against an earlier judgment, and supported Aslam and Farrar's case.

"The correct inference was that Uber London contracts with passengers and engages drivers to carry out bookings for it," stated the Supreme Court.

Reasons for the Supreme Court judgment

The Supreme Court listed five reasons for its judgment that Uber exercises more control over its drivers than the company would like to admit:

1) Uber sets the fare for journeys, and therefore controls how much the drivers are paid;
2) Uber dictates the contract terms of the work, over which drivers have no control;
3) Having logged in to the app, drivers are constricted in their choice of whether or not to accept ride requests, via a system that penalises them for declining too many requests;
4) Uber exercises control over the way that drivers deliver their services, by means of the customer ratings system which penalises drivers for failing to maintain a certain rating;
5) Uber restricts the communication between drivers and customers to the minimum required.

"Taking these factors together, the transportation service performed by drivers and offered to passengers through the Uber app is very tightly defined and controlled by Uber," stated the court.

"Drivers are in a position of subordination and dependency in relation to Uber such that they have little or no ability to improve their economic position through professional or entrepreneurial skill."

The ruling is likely to have implications across the gig economy, but the fundamental questions about the status and rights of gig economy workers are a long way from being resolved.

Implications of the ruling

The Uber ruling was a strong statement from the highest court in the UK that platform companies cannot exploit their position, as operators in a nascent and unregulated area of the economy, to shirk their responsibilities.

Around the same time as the UK Uber ruling, another judgment appeared to support this position. The Amsterdam Court of Appeal ruled on February 16 2021 that delivery riders' agreement with Deliveroo constitutes an employment contract. Deliveroo has subsequently appealed to the Supreme Court.

However, not all courts agree with this position. The UK Court of Appeal dismissed an attempt by Deliveroo riders to assert their status as employees on July 24 2021. This marked the fourth UK court judgment to reinforce the position that Deliveroo riders are self-employed.

The gig economy poses new questions for tax

The disagreement between courts in the Netherlands and the UK over the employment status of riders for the same company indicates that reaching a consensus on this issue will be difficult. Different courts and countries will take differing positions, and the specific form of agreements between platforms and their drivers or riders will also be considered.

The OECD has begun work on the issue, with a report on the gig economy as it relates to indirect tax policy. This is an increasingly important area of tax policy discussion, as economic activity shifts from traditional sectors to flexible arrangements.

The February 2021 ruling in the Uber case was a landmark judgment in the disputes over the status of gig economy workers, but the issues behind the controversy is far from resolved. People will continue to debate the responsibilities of companies in the gig economy. ■

CRISES

COVID-19

The virus that changed the world continues to create problems for taxpayers.

Everyone hoped that the coronavirus outbreak would last a matter of weeks, or months at most, before being contained and defeated. Instead, the world has lost two years to a deadly pandemic.

COVID-19 has shaken the global economy to its core. Many companies have had to adapt to the situation, while governments have resorted to emergency measures to ease the economic fallout from the pandemic.

The COVID-19 pandemic has tested the strength of tax and transfer pricing strategies around the world. Not only has the pandemic created a vast amount of government debt worldwide, but the shock to the global economy has also disrupted global supply chains.

The results have meant greater difficulty for tax departments, particularly when it comes to transfer pricing and benchmark data. Meanwhile, governments have been pushed to spend vast sums of money on emergency measures and the cost will come back to the taxpayers.

The COVID-19 pandemic may force many governments to move away from the neoliberal consensus of low tax, light-touch regulation in favour of higher taxes and more state intervention in the economy.

Shocks to the system

The COVID-19 pandemic has tested the strength of tax laws around the world and the Tax Cuts and Jobs Act (TCJA) was no exception. US tax reform may have secured a landmark tax cut for businesses, but the interaction of complex provisions with the conditions of a public health crisis has highlighted weaknesses in US tax policy.

One tax director at a mass entertainment company said that the pandemic had "exposed the volatility of the new US tax rules, particularly the dependence on certain levels of taxable income".

"It has highlighted the fact that certain provisions are not robust in situations where taxable income has varied significantly," said the tax director.

On the one hand, US tax reform cut the headline corporate rate to 21%, however, it also imposed a minimum rate of 10.5% through the global intangible low-taxed income (GILTI) rules. At the same time, the TCJA introduced the foreign-derived intangible income (FDII) deduction.

The tax director pointed out that Section 250(a)(2) of the Internal Revenue Code (IRC) could significantly increase the GILTI tax rate and eliminate any FDII benefit. But they also stressed that there is a lack of foreign tax credits (FTCs) and qualified business asset investment (QBAI) relief for controlled foreign corporations (CFCs) running losses.

The lack of relief was one problem, but it was made worse by the fact that the FDII requirements involved a lot of documentation for businesses.

Data trouble

ITR's 2021 survey on the tax lessons of COVID-19 found tax directors are grappling with many different problems, but uncertainty was at the top of the list for most respondents.

A strong majority of 66.4% respondents ranked uncertainty as the leading problem they faced. Yet this uncertainty has trickled down through how tax departments work.

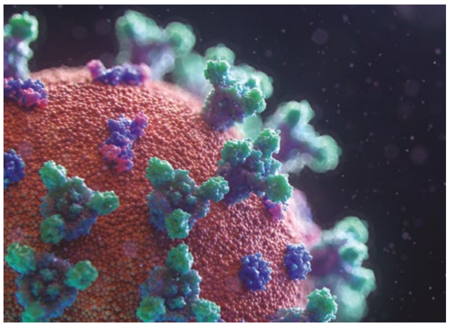
Uncertainty has no doubt fed into planning difficulties and concerns over exposure to risks unique to the crisis. Almost half of respondents (47.8%) said they had difficulties planning, particularly when it came to benchmarking and the use of comparables.

When the pandemic struck in 2020, companies were still working from 2018/19 comparables as part of TP strategy. Companies incurring unusual losses as a result of the fallout from the pandemic delivered very different results at the end of the financial year.

These bad financial results could hold back future TP planning. Furthermore, the impact could ripple through 2022 and beyond.

Waves of controversy

Many companies are expecting more audits and controversy in the post-pandemic world. The pandemic has laid waste



The virus that changed tax

to entire economies and created unique problems for businesses wherever it did not make old problems worse.

A clear majority of 56% fear that audits and disputes will hit their industry once the public health crisis is over, while a strong minority of 43.9% do not expect to see a wave of audits and disputes following the pandemic.

Taxpayers should expect transfer pricing documentation to become more important. It may be the best way to maintain a strong narrative when the auditor comes knocking. This may be another reason why compliance has become more difficult for businesses during the pandemic.

Tax after the pandemic

Facing few alternatives many countries went into lockdown and most people hoped it would only be a matter of months before normality returned. And yet, almost two years later, the world is still waiting for the end of the crisis.

Many companies around the world were thrown into upheaval by this unprecedented public health crisis. Tax teams turned to in-house technological solutions, but remote working has been difficult for many professionals.

Companies can expect many of these problems to continue for a long time. The pandemic may end in 2021 or 2022, but the virus is not going away and may well become endemic. In the meantime, the economic fallout of COVID-19 will be felt for years if not decades.

Tax directors hoped that the economy would stabilise once the pandemic was in retreat, but this may not be the case. Businesses might hope that fundamental aspects of the tax system will stay the same, however, the old problems are worse and some different problems are here to stay. ■

European gas crisis

Europe is facing a historic crisis over natural gas shortages and skyrocketing prices made worse by the Russia-Ukraine conflict. How this crisis is handled may have serious implications for taxpayers.

A fuel crisis hits Europe

Global energy markets were increasingly volatile even before the Russian invasion of Ukraine, but it is going to get much worse as a result. The world faced an oil price shock in 2020 with US oil producers were forced to pay people to take away oil. This shock has been followed by a natural gas crisis in European countries.

The energy crisis has many implications for fiscal policy. It could turn European governments against tax plans designed to reduce carbon emissions and towards VAT reliefs and windfall taxes to ease a growing cost of living crisis.

The shortage of natural gas originally stemmed from maintenance work in the Russian gas industry, plus greater demand from Asia and Latin America. This is set to get much worse amid the Russia-Ukraine war and Europe is facing even steeper prices. The results may increase opposition to carbon taxes while forcing governments to consider emergency measures.

The European Green Deal aims to cut carbon emissions by 55% this decade, before cutting emissions to zero by 2050. The gas shortage puts these aims under tremendous strain since the cost of such measures is passed onto the consumer.

The French government fears the planned changes to the Emissions Trading Scheme (ETS) could spark renewed protests. The memory of the *gilets jaunes* (yellow vests) movement is still fresh in the mind of President Emmanuel Macron, who is up for re-election in April 2022.

Natural gas import prices to the EU were up 440% since 2020 and the rising gas prices are fuelling opposition to the EU carbon tax plan. Hostility from France and Spain to the plan is only going to intensify as citizens are hit with ever-higher bills.

What are governments doing about the crisis?

An increasing number of European governments are considering using VAT policy to mitigate the effects of rising energy prices, caused by a long-running energy crisis, on their citizens. Germany, Italy, Romania and Spain are cutting taxes in response to soaring prices, but there is no uniform approach.

For example, Germany slashed the renewable energy tax by 40% in 2021. Since the change of government, Germany is offering one-time grants to low-income households and shifting the surcharge for renewable energy to the state budget from 2023.

By contrast, the Italian government has announced €7.5 billion euros ($8.50 billion) worth of cuts to personal and business taxes. This is following up on a €3 billion package to support low-income households and a significant VAT cut from 22% to 5%.

The Romanian government has declared that citizens with a domestic energy bill of less than 300 kWh per month will qualify for a preferential VAT rate of 5% on their electricity, down from 19%. Meanwhile, Spain has extended its energy tax cuts to May 2022.

These tax cuts include slashing the VAT on energy bills from 21% to 10% and cutting the special electricity tax from 5.1% to 0.5%. However, the Spanish government is also pursuing tax revenue from the energy sector.

The Spanish government is levying a windfall tax on energy providers, making ‘excessive’ profits from the surging price of gas. The plan is projected to raise €3 billion ($3.4 billion) for infrastructure investments, while taxes levied on household energy bills are reduced.

Outside the EU, the UK government may be about to copy the Spanish windfall tax to offset the impact on living costs. The UK has seen some of the highest increases in gas bills in Europe, while several energy providers have collapsed.

The UK Treasury has since introduced the public interest business protection tax and imposed a 75% rate on shareholders cashing out contracts during this crisis. Some people are calling the levy a ‘super tax’.

The UK has so far avoided VAT cuts in favour of small subsidies to households struggling with energy costs. Nevertheless, there are growing calls for state intervention. Many observers are expecting gas prices to jump by 50% or more in April 2022 when the UK energy price cap is raised.

The energy crisis will continue to play out in European countries throughout 2022. Governments have yet another fire to fight and taxes are one way to bring down costs and reduce price-gouging. What is certain is that this crisis is far from over. ■

Supply chain crisis

The world has been hit by a supply chain crisis that has implications for tax departments working on tax and transfer pricing (TP) policy.

The COVID-19 pandemic has wrought havoc on the global economy and disrupted supply chains worldwide. The pandemic has created a labour shortage in many countries, as well as an imbalance between supply and demand for many different goods and services.

Self-isolation and remote working have changed the way many companies operate, while border controls have set limits on global mobility. However, these policies have also slowed down global trade and forced people to rely more on delivery services.

As a result, companies are grappling with dysfunctional supply chains and many businesses are considering moving operations. However, all of this comes with transfer pricing implications. As supply chains change, the TP policy has to change to match it.

TP risks have to be re-evaluated, documentation prepared, the pricing may change and so will the methodology. In some cases, it is possible a supply chain may make good business sense but come with an increased tax cost.

Businesses have had to adapt because the impact of COVID-19 will continue long after the pandemic ends. The reality may be that the world will have a slower pace of trade for the foreseeable future.

Multiprong crisis

COVID-19

The pandemic has sent shockwaves through supply chains from the shortage of workers to an increase in consumer demand for delivered goods. Inflation is hitting many countries as demand outpaces supply.

The US has seen its ports clogged with shipments and its trucking industry has been left overstretched and understaffed. The infection rate has hit the workforce hard and continues to hold back certain services. Meanwhile, the US labour market is undergoing the so-called 'great resignation' where many US workers are leaving jobs they are dissatisfied with.

More than 4.5 million US workers quit their jobs in November 2021. This is far from unique to the US. Australia, China and India have seen similar trends. Many people are quitting jobs for what they see as a better lifestyle.

COVID-19 is the most obvious force reaping havoc around the world. Yet it is not the only factor behind the supply chain crisis.

Climate change

Climate change is often talked about as if it is a future development, but it is already happening. Extreme weather, such as storms and droughts, have forced businesses to close operations temporarily in certain jurisdictions.

For example, Taiwan was hit by the worst drought in more than 50 years in 2021. Taiwan is a leading producer of semiconductor chips and dominates the global market. The lack of water held back production given that the process requires tens of thousands of tonnes of water a day.

In the same year, Samsung and NXP production plans based in Texas had to close down for several months due to Storm Uri in February 2021. So there was a slow down in production just as demand skyrocketed due to the rise of remote working.

These extreme weather events also came at a time when China-US trade tensions hit the market for semiconductor chips. The result has been to create a global chip shortage.

Trade warfare

The global shortage of semiconductor chips risks holding back technological innovation. One driving factor has been political: the China-US trade tensions.

The US and China have clashed over economic policy many times, but the trade tensions heated up under President Donald Trump. The Trump administration ratcheted up those tensions and imposed tariffs to limit trade with China, particularly the trade in semiconductor chips.

The Trump administration tried to block trade with the Semiconductor Manufacturing International Corporation (SMIC), the largest semiconductor manufacturer in China, in favour of over-stretched Taiwanese production.

These chips are so fundamental that the impact is being felt all over the world. The European Commission is working on plans to bolster EU production to reduce the union's dependency on East Asian production.

However, there is no quick fix to these problems. Global supply chains may not stabilise for some time, and tax departments will be tasked with managing the impact on TP structures in the meantime. ■

Where you going to run to?

INDIVIDUALS

Piet Battiau

In this exclusive interview, Piet Battiau, head of the Consumption Taxes Unit at the OECD, talks to ITR about the achievements of 2021, and what to look out for this year.

In his role at the OECD, Piet Battiau has overseen the organisation's work on indirect tax policy throughout 2021. From publishing the first regional VAT digital toolkit to completing an analysis of the unit's effectiveness, there has been plenty to keep Battiau and his team busy.

The work continues in 2022, with more toolkits and some exciting forays planned into issues such as cross-border enforcement and data reporting. Here, Battiau updates *ITR* on the unit's work in indirect tax policy.

Capacity-building toolkits and a technical assistance programme are on the OECD agenda for 2022

ITR: What were your highlights of 2021?

Piet Battiau: One of our areas of focus is the development of standards and guidance to support the consistent application of national VAT systems in an international context. The main output there was the sharing and gig economy report, which was delivered in April. That has already been quite impactful in various ways, not all of which are visible to the public – for example, in influencing government thinking.

The other highlight of the year has been the delivery of the VAT digital toolkit for Latin America and the Caribbean, and almost completing the second one for Asia Pacific, which will be released in February. That has been a huge piece of work to support capacity-building in developing economies.

The reports are the result of a very consultative process, in cooperation with the World Bank Group, tax authorities, and regional organisations.

ITR: What obstacles have you had to deal with over the past year?

Piet: We've not managed to do anything in person, with one exception where we managed to travel abroad for technical assistance, and to give an evaluation of a tax regime. That's typically the kind of work that's extremely difficult to organise online. And we made more progress in three days than we had in several weeks in the virtual format!

But we have all adapted, we've got better at organising panel discussions virtually and all that. And we have continued delivering quite a bit.

ITR: What achievements in 2021 are you most pleased about?

Piet: We had to do an in-depth assessment of the impact of our work over the past five years on global VAT policy design and administration, for the OECD Council. It's internal, and it includes surveys of tax authorities and the business community.

I'm proud to report that the outcomes have been exceedingly positive. Just five or so years back, there were not many countries that had implemented a regime to collect VAT from non-resident suppliers. There was scepticism about whether voluntary compliance would work.

But we've had many testimonials of areas where the various products we've produced, and the underlying process of policy dialogue, has helped countries in feeling confident with implementing reform. Now, every country in the OECD has implemented those regimes. It's encouraging.

ITR: What is on the indirect tax agenda for 2022?

Piet: There is no real break between 2021 and 2022, so things continue. In terms of priorities, we are planning to further develop our capacity-building work, and we'll deliver the Africa digital toolkit by mid-2022 [as well as the APAC toolkit in February].

In parallel with that, we are developing a technical assistance programme, where we will be offering countries the possibility to work with us to implement both the standards we have developed, and reform targeted at digital trade.

In some ways, the toolkits are a multilateral form of capacity-building, and we're now increasingly complementing that with bilateral capacity-building, providing bespoke technical assistance to individual countries that are interested. We're planning to start rolling this out in 2022.

ITR: I believe cross-border enforcement is also on the agenda this year. Can you elaborate on what you're working on in this area?

Piet: We will be developing work to look at ways in which countries' enforcement capacity in a cross-border context can be strengthened. Many countries rely on resident suppliers to register for VAT there, and compliance levels are high, but obviously there is no full compliance.

What can be done to assist tax authorities in managing those compliance risks? For example, that could include audits of taxpayers that are not in your country, which is not happening in a systematic manner at the moment. It's a bit of a new area, and it's not an easy one, so I'm keeping an open mind about where we will end up.

We will produce an outcome, such as a report or a set of guidance, on how countries can use the existing administrative cooperation framework to meet their enforcement needs in a cross-border context. That might include efficient ways to audit compliant businesses in a way that does not create an undue administrative burden, or enforcing compliance against those that have chosen not to comply.

ITR: Is there anything else that you're looking into this year?

Piet: Another area we're starting to explore is connected to tax authorities' growing need for data. The digital economy has created a range of challenges for tax authorities, such as collecting tax from business in other jurisdictions, or keeping track of sharing economy activities with new operators that might not be visible.

But [the digital economy] also creates great opportunities in that it builds on data, and that creates opportunities to facilitate compliance, and provides greater visibility of economic activity.

However, businesses are confronted with increasing data reporting obligations. Can we, should we, do something to help enhance consistency across jurisdictions? We're looking into this, but again, this is a very new area. ■

Joe Biden

US President Joe Biden came to power promising to reform the US tax code as part of an ambitious economic platform. Yet the roadmap for tax reform is still uncertain.

More than a year into the Biden presidency the Democratic administration has tabled an ambitious reform of the Tax Cuts and Jobs Act (TCJA), but the biggest achievement has been international and not domestic.

The OECD has managed to broker a multilateral agreement thanks to US support. The US has re-engaged the international policy debate on digital tax and played a critical role in swaying the G20 to support a global minimum corporate tax rate.

President Biden walked into the White House with big plans. Biden pledged to take the global intangible low-taxed income (GILTI) rules and raise the minimum corporate tax rate from 10.5% to 21%. Domestic fiscal reform is still on the cards in 2022, but there are many obstacles ahead.

Many people wanted President Biden to draw a clear red line between his administration and the Trump era, yet the Biden administration has taken the TCJA as a starting point rather than something to throw out.

There is more continuity (on tax at least) between Barack Obama, Donald Trump and Joe Biden than many supporters and critics would like to admit. The long road to a global minimum corporate tax rate was being paved more than a decade ago.

The changing role of US policy

After the 2008 financial crisis, the Obama administration had a historic opportunity to rewrite whole sections of US policy. Many people hoped for rapid change, but the reality was much different. Nevertheless, the first black president made changes to fit with the times.

The Obama administration implemented the Foreign Account Tax Compliance Act (FATCA) in 2010. The official aim was to reinforce tax collection and compliance. However, the US policy was at odds with international attempts to increase financial transparency.

US opposition to sharing the information amassed through FATCA meant that the OECD needed an alternative. The result was the OECD designed the common reporting standard (CRS) to enable the automatic exchange of information (AEOI) everywhere outside the US to complement FATCA.

Since the OECD was formed as part of the post-war settlement, the Paris-based organisation has learned to move with US policy as part of redefining international tax norms. The OECD would later use GILTI as a model for international tax reform because of the experience of FATCA and the CRS.

The US did not want to share data with other countries, including longstanding allies. However, several

European governments were happy to sign bilateral agreements because financial institutions did not want to enter into a direct relationship with the Internal Revenue Service (IRS).

So the European Union was partly able to bypass the unanimity requirements for AEOI because the US signed bilateral agreements with European governments, including Austria, Luxembourg and Switzerland.

In effect, the US stance on information exchange became a means of getting beyond the need for unanimity among EU member states. Likewise, the OECD was able to take the US position as a starting point for expanding tax transparency worldwide.

The turn towards pillar two follows a similar story. President Trump followed up on Obama's anti-inversion measures with a radical plan to bring down the US headline corporate rate and impose a minimal level of taxation.

The TCJA came into force in 2018 just as the OECD was battling to solve the question of how to tax the digital economy. A growing number of countries, including European nations, were taking unilateral action against US technology companies.

Ultimately, the US government was happy to stop unilateral measures by meeting such countries halfway on its own terms. This was true of the Trump team for a while, and it is even more true of the Biden administration.

Trouble ahead

As much as the OECD has secured an agreement, the US still has to enact policies at home to make it work abroad and this is where the plan could fall apart. The Biden administration has yet to secure its domestic agenda and the November 2022 mid-term elections are coming up.

A week is a long time in US politics, however, the Republican Party has a big incentive to block reform until the election because they may make gains in November. It could go the other way. The Democrats could make enough gains for President Biden to get tax reform through Congress.

If the Democrats fail to make gains and make significant losses, the Democrats could left with little room to enact any change at all and Joe Biden might even go down in history as a 'lame duck president'.

President Biden has had a tough first year in office. He came to power just weeks after protesters entered the Capitol building, while the US was being ravaged by COVID-19. Yet it looks like 2022 will not be much easier for the president. The world looks more volatile than ever since Russia invaded Ukraine. ■

Raquel Buenrostro Sánchez

Mexico's 'Iron Lady' tax chief Raquel Buenrostro continues to crack down hard on tax evasion, while looking to close tax loopholes for multinational companies.

Just two years into her role, Raquel Buenrostro has overseen tough policies to reduce tax evasion and avoidance in Mexico. She cut back $9 billion on federal procurement to save the Tax Administration Service (SAT) in a single year. This earned her the nickname 'Iron Lady'.

A close ally to Mexican President Andrés Manuel López Oprador (AMLO), Buenrostro has become the face of his crackdown on tax evasion and avoidance. AMLO set out to boost tax revenue through more efficient collection. He was not afraid to scare businesses to do so, and neither was Buenrostro.

"There was tax fraud in the past, and it never led to criminal procedures. Executives now know that if they commit tax fraud, we will have to open a criminal procedure," said Buenrostro.

Early into his term, the president threatened to expose 15 companies that he claimed owe $2.3 billion in back taxes. Buenrostro claimed that the list of 15 companies represents just a handful of businesses in arrears.

Buenrostro has set her sights on multinational enterprises, often branded as "tax dodgers" by the government. She has targeted her enforcement efforts on the country's large taxpayers and threatened to use criminal charges as part of the tax crackdown.

Tax crackdown

The SAT began targeting the tax incentives granted to the automotive industry in 2021. Past administrations have granted the car manufacturing industry tax incentives to operate in Mexico. These incentives have helped attract automakers such as Toyota and General Motors to Mexico.

"We are going to purge all of these," said Buenrostro. "We have to see what the incentives were that the government at the time gave out so that they could bring in the investment, but once that investment is recovered, it doesn't make any sense to keep them."

The SAT pursued this strategy to help increase tax collection by 1% of GDP. Buenrostro was building on her record of raising revenue from multinational companies. She has consistently framed the discussion on tax collection as a battle against "tax dodgers".


Source: gob.mx

However, all businesses facing the crackdown would dispute the suggestion that they are engaged in illegal and unethical tax practices. Nevertheless, the Mexican government continues to rely on populist language on tax matters.

Buenrostro's record speaks for itself. The SAT has succeeded in extracting hundreds of millions of dollars from Walmart's Mexico unit, Coca-Cola bottler Femsa, IBM and silver mining group Fresnillo. Many other firms are under intense scrutiny in Mexico and there is no sign of it ending soon.

The SAT's aggressive pursuit of taxpayers has even been described as "fiscal terrorism" by one tax expert. "It's not fiscal terrorism because people are paying up. Those who feel threatened and pressured are the ones who aren't," said Buenrostro.

Although AMLO promised "no new taxes" for three years, the Mexican government has imposed a 16% digital levy on online services provided by non-resident businesses. The government has also used tariffs in response to US trade policy.

Apart from the digital levy, the Mexican government has favoured structural reforms to raise tax collection rather than sharp tax hikes. Mexico is set to undergo a fourth round of tax reform in 2022 to close more loopholes.

Policing the tax base is one way to raise revenue without hitting taxpayers with headline rate increases. Yet the three-year limit on AMLO's promise expires in 2022, so some observers predict Mexico may see higher rates sooner or later. ■

Paschal Donohoe

Irish Finance Minister Paschal Donohoe is about to embark on tax reform as Ireland moves away from its longstanding corporate tax policy in favour of a higher rate.

After signing up to the OECD's global minimum tax rate, Ireland is set to raise its headline corporate tax rate from 12.5% to 15% as part of its end of the deal. Finance Minister Paschal Donohoe played a leading role in defending Ireland's position and reaching a compromise.

The Irish government backed this shift because there is still hope that Ireland will be able to maintain a competitive tax system. "The framework will still enable tax competition in the future, it will just be inside parameters that can maintain tax cooperation and stable trade in the future," said Donohoe.

Ireland was a part of the original set of holdout nations, including Hungary and Estonia. The three countries eventually agreed to support the OECD plan to impose a global minimum corporate rate, albeit with strings attached.

The Irish government decided to accept the agreement once the European Commission gave it guarantees. The final rate would not be 21%, but 15%. However, it was not the only concession. The Irish government wanted to maintain the offer of 12.5% for smaller companies that do not fall in scope of the tax deal.

Before these concessions, the Irish government was very unlikely to accept the deal. Donohoe said that he was hesitant about ongoing pillar two negotiations because the objective of the OECD's digital tax agenda was moving towards global tax harmonisation.

"Tax policy is important to compete with the location, scale, and resources of larger countries, and the OECD's digital tax agenda should work for smaller countries like Ireland too," said Donohoe.

Taoiseach Leo Varadkar's cabinet appointed Donohoe after winning power in 2017. Once in office, Donohoe became the public face of Ireland's low-tax policy. He defended the country's low-tax pro-business record countless times.

By this point, the US was embarking on an ambitious tax reform package to combat the inversion boom. Almost every US political figure from Barack Obama to Donald Trump condemned the practice as 'unpatriotic'. Except the Trump administration had made US tax reform its priority.

The Varadkar government picked up where the Kenny government had left


Source: DebSwee / Wikimedia Commons

off. The Kenny government had vowed no changes to the Irish corporate tax system for the sake of securing greater investment. However, international pressure was growing.

Ireland abolished its controversial double Irish loophole. The Varadkar government showed it had an appetite for fiscal reform, however, change would be slow. Five years later, Paschal Donohoe is still finance minister but a grand coalition came to power in 2020.

Taoiseach Micheál Martin took over from Leo Varadkar after the 2020 general election. Fianna Fáil and Fine Gael formed a grand coalition, including the Green Party. Donohoe will continue to play an indispensable role in Irish politics.

Ireland's low tax strategy

Donohoe may be about to preside over the greatest shift in Irish tax policy for almost 20 years. No Irish government has raised corporate tax since the 1980s, yet the government has been following a low-tax strategy for a long time.

"The low tax rate started in the 1960s at zero and then went to 10%," said Seamus Coffey, an economist at University College Cork and former chair of the Irish Fiscal Advisory Council.

"The point of it was never to generate corporate tax revenue, but to use relatively low corporate tax to attract the companies to set up in Ireland and let them build big factories and facilities," he stressed.

The Irish government was moving towards a low corporate tax regime to secure greater foreign direct investment (FDI). The strategy was defined by an open door to taxpayers looking for a good deal. Apple opened its plant in Cork in 1980. It was just the beginning.

The Irish government would turn the country into a gateway for US investment into European markets. Ireland cut its headline corporate tax rate from a high point of 50% in 1987 to 12.5% in 2003. The shift to 15% could be seen as a step backwards.

As part of its strategy, Ireland has welcomed companies such as Apple, Google and Facebook to its shores. Many of these technology companies have built a sizeable presence in Dublin and elsewhere in the country. Some worry these companies will move away from Ireland, but experts disagree.

"In the short to medium term, no, there won't be an exodus, the change from 12.5% to 15% is not that significant," said Coffey.

It is this strategy that the case brought into question. Critics have claimed Ireland has become a 'tax haven' through schemes like the double Irish. Nevertheless, the supporters of Ireland's low-tax strategy would defend it on economic grounds.

The 'Celtic Tiger' economy was in serious trouble when the 2008 financial crisis hit. Not only was the prosperity coming to an end, the Irish tax system was going to face more scrutiny as a result of public outrage over tax avoidance.

Eventually, the EU pushed for Ireland and the Netherlands to implement reforms. In 2015, the Irish government decided to wind-up the double Irish loophole for new companies and gave businesses until 2020 to restructure.

The double Irish loophole, which was phased out in 2020, allowed companies to place their intellectual property (IP) in Ireland and then channel the income through countries like Bermuda, the British Virgin Islands and the Cayman Islands.

Companies had to abandon double Irish structures over the ensuing controversy. However, as the loophole was closed, US multinational companies like Google, Facebook and Apple found alternatives to such aggressive tax planning.

Tax planning is still the name of the game, but it is not so brazen anymore. The Irish government will have to be very creative to maintain its competitive tax system once the global minimum rate becomes the standard. ■

Paolo Gentiloni

European Commissioner for the Economy Paolo Gentiloni is set to play a crucial role in securing digital tax reform in the EU as the union moves to enact the OECD's two-pillar plan.

Commissioner Paolo Gentiloni has to juggle more than two difficult tasks. Not only does the European Commission hope to secure EU-wide digital tax reform, but the Commission is taking tough economic action on Russia. This is while the Commission tries to contain the economic fallout of COVID-19.

"As we emerge from the shadow of the pandemic, we have a unique opportunity to rebuild our economies on a new footing. We want to see not just a rebound, but a new era of sustained and sustainable growth," said Gentiloni in a speech on the reform.

"Our world has changed enormously in the last two years," he added, stressing, "It is high time also for global taxation to change."

Before joining the European Commission, Gentiloni had a long career in Italian politics. He was the last prime minister of the Democratic government, taking over from Matteo Renzi in 2016 until the 2018 elections forced the Democratic Party (PD) from power.

The Italian government backed Gentiloni to represent the country in the Commission. The PD helped make this happen because of Gentiloni's skills of persuasion. These skills are being put to the test by a series of crises.

The chances of a quiet year may have dropped to zero since Russia invaded Ukraine, but Gentiloni had a full agenda before sanctions rose to the forefront of European politics. Nevertheless, Gentiloni may be about to unlock EU-wide tax reform.

Forging tax reform

The European Commission determined to make the OECD's two pillars EU policy, but it also aims to build other reforms on top of the minimum corporate rate. This includes another directive on administrative cooperation (DAC) to address crypto-assets.

However, it does not stop there. The Commission has two key proposals to reform EU tax going forward: the business in Europe framework for income tax (Befit) and the debt-equity bias reduction allowance (Debra). The aim of both proposals is to increase business investment and lower compliance costs.

The Commission is determined to go ahead with the plan for a minimum rate regardless of whether or not it becomes a global standard. The US has yet to enact reform at the domestic level, and the OECD is still working to secure pillar one by the summer.

There were calls from BusinessEurope to hit the breaks and slow down on reform, but the Commission was determined to take the fastest route to establish a minimum corporate rate across the EU.

Gentiloni may have to shelve one set of proposals while other policies can be implemented. This is the not the same as dropping proposals and moving on. The Commission is still committed to developing a common corporate tax system, but it has plenty of work to do to get there.

Closing the VAT gap

The EU continues to struggle to close the VAT gap and the 2019 figures may not be as bad as the 2020 and 2021 figures. EU member states lost an estimated €134 billion ($152 billion) in VAT revenue in 2019, according to an EU report. This is due to tax avoidance and evasion, bankruptcies, and administrative errors.

The EU VAT gap decreased by around €7 billion between 2018 and 2019, indicating a positive trend as the bloc's leaders clamp down on tax avoidance and work to improve reporting and collection processes. Yet 2019 saw EU member states lose out on a combined total of €134 billion in VAT revenues, representing 10.3% of the VAT total tax liability (VTTL).

"Despite the positive trend registered in the last few years, the VAT gap remains a major concern," said Gentiloni.

"This year's figures correspond to a loss of more than €4,000 per second. These are unacceptable losses for national budgets," he stressed.

The European Commission was keen to point out that the 2019 statistics show a marked decrease in the VAT gap from €141 billion in 2018 to €134 billion in 2019. This may have got even worse since the COVID-19 pandemic drove down consumer spending in 2020, but this analysis has yet to be carried out.

There is no shortage of political will in the EU to close the VAT gap. "We need to make a joint effort to crack down on VAT fraud, a serious crime that takes money out of consumers' pockets, undermines our welfare systems and depletes government coffers," said Gentiloni.

Soon Europeans will find out whether the VAT gap has got worse since COVID-19 struck. In the meantime, the Commission has got plenty of work to do to close this gap and shore up the tax base of multiple EU countries. This would go a long way to helping each economy recover from the shock of the pandemic. ■


Source: European Parliament

Bob Hamilton

Bob Hamilton, chair of the Forum on Tax Administration (FTA), commissioner of the CRA, and governing board member of Tax Inspectors Without Borders (TIWB), talks to ITR about his achievements in 2021 and plans for 2022.

Canada Revenue Authority (CRA) Commissioner Bob Hamilton has had another busy year of wearing different hats, both in Canada and on the international tax stage. Despite being 18 months into his role as leader of the FTA, Hamilton has yet to have an in-person meeting with his fellow commissioners, due to the COVID-19 pandemic.

The lack of personal interaction has made work more difficult, but the FTA has adjusted to remote working and fostered connections between tax authorities to support them during this phase of the pandemic.

Meanwhile, Hamilton is looking forward to continued projects in 2022, including capacity-building with TIWB and supporting countries to implement the OECD agreement on pillar one and pillar two.

Alice: What has been your biggest challenge in 2021?

Bob Hamilton: Perhaps not surprisingly, the biggest challenge in 2021 continued to be the ongoing impact of the pandemic on every aspect of the work of the CRA and the FTA. In particular, it has been challenging to resume compliance and collection activities in light of the ongoing economic impacts of the pandemic on taxpayers. And, after almost two years, the pandemic has taken a toll on the mental health and overall wellness of our employees.

Despite these challenges, we continued to support government recovery efforts, while ensuring the tax system continued to operate effectively. We have also grown and learned from these times of uncertainty and, as an agency, we continued to support our front-line employees.

Alice: What are you most pleased or proud about in the past year?

Bob: Tax administrations in many countries, Canada included, had to rapidly shift their focus to deliver government support benefits in 2020 in response to the pandemic. In Canada, this continued throughout 2021 and it was instrumental in supporting Canadians and businesses most affected by the pandemic.

I am proud of all CRA employees and their dedication to serving Canadians with professionalism, empathy, and respect, while at the same time consistently demonstrating resilience and strong adaptability while leveraging new technology.

From an FTA perspective, we have seen many similar examples from tax administrations around the globe, who innovated and leveraged new ways of working to better deliver government programs and support the citizens of their jurisdictions.

Through the wide-ranging collaboration fostered in the FTA, as well as through the annual Tax Administration Series publication, tax administrations can learn from one another, and consider how the innovative approaches taken by other jurisdictions may be adapted to enhance and improve their own programs. In many ways, the pandemic has made the FTA stronger as we supported each other and shared our respective experiences.

Alice: How has COVID-19 affected your work this year, and how have your teams adapted to it?

Bob: During 2021, there was a continued need for physical distancing and staying in a remote work environment, which the CRA workforce has largely adapted to quite well.

This adaptability has allowed us to continue to support Canadians, including through the delivery of emergency programs, in the context of a more flexible approach to the workplace.

However, as we look forward, determining the long-term future of work and the workplace may prove to be a greater challenge than the initial adjustment to the pandemic. As we begin to plan for the future, finding a balance between flexible work arrangements and enabling in-person connections will be a key priority for the CRA.

From an international collaboration perspective, although virtual interactions have been successful, we have felt the absence of face-to-face connections. While an in-person meeting of FTA commissioners has yet to occur since I came into the role of FTA chair in August 2020, I am hopeful that will change in 2022.

Alice: How do you think the pandemic has affected relationships between taxpayers and tax authorities?

Bob: Many tax administrations saw a significant increase in taxpayer trust during the pandemic as they quickly shifted from traditional tax administration activities and effectively delivered emergency pandemic-related benefits on behalf of their respective governments.

Bob Hamilton has been keeping the CRA and FTA going during COVID-19

As countries begin to shift to a post-pandemic economy, FTA member tax administrations are exploring opportunities to maintain this increased taxpayer trust and mitigate damage to tax morale as they resume compliance and debt management activities.

The pandemic also highlighted that the government plays an essential role in supporting its citizens through difficult times, reinforcing the need for a strong tax system to which everyone contributes their fair share. As a result, fairness in tax policy and tax administration will remain important issues going forward.

Alice: How will recent developments in tax technology and digitalisation affect your work in 2022?

Bob: The FTA programme of work for 2022 will feature many ongoing activities and projects carrying forward from 2021, although a key new priority will be implementation of the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.

While Inclusive Framework efforts on the policy-related aspects of the agreement continue at pace, the FTA will play a key role in addressing the administrative details of implementation for efficacy and efficiency and to help minimise the burden on tax administrations and business.

As COVID-19 has accelerated the need for digitalisation, Tax Administration 3.0, which is focused on the digital transformation of tax administrations in support of a more seamless model for taxation, will also remain a priority in 2022.

The FTA has also developed two new tools – a Digital Transformation Maturity Model and a web-based Inventory of Tax Technology Initiatives – to help administrations to understand the global landscape on digitalisation and how they are positioned.

Alice:What else is on the agenda for 2022?

Bob: Enhanced FTA support for developing countries through their capacity-building efforts, particularly related to the implementation of the pillars, and to digitalisation, will be a priority for 2022 and beyond.

As member of the TIWB governing board, I am pleased with the progress of this work and its contribution to capacity-building. Having expanded beyond transfer pricing assistance to include capacity-building support on the automatic exchange of information [AEOI] and criminal investigations, in 2022 we will be launching a pilot to help developing countries in their digitalisation efforts. ■

Sri Mulyani Indrawati

Source: Patrick Tsui / FCO

Indonesian Minister of Finance Sri Mulyani Indrawati is chairing the G20 meetings on tax in 2022 and will be advocating for carbon taxes and other environmental tax measures based on her domestic reforms.

Indrawati has led the Ministry of Finance in Indonesia since 2016. She won her spot in this year's Global Tax 50 for proposing a carbon tax to bolster national revenues by 2023, which could hasten environmental tax reform in the Asia Pacific (APAC) region. Indrawati is also co-chairing the G20 finance ministers and central bank governors meetings that will headline several global tax reform issues, including an environmental tax reform agenda, in 2022.

Indrawati's reforms include a carbon tax, a higher VAT rate, and a programme to report undisclosed assets from 2021 to bolster the Indonesian government's revenues by 2023. These measures were introduced under Law Number 7 in October 2021, the Harmonisation of Taxation Regulations (Undang-Undang Harmonisasi Peraturan Perpajakan – HPP Law).

"Governments desperately need revenue to rebuild their economies and they will need more of it in the long-term to address climate change, especially as the pandemic recedes," says Indrawati.

The VAT rate in Indonesia increased from 10% to 12% in October, while goods and services are taxed at between 5% and 25%. Several VAT exemptions will be removed in 2022. The legislative package also includes a carbon tax at 75 rupiah ($0.0052) for every kilo of carbon dioxide emitted, and an excise tax on all plastic products.

Additionally, Indrawati unveiled a programme to allow undisclosed assets to be reported following Indonesia's previous tax amnesty from 2016 to 2017. The legislation gives taxpayers another chance to declare hidden assets, but they will face a levy of between 12.5% and 30% of the asset's value.

Indonesian tax policy advisors are cautious about the knock-on effects of several of these changes, particularly a carbon tax, which could harm Indonesia's economic recovery as it faces the ongoing effects of the COVID-19 pandemic. However, the legislation is needed to lower the budget deficit below Indonesia's legal limit of 3% of GDP in 2023.

"Even though we are discussing these measures during the COVID pandemic, it does not divert our attention from the medium-to-long-term need to build a fair, healthy, effective and accountable tax system," says Indrawati. Parliamentary debate to enact legislation typically takes months to conclude, according to local advisors.

"Businesses were going to have to face these tax changes sooner or later," adds Indrawati.

Indonesia is joining several other countries in minimising government spending in 2022 by rolling back pandemic-era state aid packages that sustained economies but increased debt. Upcoming G20 meetings will also provide Indrawati with a platform to discuss global coordination in promoting certain tax measures.

Highlights from 2021

Indonesia achieved its tax revenue target of 1,444.5 trillion rupiah ($101.26 billion) in 2021 under Indrawati's leadership. This milestone is the first time that target has been met in more than a decade.

Indrawati says that this figure reflects a "strong economic recovery as commercial activities improved and businesses can pay taxes again". The higher revenues are a step towards bringing the budget deficit back below 3% of GDP by 2023.

Additionally, Indonesia took over the G20 presidency in 2021 and Indrawati, who is co-chairing discussions, has already called for a coordinated global exit policy on tax stimulus packages.

"We need tax policy measures and state aid rollback to be communicated clearly and taken in stages," says Indrawati.

Meanwhile, Indrawati is playing a key role in overseeing the OECD's framework for a two-pillar solution in 2022, which includes enacting a global minimum corporate tax under pillar two by 2023. The in-depth tax policy talks will likely take place at the meeting of G20 countries in Indonesia in October.

The G20 leaders recommissioned the OECD to address the issue of taxation in the digital economy following the BEPS action plan in 2017. Indrawati has already been active in these discussions through meetings between finance ministers and the Inclusive Framework on BEPS at the OECD since 2020.

Ongoing negotiations remain important as the digital economy is increasingly intertwined with the traditional economy in Indonesia. Attempts to segregate the two for tax purposes, whether direct or indirect, will not be easy for tax policy advisors.

Asia-based advisors expect Indonesia to grow into one of the world's largest digital economies in the next decade, surpassing Canada and most EU countries, but its path is complicated by corporate tax concerns around over-regulation and disputes.

Digital tax measures and environmental tax regulation will headline Indonesia's G20 presidency. Indrawati will be overseeing the rollout of the global minimum corporate tax rate and setting an environmental tax policy agenda during her term as chair at the G20 meetings in 2022. ■

Boris Johnson

UK Prime Minister Boris Johnson may no longer be the triumphant Conservative leader he was in 2019, but he has redefined UK tax policy in response to COVID-19.

Since his first appearance in *ITR*'s Global Tax 50, Boris Johnson has presided over an emergency response to COVID-19 with fiscal policy as a key lever in mitigating the worst of the economic fallout. A lot has changed for the Conservative leader who ran as an outsider politician in 2019.

The last time Johnson was featured in the Tax 50 he was triumphant after a landslide election victory. The Conservative Party won more than 50 Brexit-supporting Labour constituencies. Johnson had helped make "get Brexit done" inevitable.

Two years later, the UK is outside the EU and Johnson has become embroiled in scandals over claims he attended parties during lockdown. The Trade and Customs Agreement (TCA) is a reality, and the UK economy is wracked by the impact of COVID-19 and a supply chain crisis.

The Conservative leader looked like he might be on his way out of Downing Street, but then the Ukraine crisis struck. Johnson was quick to pledge support for Ukraine. He has imposed sanctions on Russian businesses and specific individuals. But his real legacy is still domestic.

What cannot be denied is that Johnson has changed the course of UK politics during his time as prime minister. He has presided over tax hikes and massive public spending. Fiscal policy looks very different to what it did a decade ago in the austerity years.

Many Leave campaigners wanted Brexit to be an opportunity to shrink the state and slash taxes to the bone in a bid to make the UK economy more dynamic and more competitive. Instead, the UK is heading for a very different economic model.

Low growth, high taxes

Despite his reputation for being a libertarian, Boris Johnson has backed massive state intervention in the economy and increased taxes to cover the long-term cost. The UK could afford this crisis spending thanks to cheap yields for raising debt on the capital markets.

The Johnson government quickly set itself apart from the short-lived May government. Strict austerity was no longer the name of the game, although Johnson picked up where Theresa May left off. His government has not reversed the years of public spending cuts.

The Johnson government made it clear that it was abandoning Philip Hammond's public spending limits and adopting a more expansionary spending plan. Though this will mean extra tax revenue has to be found from somewhere, even if it's just to finance a budget deficit rather than create a surplus.

This is why Johnson announced his government was shelving the plan to cut corporation tax from 19% to 17% in 2020. Yet he went further in 2021 with a corporate tax increase to 24%. His government has also increased national insurance rates and considered raising capital gains tax.

The most pro-business tax policy the Johnson government put into action was the 130% 'super-deduction' for capital investment. However, this is a temporary measure implemented to bolster economic growth as the pandemic is contained.

Not everyone is convinced that this is enough. Tony Danker, director general of the Confederation of British Industry (CBI), gave a speech on February 3 criticising the UK's economic strategy. He claimed the country was moving into a "vicious cycle" of high taxes and low growth.

"The super-deduction was a super-exception to normal incremental thinking. It was the boldness we need. Now, the 2023 end date is just too soon for most investment cycles," Danker told the audience at CBI head office.

"So not only does it need extending; it needs to represent a totally new way of thinking about business investment," he stressed.

The CBI is calling for a permanent 100% investment deduction for capital spending to boost investment. This would apply from March 2023, when the Treasury's 'super-deduction' ends. Once upon a time, Conservative governments would have backed such a policy.

It may be too costly to offer a permanent investment deduction, but Johnson needs to win over business leaders. He has to convince Conservative MPs to stay on his side, while he rebuilds his support among the public.

Leadership change?

By March 2023, the Conservatives may be thinking about the next general election. The UK has to hold an election before the end of 2024. This is why there is such urgency over Johnson's position, and who, if anyone, could replace him.

The Conservative Party may have a leadership election in 2022 unless Johnson can turn around his approval ratings ahead of the May local elections. He still commands enough loyalty among Conservative MPs to hold on, but this could change very quickly in the near future.

However, observers should be careful about making predictions of Johnson's political downfall. Theresa May outlasted all such predictions without a majority, relying on the Democratic Unionist Party (DUP), even after losing countless votes in Parliament.

By contrast, Johnson presided over the revival of the Conservative national vote in 2019. The party, which had no won a large majority since 1992, seized dozens of Labour seats in Northern English towns. This achievement means Johnson may be able to hold-off his opponents for a while.

Whether or not he faces a leadership election sooner or later, Boris Johnson's legacy in UK politics will play out for many years to come. ■

Fumio Kishida

Japanese Prime Minister Fumio Kishida wants to redefine Japanese capitalism and tax policy will be a key part of his strategy.

Six months into the job, Prime Minister Kishida has made it clear his style of leadership will be different from his predecessors. He has pitched himself as a 'moderate' leader, yet he surprised investors with a proposal to increase capital gains tax soon after he took office.

Kishida suggested the 20% capital gains tax rate be increased as part of a fiscal consolidation. The so-called 'Kishida shock' saw spooked investors selling off Japanese stocks in reaction. The Japanese government has since shelved the capital gains proposal, but this does not mean it will stay on the shelf forever.

"As we debate a new form of capitalism, various policies will be required… to achieve a virtuous cycle between growth and distribution," said Kishida at the time. "There is a need to consider the financial income tax. I've raised it as one of various options."

Japan may have to consider a very different fiscal strategy to manage its debt burden. The country has a high tax burden for individuals. The highest personal income tax rate is 55%, whereas consumption tax is at 10%.

There is little appetite for higher rates on either front. There may be a shift to higher taxes on capital rather than labour and consumption. Kishida has talked up redistributive policies to focus on the Japanese middle class. He has alluded to the 1960 Income Doubling Plan that doubled the size of the economy is less than a decade.

However, Kishida has to keep his party on board while drafting policies for the country. He is the leader of the centrist Kōchikai in the LDP, but he also has ties to the nationalist Nippon Kaigi. Keeping everyone happy is impossible in politics.

'New capitalism'

Prime Minister Kishida has good reasons to talk about a 'new capitalism' since the Japanese economy may only just be recovering from the impact of COVID-19.

Businesses in Japan faced an unprecedented downturn when the COVID-19 pandemic hit the economy and consumer demand nose-dived, following other significant factors such as the consumption tax increase and the fallout from Typhoon Hagibis – both in October 2019.

This has led to changes to the net operating losses system in the 2021 tax reform package, which allows a deduction of tax losses to be brought forward for 100% of taxable income under certain conditions.

Source: Prime Minister's Office of Japan

The impact of COVID-19 has revealed the cracks in Japan's tax procedures and the fragility of its digital economy. Many tax processes rely on manual input, such as stamps and face-to-face interactions.

However, the Japanese economy has seen its GDP growth rate rise to 1.6% in 2021. This may be the beginning of a slow recovery. The International Monetary Fund (IMF) projects that Japan will be able to increase its growth rate to 3.3% in 2022.

The International Monetary Fund (IMF) called on the Japanese government in January 2022 to cut back on emergency spending and consider tax increases to cover the costs of the COVID-19 pandemic.

"Fiscal policy should be nimble and flexible, adjusting the scale and composition of support in response to epidemiological and economic developments," said the IMF as part of its report on the Japanese economy.

The IMF may have provided the Japanese government with more arguments for raising taxes as the economy recovers from the impact of the pandemic. Prime Minister Kishida has used stimulus measures, as well as tax incentives, to boost economic growth.

The Japanese economy suffered from stagnant growth long before the pandemic hit. The government's stimulus measures may have helped the economy recover from the impact of COVID-19, but it is less certain that the economy will return to its glory days.

Much like other advanced economies, Japan may be entering another era of low growth. Except this time the state may be much more 'hands on' than ever before and taxes could stay high to sustain even this level of growth. ■

Michael Lennard

Michael Lennard, chief of international tax cooperation at the UN's Financing for Development Office, plans to get back to a wide range of tax issues neglected during the digital tax debate.

The UN tax committee has set itself a busy agenda for 2022. Michael Lennard will continue to oversee the committee's crucial work. The committee has an opportunity to get back to addressing tax issues that have not received as much attention as digital tax in the last few years.

In the cautious world of tax policy, Lennard has a reputation for straight-talking. This is an asset given his work is particularly focused on ensuring the fairness of international tax norms, especially when it comes to the global south and sustainable development.

Lennard has worked on fiscal policy at multiple levels. He advised the OECD on tax treaties and he worked on tax treaties and international policy at the Australian Tax Office (ATO). He also led Australia's negotiating teams on trade agreements and tax treaties.

He has prepared arguments for tax matters to be put before the Australian High Court and the US Supreme Court, as well as the World Trade Organisation. His work on treaty interpretation has become a useful reference for the WTO Appellate Body.

He may see an opportunity as digital tax reform enters its last phase. The October 2021 agreement on the OECD's two pillars may have created more space in 2022 for further debates on other key areas of policy.

The debate on how to tax the digital economy has taken up a lot of time and energy that could have gone to work on other tax issues. This means getting back to core areas such as double taxation, transfer pricing, tax treaty negotiation and VAT standards. As a result, the UN tax committee has a very busy agenda for 2022.

The UN tax committee is launching almost a dozen sub-committees on specific issues such as environmental taxation and the relationship of tax to trade treaties. Digitalisation and globalisation will be the focus of one sub-committee.

Furthermore, this is the first year that the UN will have a tax sub-committee dedicated to VAT policy, health taxes and the role of tax in reducing inequality. Tax and gender will be the focus of another sub-committee.

The challenge for the tax committee will be putting tax in its proper context while making sure that all the technical work gets done. Political backing and political will are important in international tax, however, the key is getting the technical detail right for all taxpayers and stakeholders.

Unlike the OECD, the UN does not have to worry about consensus as much as granting a platform to countries that might otherwise be ignored. The global south faces many unique fiscal problems that the global north does not.

For instance, African and Asian countries are much more vulnerable to the detrimental impact of climate change. Therefore, the governments in these regions have a much bigger stake in environmental tax policies. The UN can act as their platform.

The multilateralisation of tax policy through the OECD may have produced an agreement on digital tax, but the UN is still committed to its tax model. Lennard still believes that the world needs bilateral negotiation and that there is a space for unilateral action.

After all, it was the rise of unilateralism over the digital economy that spurred on the OECD to secure a multilateral agreement. This was explicit in some cases, such as France, where the government set out to pressure the OECD by instituting a digital services tax (DST) regime.

Many other countries followed the French example and the pressure continued to rise. The US government was vocally opposed to such unilateral measures and enacted its own tax reform to try and put a floor under global tax competition.

The UN tax committee will play a key role in giving voice to the global south and taking the debate further than what North American and European governments want. The world needs more than one forum for tax policy. ■

The UN plays a crucial role as a forum for tax policy

Ursula von der Leyen

European Commission President Ursula von der Leyen is doubling down on corporate tax reform and pushing for making country-by-country reporting (CbCR) public, while cracking down on EU-based shell companies.

Several data leaks in 2021, including the Pandora Papers, set off renewed calls for global tax reform and tax transparency across countries and von der Leyen is responding with a roadmap for business tax reform that will take shape in 2022.

More tax transparency and simplifications on corporate tax are high on the Commission's agenda, especially as the OECD is pushing for more multilateral cooperation. "We have in the EU some of the highest tax transparency standards in the world, but as we see it is not enough, more work is needed," said von der Leyen.

One of von der Leyen's biggest achievements in 2021 is enacting the public CbCR, which marks the Commission's intention for a wider corporate tax transparency regime. This coupled with other EU laws such as the automatic exchange of information with the Directive on Administrative Cooperation (DAC) 2011/16/EU, will enhance the Commission's net of oversight on corporate tax matters.

Von der Leyen also notably signed and finalised the OECD's two-pillar solution to address tax challenges in the digital economy with several other world leaders in October 2021. She is looking to use the momentum from the two-pillar solution to pass wider business tax reforms.

The EC president claims that the reforms will reduce administrative burdens, remove tax obstacles and create a more business-friendly environment in the single market by 2023.

Business tax reform in Europe

Von der Leyen's other achievements include adopting the Communication on Business Taxation for the 21st century, a roadmap to standardise the EU's business tax framework. The roadmap builds on top of the OECD's two-pillar solution to address the tax challenges of the digital economy.

The tax policy roadmap includes replacing the deadlocked common consolidated corporate tax base (CCCTB) proposal with the Business in Europe: Framework for Income Taxation (Befit) proposal. The Befit proposal introduces a single corporate tax system based on features from the CCCTB and the OECD's two-pillar proposals for global tax reform.

Von der Leyen is focusing on tax reform again in the EU in 2022

Common rules for determining the corporate tax base under Befit will deliver substantial simplifications for companies operating in the single market, according to the Commission. Instead of the EU having 27 different sets of corporate tax regimes, a corporate group will be able to determine its tax liability in each member state under one single set of rules.

The Commission also published a directive on pillar two in December 2021 to ensure a global minimum level of taxation at a 15% rate for multinational enterprises (MNEs). It is under negotiation at the European Council and Parliament and if both greenlight the directive then all member states will need to enact the minimum tax and its rules by December 2022.

Greater tax transparency

Alongside corporate tax reform with the Befit proposal and minimum tax framework, von der Leyen is also supporting tax transparency measures that will spotlight several levels of large business activity.

The public CbCR directive requires MNEs with group revenue of more than €750 million ($858 million) to publicly disclose the amount of corporate tax they pay in every EU countries they operate in. Large businesses will need comply with the first provisions of this directive by mid-2024.

"This is a big step because for too long large corporations have played by their own rules and more needs to be disclosed to build the public trust," said von der Leyen, regarding the European Parliament voting in favour of public CbCR in November 2021.

The directive would also apply to MNEs headquartered outside the EU that do business in the EU through subsidiaries. This includes MNEs operating in countries on the EU's list of non-cooperative tax jurisdictions (EU tax blacklist).

Meanwhile, the Commission is also working to expand tax transparency in the DAC framework by adding reporting requirements relating to digital platforms in DAC7 and crypto-assets and e-money in DAC8, both are future iterations of the directive.

DAC7 was greenlighted in March 2021 in the EU, marking another win for the Commission's leadership. The directive requires online platforms such as Amazon to collect and share data on their sellers and transactions. EU member states will have to implement DAC7 in national law by December 31 2022.

The EU Commission also launched a consultation on DAC8 in March 2021. The feedback will help inform how the EU authorities expand regulation on disclosures of financial assets. This will ideally provide tax authorities with more options to act against tax fraud and tax evasion within the next 12 to 18 months.

While tax transparency measures are moving forward in the EU, von der Leyen and the Commission are also focusing on environmental taxation measures as a next step on the corporate tax roadmap. Multilateral engagement on setting a global carbon tax policy looks to be the next BEPS-level project.

Next steps

Von der Leyen called for global carbon pricing at the UN Climate Change conference (COP26) in November 2021."We need to agree to a robust framework of rules to make global carbon markets a reality and put a price on carbon as nature cannot pay that price anymore," said von der Leyen.

Carbon taxation may also become an increasingly important topic in the EU as the debt from bailout packages during the COVID-19 pandemic accelerates the pace of tax reform in the bloc. The Commission is vying for large businesses to at least partly address the bill from several state aid packages.

Global corporate tax frameworks are undergoing some of the most dramatic changes in decades, partly exacerbated by the economic impact of the pandemic. Von der Leyen is a key figure in this trend. The EU is bound to become more transparent in tax policy than it ever has before, but this may put tax systems to the test. ■

Bruno Le Maire

French finance minister Bruno Le Maire pushed the international community towards a multilateral solution on digital tax by imposing a digital services tax (DST). The OECD reached an agreement partly in response.

As France's finance minister, Bruno Le Maire has used the threat of a DST to pressure the OECD and the EU to seek an international solution to taxing the digital economy. Le Maire claimed that technology companies, including Google, Amazon, Facebook and Apple, failed to pay their fair share of tax.

With a growing urge to tackle tax avoidance and increase tax revenue, Le Maire's ambition to tax these multinationals has led to difficult conversations with world leaders such as former US President Donald Trump.

The OECD's tax deal on pillar one and pillar two was yet a relief for France's finance minister, as jurisdictions finally agreed to endorse a 15% minimum global corporate tax and the reallocation of hundreds of billions of euros in profit. The consensus reached not only put an end to multilateral measures but also marked a renewed relationship between Europe and the US.

"We succeeded in finding a compromise on these strategic questions, which is a new taxation system for the 21st century. This is a tax revolution. It's the first time we've succeeded in finding a solution on taxation issues. There is no way back," said Le Maire during a press interview in October.

"It means more fairness and efficiency in the way we will tax the biggest companies in the world and the way we will tax profit made by companies without any physical presence in the nations. This is clearly a major achievement," he added.

Once endorsed by jurisdictions, the global tax deal will abolish unilateral measures in 2023. Countries such as France could hang onto their DSTs during the transitional period. They will also offer a tax credit to corporations that are subject to the tax after October 8 2021, when the agreement was reached.

While the OECD's landmark tax deal revived Le Maire's hope for a fairer and more efficient global tax framework, the finance minister recalled how negotiations between parties had not been easy.

In his last book *L'Ange et la Bête: Mémoires provisoires* (*The Angel and the Beast: Provisional Memoires*), Le Maire described a split between the OECD and the European Union following the April 2018 meeting of European finances ministers.

"Instead of supporting our efforts to rapidly reach a consensus at 27, the OECD was wiping them out. It was asking for time. It was recommending prudence," he wrote. "It was not the moment for Great Britain, in the middle of Brexit, to lose the support of its big brother, nor for the OECD to risk a reduction in the American contribution."

"The Germans remained silent. They feared retaliatory measures on their automobile industry, but they did not want to hold up France either," explained Le Maire.

Le Maire described the deep anger he had during the meeting, in which he felt the EU was "ridiculing itself" by being "incapable of defending its financial interests".

Trade tensions

One year later, Le Maire suggested to French President Emmanuel Macron a project of domestic taxation on technology multinationals. He was determined to submit the idea at the European Parliament and the next G7 meeting. However, convincing Trump was bound to be a difficult task.

Steven Mnuchin – former Secretary of the Treasury – told Le Maire the proposals suggested were discriminatory against American multinationals. Le Maire's determination to tax technology multinationals resulted in a tense relationship between the US and France where stakes were high. Either France abandoned its DST or faced trade tariffs on its exports, particularly on wine.

Both countries came to an agreement following the G7 meeting held in Biarritz, France in August 2019. Under the accord, companies would have the option to deduct the French DST if an OECD solution were to take place in 2020. The difference between the national taxation and the international rate imposed would be reimbursed to multinationals.

The US-EU trade tensions persisted for several months. Discussions at the 2020 World Economic Forum (WEF) between world leaders eased the pressure, but the COVID-19 pandemic sparked new disagreements.

In June 2020, the US withdrew from digital tax talks as Mnuchin warned the discussions had reached an "impasse", claiming negotiations should be put on hold while governments dealt with the economic difficulties resulting from the health crisis.

"As we have repeatedly said, if countries choose to collect or adopt such taxes, the United States will respond with appropriate commensurate measures," said Mnuchin.

The pandemic also delayed the OECD's pillar two proposal, which led countries to consider unilateral measures despite the risk of double taxation. In October 2020, Le Maire reiterated the need for the EU to implement a bloc-wide DST if jurisdictions failed to reach an agreement around pillar two.

"Either one accepts an extension again for months, maybe years, or one considers that fair taxes on digital activities are urgent and, in this case,, Europe sets the example. We consider it indispensable that Europe sets an example and adopts digital taxation as soon as possible," said Le Maire.

The arrival of Joe Biden yet enabled further collaboration between Europe and the US around digital tax. The French finance minister had hoped the Biden administration would lead to a new start between the two parties, aiming to reach a consensus by the beginning of 2021.

Following months of negotiations, the OECD's global tax framework – signed by 136 countries in October – put a final stop at US-France trade tensions as countries agreed to impose a 15% tax rate on companies with revenues exceeding €750 million ($852 million).

The agreement came as a good compromise for both countries. The deal meant US technology companies were not the only ones targeted by the corporate tax rule while the framework still successfully addressed the issue of multinationals' lack of physical presence – a key issue that Le Maire often pointed out.

The year 2021 was a successful turning point for the French finance minister in the DST debate. France is set for the 2022 presidential election in April, and this could also be a critical moment for Europe, with far-right candidate Marine Le Pen back running for office. ■

Zayda Manatta

In this exclusive interview, Zayda Manatta, head of the OECD Global Forum's Secretariat, talks to ITR about what taxpayers can expect from her team in 2022.

Zayda Manatta has not let COVID-19 hold her back over the past year.

As an international body made up of more than 160 countries, the Global Forum (GF) plays a crucial role in advancing tax transparency, but it has faced hurdles during the pandemic.

Nevertheless, Manatta has overseen key developments when it comes to the exchange of information on request (EOIR) and the automatic exchange of information (AEOI). Here she talks *ITR* through the difficulties and achievements of 2021, as well as her aims for 2022.

ITR: What has been the biggest challenge of 2021?

Zayda Manatta: To carry on activities and keep engagement up despite the pandemic. It was not an easy year to keep everything running in the virtual environment – and there was also a bit of fatigue of all these virtual meetings.

On the other hand, we became much more effective in the virtual environment, and meetings became more productive because people learned how to interact. And there are advantages to virtual working: we managed to get many more participants for our meetings, and some people said they would never have been able attend otherwise, because of the cost of travelling. This is important, especially for developing countries.

We took advantage of this time to work on toolkits and e-learning modules, so that when we come back to 'normalcy' – if that ever comes back! – we have these. Since 2011 we have finished nine toolkits, and six of them were done last year. We just focused on what we could do.

ITR: What are you most pleased with, or proud of, in 2021?

Zayda: I'm very happy to see the sense of community and a common goal in the Global Forum, despite some differences and challenges. I saw a great sense of union and community, and we got a lot of support from our members.

I'm also very proud of what my team was able to deliver. They were working in very difficult conditions because of the distance, but they managed to deliver a lot and were very conscious of the importance of the work they were doing.

In addition, we started a project called Train the Trainer, with the idea to train tax authority officers to be trainers in their own jurisdiction. We started with 17 jurisdictions, and at least 24 trainings took place last year in Africa. We plan to expand it to other regions this year. The programme doesn't depend on the Secretariat being available to provide training, so it's much more sustainable.

We also launched something this year that I am very proud of, which is our Women leaders in tax transparency initiative focusing on women from tax administrations in developing countries. The initiative is a one-year pilot project aimed at building capacity and empowering women to take leadership roles in their tax administrations.

ITR: Can you explain a bit more about the Women leaders in tax transparency initiative?

Zayda: The goal is really to guarantee that female officers have the opportunity to take leadership roles. We aim to discuss soft skills like leadership, communication, sharing experience, and building a network of women from developing countries. We have had many interested applications, and I hope that it works well so we can expand it.

Another action we've taken now for two years is to request that, whenever we do training, the jurisdiction provides at least 50% female applications. It has worked so far in most cases. But we still see that most participants are male, so there is a need to empower these women and build capacity so women can take these roles in the future.

ITR: How was progress on the GF's capacity-building programme, which reached its 10-year anniversary last year, in 2021?

Zayda: We made a lot of progress last year, and we defined a new strategy for the next two years, including three main points:

1) Guaranteeing policymakers' understanding and commitment to transparency and the exchange of information (EOI);
2) Providing toolkits and e-learning for jurisdictions to build their capacity in a way that is not dependent on one-to-one support;
3) A step-by-step plan for each jurisdiction, which is a more modular approach. We also designed some tools that can show tax authorities their progress, and where they can monitor key milestones.

ITR: What work were you able to do on EOIR and AEOI in 2021?

Zayda: On EOIR, last year we started an enhanced follow-up report, which is peer feedback. This was the first time that jurisdictions were offered the opportunity to provide feedback that is not in the context of a jurisdiction being reviewed.

We had a nice outcome because overall countries are happy with the cooperation.

The OECD will deliver its first report on the effectiveness of AEOI in 2022

It's an opportunity for them to shed light on issues that may arise, and to build collaboration and communication. Of course, it also puts some pressure on jurisdictions to keep moving!

On AEOI, we expected to publish the results of the effectiveness review at the beginning of last year, but because of COVID-19 we were asked to postpone the report until this year.

Ensuring the effectiveness of implementation is key to ensuring financial institutions are collecting complete and accurate information. The biggest thing for us this year will be the report on the effectiveness of the implementation – it's something new, and everybody is expecting it.

***ITR*: There is also a capacity-building initiative for Asia that is planned to launch this year.**

Zayda: Yes – the initiative will be similar to what we have in Africa and Latin America [the Yaoundé and Punta del Este declarations].

We still have to discuss with Asian countries what their priorities are. Asia is a bit more challenging because progress is uneven; we have very developed jurisdictions but on the other hand we have some jurisdictions that have not committed to EOI or are not even GF members. This is a bit different from Africa where, although there are more advanced jurisdictions, overall they move together.

We plan to take advantage of the fact that Indonesia is the G20 president and that, the following year, it will be India, meaning two Asian countries. The Asian Development Bank is also on board, which brings lots of support for us, so we plan to do a lot of work on it this year.

***ITR*: What are your plans for 2022?**

Zayda: The delivery of the AEOI effectiveness report will be key this year. It will be important for us to guarantee that jurisdictions are fulfilling their commitment but also that they are benefitting from it.

It's also very important to us that those who are interested in implementing transparency standards are supported to do it, and not left behind. This is a sometimes a challenge, but we are very committed to do it.

This year we are also going to have a strategic discussion about our process. Should we continue peer reviews in the form they have now, or should we move to something different? Is there a need for a third round of EOIR reviews or should we move to a different approach?

With AEOI, what will we do in 2023? Should we continue doing that? Is there a need for adding some elements or streamlining some of them? These are the key issues we have to discuss this year. ■

Will Morris

Will Morris has taken on the role of vice chairperson of the BIAC tax and fiscal affairs committee. He will continue to help shape the tax agenda in 2022.

After more than a decade, Will Morris has stepped down as the chairman of the tax and fiscal affairs committee at the OECD's Business and Industry Advisory Committee (BIAC). He has taken on the role of vice chair and will still have a lot of influence on tax simplifications and safeguards for the OECD's two-pillar project in 2022.

Morris has frequently been part of *ITR's* Global Tax 50 because of his influence on international tax negotiations between businesses and governments for many years. He is well respected for ensuring the views of large businesses are listened to during the technical development of tax policies at the OECD. Yet 2021 was the most difficult year to be in this role.

"There was genuine anger and frustration from businesses at the lack of consultation and the position in which they found themselves in from complexities in pillar two," says Morris.

He even published an open letter to the OECD in January about several issues in the updated draft of pillar two's model rules.

"It is very interesting to explain one country's position to another country and then to act as a bridge for business involvement is something I find quite attractive about my role," says Morris, regarding his decade-long tenure at BIAC and move from chairman to vice chair and advisor to the committee in 2022.

BIAC synthesises the views of several large business groups such as the US Council for International Business (USCIB) and the Japan Business Federation (Keidanren).

The group has also advised on business principles for the OECD's tax and environmental agenda, as well as the tax treatment of an increasingly mobile workforce and tax administration 3.0.

"I have always advocated for predictable, stable and transparent tax frameworks to eliminate double taxation and other barriers to cross-border trade and investment," says Morris.

He will still influence the business response to pillar two in 2022 as vice chairperson at BIAC because a global minimum corporate tax framework under pillar two is more likely to be adopted by most governments by 2023.

"I honestly stayed on as chairman a little longer than I thought I was going to, and probably a little beyond my term in order to see out this digital project," added Morris.

The biggest challenge Morris faced at BIAC in his final months as chairman was in distilling thousands of pages of comments from large businesses on the complexities of pillar two. This was one way to appease tax leaders whose views had been neglected due to pillar two's tight deadline.

Hardships in negotiating pillar two

BIAC received more than 3,000 pages of comments on pillar two from large businesses, which needed to be negotiated with governments during the pandemic.

"The pandemic exacerbated issues around finding a solution to the problems tied to pillar two, since BIAC is a group which doesn't work unless people get together and talk," says Morris.

He has visited business delegates in more than 30 countries across almost all continents prior to the pandemic to discuss the problems and find a consensus framework for the two-pillar project.

"It [the list of comments] was indigestible for the OECD secretariat alone and it became complicated when having to go back-and-forth with governments too," says Morris.

"Some of the discussions on the surrender jurisdiction, the country which cedes a tax base in essence, have become terribly theoretical and complicated," adds Morris.

All governments were winners in the first BEPS project, which made the process of forming the provisions a little more relaxed. However, the digital project is different and needs to be cut up into bite-sized pieces for businesses and governments to digest because there are clearer losers under the framework.

Another major difference between projects is that the BEPS project involved OECD member states and the G20, but the two-pillar project evolved under the guidance of the Inclusive Framework.

Tense and contentious negotiations with BIAC on the two-pillar project restricted detailed technical input from the business community. For example, US business leaders suggested pillar two is more generous than the global intangible low income (GILTI) tax, but European leaders disagreed.

Next steps for negotiations

Morris shares with *ITR* what taxpayers can expect from the OECD's business partner on tax in 2022. "I am going to stay involved in BIAC for at least another two years and I will still be quite involved in the digital project as it unfolds," says Morris.

"Alan McLean has a long history with BIAC, and he will be taking over from me, and I think he will do a great job in continuing to bridge the gap," says Morris. McLean is head of tax at Shell and chairperson elect at BIAC.

Nonetheless, one of the targets Morris will be focusing on at BIAC in 2022 is working with the OECD Working Party 11 on simplifying pillar two for large business compliance. BIAC is also advising the OECD on safe harbour rules before countries must implement legislation in 2023.

"While the working parties on pillar two are not directly in contact with me, the secretariat is receptive to the position BIAC is trying to achieve for global businesses," added Morris.

Simplification is the biggest issue Morris sees for businesses to overcome from the two-pillar project and the OECD is under a tight deadline in 2023 to revise any framework rules or add caveats before countries start enacting legislation. Any variations from the model rules could leave businesses with compliance challenges for years to come. ■

John Peterson

John Peterson, head of the OECD's aggressive tax planning unit, is responsible for pillar two's global minimum tax framework. About 137 countries are drafting minimum taxes based on his design.

The G20/OECD's digital tax agenda remains the hottest topic in tax policymaking in 2022 as several countries prepare draft legislation for a 15% global minimum corporate tax rate by 2023. The minimum rate will set a floor on international tax competition and is intended to stop multinational enterprises (MNEs) shifting profit to lower tax jurisdictions.

"The Panama Papers and the Paradise Papers have focused the public's attention on the global reach of the tax planning industry, and the leaks make it more obvious that tax avoidance is a global problem that requires co-ordinated rules and collaborative action," says Peterson, who started working on the design of the global anti-base erosion (GloBE) rules for pillar two with his team in 2019.

The GloBE rules that Peterson co-designed are the basis of a global minimum tax framework that will be enacted in 137 countries so that MNEs with a turnover of more than €750 million ($820 million) pay a 15% effective tax rate regardless of where they are headquartered.

"We are trying to design these rules so they are future-proof [as the digital economy expands]," says Peterson. The set of GloBE rules include the income inclusion rule (IIR), undertaxed payment rule (UTPR), and switch-over rule (SOR).

Peterson's team at the OECD co-released a model framework for the rules in December 2021 to pave a way for countries to draft legislation for pillar two in 2022. However, several corporate leaders are calling for greater simplicity as the GloBE rules may be difficult to standardise across countries.

Addressing complexity

In 2022, Peterson will continue working on reducing overall complexity in pillar two's model rules after facing some criticism from businesses. The Business and Industry Advisory Committee (BIAC) published a letter in January 2022 stressing that complexity is the key issue to resolve in the model rules.

Some shortcomings in standardising the minimum tax framework are apparent as the UK and other countries are drafting legislation for a qualified domestic minimum top-up tax (QDMTT) based on the rules that might deviate from Peterson's original design.

John Peterson co-designed pillar two's GloBE rules

The QDMTT gives countries with subsidiaries priority in collecting the IIR top-up tax when group profits are taxed under the 15% rate instead of countries where MNEs are headquartered, as originally planned by Peterson's team.

"The OECD does not recommend such interim measures [while the rules are still under discussion], but that is not to say they are not allowed," says Peterson.

"An ongoing peer review process may determine whether a country's minimum tax rules are considered acceptable under the OECD-led corporate tax agreement," he adds.

Peterson acknowledges that the OECD cannot be certain how each country's local rules and adjustments to the model rules will interact with the overall GloBE framework. Yet he also says the OECD is confident abuses will be limited because countries will calculate taxable income based on accounting rules.

Deferred tax accounting

The GloBE rules use deferred tax accounting to address timing differences in tax returns across groups, which impacts groups with long-term capital-intensive projects. Peterson's team will be expanding on a double tax agreement (DTA) safe harbour to address such timing differences too.

"There will be several safeguards to ensure that the approach only operates to neutralise temporary timing differences and that credit is only given for tax that will be paid," he says.

The DTA approach takes the total amount of deferred tax adjustments for the year as reported in the group's financial accounts and then makes three adjustments. This includes including removing deferred tax items that have management views, excluding deferred tax items not included in the GLoBE tax base, and capping the accrued deferred tax assets and liabilities at the minimum rate.

The GloBE rules will also incorporate an alternative safe harbour mechanism, primarily intended for MNEs that incur losses in low tax jurisdictions, that allows the MNE to carry-forward those losses in the form of a deemed tax asset that is priced based on the minimum tax rate.

Next steps

Peterson will be working on launching a consultation on the implementation mechanism for pillar two in March 2022 that will include other safe harbour provisions for MNEs. He is also working with the BIAC to address the remaining policy and technical gaps in the GloBE rules and simplify the overall framework.

"A global minimum tax represents a chance to bring stability to the international tax system," says Peterson. He explains that will may end the historic arms-race between anti-avoidance rules and tax incentives, encourage the allocation of capital based on real economic factors and build a more resilient global economy.

"We cannot leave much to chance as this will have an impact on the tax system for years," he adds.

Business feedback from the consultation may change the way the GloBE rules are implemented by countries in 2023 and what safe harbours may be appropriate to avoid double taxation. Nonetheless, the rules will put a floor on global tax competition that will force governments to revise several of their strategies on tax policymaking. ■

Charles Rettig

Charles Rettig, commissioner of the Internal Revenue Service (IRS), is pushing for the US to impose stricter reporting requirements on crypto-assets such as non-fungible tokens (NFTs) to prevent tax evasion.

IRS Commissioner Charles Rettig has raised concerns over the tax gap caused by cryptocurrencies in the United States, calling for further reporting standards to be adopted by the government. The IRS is going after crypto-assets because the sector is estimated to be costing the service $1 trillion a year in tax revenue.

The Treasury's 'Green Book' proposed to expand reporting requirements for crypto-assets in May 2021. Transactions of $10,000 or more would have to be reported to the US tax authority. This would also mean extending the financial account reporting to cryptocurrencies.

In a written testimony before the Senate Finance Committee, Rettig called for a "comprehensive financial account information reporting" to be introduced. The annual return would report "gross inflows and outflows with a breakdown for physical cash, transactions with a foreign account, and transfer to and from another account with the same owner".

That same reporting obligation would also be used to increase transparency over transactions involving digital assets, being applied to crypto exchanges and custodians.

"I think we need congressional authority. As you're aware, we get challenged frequently and to have a clear dictate from Congress and the authority of us to collect that information is critical," said Rettig.

The nascent NFTs sector has also contributed to the rising demand of the IRS to tax these digital assets. Under US standards, taxpayers are solely required to report whether they have been involved with crypto or not.

Rettig has previously considered NFTs as a potential tax evasion risk, stating that the crypto world was "replicating itself constantly", at a Senate Finance hearing.

"These are not visible items by design. The crypto world is not visible," he said.

Taxing digital assets is a complex issue and the various tax implications around it must be closely assessed by governments. More guidance is needed from governments for taxpayers to be compliant with reporting rules over their crypto-assets.

Countries such as India have set up frameworks for taxing digital assets. India's 2022 budget set out proposals to tax cryptocurrencies and NFTs, in which the capital gains tax (CGT) rate will be at 30% for cryptocurrencies and NFTs as well as a withholding tax rate of 1%.

The European Union has also proposed a regulation on markets in crypto-asset (MiCA), claiming the absence of applicable rules to services related to digital assets could leave investors and consumers facing significant risks.

Many governments around the world are working on implementing an appropriate framework for crypto market participants, guidance remains including how tax authorities collect data from taxpayers while respecting their right to privacy. Most crypto exchange platforms follow a know your customer (KYC) regime, but this is why the authorities are finding it difficult to track transactions.

President Biden's Infrastructure Bill, approved in December 2021, was a landmark victory for those calling for tax reporting rules to be extended to digital assets.

Under the bill, crypto exchanges will need to file an additional form when receiving digital assets during a transaction whose value exceeds the $10,000 threshold. By narrowing tax collection on cryptocurrency, the US government aims to fund many of its plans set in the bill including infrastructure projects, modernisation of public transit and broadband.

There is no global standard for the taxation of crypto-asset transactions. However, national tax authorities are likely to continue to raise tougher reporting standards on investors in crypto. The crackdown may have only just begun.

As digital assets including NFTs gain further attraction by investors and platforms such as Coinbase continue to grow, the IRS is set to be chasing taxpayers for more revenue, particularly as the US government looks to offset expenditure of its infrastructure bill. Taxpayers should be on the lookout for future developments in the regulatory space. ■

Pascal Saint-Amans

In an exclusive interview, Pascal Saint-Amans tells ITR's Leanna Reeves about the OECD's biggest tax headaches, when a legal framework on pillar one and two will be published and why gender bias in taxation needs to be addressed.

The Centre for Tax Policy and Administration secured one of its greatest achievements in 2021: the endorsement of a global tax framework bound to reform the tax system across the world.

"Even after the election of Biden, very few people believed that we could reach an agreement and that we could reach a global agreement with almost all the countries part of it. And that's what we did," says Pascal Saint-Amans, director of the Centre for Tax Policy and Administration at the OECD.

The OECD had set itself a deadline of mid-2021 to reach an agreement on the pillar one and pillar two proposals. However, US President Joe Biden only took office in February 2021, leaving the Paris-based organisation with a few months to achieve its goals.

Saint-Amans says time management was very difficult "because it was a reset of the project" and having only a few months to finalise an agreement during the COVID-19 crisis added more pressure.

With more than 130 jurisdictions on board, the implementation of pillar one and pillar two is as close as it's ever been, but more details remain to be established this year.

The OECD aims to deliver a coordinated approach for pillar two, as well as a multilateral convention for pillar one, in a bid to provide more stability to the international tax system. Taxpayers can also expect further development on issues including carbon tax, digitalisation, and the taxation of cryptocurrency transactions.

In a conversation with Leanna Reeves, Saint-Amans explains what taxpayers can expect from the OECD in 2022.

Leanna Reeves: What are you hoping to achieve this year in regards, for example, to pillar one and two?

Pascal: Completing the legal framework. We need to come up with the framework for the coordination of pillar two, we need to complete the model rules with a module global intangible low-taxed income (GILTI) compatibility, which depends obviously, on what's going to happen in the US from the build back better legislation.

In regards to pillar one, it's extremely challenging but we need to come up with a multilateral convention by the end of June at the latest. This is what the OECD secretariat is in charge of. Of course, this project goes beyond what the secretariat delivers.

For the world's sake, what is also important is that countries do implement pillar two throughout 2022 and to sign and ratify the multilateral convention for pillar one, which is another set of challenges but more for the members than the secretariat.

Leanna: Are you confident the new global tax framework will be a success?

Pascal: I am confident that this new framework, if implemented, will provide more stability to the international tax system, will provide more secure revenues for member countries, and will provide more tax certainty and a level playing field for companies.

I believe that's the goal – to ensure a more stable and sustainable international tax environment after years of shaking up and after decades where the basics of the international tax framework were undermined. We needed to turn the page.

The new page, which we have written and are still writing with the multilateral convention should provide more stability, which is better for investment and for securing revenues.

Leanna: Can we expect further details this year on pillar one and pillar two, such as the methodology around the reallocation of profits?

Pascal: Yes, there will be more details on everything. The multilateral convention will have to provide for all the technical – and some of them are political – details of the agreement. I would mention revenue sourcing; elimination of double taxation; marketing and distribution; safe harbour for pillar one; and GILTI compatibility for pillar two.

There will be more information, there will be a whole set of legal measure or legal framework. That should come in the next six months.

Leanna: COVID-19 is still impacting economies around the world. Could emerging variants delay implementation of the OECD's two-pillar solution?

Pascal: No, I don't think so. We've been able to deliver the political agreement in 2021 when the COVID situation was even more severe than it is now. We need to adapt and that's what we're doing: remote working and video conferencing for the negotiation. It has some benefits. It saves a lot of travel and a lot of CO2 emissions, but it also makes things slightly more complicated.

You can negotiate for three to four hours a day, given the time difference, you can have one meeting after the other. When we plan physical meetings, we need to give much more notice. The situation is as it is and we are coping with it. It will not be delaying or postponing the agreement.

Pascal Saint-Amans, director of the Centre for Tax Policy and Administration at the OECD

Leanna: What are the challenges ahead for reform?

Pascal: We have two sets of challenges. One is our job – to master and deliver the elimination of double taxation, for instance, which is a headache. Technically marketing and distribution of safe harbour is also one, and managing the timeline is extremely stringent.

We have a few months, and we need to write new rules, get them right, and put a civil society and business consultation in extremely tight schedules. That's a serious challenge.

Another set of challenges is not really for us. In other words, we don't have much of a mastery on that. It's the implementation – and that is up to members: the European countries agreeing on the pillar two directive, and the US ratifying the multilateral convention if signed by June.

On one hand, it's what we have to deliberate to make things happen and on the other is what members need to do to have things implemented.

Leanna: What else is the OECD focusing on besides pillar one and pillar two in 2022?

Pascal: Top priorities are putting in place the framework for carbon pricing, which goes beyond tax and which will be done with other colleagues at the OECD. It's about moving towards an approach which would be able to measure the equivalent price of other climate change mitigation policies. So, that's the priorities for the Secretary General.

The second area of work where we have a lot to do is administration 3.0 – how can we help tax administrations move towards digitisation.

The third priority is about the assistance to developing countries to implement BEPS, pillar one and pillar two, exchange of information, and domestic resource mobilisation. We're extremely active on that front.

Finally, we need to deliver the assessment of the auditing standard, the automatic exchange of information (AEOI), and we need to update the common reporting standard (CRS) to cover crypto assets, which has to be delivered in the course of the year. You can see there is a range of breaches and I could mention many others.

For instance, we now have a mandate from the G20 finance ministers to work on tax policy and particularly on gender and tax – how to make sure the tax systems are not biased against women. There is an extremely interesting report that we are going to issue in the upcoming weeks that I'm very proud of.

If we prioritise, we will start with delivering pillar one and two, the inclusive framework on carbon pricing, and the administration work on tax and developments. ■

Olaf Scholz

German Chancellor Olaf Scholz is committed to global tax reform and tackling climate change, but he is already being put to the test by an international crisis.

Barely three months into his role, Olaf Scholz has negotiated a difficult three-way coalition, worked to contain the COVID-19 pandemic, and led his country's response to the Russian invasion of Ukraine.

Scholz has not had an easy initiation into office, but the former finance minister is accustomed to taking the lead in European politics. The Hamburg native was an important early backer of the proposal for a global minimum tax, and Scholz's talks with the US were instrumental in securing President Joe Biden's support.

The OECD brokered an international deal on the allocation of taxing rights and on a global minimum tax in October 2021. Yet without the backing of the US, the deal on pillar one and pillar two would not have succeeded.

As German Vice Chancellor and Federal Minister of Finance since 2018, Scholz also led Germany's response to the pandemic. The SPD politician's stimulus packages proved to be highly effective, ensuring that Germany weathered the crisis well from an economic standpoint. Scholz announced in February that almost all COVID-19-related restrictions in Germany will end from March 20 2022.

In the meantime, Scholz has taken a stand against the Russian invasion of Ukraine, emphasising the importance of European unity and the need to protect the sovereignty of all countries, including Germany.

Traffic light coalition

A hard-fought federal election in Germany on September 26 2021 saw the SPD, with Scholz at the helm, attract 25.7% of votes. This was the first time the SPD had won the largest share of the vote since 2002.

The 20th Century political landscape in Germany has been dominated by grand coalitions, between the Christian Democratic Union / Christian Social Union of Bavaria (CDU/CSU) and the SPD. However, both parties dismissed this option in 2021.

This meant that the Free Democratic Party (FDP) and the Greens were kingmakers, with the power to elevate Scholz to power without being viable candidates themselves.

These three parties agreed on November 23 to a traffic light coalition, so called because of the parties' colours: red, yellow, and green. The SPD-Green-FDP coalition became official on December 7. It is the first of its kind and the first SPD-led coalition since Gerhard Schröder left office in 2005.

Germany's relatively strong economic recovery from the COVID-19 pandemic is a financial gift to the coalition. The

Olaf Scholz has been Germany's chancellor since December 2021

German government estimates that, from 2021-2025, local, state, and federal governments will collect a combined €179 billion ($205 billion) more than was predicted in May 2021.

Climate protection

The coalition agreement includes some key tax policies, including a super-deduction that will apply to investments in digitization and climate protection. Both these areas are important for the SPD-led coalition. As Germany took over the G7 Presidency on January 1 2022, Scholz said that he would lead the group to become "a pioneer for a climate-neutral way of doing business and a fair world".

Scholz has also previously advocated for a "climate club" to accelerate the transition to a more planet-friendly economy. Crucially, cooperation between large and environmentally ambitious countries would decrease the risk of disputes and trade wars between jurisdictions over carbon taxes and carbon borders.

Tension has already arisen in this area. Tax professionals told ITR in May 2021 that EU's carbon border adjustment mechanism (CBAM) is at risk of being branded discriminatory and protectionist, and that it could lead to pressure from the US or China.

Scholz has inherited a stable, powerful country that other nations will look to for a sensible response to crises in Europe, including the Russia-Ukraine conflict, the climate crisis, and the economic difficulties caused by COVID-19.

The fact that the SPD was able to forge a coalition with the Greens and the FDP, despite some stark policy differences, is a good indicator of Scholz's ability to build bridges. This will be integral to the success of Germany's political future, from foreign policy to tax policy. ■

Anton Siluanov

Russia's Minister of Finance Anton Siluanov is tasked with overseeing the country's fiscal strategy amid mounting international sanctions.

Source: premier.gov.ru
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Since Russia invaded Ukraine, Anton Siluanov is not just the finance minister. He is in charge of keeping the Russian economy stable as sanctions are imposed by the US and its European allies. And yet Russian tax policy looks steady as the country is at the centre of an international crisis.

The Ministry of Finance calculated that the country could withstand sanctions ahead of Russia's invasion of Ukraine. The country has reserves and a low level of national debt.

"Thank god, we have enough forex liquidity and enough forex reserves," Siluanov told the press in February. "We have a financial shield in the form of gold and forex reserves, budget surplus and [budget] rule, low debt."

The Russian government has $643 billion in gold and forex reserves. Russia could fall back on these reserves if the international community restricts purchases of Russian debt.

At the same time, the Ministry of Finance has stated it has no plans to revise its fiscal plans for 2022. Russian President Vladimir Putin must have thought the country could withstand the shock of sanctions and financial restrictions, but the consequences will be felt by Russians.

The value of the rouble fell by 65% in less than a week after the invasion. The Central Bank of Russia was forced to hike interest rates to 20%, while Russian companies are facing rising barriers to doing business outside Russia.

Siluanov led Russia's fiscal response to the COVID-19 pandemic, introducing tax breaks and payment deadline extensions for companies. The economic fallout from the war in Ukraine could be even more difficult to overcome.

Tax agenda on hold?

Siluanov has overseen serious reforms since he was appointed finance minister in 2011. The Russian government has undertaken serious tax reform on his watch, including the implementation of the OECD's BEPS project.

Over the last decade, Russia has introduced the so-called 'Google tax' on technology companies, maintained a flat tax rate for personal income and increased the VAT rate from 18% to 20%. The result has been a steady flow of tax revenue for the government.

The next big reform will be on the taxation of crypto-assets. The Russian cryptocurrency market is valued at $200 billion. This makes Russia the third biggest crypto market in the world. The tax revenue generated could be crucial.

On the other hand, Siluanov may have to give up on his plans to renegotiate more tax treaties in 2022. Russia has renegotiated double taxation agreements (DTAs) with key jurisdictions such as the Netherlands and Switzerland. These deals were crucial to Putin's economic strategy.

Although no government has yet threatened to tear up DTAs with Russia, any draft agreements in the works may be quietly shelved and forgotten. The Russian government set out to reorganise its tax treaty network as part of efforts to keep capital in the country.

The Russian government planned to extend a 15% withholding tax rate to interest and dividends payments leaving Russia. The rate was already 15% for countries with which Russia had no DTA. However, entities operating from the 80-plus countries in DTA partnerships with Russia had enjoyed lower rates of 5% or 10%.

Renegotiating more than 80 bilateral double taxation agreements is difficult at the best of times, and the incentive to not work with Russia is greater than ever. The Russian government has threatened to withdraw from tax treaties if the changes are not made.

The Putin government could take this dramatic step. It would be unprecedented for a country to shred most of its tax treaty network, especially when that country is being hit with sanctions. But these are not normal times. ■

Kristin Smith

Kristin Smith, executive director of the Blockchain Association, talks about the US Infrastructure Bill and how the association is determined to challenge policymakers' reporting rules for digital assets.

The growth of crypto-assets, aligned with rising concerns over money laundering and tax evasion, has led to a series of debates between governments across the globe when establishing the appropriate tax framework for digital assets.

While some jurisdictions opt for domestic policies to be endorsed, US President Joe Biden's bipartisan infrastructure law – set to expand information reporting rules applied to digital assets from 2023 – raised some eyebrows in the crypto industry.

Kristin Smith, executive director of the Blockchain Association, was at the forefront of the tax policy battle over cryptocurrencies. "There was a provision tucked into the bill at the last minute. It was not well thought out and poses a lot of problems for the industry," she said.

In November 2021, Biden confirmed the implementation of the $1 trillion Infrastructure Bill designed to raise the country's investment in infrastructure and competitiveness.

This bill extends Section 6050I to digital assets including cryptocurrencies and non-fungible tokens (NFTs), with a value of $10,000 or more. Crypto exchanges will be required to file Form 8300 when receiving digital assets during a transaction with a value exceeding that threshold.

While lobbyists failed to amend the language within the bill, Smith said the campaign marked a "wonderful" moment as the crypto industry in the US, along with the broader crypto ecosystem, banded together to express their voice.

"This provided an opportunity to show how strong the political force the crypto community was – because we did hold up the passage of the bill," she explained.

Going after crypto-assets

The Blockchain Association had previously criticised the bill for its broad language, claiming it impacted too many crypto investors.

"The language, in the way it was drafted, was short-sighted. It would impose tax reporting obligations on different individuals and entities within the crypto ecosystem that don't have the ability to report that information," added Smith.

A broad interpretation of the Infrastructure Bill would mean that those involved in the crypto industry including miners, validators, software developers, or wallet providers who contribute to the digital asset exchange, would be obliged to report to the IRS each year.

If interpreted too broadly, innovators could move overseas. Several outstanding open issues on tax policy also remain, according to Smith. "Here are questions not just about information reporting, as addressed in the infrastructure bill, but there are also questions around lending, around the treatment of staking rewards," she said.

"There are several issues that need to be addressed. It's our hope – at the Blockchain Association – that policymakers have an open process," she explained.

While industry participants acknowledge the need for a tax framework to be established in the crypto space, they want to push for an easy and simpler process. Collaboration between policymakers and shareholders could be necessary when designing the specific language that will be used.

In the short-term, the Blockchain Association will be working with the treasury department and the *ITR* who have been tasked with the implementation of the provision. In the long-term, if they choose to opt for a broader interpretation of the definitions, the organisation will seek legislative change.

Policymakers are eager to introduce reporting rules for these digital assets, but the process will require time and education remains a key barrier.

"I'm optimistic that we can get this right in the long run, but there might be some back and forth between stakeholders in this space and policymakers," said Smith.

"Given that the crypto industry does have political strength, there are a lot of people that are passionate about this. They want to be actively involved in the process," she said.

Countries around the world are imposing tougher policies to tackle tax evasion and money laundering, as well as to offset additional expenditure in their budget.

Lobbyists in the crypto space will continue to push for a more narrowed legislation, in which fewer digital asset players are subject to reporting rules and taxation. In the meantime, countries such as India have reiterated their ambition to tax the crypto-assets. This is a trend to watch in 2022. ■

Paul Tang

The Dutch member of the European Parliament (MEP) and chair of the European Parliament Sub-Committee on Tax Matters (FISC) talks to ITR about how the fight against tax avoidance progressed in 2021.

The campaign to plug the tax gap and stop tax avoidance continued in 2021, spurred on by scandals including OpenLux and the Pandora Papers. Paul Tang was front and centre of the debate, meeting with national parliaments, and supporting reform on income taxes and shell companies.

Outspoken as ever, Tang tells Alice Jones about his thoughts on the EU tax haven blacklist, his frustration with European countries that resist reform, and his plans for legislation to further shake up the international tax landscape.

Alice: Could you give us a summary of what you've been up to in 2021?

Paul Tang: Let's start with the setting – just over a year ago, we were waiting to see what BEPS 2.0 would be, and we were waiting for the election of Donald Trump or Joe Biden. That [Biden's election and support of the OECD deal] made a world of difference.

For the first time, we made a break-through in the fight against tax avoidance [with the OECD agreement on pillars one and two], which gave a lot of renewed impetus to our work in the European Parliament.

We also had some revelations feeding our work. OpenLux didn't get that much attention, but it showed what kind of constructions there are in Luxembourg – it was illuminating. And the Pandora Papers also provided renewed impetus to our work.

The Parliament wants to push further in this direction, with the unshell proposal. Also, the Befit [Business in Europe: Framework for Income Taxation] proposal is coming up; it's a redo of the CCCTB [Common Consolidated Corporate Tax Base].

Alice: What's your take on the OECD deal? It has been a big success but has also attracted some criticism.

Paul: Yes, it's a historical breakthrough, but if this is a second round, let's hope that we get to a third round. I hope that we are building an infrastructure to reach international agreements, not just once, but more than once – a bit like IPCC [the Intergovernmental Panel on Climate Change], where we have a framework for discussion that helps countries come together.

Of course, there are concerns about developing countries: is the table inclusive enough? And the gaps we still have in the tax base are a concern. But I am optimistic and hope that it will pave the way for a third round in years to come.

Alice: Can I ask you about the Pandora Papers? You said that the leak provided an impetus for your work. Will we see more leaks or are they becoming fewer as tax administration tightens?

Paul: I am afraid this is the tip of the iceberg. The work in the European Parliament has been based on leaks, starting with LuxLeaks, which provide impetus for our work because you see a growing public awareness and therefore a growing political need to intervene.

I would not be surprised if something like the Pandora Papers happens again; there is still a lot to do. In the past year, we have built public awareness, but to be frank, political action is still not up to the task.

The OECD agreement only applies to the large corporates. What we learned from the Pandora Papers and OpenLux is that there are also many constructions for rich families, and for smaller companies.

We will also look into personal income taxes. More and more, with people working digitally, they will be moving countries, and tax experts have warned about this. We're starting to see competition on income taxes.

Alice: What impact has COVID-19 had on your work in 2021?

Paul: Of course, it's an issue – we see each other a lot less, and personal contact, especially in politics, really helps. But we have fully adjusted. In early 2020, the work slowed down, but now we know how to deal with it.

It has also shown an advantage in that we have more digital meetings. For example, we meet with national parliaments – we've met the German *Bundestag* and the French *Assemblée*.

In the coming year, we will stay in contact with these parliaments, but also look at some of the smaller member states that are a vehicle for aggressive tax planning – including, of course, the Netherlands. There is a real inclination for change in the Netherlands, and I hope other countries will follow.

Alice: Can I ask about the EU blacklist of non-cooperative jurisdictions on tax policy? You've criticised it in the past.

Paul: One of the first things the FISC committee did was a resolution in parliament, in which we harshly criticised the blacklist and the work of the European

Paul Tang is keen to target intermediaries that facilitate tax avoidance in 2022

Council. The Parliament is very unhappy with the blacklist – there are too many diplomatic and political considerations to make it effective. The Council heard the criticism, but of course it didn't lead to instant change.

And then, when the Pandora Papers arrived and, at the same time, the Council decided to reduce the blacklist, the 'proverbial' hit the fan. This is what I mean by growing public awareness leading to political pressure and political action.

Alice: What was the biggest challenge of 2021?

Paul: Apart from COVID-19, you mean? Much of the resistance to the OECD agreement came from Europe, showing how difficult it is to reach a consensus. We had Hungary, Estonia, Ireland, Cyprus, and Malta – which was not outspoken in public – that initially went against the OECD agreement. Paschal Donohoe spoke publicly against the OECD agreement and I thought, what are you doing?

I'm glad this has been resolved, but it shows how difficult it is, in the current European setting, to move forward. That's why it's so important to take discussions out of the 'Brussels bubble'.

Alice: What are you most pleased or proud of?

Paul: I am very happy to see the OECD agreement, but also the unshell proposal, because we all know that some member states in the EU are big hubs in the tax avoidance industry.

We're not sure how countries will respond to it, which is why we need to put pressure on individual member states. It's a pretty clever proposal, and it should be helpful going forward.

Alice: What are your main focuses for 2022?

Paul: The FISC sub-committee has decided to focus on two workstreams. The first is related to the Pandora Papers. We're looking at the vehicles of tax avoidance, including shell companies, and the enablers of tax avoidance: intermediaries.

I'm keen to work on intermediaries; that's an issue where there is growing awareness. Some countries have regulated the profession of tax advisory, like Germany and Austria, but in the Netherlands or Luxembourg it's completely liberal. Anyone can be a tax advisor and you can do whatever you want.

The second workstream is on the corporate tax system, related to the OECD deal: what can we do to make sure that we move towards a modern system of corporate taxation?

I would also like to start the discussion on digital workers, and the competition we see in income taxes and expat arrangements. ■

Wang Jun

Chinese State Tax Administration Wang Jun is set to continue to build on the STA's achievements in tax governance and digitalisation despite the COVID-19 pandemic.

Wang Jun has proven to be a reliable hand in unpredictable times. Under Wang's leadership, the STA has demonstrated how tax authorities worldwide can navigate the impact of COVID-19 and still improve tax services.

Wang became the head of the STA in 2013. He had previously served the Ministry of Finance for more than 25 years before taking this role. He was vice-minister of the Ministry of Finance from 2005 to 2013.

As commissioner, Wang has presided over the STA's efforts to improve taxpayer services and tax governance. He has also overseen the fiscal policy side of the Belt and Road Initiative (BRI) and helped build the BRI Tax Administration Cooperation Mechanism (Britacom).

The Britacom held its second annual conference in September 2021 and the issue of digitalisation was at the forefront of discussions. The aim is to facilitate greater fiscal coordination between countries taking part in the BRI.

At the same time, China is scheduled to hold a virtual summit with the European Commission in April over the long-awaited investment agreement between China and the European Union. The agreement could be crucial for the success of the BRI.

The year 2022 is not just another year. This is the second year of China's 14th five-year plan, requiring the Chinese tax administration to rollout various tax reforms, optimise tax enforcement and collection, and continue to modernise tax administration.

Making tax administration digital

The STA may be setting a global standard for digitalisation. A one-stop shop for corporate tax is an early win for the STA for expanding digital services, or e-administration, however, the role of enterprise resource planning (ERP) systems is crucial.

China's digital transformation has made the tax system more interconnected and responsive. The STA has achieved this by expanding real-time information exchange to improve tax certainty for businesses.

The Blueprint for Further Deepening the Reform of Tax Collection and Administration released in March 2021 is the latest roadmap on the STA's reforms for the next five years, including digital transformations for compliance-by-design in the longer-term.

The STA reorganised in 2018 and linked together state tax offices and local tax offices to offer one-stop-shop services. As a result, the number of hours large taxpayers spend on tax compliance fell from 259 hours in 2017 to 138 hours in 2020.

However, this reduction in compliance costs has a wider impact on businesses and the economy. This reshuffle helped boost China's ease of doing business ranking from 78 to 31 in the World Bank's Doing Business report.

The STA's digital transformation helped to create more domestic tax certainty because of fewer information gaps with its many offices and taxpayers. This offers other tax authorities an operating model for the future.

The STA's model builds administrative processes into taxpayers' natural systems, which allows automation and upstreaming many aspects of tax administration. Communication, filings, and payments aim to be interlinked, closing time and information gaps for taxpayers and authorities.

The STA also made significant advances in developing big data, cloud computing and artificial intelligence operations for tax matters to provide other data-driven, digital services. All of these will become crucial tools for tax administrations around the world.

The STA's advanced analytics tools narrowed down more than 100 possible outcomes of VAT reform with different rate combinations to pass a final VAT legislative package in 2019. This technological edge helps promote long-term economic planning.

The future of tax administration under e-administration will be a break from the voluntary compliance approach. Tax authorities may be able to move away from such resource-intensive investigations to address non-compliance. In short, the STA continues to take the lead in tax administration. ■

Logan Wort

In an exclusive conversation with ITR's Leanna Reeves, Logan Wort talks about ATAF's effort to simplify the OECD's pillar one proposal and the programmes' success in collecting more revenue for developing countries.

Logan Wort, executive secretary at ATAF

Not all regions of the world are affected the same way by international tax reform. Many African governments are concerned that the OECD's plans for taxing the digital economy may not go far enough to address the problems they face.

This is why the African Tax Administration Forum (ATAF) demanded that the OECD simplify its pillar one proposal, arguing that the profit allocation rules maintained an unfair playing field. The ATAF proposal highlighted the specific needs of African economies. This was a key moment for further discussions on pillar one.

"After we told the OECD we didn't think developing countries or African countries' discussions were being heard at meetings, we insisted on developing our own set of proposals," says Logan Wort, executive secretary at ATAF.

"Our proposals did have an impact in a significant change in direction of the discussions in Paris and we found a common ground with other developing countries," says Wort.

Amongst other successes, Wort cites the case of Zambia, which marked a landmark victory for Africa as the Supreme Court ordered a copper mining company to pay back over $18 million in taxes out of a long-running transfer pricing (TP) dispute.

"In the context of US and Europe numbers, these are small. In the context of African numbers, these are huge," says Wort.

While ATAF will continue to push for the OECD to include more multinational enterprises (MNEs) within the pillar one's global revenue threshold, the organisation is also set to support countries in the implementation of the two-pillar solution in 2022.

In a discussion with Leanna Reeves, Wort explains ATAF's achievements over the last year and its aims for 2021.

Leanna Reeves: What were the highlights of ATAF in 2021?

Logan: Our contribution to revenue collection in our member countries. With last year alone, we contributed through our country programmes in the assessment of just under $300 million worth of tax revenue that was never going to be collected if we hadn't participated or taken assessments. For that, about $250 million is already in the bank. Now, for African countries and Africa, that's significant.

Our country programmes are very significant because they have an immediate revenue impact – and it strengthens the policy and administrative staff. That's our bread and butter, and we are getting stronger on our revenue production.

The other highlight is the impact on the international stage. It's our work with the IF.

Our training programme is very successful. We did extensive training for 1,400 tax officials from 45 African countries this year. We've launched an African women tax network to enhance women work on the impact of tax policy and tax services.

If you look at the type of economy of Africa, the extent of ruralness and the role of agriculture and the informal sector, women form a big part of this. The work is being done on the impact of both revenue collection tax policy and tax spend on that sector, so we're very excited about that development.

We've launched this year a programme called ATAF in the new decade, which will set up ATAF on a new platform for the next 10 years. This will include additional functions to our current value proposition, and so we will be developing a tax policy capacity within ATAF as well as a trade and customs capacity.

Also, to prepare for the African continental free trade agreement, we are developing a trade capacity. The immediate beneficiaries will be the stronger economies: South Africa, Egypt, Nigeria, Kenya and so on. The smaller economies are going to experience an immediate gap in the income.

Leanna: What is ATAF's biggest objective for 2022?

Logan: Our primary aim for this year continues to be build on our country programmes and the impact on revenue that we are having amongst our member countries to raise more revenue without raising taxes, but by closing loopholes that lead to tax leakage either through poor policy or poor administration. We want to strengthen that.

With regards to the global tax reform, we must work with our countries to prepare them for the next phase to either implement or mitigate any repercussions of adopting the two-pillar solution. We are not encouraging or discouraging – our job is to explain what the agreement is, what it will mean in terms of taxation for the country, and what the implications are for not joining and what are the alternatives.

We've made some gains by changing some of the thresholds, but there's a lot of detail that must be worked out. We are committed to voicing African needs at the OECD working parties where a lot of these discussions take place.

The number of meetings that is being set up in the inclusive framework is way too many. I don't know if countries can attend all of these meetings, even virtual. African countries certainly don't have the capacity or expertise to attend all of them.

The other day we received a document after 10 in the evening with a deadline for the next morning. You can sign away your taxing rights in your sleep if you receive a deadline like this.

If this process is not careful about the pace, the number of meetings, deadlines and the short notice to comment, it could lead to a de facto exclusion.

Our target for 2022 is to intensity our work on this agreement, to be present, but also to raise caution about the possible de facto exclusion.

Leanna: On the OECD's pillar one, will ATAF continue to pursue a better playing field regarding multinational's profit and how they are calculated?

Logan: Definitely. We have worked with the African Union and have been involved in the negotiations on the two-pillar solution. We think that work has been pioneering for Africa – and it has meant our participation in it.

We'll continue to work to increase Africa's influence in these rules to ensure it is fair and just. In our view, the pillar one proposal would have achieved a more equitable allocation of taxing rights if it allocated a large potion of the mergers and acquisitions (M&A) global profits to the market jurisdictions. This was a battle. At the base of this is the source of residence debate. In this case, the process missed an opportunity for a more equitable distribution of taxing rights.

Developed countries have the G7 and G20 behind them, the developing countries have nobody behind them. We're very happy that the African Union is now behind the work that ATAF does.

Leanna: What will be the difficulties this year in achieving these objectives?

Logan: To provide support to countries in the technical design of the two-pillar agreement and the implementation. We must go beyond the propaganda. A lot of the soft landing around international tax rules or the taxation of the digital economy is the fact that people say that we're going to have a whole technical capacity building.

Everybody must be happy because Africa will be fine as it will get training. Training is not the issue. The issue is taxing rights. Our job must be to support countries in implementing the details of pillar one and two. That cannot happen without sending an expert to Senegal – it is a partnership of implementation. That will be the challenge ahead.

Another challenge will be to get more developing countries and African countries to speak at IF meetings. Disagreement by members of the IF has shown that it is possible to make changes to the global tax rules. ■

LEAKS

OpenLux Investigations

The OpenLux investigation found that more than half of the companies registered in Luxembourg were not declaring their beneficial owners on the public register, leading to more calls for tax transparency in the EU.

The OpenLux investigation from February 2021 shows the failures of public beneficial ownership registers in Luxembourg. Several European journalists obtained and assessed more than three million official documents from more than 260,000 companies from 1955 to 2020. The investigation's findings have reignited debates of tax transparency across the EU.

"What makes OpenLux so striking is that it is not a leak from a shady service provider, but a deep dive into public government data that had been made unwieldy to connect dots," says Markus Meinzer, director of financial secrecy and governance at the Tax Justice Network (TJN).

Transparency International and the Anti-Corruption Data Collective (ACDC) – both global civil society organisations that investigate corruption – found that 80% of investment funds did not declare their beneficial owners. In addition, 15% of funds gave conflicting information to different authorities.

The LuxLeaks scandal in 2014 led the European Commission to investigate Luxembourg's unilateral advanced pricing agreements (APAs). In a similar way, the OpenLux investigation led the Commission to introduce higher forms of tax transparency, including public country-by-country reporting (CbCR).

Consequences for tax transparency in the EU

The OpenLux investigation found that 90% of the companies with identifiable beneficiaries were foreign controlled. Among the 157 nationalities involved, France was the greatest culprit. There were more than 17,000 French-owned companies on the list, including top brands such as Chanel, Decathlon, JCDecaux, and Yves Rocher.

Luxembourg was among the first EU countries to set up a public register of beneficial owners. Yet the register was built so it could only be searched by company name or registration number, not by the names of the owners.

The beneficial owner is still unidentifiable in many cases because the definition of a beneficial owner – the person who ultimately owns or controls a company – is limited in the EU's legal framework. This allows advisors to make arbitrary decisions about what should be left out of declarations.

Yet even if the definition and process of identifying a beneficial owner were enhanced in the EU, the Commission would still have to find unanimity to change several national fiscal policies in the bloc to align with this objective.

Despite such limitations, the European Council and Parliament greenlit the directive on public CbCR in November 2021, partly because of tax transparency debates sparked by the OpenLux investigation.

Meanwhile, the EU Competitiveness Council is also reviewing the EU blacklist of non-cooperative tax jurisdictions based on the investigation. The Council will add 10 more countries to the grey list, including Israel, Russia, and Vietnam, in late February. The grey list already has 15 countries.

While the OpenLux investigation increased calls for domestic tax transparency in the EU, it also put pressure on international high-level political discussions.

International developments

The UN's International Financial Accountability, Transparency and Integrity for Achieving (FACTI) panel published 14 recommendations for governments to follow to improve global tax transparency in 2021. These included building corporate ownership registers and enhancing global governance frameworks.

The high-level UN panel advised several developing countries to set up public beneficial ownership registers to address illicit financial flows (IFFs) following the OpenLux investigation.

OpenLux highlights the shortcomings of EU tax transparency

"For beneficial ownership transparency to be useful at all, it must be made publicly available so that society can hold wrongdoers and government to account," says Meinzer.

However, the possibility of beneficial ownership registers being adopted globally depends on political will and the ability to navigate the different laws and regulations across countries.

"We think a multi-pronged approach is most effective to get accurate beneficial ownership data, and public registries are an option that we encourage," says Marcus Pleyer, president of the Financial Action Task Force, one intergovernmental body setting international standards to stop IFFs.

"However, you must also see the global picture, and we [intergovernmental agencies] cannot oblige every country to have a public register, because each country is different with different data protection laws," adds Pleyer.

Most EU member states already have a beneficial ownership register. The only three countries that have not yet established any type of beneficial ownership registers are Hungary, Italy, and Lithuania.

The OpenLux investigation has highlighted the importance of increased tax transparency as governments try to plug revenue gaps and ensure that taxpayers pay their fair share. The investigation's findings have already led the Commission to expand on certain tax transparency directives in the EU, and this trend is likely to continue in 2022. ■

Pandora Papers

The Pandora Papers data leak, published in October 2021, continues the long line of tax avoidance scandals from LuxLeaks to the Paradise Papers. The scandal draws yet more attention to corporate tax affairs.

A data leak of close to 12 million files that expose offshore financial dealings in more than 90 countries caused yet another tax avoidance scandal in October 2021. The Pandora Papers reignited outrage over individuals and companies that use offshore financial structures to avoid paying a fair share of tax, and raised questions about the tax morality of multinational enterprises (MNEs) and advisors.

Transparency has been a significant topic in the international tax community for years, but every so often, the emphasis on it is intensified by a high-profile scandal. The Pandora Papers, leaked by the International Consortium of Investigative Journalists (ICIJ) on October 3 2021, was the latest to make the front pages.

Like the LuxLeaks (2014), Panama Papers (2016), and Paradise Papers (2017) scandals before it, the Pandora Papers leak rekindled the debate about tax transparency. In the wake of the publication, tax justice advocates including Alex Cobham, chief executive of the Tax Justice Network, and Paul Tang, chair of the European Parliament Subcommittee on Tax Matters (FISC), spoke out about the need for wide-ranging reform.

"The Pandora Papers confirm our global tax system has been turned into an ATM for the rich and powerful," said Cobham.

Meanwhile, Tang called for global public country-by-country reporting (CbCR), reform of the EU tax haven blacklist, and an end to financial secrecy. The EU is moving towards public CbCR and it may set a precedent for many governments to follow around the world.

The cost of scandals

Taxpayers live in fear of being named in newspaper headlines. The media can make or break a company and governments have to pay attention to public opinion. This is one of the driving forces behind the trend of unilateral measures around the world.

The work of investigative journalists on the Panama Papers and Paradise Papers, and before that on the Offshore Leaks, the LuxLeaks and the Swiss Leaks, helped prompt more than 90 countries to share details of an estimated 47 million previously secret offshore accounts.

The Pandora Papers leak has raised more questions about the role of financial advisors in facilitating aggressive tax planning and tax avoidance. There is a blurry line between what is deemed acceptable tax planning and what is deemed unacceptable tax avoidance. This introduces reputational risks for both financial service companies and the MNEs that rely on them.

Even if this line was clear, financial arrangements are often so complex that it would be difficult to determine whether the line had been crossed or not. At the time of the Pandora Papers leak, Ali Kazimi, managing director at Hansuke Consulting, told *ITR* that many financial companies were "sitting ducks as they do not know where they could be implicated".

As governments face continued financial pressure due to the COVID-19 pandemic, tax transparency initiatives are gaining traction. The EU has formally adopted public CbCR, and OECD initiatives such as the automatic exchange of information (AEOI) are being increasingly adopted around the world.

Previous exposés of dodgy financial dealings have entered into both tax transparency history and the public consciousness – such as the Panama Papers, immortalised in the film *The Laundromat* starring Meryl Streep.

The Pandora Papers are another entry into that list of scandals, providing potent fodder for tax justice advocates. The effect of this leak will be felt, both in the public perception of MNEs and in tax policy, for years to come. ■

The Pandora Papers prompted outrage from tax justice campaigners and reignited the global debate over tax avoidance

Black Tax Matters

Brazilian group Black Tax Matters (BTM) is fighting for greater diversity in the tax profession.

The tax profession is no stranger to many of the problems of wider society, including a lack of diversity and inclusion in top positions in businesses. Black Tax Matters is one group trying to address these problems in Brazil.

BTM is a group of tax professionals aiming to change hiring processes through education and mentoring. The group whose name alludes to the Black Lives Matter (BLM) movement is dedicated to the inclusion of black professionals in the tax and accounting areas, especially in leadership positions.

"The idea of creating Black Tax Matters was to empower and accelerate the careers of black tax professionals in Brazil," said Maíra Oltra, regional head of tax at Stripe, Latin America and the founder of Black Tax Matters.

Oltra who has worked on diversity in companies such as Heineken and Amazon realised that there were very few black tax professionals in leadership positions. "We started looking at our networks and found that black tax professionals existed but just not in leadership positions," said Oltra.

"Since we started in October 2020, we've recruited a lot of people to help on our pillars. We don't make any money, so it's everybody working pro bono and using their time to help with the project," she added.

One of BTM's pillars is content creation to raise awareness on racism in Brazil among their 1,300+ followers. They also provide mentorship to help black tax professionals make positive career moves. BTM has also partnered with companies such as KPMG, C&A and Natura, to improve their recruiting processes.

The requirements for even junior positions had become too high, according to BTM. Many jobs required tax professionals speak fluent English and gave preference to those from the top universities.

Black Lives Matter changed everything

Meanwhile, many Black Brazilians are at a disadvantage for financial reasons. Many do not have the opportunity to get into the best universities in the country as they come from public schools due to growing up in poor households.

This is just yet another barrier in the way of black tax professionals in Brazil because it impacts how companies recruit tax professionals. These problems are at the top of BTM's agenda in 2022.

How to diversify tax

BTM pushes for exclusive spots specifically for black people, as well as more flexible requirements to avoid locking people out of jobs. More companies are taking bold actions, but there is still plenty of room for improvement.

"In Brazil, more than 50% of the people are black yet you see zero representation or like 1%. So, it won't work if you don't create exclusive roles and if you don't take real, affirmative actions," said Oltra.

"Even companies that say they're not allowed to have exclusive roles yet, want to make sure their job opportunities are posted in the BTM group. So, I've seen a lot that's changing from my perspective," she added.

Some companies are worried about adopting affirmative action because of the criticism that it takes away opportunities for others.

"It doesn't mean white people won't have opportunities. It's about providing historical reparations and trying to give opportunities. Research shows that if you don't do that, they will never be in the shortlist," said Oltra.

"There are good examples of companies that are taking the lead and we expect that ESG will force companies to change, but it's still very far away from what we would like to have," she stressed.

BTM is making a real-world impact in the tax industry with more business leaders engaging with the cause. The past year's events have highlighted the need for diversity and inclusion in workplaces and companies that are not doing enough are set to be at a disadvantage in the long-term. ■

The Supreme Federal Court of Brazil

The Supreme Federal Court of Brazil played a decisive role over the tax treatment of interest payments and tax credits available to businesses. It was one of the most important tax cases in many years.

The Brazilian Supreme Court concluded one of the most important tax discussions in Brazil on May 13 2021. The Supreme Court issued a decision on a case relating to the exclusion of ICMS (state sales tax) in the PIS/COFINS (federal contribution on total revenue) tax base.

Taxpayers in Brazil responded by filing lawsuits to ensure that the interest payments on their tax credits would not be subject to tax. Businesses were trying to anticipate the Supreme Court ruling due in September. However, these lawsuits could not exclude tax credits from a future court decision.

The Supreme Court ruled in favour of taxpayers on September 24 over the exclusion of the *Sistema Especial de Liquidação e Custodia* (SELIC) interest rate in certain refunds. The refunds in question were for unduly paid taxes from corporate income tax (IRPJ) and social security contribution on net profit (CSLL) tax base.

Taxpayers argued that the interest is not taxable, but the Brazilian government took the opposite view. Nevertheless, the court found that IRPJ and CSLL should be calculated and levied on the SELIC interest rate since it is characterised as indemnity and not as a taxable asset increase.

The Supreme Court decision settled a long-running legal discussion in Brazil. However, the story is not over. The Office of the General Counsel for the Federal Treasury (PGFN) riled a motion for clarification (*embargos de declaração*) due in February 2022.

What the decision means for businesses?

Businesses in Brazil will be able to recover the accrued interest on their tax credits without paying any levies on this sum. This might only apply for a select few companies at first, but the precedent has implications for many more businesses.

If the court had ruled against the taxpayers, the decision could have cost businesses 34% of their accrued interest to IRPJ and CSLL. This could have created cash-flow problems for these companies. The tax credits will only be recoverable over a period of years because of the large amounts involved, but the tax due on the interest payments could be due immediately.

The issue goes back to a dispute over the exclusion of the state sales tax ICMS from the federal turnover taxes PIS and COFINS. After a 20-year debate, the Brazilian Supreme Court ruled in March 2017 that ICMS can be excluded from the taxable base of PIS/COFINS. Yet the terms of this exclusion were unclear, leading the Office of the General Counsel for the Federal Treasury (PGFN) to apply for a clarification.

The PGFN argued that only the ICMS actually paid by a company can be excluded from PIS/COFINS, discounting both credits and services. However, taxpayers argued that they should be able to exclude the total amount of ICMS in the sales invoice from PIS/COFINS. This value is often higher than the amount of ICMS actually paid.

The Supreme Court decision in May 2021 meant that many businesses had overpaid the tax authority and were owed repayments in the form of tax credits. It is the tax treatment of the accrued interest on these credits that is the subject of the ongoing Supreme Court case.

Crucially, the May 2021 judgment came with an important caveat. The Supreme Court restricted the effects of its decision to taxable events from March 15 2017 onwards. Only taxpayers that had filed a lawsuit before this date could recover the extra amounts paid up to five years before the filing date.

Tax professionals suspect that a similar caveat will apply if the Supreme Court rules in favour of the taxpayer that the accrued interest is not taxable. Many taxpayers rushed to raise lawsuits to protect their tax credits and interest in the case that this should happen.

Many tax directors concluded that the lawsuits were the best option to get ahead of the Supreme Court. This domino series of court cases reflects the difficulty of operating in Brazil for businesses. It could have been much worse had the Supreme Court ruled against the taxpayers.

All of this goes to show just how important the court is in resolving tax problems in Brazil. The future will certainly hold yet more landmark tax cases in this litigious jurisdiction. ■

The rise of Britacom

The Belt and Road Initiative Tax Administration Cooperation Mechanism (Britacom) is set to become ever more important as BRI jurisdictions open special economic zones to bolster investment.

The Chinese State Tax Administration (STA) is presiding over the Britacom to promote greater fiscal coordination between countries taking part in the Belt and Road Initiative (BRI). The BRI is set to change the course of global trade for decades, and tax policy is going to play a key role.

The Britacom held its second annual conference in September 2021 and digitalisation was at the forefront of discussions. STA Commissioner Wang Jun addressed the conference and set out the key aims of the organisation for the short-term.

"Firstly, let's strengthen communication on the digitalisation of tax administration. Representatives of all parties to this meeting will share their experience in digitalisation capacity-building, and we will hear helpful suggestions from international organisations, experts and scholars," said Wang Jun.

He went on to stress the importance of training for digitalisation, particularly through the OECD-Yangzhou Multilateral Tax Centre and the BRI tax academies.

"Let's make the most of the Britacom enhance mutual learning and best practice-sharing, and promote the modernisation of tax governance in BRI jurisdictions as well as the high-quality economic growth," said Wang.

"Let's build a more comprehensive cooperation mechanism, set up more platforms and channels for cooperation, innovate our cooperation in more fields, and launch more effective cooperation projects," he added.

Tax administrations in BRI jurisdictions are going to have to work together more closely for the initiative to flourish. The BRI route runs through several special economic zones, including export processing zones and free trade zones, where tax incentives are used to bolster production and investment.

Businesses operating in these zones are often exempt from VAT and customs duties, as well as certain regulations. The idea is to concentrate economic activity in these zones. This was a key part of China's economic opening in the 1980s.

China's roads reach worldwide

The cliché is that China's economic dynamism will soon overtake the US and Europe. However, the shift in global trade will result in changing fiscal policy across many countries in Asia and Africa. Most governments in the world are asking themselves where they stand on the BRI.

Remaking global trade

There is a lot of competition in global trade initiatives in 2022. The US has backed the Build Back Better World (B3W) initiative among the G7 nations, whereas the European Commission has launched its own Global Gateway initiative across the EU.

The B3W initiative, backed by the Biden administration, has highlighted the need to address an estimated $30 trillion infrastructure gap with developing countries. The EU's Global Gateway is a project to mobilise €300 billion ($338 billion) in infrastructure investment from 2021 to 2027.

The Chinese government plans for the BRI is to strengthen trade links between more than 60 nations worldwide. By 2050, the BRI aims to account for 80% of global GDP growth. The Chartered Institute of Building (CIOB) projected in 2019 that the BRI will contribute as much as $7.1 trillion a year to global GDP by 2040.

Many EU member states have signed up to the BRI including Austria, Greece, Italy and Portugal. On the other hand, the two biggest EU economies France and Germany have not joined the initiative and the launch of the Global Gateway is no coincidence.

Meanwhile, low-tax EU jurisdictions such as Cyprus, Hungary and Luxembourg have signed up, whereas Ireland and the Netherlands are holding out. Yet the shift in the EU clearly favours the BRI even with the Global Gateway.

The BRI includes a vast land route through Central Asia to the doorsteps of Europe. The land route stretches from Xinjiang Province in Western China through Kazakhstan, across Azerbaijan to Georgia and then Turkey before reaching the European Union.

At the same time, the BRI includes trade routes by sea as well as land and the project may further integrate China's supply chains with African trading partners. African countries taking part in the BRI want to benefit from the trade advantages the initiative brings.

Many African governments have fostered trade relations with China for the sake of infrastructure investment and overcoming old colonial ties. The economic benefits of doing so are very clear. As many as 56 countries are expected to increase their GDP growth by more than $10 billion by 2040, according to the CIOB.

There is still intense competition in global trade, however, China is very much leading in the race. Britacom has a crucial role to play in forging greater tax cooperation among BRI countries. The organisation will be one to watch for years to come. ■

Environmental tax

Tax is a powerful lever for environmental policy, and carbon taxes gained greater traction in 2021 due to COP26. Meanwhile the EU published a contentious proposal for a carbon border and more governments turned to plastic taxes.

As environmental, social, and governance concerns (ESG) become an increasing priority for the public and politicians, multinational enterprises (MNEs) are feeling the effect. Policymakers are increasingly turning to taxes as a powerful lever to encourage behavioural change and combat climate change.

The 26th United Nations Climate Change Conference (COP26) in November 2021 drew additional public attention to environmental tax policies and put pressure on governments to act. Meanwhile, an increasing focus on tax transparency is bringing environmental concerns into the light, driving MNEs to be accountable for their environmental impact.

Many governments took action on plastic taxes, carbon taxes, and carbon borders during the past year – and the momentum is not going to slow down in 2022.

Carbon taxes

Carbon taxes are among the most important policy levers that governments can draw on to combat global warming. Many countries already have carbon taxes in force, but momentum is growing as more countries face pressure to tackle carbon emissions and honour international accords such as the 2015 Paris Agreement.

The World Bank states that 45 countries have carbon pricing initiatives in one form or another, including emissions trading schemes (ETS) and carbon taxes. The EU's ETS was the first of its kind in the world, and it has been in effect since 2005.

The EU ETS scheme, which covers around 40% of the EU's greenhouse gas emissions, operates under a 'cap and trade' system. There is a cap on the amount of greenhouse gases that can be emitted, and companies can buy and trade allowances to enable them to produce emissions.

Proponents of the ETS argue that the trading system ensures emissions are cut where it is most efficient and cost-effective to do so. In addition, the fact that the cap decreases year-on-year allows policymakers to determine the total annual emissions, in line with climate change targets.

However, there are issues with the ETS, as demonstrated during the early days of the COVID-19 pandemic. In the first quarter of 2020, as economic activity slowed, EU ETS allowance prices decreased from their 2019 price of around €25 ($30) to €17.

Fluctuations such as this rob governments of the ability to determine carbon prices, reducing the incentive for companies to decrease their reliance on fossil fuels.

On the other hand, ETS price rises in 2021 caused concern for MNEs and led to an increase in support from companies for a European carbon border to protect domestic business interests.

Carbon borders

The idea of carbon borders gained traction in 2021, as governments with carbon taxes worried that companies would move their carbon-intensive processes to countries without a tax on emissions. This is a particular risk in high-carbon sectors such as the steel and automotive industries.

These concerns over 'carbon leakage' led the EU to propose a Carbon Border Adjustment Mechanism (CBAM) in July 2021 as part of the European Green Deal. The Green Deal aims to achieve a 55% reduction in carbon emissions compared to 1990 levels by 2030, and tax policy will be an important factor in achieving this.

The EU's CBAM proposal won support from some industries in 2021 as EU ETS prices climbed, reaching a high of €88.88 per tonne in December. This led to concerns that European companies were being disadvantaged compared to their international competitors. A CBAM would help to level the playing field.

However, any incoming legislation means increased compliance costs for businesses. MNE tax teams became more aware of the need to factor carbon taxes and borders in to their workstreams in 2021, and this trend is set to continue.

Environmental taxes are becoming increasingly important to governments and MNEs

Stakeholders have also criticised carbon borders on the grounds that the mechanism may not be compliant with World Trade Organisation (WTO) rules. The EU's CBAM proposal faced accusations of discrimination against emerging economies and protectionism in 2021.

"Even the best intentions will have a chilling effect on trade that may be seen as protectionism, and in fact can be (rather effectively) used as a veiled protectionist measure," wrote David Morfesi, international trade director at MinterEllison, and Matt Andrew, head of the tax treaty, transfer pricing and financial transactions division at the OECD, in May.

If countries such as the US or China are not happy with the EU CBAM, which will come into effect in 2026, the EU could face retaliatory measures such as sanctions or tariffs.

Meanwhile, although carbon taxes and borders dominate the environmental tax landscape, other levies – on plastic and even meat and dairy – were also up for discussion in 2021.

Plastic and meat taxes

Plastic taxes are increasingly common around the world, driven by a combination of public pressure and political will. The EU introduced a tax on its member states of €0.80 per kilogram on non-recycled plastic packaging waste from January 2021, which produced knock-on reactions in countries including Italy and Spain.

Meanwhile, a plastic packaging tax at £200 ($272) per tonne will come into effect in the UK from April 2022. However, there has been some pushback from companies that may find it difficult to comply with a vast number of unilateral plastic taxes across jurisdictions.

At the same time, although more on the fringes of the international tax landscape, environmental campaigners have floated the idea of meat taxes. This would encourage a less meat-heavy diet and decrease carbon emissions associated with the meat industry. Countries including Germany and the Netherlands have entertained the idea of a meat tax, but the concept remains politically contentious.

Last year saw carbon taxes and CBAMs move up the political agenda globally, driven by increased public concern over global warming and the COP26 political summit. Plastic taxes are slowly gathering momentum, too, although meat taxes remain a niche idea.

Climate change is not going away, and environmental taxes will become increasingly important for MNEs and governments in the coming years. ■

The Gulf Cooperation Council

Tax fragmentation continues in the Gulf Cooperation Council (GCC) countries with varying VAT systems and corporate tax rates. Both Saudi Arabia and the United Arab Emirates have taken unilateral action, but others may follow.

The GCC is a political and economic union with Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE. The group continues to exhibit a dynamic approach to building novel tax regimes as they introduce the world's most up-to-date VAT, corporate tax, and transfer pricing (TP) requirements.

However, the GCC countries have also continued to enact unilateral tax measures since Saudi Arabia increased the VAT rate from 5% to 15% in 2020. The UAE introduced the region's lowest corporate tax headline rate at 9% in January while Oman may be introducing the first income tax regime later in 2022 if the COVID-19 pandemic keeps tax revenues low.

Fragmented GCC tax frameworks

While Saudi Arabia started the trend of moving away from tax harmony in the region, Saudi Crown Prince Mohammed bin Salman reassured citizens that the VAT hike will not last longer than five years.

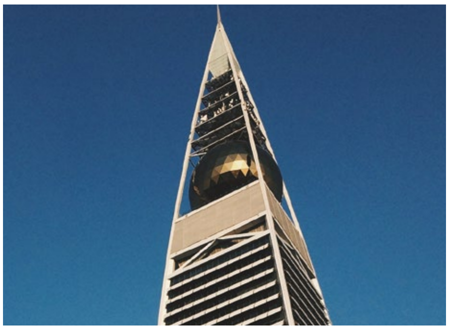
However, more unilateral moves such as the latest e-invoicing legislation in Saudi Arabia that requires multinational enterprises (MNEs) to have some form of domestic presence is introducing more complications. It is also increasing the compliance burden for MNEs in the region.

"The country is departing from recognised best practices by requiring digital invoices to be stored on local soil," said Christiaan van der Valk, VP of strategy and regulatory at Sovos.

Saudi Arabia is the first GCC country to introduce mandatory e-invoicing, which started in December 2021. Taxpayers say that the UAE, Bahrain, and Oman may enact similar systems in 2022 despite regional fragmentation as national revenues remain depressed amid the pandemic.

The GCC countries have an advantage over other jurisdictions because their VAT systems have only recently been introduced. "This is providing a double leapfrog opportunity… these countries can avoid the challenges that more mature VAT jurisdictions may have – for example in retraining auditors," said van der Valk.

Advisors who have been in the region since the early plans for VAT in Saudi Arabia and the UAE say that the market for local tax talent is set to mature between 2023 and 2025.



Saudi Arabia takes the lead in the GCC

Personal income tax

Personal income tax could follow the fragmented VAT harmony in the GCC, but Crown Prince Mohammed bin Salman said the country has no plans to introduce an income tax in April 2021. The UAE government also made similar public commitments. However, Oman expects to introduce an income tax on high earners in 2022.

Oman is also the latest GCC country to implement the harmonised 5% VAT rate in the region, which was a surprise to some tax professionals who expected Qatar to be the next country to unveil the tax. Yet delayed executive regulations and guidance in early 2021 stymied many tax professionals from preparing adequately for the tax changes.

The Omani tax authority has already started imposing fines for several delayed VAT returns from taxpayers who failed to file in July 2021.

As more GCC countries may consider e-invoicing and income tax regimes in coming months, taxpayers are concerned that more fragmentation in the GCC will make it harder for MNEs to operate in the region. This may already have started with the UAE's introduction of a 9% corporate tax rate in 2022.

Building corporate tax frameworks

Alongside expanding on VAT systems, the GCC countries are also introducing corporate tax frameworks that align with the OECD's two-pillar solution's timeline. Missing the 2023 deadline would mean missing a portion of tax revenue coming from global tax reform.

The UAE's Ministry of Finance (MOF) has finalised the first draft of its corporate tax regime. It headlines a 9% statutory rate on large businesses that will be effective from June 2023. Bahrain is the only country in GCC that has not introduced a corporate tax regime.

The introduction of corporate tax in the UAE will make the OECD transfer pricing rules mandatory and applicable to domestic transactions too. MNEs will have to comply with the OECD rules and documentation requirements as they do in Saudi Arabia, which has a 25% corporate tax rate for listed companies and a 35% rate for private companies. The UAE has the region's lowest corporate tax rate.

The UAE's Ministry of Finance (MOF) also issued a statement in July confirming its support for the OECD's BEPS project and the implementation of the two-pillar solution as agreed by the G20. Pillar one will affect MNEs with a global turnover of over €20 billion ($23.6 billion), while pillar two will set up a 15% global minimum tax rate on MNEs that meet the €750 million threshold.

The UAE's incoming 9% headline rate is below the OECD's global minimum 15% tax rate, but the MOF announced it will also enforce the 15% global minimum tax rate on large MNEs with group revenue of more than €750 million ($860 million) that file a country-by-country report.

These incoming rules will not impact most entities operating in the UAE, but a few UK MNEs will be affected. Keeping the domestic corporate tax rate at 9% should allow the UAE to continue to attract FDI in the longer-term.

"There are many positive aspects here for businesses operating in the UAE," says Shiv Mahalingham, TP and BEPS expert at the Cragus Group Limited.

"By way of example, an improved mutual agreement procedure (MAP) process for managing tax audits will assist all MNEs dealing with their domestic tax authorities who often challenge UAE transactions," adds Mahalingham, regarding the expansion of tax frameworks, including the introduction of a corporate tax regime.

Oman is likely to introduce a personal income tax regime despite reservations from Saudi Arabia and the UAE as tax fragmentation persists in the region. More tax fragmentation could spell limited cross-border compatibility as tax bases expand and more tax frameworks are introduced across the GCC countries.

Even Bahrain could introduce a different corporate tax regime. In-house tax directors should consider a holistic strategy to interlink their systems early to comply with a range of tax frameworks that could be introduced across the GCC countries. ■

The Supreme Court of India

The Supreme Court of India continues to make history with its judgments on the most important tax disputes in the country. Some cases have implications for multinational companies from all over the world.

The Supreme Court of India delivered a landmark ruling in March 2021, whereby software supplied would be treated as a copyrighted article and not a copyright. The judgment covered a total of 86 cases, including disputes involving Ericsson, GE, IBM and Samsung Electronics.

Following the OECD approach, the Supreme Court ruled that any retrospective amendment made under the legislation would have no royalty applicable on such copyrighted articles. The ruling provided much needed clarity on taxation of payments made for software by Indian companies.

"The ruling gives us clarity and aligns with the OECD vision on royalty and technical services. It's a great move which is very encouraging for companies wanting to invest in India," said Cecilia Ku, deputy managing director & deputy global head of tax at Delta Electronics.

"However, business models change quite rapidly," said Ku. "So, for investors going into India, we may need to have a faster pace on determining different taxing rights and application of tax rules."

This decision brought India's taxation of software fees closer to OECD standards. The result was much more certainty for multinational companies doing business in India.

Background

In the lead case, EAC is a resident Indian end-user of shrink-wrapped computer software. It directly imported computer software from the US and the assessing tax officer decided that the transaction involved the transfer of copyright, which attracted the payment of royalties.

As such, according to the assessment, EAC was required to deduct tax at source as per provisions in the Income Tax Act, when read together with the India-US tax treaty.

However, when the case was appealed before the Income Tax Appellate Tribunal (ITAT), the tribunal followed the approach in the *Samsung Electronics* case from 2005. In that case, the Bangalore ITAT reversed the Indian tax authorities' position by stating that payments made for shrink-wrapped software cannot be classified as a royalty and was not subject to withholding tax at source.

The explanation was that no copyright was being transferred to the Indian entity. The Indian companies were only being given the right to distribute or re-sell use of the software.

The *Samsung* case was appealed by the revenue authorities at the Karnataka High Court, where in 2011 the Court ruled in favour of the revenue authority, stating that income from the sale of shrink-wrapped software is a royalty and therefore taxable. However, in the same year the Delhi High Court ruled in favour of the taxpayer, Ericsson, in a similar matter.

The divergent views of multiple courts on this issue led to the Supreme Court having to examine the application of the law to settle the long-running conflicting interpretations.

The Supreme Court's ruling

The Supreme Court heard 86 appeals divided into four categories:

1) Cases in which computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer;
2) Cases with resident Indian companies that act as distributors or resellers, by purchasing computer software from foreign, non-resident suppliers or manufacturers and then reselling the same to resident Indian end-users;
3) Cases wherein the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users; and
4) Cases wherein computer software is affixed onto hardware and is sold as an integrated unit/equipment.

The argument was over the nature of the payments collected by companies for software licenses. The Indian revenue department had argued that the fees for software licensing amounted to royalty income because the program is licensed to the end user and the Indian buyer has the right to exploit the copyright. As such, the income would be subject to taxation in India.

However, taxpayers contended that the proprietary rights to the software are retained by the owner and that the Indian entity is restricted in its use, distribution and resale of the product.

Therefore, they argued, the money is business income. Unless the company has a permanent establishment in India, this cannot be taxed in the country.

The Finance Bill, 2012 introduced an amendment to royalty provisions to expand the definition of royalty income, which could have ensured that software payments fell into this category and were taxable in India. However, the amendment faced accusations of contravening double tax agreements.

The Supreme Court said that in all four scenarios the payment for the use or distribution of software cannot be classified as royalties. The decision overrides previous judgments and will ensure that any open litigation is closed.

Many tax directors were relieved that the decision had settled the question of how to classify software licensing fees. However, some tax professionals were still concerned that this is not over yet. This was still a landmark decision in tax for Indian businesses. ■

TIWB

Rusudan Kemularia, head of TIWB Secretariat, shares the Tax Inspectors Without Borders (TIWB)'s achievements and upcoming programmes aimed at combatting the problems of tax evasion and illicit financial flows.

Rusudan Kemularia, head of TIWB Secretariat

The COVID-19 health crisis caused significant delays in the audit space, particularly for tax administrations in developing countries. At a time when collecting further tax revenue was critical, jurisdictions have had to build capacity and combat tax avoidance and evasion.

These governments were not on their own. Programmes led by Tax Inspectors Without Borders (TIWB) – a joint project by the UNDP and the OECD – have helped tax administrations tackle such problems as illicit financial flows.

Collecting revenue

Rusudan Kemularia, head of TIWB Secretariat, said the programmes enabled governments to boost revenues and build audit capacity, in which developing countries were able to improve the overall performance of tax administrations More than $1.6 billion in extra revenue have been raised so far by developing countries thanks to the initiative.

"It was a very challenging year because of COVID. However, it has not stopped TIWB experts from continuing their work to improve tax audit of multinational enterprises in developing countries worldwide. We have been able to remotely launch 16 new TIWB programmes to provide support in specific sectors," she said.

"This is the new direction for TIWB and one pilot for the effective use of data received through automatic exchange of information (AEOI)," added Kemularia.

Amongst their biggest achievements, Kemularia cited their partnership with Mongolia. In this mission, TIWB worked on the extractive sector, which produced significant results. Launched in 2019, $228million of tax was collected.

This shows the immediate benefits coming from the implementation of BEPS measures and the efficiency of coordinated international support.

TIWB has also initiated programmes in other developing countries including Senegal. "It's an important programme for the country because auditors with the guidance of TIWB experts will conduct audit in two main areas which are insurance and banking – the major sectors in Senegal. Moreover, we are confident that this programme will allow the Directorate General of Taxes and Domains (DGID) to develop long-term skills and foster domestic revenue mobilisation (DRM)," explained Kemularia.

Developing countries had previously shared their successful partnership TIWB, particularly with its assistance in implementing the OECD's two-pillar solution.

Ekaterine Guntsadze, deputy minister of finance of Georgia, said their collaboration led to improved audits and increased local tax offices' confidence when managing transfer pricing (TP) cases. This presented a significant measure in Georgia as developing countries often consider TP as a key risk in their tax base due to millions of dollars of tax at stake, according to an OECD report.

The support offered by TIWB meant that tax officials improved their risk assessment skills and understanding of TP. Since the partnership, the Georgia Revenue Service designed a dedicated TP division and increased its teams in TP audits.

"The aim is to help developing countries fight tax avoidance and evasion effectively. This means continuing to provide support on international tax audit and help on other directions such as criminal tax investigation, AEOI, digitalisation of tax administrations, tax and the environment," said Kemularia.

"TIWB will stick to its key mandate, which is providing hands-on assistance on the real cases by using a practical 'learning by doing' approach," she added.

This year, however, TIWB aims to offer broader assistance to countries that need revenue and domestic resources. The TIWB also aims to help governments build state capacity, reform their tax administrations and promote compliance initiatives.

"We will intensively work with developing countries and offer diversified services Remote work is good if it's combined with onsite missions, and this is what we have planned for 2022 and beyond– to address developing countries' needs," said Kemularia.

The Omicron variant continues to create travel difficulties, making it difficult for TIWB to predict in which countries they will be able to operate. Depending on each situation, the OECD and UN joint initiative is determined to maximise its utility and use opportunities, wherever possible, to send experts on missions and combine it with remote work.

TIWB has become a key partner for developing countries when it comes to tackling tax avoidance and evasion. While the health crisis might have caused delays in the implementation of audits, the continuous programmes – combining both remote and onsite missions – are set to raise revenues and improve TP policy through this partnership. ■

Beneficial ownership

Beneficial ownership has been highlighted by court cases and scandals. It is a part of key provisions for multinational enterprises (MNEs) to seek treaty benefits, and some companies have even restructured because of it.

The UN Model Double Taxation Convention and OECD commentary on tax treaties both advocate for beneficial ownership tests to determine whether MNEs should have access to treaty benefits, including exemptions on withholding taxes.

As more countries improve tax transparency with international tax policies to clarify the beneficial owner, in-house tax teams are simplifying holding company structures to comply with beneficial ownership tests to access treaty benefits in the longer-term.

Several events in 2021 enhanced the concept of beneficial ownership, including the OpenLux investigation, European high court cases, and the release of a landmark UN tax report. Some countries such as the UK have taken steps to establish public registers of beneficial ownership.

More countries are likely to follow this example and enact beneficial ownership registers amid increasing calls for greater tax transparency. The issue of beneficial ownership is not going away.

Global calls for tax transparency

The OpenLux leaks from February 2021 led to global calls to increase tax transparency in the EU. The investigation found that more than half of the companies registered in Luxembourg are not declaring their beneficial owners on the public register, while others are giving conflicting information.

The OpenLux investigation highlights the failure of the public beneficial ownership register in Luxembourg. Most EU member states have some form of a beneficial ownership register. Only Hungary, Italy, and Lithuania have not established any type of register.

"We [intergovernmental agencies] cannot oblige every country to have a public register because each country is different with different data protection laws," says Marcus Pleyer, president of the Financial Action Task Force.

Beneficial ownership as a concept has headlined tax events in 2021

The UN's International Financial Accountability, Transparency and Integrity for Achieving (FACTI) panel recommended developing countries to set up public beneficial ownership registers in February 2021 to address illicit financial flows (IFFs) following insights from the OpenLux investigation.

The high-level UN panel published 14 recommendations for countries to improve tax transparency, which includes public beneficial ownership registers. However, the possibility of beneficial ownership registers getting adopted globally depends on political will and options on how to navigate the different laws and regulations across countries.

The US is considering a national beneficial ownership register may incentivise other countries to follow the set up for a domestic register to track financial flows, especially when crypto assets are more commonplace in 2022.

Examples of beneficial ownership registers

The US Corporate Transparency Act (CTA) from January 2021 included a private beneficial ownership register. The US Treasury Department's Financial Crimes Enforcement Network (FinCEN) published a draft of reporting rules for the register in December 2021.

The final draft legislation for the register will likely be finalised and ready for use in late 2022. FinCEN is still finalising rules to address who will report beneficial ownership information, when they must report, and what information to report.

"Understanding all the rules and what sectors this [CTA] legislation impacts specifically will take a couple years," says one chief tax officer at a utilities company, regarding the latest legislation for the federal beneficial ownership register.

While there are exemptions for entities that present a low money laundering risk such as publicly traded companies, some large companies may still have reporting obligations under the CTA. Taxpayers will need to report the beneficial owner of all entities with US operations.

"FinCEN is taking aggressive aim at those who would exploit anonymous shell corporations, front companies, and other loopholes to launder the proceeds of crimes, such as corruption, drug and arms trafficking, or terrorist financing," said Himamauli Das, acting director of FinCEN.

Many US companies have less experience with such broad rules as the general anti-abuse rule (GAAR) and the EU directive for administrative cooperation (DAC) in the field of taxation. This is in contrast with EU companies.

Beneficial ownership in the EU

Holding companies in Luxembourg and the Netherlands were an organisational strategy to avoid withholding taxes on dividends before anti-avoidance measures were enacted in the EU. Directive 2015/849 requires EU member states to hold corporate beneficial ownership information in a register.

Six Danish beneficial ownership cases in 2021 questioned whether dividend and interest payments are exempt from at least 28% withholding tax under the EU's parent-subsidiary directive. These cases concerned the payments of a Danish company made to an EU holding company, and then to a parent company in a third country.

The Ministry of Taxation in Denmark claims the benefits under the parent-subsidiary directive should have been denied because the EU holding companies are not the ultimate beneficial owner. Two of the six Danish beneficial ownership cases have already been ruled in favour of the Danish tax authority.

The Danish beneficial ownership tax cases have received a lot of publicity after the Court of Justice of the European Union's (CJEU) preliminary ruling in 2019 highlighted EU measures cannot be claimed to facilitate abuse or fraud.

The consequences of the CJEU ruling cannot be understated as it has influenced several other domestic rulings from courts in France, Italy, the Netherlands, Switzerland, and Belgium.

Most of these cases highlight that national tax authorities can deny taxpayers waivers on withholding tax on dividends across more situations involving shell companies. The rulings have an impact on many investment structures and the use of holding companies is under higher scrutiny in the EU.

Beneficial ownership tests have put more pressure on taxpayers to hold an adequate level of substance and comply with higher disclosure requirements to gain benefits available under most tax treaties.

More tax transparency pressures are coming as more countries introduce beneficial ownership registers in 2022. The compliance burden could be exacerbated if similar rules to the US beneficial ownership register are adopted in developing countries in the longer-term. ■

Brexit

Despite gaining certainty, UK businesses have faced a more complex compliance burden, supply chain problems and higher tax costs following Brexit.

Brexit caused more compliance burden, supply chain problems and higher tax costs

Two years after having withdrawn from the European Union (EU), UK taxpayers still bear the cost of more compliance requirements, higher direct tax burdens, and VAT obligations. Changes in businesses' operating models caused by Brexit have also required corporations to file their transfer pricing (TP) documents early.

As a result, Brexit is once again included in *ITR*'s Global Tax 50. The UK leaving the EU will have economic consequences for years to come.

International standards on tax transparency

HM Revenue and Customs (HMRC) has opted out of EU mandatory disclosure requirements – automatic exchange of information (AEOI) of cross border arrangements under the European Council Directive 2018/822 (DAC6) – marked a key change following the UK exit from the EU.

This initiative emphasised the UK's move towards international standards as it adopted OECD disclosure rules as a replacement of DAC6, clarifying its position on tax transparency.

The change came as a relief for many UK advisors due to the complexities of DAC6 and as taxpayers struggled to understand how to interpret the European directive. Tax directors must now yet remain fully compliant with OECD guidelines.

In addition, taxpayers would have experienced legal changes from court cases as the UK high court embraced more legal freedoms. This is despite EU member states pressuring Brussels to renegotiate tax transparency and corporate tax provisions following the UK-EU Trade and Cooperation Agreement (TCA).

VAT and customs

The rise of customs requirements after Brexit significantly impacted multinational enterprises (MNEs) in 2021. The UK and EU agreed there will be no tariffs or quotas on the movement of goods if the rules of origin were met by taxpayers.

The TCA required a change of model for the VAT treatment of goods coming into the UK from January 2021. This was put in place by the UK government to ensure goods from the EU and non-EU countries were treated equally – and that UK businesses were not put at disadvantage by competition.

However, the long period of negotiation caused disruptions in supply chains. Companies had to suspend exports and imports until guidance was made clearer. The risk of double duties meant that some businesses reassessed their supply chain models.

Brexit discredited the UK's status as a distribution hub and businesses started establishing European trading hubs to avoid paying the same tax twice. Countries such as The Netherlands gained particular attention from UK businesses, but it is not the only country to benefit. Retailer JD Sports has opened warehouses in Belgium and Ireland in response to Brexit.

UK businesses faced additional costs and compliance burdens. While large companies could afford some of the cost and small enterprises were unlikely involved with the EU, it was most likely the middle-sized businesses that were the most affected by VAT and customs regulations.

The change also presented a significant cash flow disadvantage for those having to account for VAT earlier than they would have.

At the same time, the timeline differences on VAT reforms between the UK and the EU contributed to the complexities faced by UK businesses in regards to their tax and supply chain models.

The disruption of supply chains caused by Brexit also meant that UK businesses have had to prepare their TP documentation in advance to mitigate the risk of disputes. While TP issues often originated from VAT changes, corporations will need to remain open with tax authorities and share the relevant information needed.

The hopes of the country becoming 'Singapore-on-Thames' seems doubtful as the UK government raised the corporate tax rate to 24% rather than continue with tax cuts. The UK is still a significant business, but Brexit has left many companies facing VAT and customs difficulties at a time when supply chains are under strain.

The tax hike expected in this year's budget, as well as record-high levels of inflation in the UK, could mean the impact of Brexit and the COVID-19 pandemic undermine what hopes some people had for a more dynamic, low-tax economy. ■

Crypto-assets

Crypto-assets from Bitcoin to non-fungible tokens (NFTs) have become the focus of a global tax crackdown over widespread concerns of tax evasion and avoidance.

The age of Bitcoin began in 2011 and barely anyone noticed. More than a decade later and the cryptocurrency is a household name. The disruptive power of cryptocurrencies is felt even in the world of tax.

Governments around the world are cracking down on cryptocurrencies and other crypto-assets because of tax risks these assets may present. Cryptocurrencies raise difficulties for tax professionals from how to classify such assets and what tax treatment results from this.

However, the tax problems with cryptocurrencies is just one set of difficult questions. The rise of NFTs have prompted more discussion in tax policy circles about how such assets should be treated. These questions are not going away.

Furthermore, the Russia-Ukraine war has given the crypto industry yet more bad press since the biggest crypto exchanges initially refused to impose a Russia ban. If 2021 was a difficult year for the crypto industry, 2022 may be even tougher.

The trouble with Bitcoin

The first Bitcoin was worth less than a $1, yet the value of Bitcoin has skyrocketed in the decade since. The currency was valued at more than $65,000 per coin in 2021. However, such assets are notoriously volatile.

"Some people think of Bitcoin as the gold of cryptocurrencies because it's the longest standing and quite valuable," said Lisa Felix, global head of tax at Kraken.

"There are other types of coins that are used for very specific functions, for example, within an app. Tax authorities may argue that certain stable coins are a security for tax purposes," said Felix.

Classifying cryptocurrency for tax purposes is a difficult question for tax practitioners. In some cases, tokens may be used analogously to foreign currency, a commodity or security, but by itself, it is a fungible intangible asset.

There are many different ways to characterise a cryptocurrency, including capital, a passive asset, an inventory, a business asset or an intangible for active trading. Each characterisation comes with a different tax impact.

"It could also be passive income, like a dividend interest royalty. All of these alternatives are currently on the table and being discussed in different contexts," said Felix.

The tax treatment differs if the taxpayer is holding the cryptocurrency or using it. Certain types of coins are used primarily in transaction flows to buy and sell things or to move money quickly across borders.

Another difficulty is sourcing cryptocurrencies to a specific tax jurisdiction. Tax authorities need to know if crypto assets are US-sourced or foreign-sourced for tax purposes, but this cannot be decided until the classification of digital assets is settled.

Nevertheless, cryptocurrencies have become increasingly important to the financial system. Several companies are accepting cryptocurrency for payments and some businesses are even paying their employees' salaries in cryptocurrency.

There are clear advantages to this. Such companies can use cryptocurrency – rather than fiat currency – to get a deduction on their financial statements and their tax return. However, these practices are coming under evermore intense scrutiny.

Governments may decide to raise the pressure on the crypto trade for the sake of making short-term fiscal gains, but also to make the market more stable and less disruptive to other sectors. Yet cryptocurrency is not the only kind of asset raising difficult questions.

The rise of NFTs

Another kind of digital asset has emerged: the NFT. Non-fungible tokens are online works of 'art' turned into digital collectibles and sold to the highest bidder. Many online entrepreneurs have turned memes and even tweets into NFTs.

The rise of NFTs has been likened to the tulip boom of the Dutch Republic – where the value of tulips continued to rise wildly, inflating a vast economic bubble – which eventually went bust. The only difference is that tulips are tangible items sold in florists.

The US Internal Revenue Service (IRS) has NFTs on its radar since the digital tokens can be worth fortunes and are taxable under most capital gains tax regimes. Yet some tax authorities, including the IRS, see NFTs as a potential tax evasion risk.

However, many cryptocurrency experts disagree with this claim not least because a reported $1 trillion tax gap can hardly be reduced to recent technological changes. When the IRS raised the possibility of a crackdown on crypto-assets, the industry was quick to go on the defensive.

"Cryptocurrency in general, is probably the worst asset to evade taxes," said Shehan Chandrasekara, head of tax strategy at cryptocurrency tax software company CoinTracker.

"The NFT industry is so nascent that not a lot of people are using it to evade taxes," he added.

The sudden interest in NFTs probably meant that the buyers were unaware that they had to pay taxes on them. "Usually you buy NFTs using some type of cryptocurrency and it's a taxable event because you're disposing of the cryptocurrency to buy the NFTs," explained Chandrasekara.

So, for people investing in NFTs, it is important to keep a record of the purchase price, sale price and the date of purchase in order to properly file tax forms at the end of the year. This sounds like it would take the fun out of NFTs for some collectors, but compliance is about much more than fun.

The crypto industry have proven unpredictable at the best of times, and investors should expect the authorities to come knocking with more demands and more paperwork. Crypto-assets may be disruptive, but the tax world is catching up. ■

The virtual currency that changed the world

DAC7

The EU is set to move towards greater harmonisation of tax reporting under DAC7, including rules for revenue made by sellers on digital platforms.

As part of the plans, EU member states will automatically exchange information about platforms to help revenue authorities to minimise tax losses from the digital economy. Directive 2021/514 (DAC7) sets up EU-wide rules for digital platforms to report income earned by online sellers to tax authorities.

DAC7 rules will be enacted by EU member states by December 31 2022 at the latest as the rules will come into force in January 2023. However, taxpayers are expected to be fully prepared even sooner since the scope of the rules is broad. This may extend to non-traditional platforms such as commercial websites.

"It was high time we updated our tax rules to reflect the growing importance of digital platforms for the European economy," said Paolo Gentiloni, commissioner for the economy.

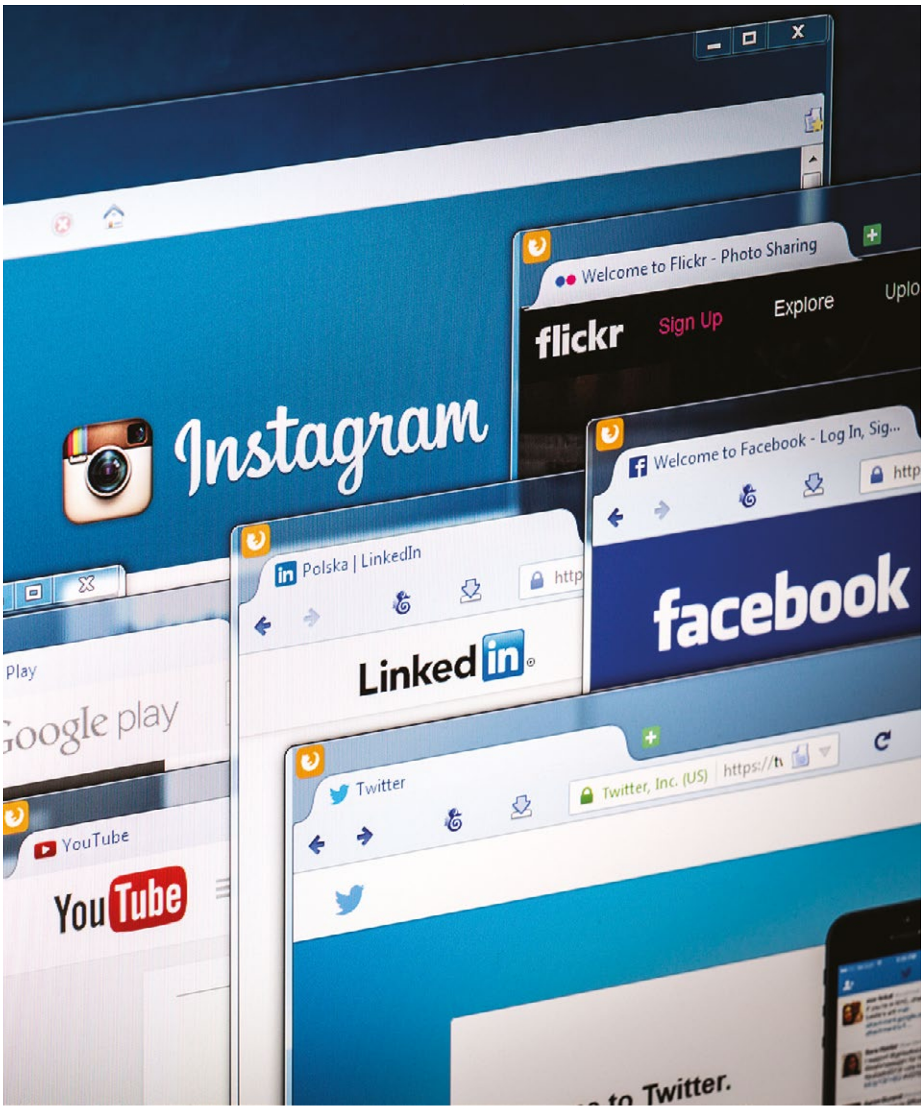
Both EU and non-EU resident platform operators are targeted by DAC7 reporting rules, but they only need to report transactions concerning sellers that have a nexus in the EU.

The rules are based on the OECD's landmark publication about a global tax reporting framework for digital platforms in the sharing and gig economy. The European Commission's aim with DAC7 is to reduce the administrative burden placed on platforms. These platforms are already dealing with different national reporting requirements.

The DAC7 directive will extend the scope of automatic exchange of information in the EU, but it also is an opportunity to make some adjustments to the concept of foreseeable relevance of information. There may also be changes to legal provisions for authorities to request information from a group of taxpayers since DAC7 has a framework for authorities in several member states to conduct joint audits.

"The EU is going beyond the current recommendations of the OECD and will require information from more platforms on a wider range of activities, including the sale of goods," says Jon Richardson, head of tax policy at PwC UK. DAC7 covers both direct tax and VAT for digital operations.

"The OECD model rules, which informed the proposal, currently focus more on the digitalised personal services sector," adds Richardson.



DAC7 will expand reporting requirements for digital platforms globally

Belgium is the first country to implement a light version of the reporting rules for digital platforms in the EU. However, other countries are also enacting similar rules based on the OECD's tax reporting framework. The UK launched a consultation on reporting rules for digital platforms in July 2021 too. This trend is definitely one to watch in 2022.

DAC7 due diligence

The DAC7 due diligence requirements are beyond the standard know-your-customer (KYC) requirements and platform operators must report the seller's personal data to the competent authorities too, including the tax identification number and VAT identification number.

Duplicate reporting is a concern with DAC7 since many digital companies offer routine services with multiple matched listings on other platforms and third parties that can be considered sellers. It is also unclear who is primarily responsible for reporting first.

To avoid duplicate reporting, platform operators could obtain adequate assurances from other platform operators that they will report the required information. This could be done by a written agreement and mechanisms to ensure that the reporting obligations are performed effectively.

Penalties are also a concern since they could vary as countries have discretion over the national enforcement regime. Member states can consider their existing reporting frameworks to set compliance expectations in the local reporting guidance.

DAC7 reflects the Commission's aim for higher tax transparency requirements across the economic bloc and scrutiny over the tax affairs of multinational companies. This trend has been exacerbated by the COVID-19 pandemic as several member states look to replace tax revenues spent on stimulus packages.

The DAC7 reporting framework is also another step to address tax challenges in the digital economy alongside the upcoming two-pillar digital tax solution from the OECD. The world of tax will see fundamental change in 2022. ■

Digital services taxes

Digital services taxes (DSTs) caused more controversy in 2021, as countries introduced them rather than wait for a multilateral agreement. However, some countries may hang on to DSTs even with a deal.

The trend of countries introducing unilateral DSTs ramped up in 2021 as more governments moved to increase tax revenue. Governments saw DSTs as an easy way to capture revenue from global digital companies that were operating in their jurisdiction.

The number of DSTs continued to rise despite widespread concerns about discrimination and double taxation, which in some cases led to disputes in court. According to a tracking tool created by BDO Global, more than 60 countries have some form of digital services tax, and some countries have multiple taxes across different states or provinces.

Yet in 2021, the OECD managed to broker an international agreement on digital tax. The consensus, reached in October 2021, was a landmark event in international taxation, with pillar one addressing the taxing rights of market jurisdictions, and pillar two imposing a global minimum corporate tax rate of 15%.

Some thought the agreement would herald the end of unilateral DSTs by allocating taxing rights over digital companies to market jurisdictions. Pascal Saint-Amans, director of the Centre for Tax Policy and Administration at the OECD, told *ITR* last year that unilateral measures will be repealed once the international agreement comes into force in 2023.

However, with so many varied DSTs in existence around the world, this is likely to be complicated. Some countries may be reluctant to give up this revenue stream, particularly those that criticise the OECD agreement for prioritising the needs of some countries over others.

Meanwhile, unilateral measures have caused disputes, both between countries, and between lawmakers and businesses.

Disputes over DSTs

In 2020, the United States Trade Representative's office (USTR) began investigating countries with unilateral DSTs, alleging that the measures are discriminatory against US technology businesses such as the FAANG (Facebook, Amazon, Apple, Netflix, Google) companies.

Trade disputes followed as the US threatened to impose retaliatory tariffs on goods from countries including Austria, France, India, Italy, Spain, the UK, and Turkey. Following the OECD agreement in October, the US agreed to withdraw the tariff threat against countries that promised to repeal unilateral DSTs by the time that pillar one comes into effect.

Yet international trade disputes are not the only hurdle that DSTs have created for jurisdictions. Within the US itself, the state of Maryland has been battling a court case over its digital advertising tax, introduced in February 2021.

Maryland faces allegations of unconstitutionality from multinational enterprises (MNEs) over the tax. This is because it targets online but not print advertising, and because it targets out-of-state businesses.

The OECD agreement on pillar one could bring an end to unilateral DSTs, but some tax professionals are concerned that this is not a given.

OECD agreement

Pillar one of the OECD agreement on digital taxes is intended to replace the need for unilateral digital taxes, and some DSTs have sunset clauses stating that they will be withdrawn when the multilateral convention (MLC) enters into force.

However, tax professionals have told *ITR* that there could be complications and disputes over when, and how, to remove DSTs, or even over which taxes are categorised as such.

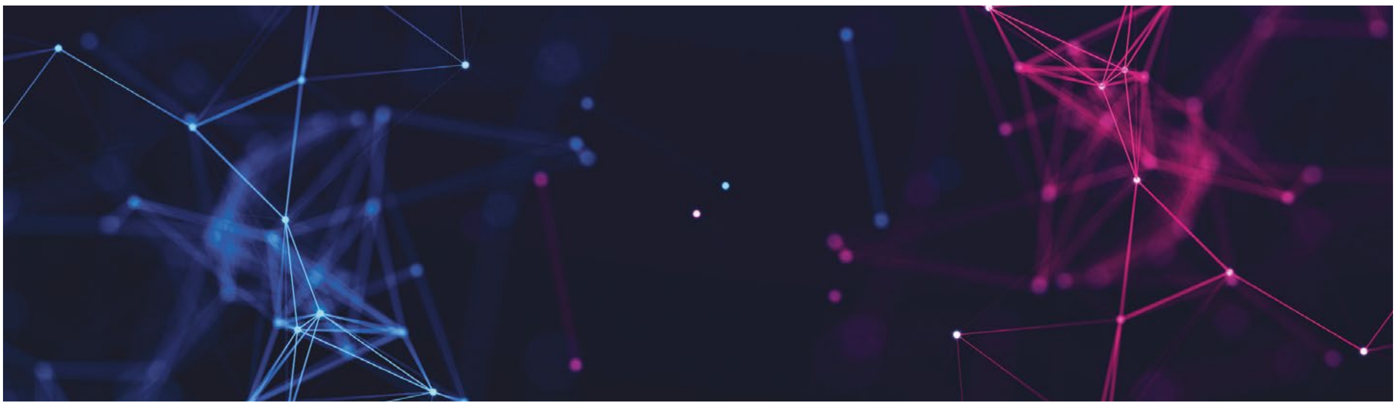
DSTs can take many forms, from the equalisation levy in India to corporate tax in Slovakia, from advertising taxes in the US to a VAT on digital services in many other countries. It could be difficult to decide which of these measures qualifies as a DST and overlaps with pillar one, meaning it should be repealed.

At the same time, the OECD agreement faced some criticism from stakeholders including the African Tax Administration Forum (ATAF). Countries that believe they are disadvantaged by the agreed allocation of taxing rights under the OECD rules could be reluctant to relinquish their DSTs – and the financial deficit caused by the COVID-19 pandemic is likely to exacerbate this issue.

"Governments may get used to the funds that they receive through various DSTs," said one tax director speaking at *ITR*'s digital economy event in September. "Even if they realise that any unilateral tax can harm growth… there's a commercial reality that they have budget difficulties [when it comes to] removing taxes".

There is hope that the OECD agreement on pillar one could bring an end to arguments over DSTs. Yet with more than 18 months until the end of 2023, the last point at which DSTs should be repealed, there are still many questions to be answered.

DSTs were a crucial topic in 2021: some countries introduced them and other promised to repeal them, while the OECD agreement in October sparked discussions about the future of these unilateral measures. Things are shaping up to be no different in 2022. ■



Unilateral DSTs caused disputes in 2021

Diversity & inclusion initiatives

Diversity and inclusion (D&I) initiatives have swept tax departments around the world in the last year, but there is still a lot of work to be done to ensure tax teams are representative.

In the wake of the Black Lives Matter protests in the summer of 2020, there is a renewed focus on diversity and inclusion in the corporate world as companies respond to social pressure to diversify their teams. The world of tax is no exception to this trend.

Multinational enterprises (MNEs) can see the business case for diversity. More diverse teams offer companies greater insights, perspectives, and knowledge. This allows in-house tax teams to better respond to compliance and regulatory challenges, and it helps advisory firms offer a better service to clients.

Tax professionals differ in their opinions on the progress diversity and inclusion initiatives have made in recent years. Some are optimistic progress is accelerating, while others believe a more fundamental shake-up is necessary to create lasting change.

Diversity is the way forward in tax

The pace of progress

In *ITR*'s 2020 survey on diversity and inclusion in tax, the results showed there is a long way to go on workplace equality initiatives, but more progress has been made in some areas than in others.

"We've done quite a lot on male-female diversity although there's more to do," said Heather Self, partner at Blick Rothenberg.

One of the hurdles to gender parity is that diversity levels decrease as seniority increases. Women are well represented at the junior levels of tax, but the head of tax and chief financial officer (CFO) levels are much less diverse.

"While it is not too difficult to recruit women for the lower levels, I see fewer of them as we move up the ladder," said Karine Halimi-Guez, managing director of tax at FedEx. "In the Netherlands, where I live, I hardly know of any women head of tax, a handful maybe."

"Tax is a much more traditional and conservative area, where the winds of change blow slower than elsewhere," said Halimi-Guez. "Only if you have a CFO that is very sensitive to the topic, or a female CFO, will you get tax departments to be shaken up."

The results of *ITR*'s 2021 survey suggested that the progress is still slow. This is despite the majority of companies having women's groups as part of their D&I initiatives. The survey found that 69% of respondents worked at organisations where there was an initiative for women, but that the initiative had no visible impact.

Women are especially discriminated against based on biological factors like pregnancy and the menopause. "I suffered discrimination in an employment selection process because I had just come back from maternity leave," said one Brazilian tax lawyer.

At the same time, there has been a greater recognition of inequality particularly when it comes to race. Out of 169 respondents, 30.2% said that the Black Lives Matter movement made them more aware of systemic racial inequalities in the workplace.

Meanwhile, 45.6% of respondents said that they did not notice a positive change within their department or company since the Black Lives Matter movement made international news.

Apart from gender and race, age is the next biggest factor in discrimination in the tax profession according to 47.3% respondents. Both younger and older tax professionals may face bias in the workforce of different kinds.

Older tax professionals reported feeling that they were not getting the same opportunities as younger professionals. By comparison, younger tax professionals reported feeling they were not paid as well as older professionals.

Progress may have been made in terms of awareness and initiatives, but there is a long way to go. There is a risk that change will not happen soon enough, and this is not just a problem in the tax industry.

As the world moves towards a post-pandemic economy and different ways of working, companies that do not invest in diversity will be losing out. So there is still a lot to change in the tax sector going forward. ■

EU VAT Reform

The EU's VAT rules were reformed on July 1 2021 to mark the rise of e-commerce and simplify processes, marking the first update to the system since 1993.

The EU introduce the first changes to its VAT rules for businesses in almost 30 years in 2021, to keep pace with the changing nature of commerce and streamline compliance for multinational enterprises (MNEs).

Cross-border e-commerce has boomed in the past decade, and the EU VAT rules were no longer fit for purpose. This issue was exacerbated by the COVID-19 pandemic, which accelerated the shift away from in-person shopping to online shopping.

The reformed VAT rules came into effect on July 1 2021 affecting both EU and non-EU online sellers, marketplaces, and platforms that facilitate sales. Postal companies and couriers were also affected, as well as customs offices and tax administrations.

The EU stated that the reform is intended "to ensure a more level playing field for all businesses, to simplify cross-border e-commerce and to introduce greater transparency for EU shoppers when it comes to pricing and consumer choice."

The wide-ranging reforms made some crucial changes to the way businesses operate in the EU, including scrapping the €22 ($24) threshold and introducing a single VAT return under a one stop shop (OSS).

Scrapping the €22 threshold

Before the reform, goods worth less than €22 and imported into the EU by non-EU companies were exempt from VAT.

However, the EU became aware that unscrupulous sellers were abusing this benefit by mislabelling goods to fall under the threshold. The EU estimates that this cost EU countries €7 billion per year in fraud.

Following the reform, VAT on goods valued at between €0 and €150 must be paid in the EU country where the goods are delivered.

Single VAT returns via the one stop shop (OSS)

The reform also introduced an option for MNEs selling physical goods to file a single VAT return, marking a big improvement for businesses. Previously, tax teams had to manage a separate VAT registration in every EU country in which their turnover exceeded a certain overall threshold, with the thresholds varying between member states.

From July 1 2021, the different thresholds were replaced by a common EU threshold of €10,000, above which VAT is due in the member state where the goods are delivered.

This process is facilitated by the OSS which allows tax teams to manage all their EU VAT compliance obligations through a single portal. The OSS's predecessor, the mini one stop shop (MOSS), has been integrated into the OSS.

MNEs can register with the OSS in their own member state and pay VAT for all their EU sales via a quarterly declaration. The OSS then distributes the VAT payments to the relevant member states.

The EU's VAT reform was a long time coming, and the changes indicate that the EU is aware of the need for tax administration to change as the global economy changes.

The shift towards online methods of exchanging goods and services comes with opportunities for tax administrations, which can use this increased digitalisation to access more taxpayer data. However, it also introduces difficulties, such as how to regulate and tax the gig economy.

Cross-border e-commerce holds a rapidly increasing share of the global economy, and the EU's commitment to address it is a good sign for the future of tax administration in this area. ■

EU tax reform is making steady progress with OSS

Holdout nations

Four global south nations refused to sign up to the OECD-brokered agreement on the two-pillar solution to digital tax. Kenya, Nigeria, Sri Lanka and Pakistan all opposed the agreement.

Kenya is holding out to keep its DST revenue

The race to a multilateral agreement, among not just G20 nations but the Inclusive Framework as well, reached the finishing line in October 2021. Kenya, Nigeria, Pakistan and Sri Lanka refused to consent to the agreement, but they were in a minority.

"You need to know exactly what you are getting for you to forego what you already have," said Terra Saidimu, commissioner for intelligence and strategic operations at Kenya Revenue Authority (KRA).

The OECD plan for a global minimum corporate tax rate does not go far enough to address the concerns of these governments. The minimum rate would apply to multinational companies with a turnover of at least €20 billion ($22.8 billion) with a 10% pre-tax profit rate.

The Kenyan government estimated that the digital services tax (DST) rate of 1.5% would raise more revenue because it would apply to more businesses. The KRA estimated that the DST applies to 89 companies, whereas the OECD proposal would cover just 11 businesses.

As much as the holdout nations are outnumbered, the OECD still has to settle the crucial details of pillar one. The holdouts may increase in number in 2022 and their demands could become even more important.

Longstanding issues

Securing pillar two might turn out to be the easy part, however, pillar one is necessary to make a global minimum corporate tax rate work. There are other issues at stake with the multilateral convention (MLC) coming up in the summer of 2022.

Both the Kenyan and the Nigerian government raised concerns over the possibility that the deal will rest on something resembling arbitration. This is a problem since many developing and emerging economies have historically lost out to arbitration tribunals.

For example, the Indian government faced the threat of state assets being seized in the *Cairn* case in which a multinational company decided to fight a retrospective tax claim. This is not the first time such threats have been raised over arbitration claims.

Plenty of countries in the global south are concerned about arbitration. This is on top of concerns that the two-pillar solution will not raise enough revenue.

Much like the Kenyan government, the Nigerian government also calculated that the gains of the OECD minimum rate would be insignificant for the West African country.

"The truth is that there's little or no money coming from either pillar one or pillar two to developing countries… We shouldn't deceive ourselves," said Mathew Gbonjubola, group lead at the Federal Inland Revenue Service (FIRS).

The Pakistani government has implemented a DST-like regime charging a rate ranging from 10-20% on all e-commerce transactions. The government opposes key details of the two-pillar agreement, including the 15% minimum corporate rate, as well as the pillar one profit allocation rules.

Meanwhile, the Sri Lankan government has yet to impose a DST but it may be considering such a regime in the near future. Many countries in the global south would prefer to keep all options on the table.

By contrast, EU member-states Hungary, Ireland and Estonia were sceptical until the last minute. However, the opposition of EU countries was arguably a much bigger problem for the OECD once most other countries were on board.

The uncertainty around pillar one means that there could be yet more opposition in 2022. Even if the OECD succeeds, some countries in the global south may decide to hold onto unilateral measures as leverage to gain greater tax revenue. ■

The Libor transition

The end of the London inter-bank offered rate (Libor) means the world is moving onto alternative rates, but tax directors have to mitigate the impact on transfer pricing (TP) policies.

The usage of the London inter-bank offered rate (Libor) has finally come to close as regulators including the Financial Conduct Authority (FCA) confirmed the cessation of the benchmark rate as of January. However, transfer pricing (TP) teams must ensure revised contracts and future agreements remain in accordance with the arm's-length principle.

From January 1 2022, 24 out of the 35 Libor settings related to certain currencies will no longer be made available. This includes the publication of all euro and Swiss franc, most sterling and Japanese yen and the one-week and two-month US dollar Libors.

The FCA and Bank of England (BoE) expect the sterling market to implement the sterling overnight index average (Sonia) when transitioning away from the benchmark rate. For multinational enterprises (MNEs) with inter-company agreements and loans under Libor, replacing the rate with an alternative risk-free rate (ARR) such as Sonia could be considered a burdensome TP exercise.

The catalyst for this transition goes back to 2012 when the Libor scandal first broke and sent shockwaves around the financial world. Some banks had been reporting artificially low or high interest rates to the benefit of their derivatives traders.

These banks used Libor to make themselves appear stronger than they actually were by reporting fictitious rates, giving some financial institutions an edge during the 2008 financial crisis.

Following the scandal, the FCA demanded the cessation of Libor back in 2017. However, this was always going to be a time-consuming process given a multinational company could have hundreds of contracts to revise.

The UK launched Libor in January 1986 after two years of work by the British Bankers' Association (BBA). This was just in time for the 'Big Bang' when the rules of the London Stock Exchange were overhauled to allow a boom in trading.

The BBA set up Libor as a self-reported rate depending on the reliability of the rates reported by a small number of international banks such as Barclays Bank, Credit Suisse and JP Morgan Chase.

The Libor transition concerns an estimated $400 trillion worth of contracts worldwide. This is no small matter.

Businesses must renegotiate contracts following end of Libor

Life begins after Libor

Businesses converting the overnight rate to an ARR will need to renegotiate contracts, as well as key aspects such as revolving credit facilities. Replacing the benchmark rate with a more RFR also comes with other consequences.

Multinational companies could see the margin increase and have an interest cover more favourable, leaving them with significant impacts on their contracts. Tax directors have previously qualified the task of transitioning away from Libor as the "biggest piece of tax work for some companies".

However, as 2022 marks a new era for the implementation of risk-free rates (RFRs), TP teams should envision the transition as an opportunity to revise their policies in place, ensuring they align with OECD regulations. The approved pricing will need to remain at arm's length.

Tax directors could also face other impacts on their TP policies such as the delineation of the transaction. They could also be challenged by a tax obligation caused by the switch from Libor to a RFR.

Edwin Schooling Latter, director of markets and wholesale policy at the FCA, reiterated the need for multinationals to transition away from the benchmark, claiming there was no reasonable delay.

"The end-game for Libor is now increasingly clear. Firms should now have everything they need to shift new business to Sonia and to complete their plans for transition of legacy exposures. There is no longer any reason for delay," he said in a statement.

"Firms shouldn't be relying on a synthetic solution or the same legacy use permissions for a synthetic US dollar Libor as we have given for sterling and yen," said Schooling Latter.

"We will stand ready to use our powers where it is feasible and desirable to do so, but firms should not plan on the basis of an assumption that this will be the case," he added.

In the meantime, assessing risks remains a stressful process for TP teams, even though the transition has been on the agenda for a while. The amendment of contracts will be a time-consuming exercise – particularly as the level of awareness around TP implications remains low.

The end of the benchmark rate has created significant consequences and compliance work as to what the future holds for TP teams. This year the financial world will find out what the changes mean for businesses. ■

Pillar one

Pillar one represents the most ambitious tax reform proposal in a century. The OECD may have secured global support for the two-pillar solution, but there is still a lot of work to do.

The OECD is planning to secure pillar one by the end of June 2022. Far more contentious than pillar two, pillar one means the overhaul of international taxing rights to resolve the problem of taxing the digital economy.

The Paris-based organisation is used to meeting tough deadlines. Many observers doubted that the October 2021 agreement was even possible, let alone on the timeline that the OECD was set. The difficulty is the combination of political and technical questions.

"It's extremely challenging but we need to come up with a multilateral convention by the end of June," says Pascal Saint-Amans, director of the Centre for Tax Policy and Administration at the OECD.

"The multilateral convention will have to provide for all the technical – and some of them are political – details of the agreement," he explains.

Many technical issues have a political aspect to it. These issues include revenue sourcing, double taxation, marketing and distribution, as well as the question of safe harbour rules and compatibility with US tax reform.

"There will be a whole set of legal measure or legal framework. That should come in the next six months," Saint-Amans tells *ITR*.

Many governments around the world have problems with the details of pillar one and finding a compromise that holds together 137 countries will be tough. Nevertheless, the OECD is still committed to making pillar one a reality.

Reaching the finishing line

Since the digital economy has put international tax norms under strain. Governments have resorted to unilateral measures in response. The race to find a solution to taxing the digital economy has seen many governments to put forward different proposals.

The risks of not enacting change could mean the world continues on the path of tax nationalism. Restoring stability to the international tax system is the aim of the OECD reforms.

"I am confident that this new framework, if implemented, will provide more stability to the international tax system, will provide more secure revenues for member countries, and will provide more

The OECD's plans will remake global tax

tax certainty and a level playing field for companies," says Saint-Amans.

Pillar one means a radical overhaul of profit allocation rules to revise taxing rights in favour of market jurisdictions. However, it is highly contentious – even more so than pillar one – since there will inevitably be winners and losers.

The OECD may be betting on governments compromising for the sake of ending the destructive proliferation of unilateral measures. The hope is that the rise of digital services taxes (DSTs) will be curtailed, if not reversed, once the MLC comes into force.

At the same time, pillar one is vulnerable to political opposition. Building international support for the plans has been an arduous task and the final details have yet to be agreed.

The OECD based its proposals for international reform on the US Tax Cuts and Jobs Act (TCJA), particularly the global intangible low-taxed income (GILTI) rules. The GILTI rules introduced a minimum corporate rate of 10.5%.

However, the Biden administration is still grappling with Congress to secure a higher minimum corporate rate of 15%. This is crucial for making the OECD plan for a global minimum rate viable. The political dynamics in the US are just one source of uncertainty.

There are international divisions over safe harbour rules, revenue sourcing, as well as marketing distribution. So far these divisions have been overcome in favour of compromise. If the OECD succeeds, the world may embark on the most ambitious tax reform in decades. ■

Pillar two

The OECD's digital tax agenda is set to still be the hottest topic in tax policymaking in 2022, as many countries prepare the groundwork for a 15% global minimum corporate tax rate by 2023.

After years of work, 137 countries signed up to the OECD's two-pillar solution for digital tax in October 2021. Pillar two is a key part of that solution, featuring a minimum rate framework to set a floor on international tax competition. The solution will also set significant limits on multinational enterprises (MNEs) shifting profits to lower tax jurisdictions.

Pillar two's rule order includes a subject-to-tax rule (STTR), income inclusion rule (IIR), undertaxed payment rule (UTPR), and switch-over rule (SOR). It starts with the STTR, which imposes a withholding tax on certain related-party payments before the IIR and UTPR taxes apply, and then ends with the SOR.

"Time will only tell whether this is good tax policy, but it clearly complicates the tax rules significantly and appears to encourage behavioural changes in both governments and taxpayers," says James Choo, international tax partner at EY Singapore.

In-house tax directors are more focused on preparing for pillar two than pillar one, since there is more political momentum behind pillar two. A minimum tax framework can eliminate incentives and create loopholes for structures to optimise advantages under the rule order. The result could increase tax controversy risks as tax authorities digitalise to share cross-border tax information.

"An MNE will likely need to hire an army of tax professionals or vastly improve its technology to collate the data, understand the accounting treatment and then make the necessary adjustments to compute the top-up taxes," adds Choo.

"We have projects that can incur large capital gains taxes that have a material impact on our business's tax books and planning capital-intensive projects with accounting impact could change what we owe under pillar two," says Ann-Maree Wolff, head of tax at Rio Tinto.

The European Commission published a directive on the minimum tax framework in December 2021 based on the OECD's model rules. Meanwhile, the Maltese and Swiss finance ministers have said they will be looking to lower other taxes and introduce financial incentives.

This is crucial for certain countries to remain attractive business hubs after implementing the model rules. Standardising pillar two's framework across countries may be challenging even with the OECD's model rules.

Shortcomings in drafting legislation

Global standardisation is one key issue under pillar two as countries are already drafting legislation for the minimum tax with some slight variations to the model rules to meet the 2023 deadline.

Under the model rules, headquarter countries can apply a top up tax if the group has less than a 15% effective tax rate in subsidiary countries. This is a significant incentive for headquarter countries to adopt pillar two by deadline or risk losing out on tax revenues.

However, the UK and several other countries have started drafting legislation for a qualified domestic minimum top-up tax (QDMTT) that is derived from the model rules. This may legally give subsidiary countries priority in collecting the top-up tax under pillar two instead.

"The EU would happily apply the UTPR on a group's low ETR profits into Europe if the parent of the group is not in its jurisdiction and subject to the minimum tax," says Arjan van der Linde, tax director at General Electric in the Netherlands.

"Arbitraging top-up tax regimes is the new game in town," adds van der Linde.

These variations may not last long as the OECD will continue to hold consultations on how to implement the two-pillar framework till April. Some countries may have to revise their draft legislation on pillar two within the next few months to meet the December 2022 deadline to finalise legislation.

Yet several countries are still at risk of missing the deadline. In many countries, the timeline for tax reform is slowed down by political dynamics. Even in the United States, the road to reform is not straightforward.

Political tensions

The US and other countries are politically deadlocked in advancing draft legislation on pillar two, which could set an example for other countries to delay enacting pillar two's rules and weaken the impact of the global minimum tax framework overall. This is a risk for the OECD's multilateral agreement.

Bipartisan issues in the US block legislation from moving through the US Congress. Political hurdles hinder EU action too, as Malta and Hungary are pushing back on advancing legislation on pillar two in the European Parliament without finalising draft legislation on pillar one.

At the same time, taxpayers are waiting to see how the global intangible low-taxed income (GILTI) regime in the US will be grandfathered in pillar two. The OECD model rules includes limited explanation on how the GILTI regime will co-exist with the GloBE rules, since the GILTI regime closely follows pillar two's IIR. The IIR rule allows the parent entity to impose a top-up tax on low-taxed income of affiliated entities.

There are outliers to the agreement. Nigeria, Kenya, Pakistan and Sri Lanka, have not joined the OECD's multilateral agreement, partly because of concerns regarding the rule order under pillar two.

African countries with alternative legislation for the UTPR would have to remove it, a move that undermines their fiscal receipts if the IIR takes precedence. The rules are most likely to favour developed countries where most groups are headquartered.

Next steps for MNEs

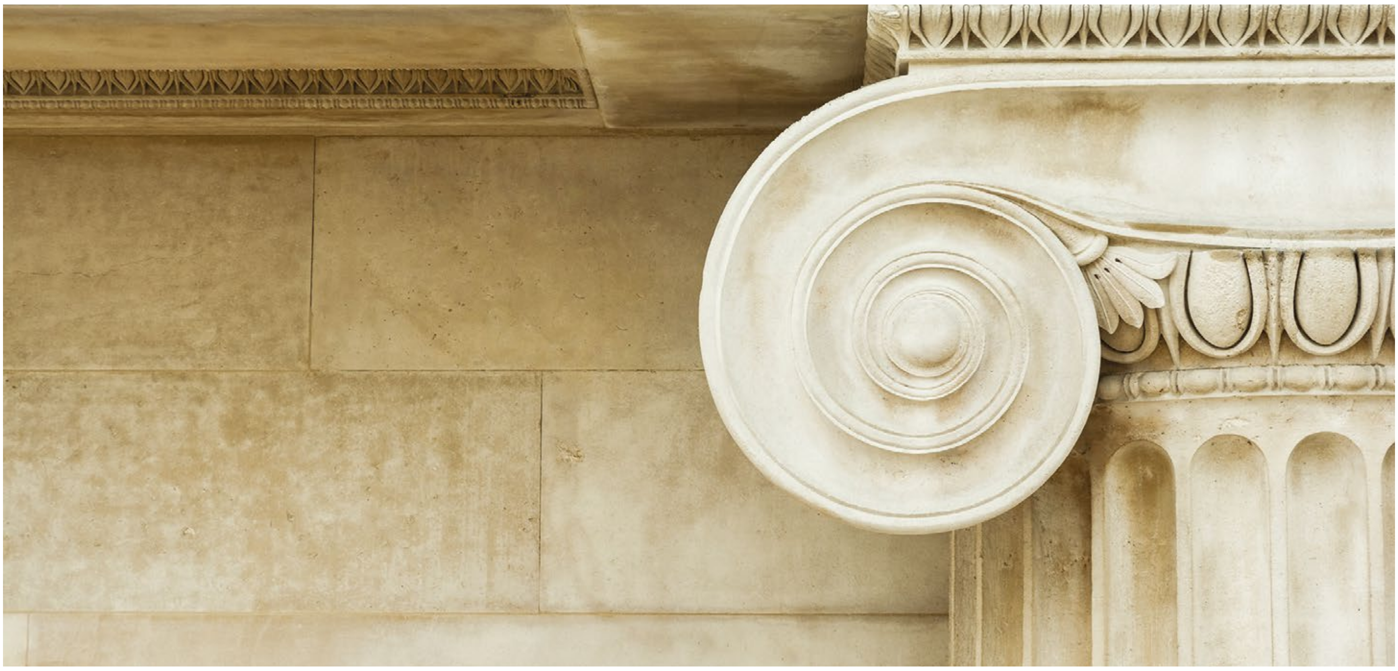
The incoming global minimum tax rules will reframe international tax and eliminate many tax strategies that can lower group effective tax rates below the 15% minimum rate. Tax teams will be searching for sustainable strategies that keep the group's effective rate as close to the minimum as possible.

"MNEs will need to balance maintaining an acceptable effective tax rate, achieving good governance and compliance, and keeping compliance costs to a manageable level," says Choo.

Two-thirds of in-house tax directors at MNEs within scope of pillar two's rules have already started modelling the impact of the minimum tax on their business activities, according to ITR survey insights.

The minimum tax rules will likely increase in-house demand for tax analysts to find what taxes apply in each country where the group operates. The rules will also likely lead to a budget boost for potential tax disputes and increase the pace of adoption of tax technologies. So MNEs can manage the next series of hurdles from a fast-changing international tax environment.

Pillar two brings many radical changes to the international tax landscape. Large businesses have until 2023 to prepare for a minimum corporate rate, but few taxpayers can accurately predict the exact impact it will have on the global economy in the longer-term. ■



Pillar two is revising global tax competition with a 15% minimum tax rate

The quest for net zero and the role of the UK tax system

Amanda Tickel and Claire Galineau of **Deloitte** track existing environmental policies and how the tax system could be used to help achieve the UK's net zero goals.

In November 2021, at the UN Climate Change Conference (COP26), there was a sense of urgency in actions and commitments in the quest for net zero. Amongst the main achievements were: 100 countries agreeing to end deforestation by 2030, a pledge to cut global methane emissions by 30% by 2030, and large amounts of private capital committed to transform the economy for net zero. Many countries agreed fresh new pledges on carbon neutrality which included the highest-emitting countries such as China and the US. Cities, regions, universities, business and investors also committed to specific and personalised net zero targets during COP26.

The journey to decarbonisation will by no means be an easy one, but the UK has already achieved the fastest per-capita reduction in the G7 and was one of the first countries to set a legally binding net zero target for 2050, in 2019. Such a result came predominantly from regulation and switching early from coal to gas and renewables to generate electricity.

That said, the UK does also have the highest carbon rate in the G20 (the emissions trading rate plus fuel excise duty) – so the use of carbon pricing and taxation is likely to be making a difference in production and consumption choices already.

The starting point: A jigsaw with no defined frame

In the UK, HM Revenue and Customs (HMRC) and HM Treasury (HMT) administer four environmental taxes with explicit environmental objectives, which are: the climate change levy, the carbon price support, landfill taxes and the aggregates levy – with the addition of a fifth, the new plastic packaging tax to be introduced in April 2022. However, the tax and incentive system is also being used much more broadly towards achieving net zero and the Office for National Statistics cites a large inventory of taxes, levies or obligations that increase directly or indirectly the price of goods or services linked to a climate objective, such as air passenger duty or the UK emission trading system.

This breadth is best illustrated by considering vehicle taxation. Tax policy levers have been pulled extensively to encourage the manufacture and consumption of electric and hybrid cars in line with the government's plan to ban the sale of all new petrol and diesel cars by 2030. There are lower first year and standard rates for vehicle excise duty (£0 first year for zero-emission vehicles compared to higher rates based on CO_2 emissions) and fuel duty of currently 57.95 pence per litre applying to petrol and diesel.

> "Effective tax policies are generally transparent, simple, certain and long-lasting"

Businesses continue to evolve to meet green goals

On top of those, in London, vehicles pay a daily congestion charge of £15 but there is a full exemption for zero-emission vehicles. There is also an Ultra Low Emission Zone daily charge of £12.50 for more polluting petrol and diesel car models. A range of manufacturer grants are in place including for plug-in cars and vans (recently lowered from a maximum of £2,500 to £1,500), a grant of up to £350 for homeowners to instal a charging point (until 31 March 2022) and scrappage schemes (e.g. low-income and disabled Londoners can receive £2,000 to scrap a car).

Further, businesses can deduct upfront the full cost of capital expenditure on some cars with zero CO2 emissions and electric vans to provide a cash flow advantage. Finally, employment tax provisions incentivise zero-emissions vehicles as company cars through a reduction of up to 90% of income tax costs compared to a petrol or diesel car.

When turned into a list like this, incentives for electric vehicles seem numerous (and generous). Whilst it is difficult to pinpoint a single policy, regulatory or consumer sentiment reason why, the fact is the UK has achieved a significant consumption switch in this sector and the trends are positive – according to the Society for Motor Manufacturers and Traders, in December 2021, one in four cars sold was an electric or hybrid vehicle.

However, the range of taxes and incentives in operation are not always easily identifiable and can take time to apply for, with businesses and individuals perhaps not realising their full potential as a result. Effective tax policies are generally transparent, simple, certain and long-lasting.

Outside of the breadth evident in the car industry, it starts to get patchier. Homeowner incentives such as solar panels, heating system and insulation have been poorly understood and have come and gone. By contrast, in France and Germany, successful retrofit schemes covering both energy efficiency and heating in the last five years relied on leveraging private sector finance and a fast application process.

For business investment and innovation, there is in fact very little use of the tax and incentive system specifically to help achieve net zero. Various general research and development (R&D) incentives exist for businesses in the UK, together with the patent box regime; however, they are not specifically targeting or increasing reliefs or incentives for eco-friendly investment. Similarly, the super-deduction of 130% available for capital expenditure by companies on certain plant and machinery, in place until March 31 2023, does not incentivise investment in energy-efficient equipment over other expenditure.

At the autumn budget in October 2021, many expected a 'green budget' – but the Chancellor Rishi Sunak only announced limited changes to the Business Rates system (tax payable annually to local councils and charged on most non-domestic properties), introducing a new investment relief for companies adopting green technology (such as solar panels and heat pumps) and a further relief on any expenditure on improving properties. Such improvements will be exempt from Business Rates for 12 months starting from April 1 2023.

Also in October, the UK government published its long awaited Net Zero Strategy to 'build back greener' in the aftermath of a global pandemic whilst HMT published its final Net Zero Review. In these documents, taxation as a policy lever was surprisingly largely absent. Calls for the government to publish a tax roadmap to signal a clear trajectory to taxpayers for how tax measures will be deployed to contribute to net zero, made by Member of Parliaments and the Chartered Institute Of Taxation were recently dismissed by HM Treasury.

The reason being the "great deal of uncertainty inherent in any modelling as far into the future as 2050, which is highly sensitive to economic, societal, and technological developments" which would mean that "a tax roadmap could ultimately give a false sense of certainty." It is understandable that a tax roadmap was not possible given the number of taxes, incentives, and reporting requirements already in existence and the timeline of nearly 30 years. However, perhaps a shorter five-year plan presenting existing and future taxes, reliefs and incentives would be valuable to provide the certainty individuals and businesses need to action new green investments.

Fixing the bugs: Troubleshooting imbalances

The largest imbalance that will certainly take governments around the world a while to troubleshoot in the coming years is the loss of revenue from fuel duty as electric vehicles become the norm. For the UK, fuel duty raised £21 billion in 2021 compared to total public sector receipts for 2020/21 of £793 billion. This gap may in future be filled partly through general taxation and possibly through gradually removing reliefs for electric vehicles. A road tax does not seem likely as it would be earmarked to road maintenance rather than going to the treasury's budget. This was discussed at length by the Institute for Government in 2021.

Chancellor Sunak's October budget announcements regarding investments in solar panels comes as a welcome rectification now allowing exemption of Business Rates for investments both where electricity is 'for sale to consumer' and for 'self-consumption' (previously only the former was exempt) although this will only take effect from April 1 2023, which may delay investments.

Another example of an imbalance is the one between electricity and household gas, with the latter being effectively subsidised. This was demonstrated at length in the 2021 Green Budget published by the Institute for Fiscal Studies. The rebalancing of the taxation of electricity compared to gas is something governments in Europe are particularly interested in, at a time of high price volatility in energy over the winter months and the shadow of social unrest that arose in France three years ago. The UK announced in the autumn several consultations to address this.

Finally, looking at electric vehicles, there is also a discrepancy in VAT rates for electric vehicle charging: home charging is subject to a 5% VAT rate compared to a 20% rate for public charging. As people living in flats cannot access the lower VAT rate, they therefore face a higher charging bill compared to home occupants. On several occasions, HMRC has confirmed there are no plans to address this inequity.

Carbon pricing at the border

In a globalised economy, international tax systems will need to evolve to help achieve net zero. In the last few decades, explicit carbon pricing policies have been enacted by governments around the world to impose a price based on territorial carbon emissions either through a carbon tax or an emission trading system (ETS). Currently, 65 jurisdictions have implemented carbon pricing initiatives according to the World Bank, and these are widely recognised to be effective in shifting production and consumption choices towards low and zero carbon options.

> "Carbon pricing needs to be on a global scale with similar rules across the board"

The thing is, carbon pricing needs to be on a global scale with similar rules across the board to discourage businesses from shifting their production or sourcing away from a jurisdiction, to lower carbon cost locations or countries with less ambitious climate change policies. Actually, the only reference to taxation at COP26 was in relation to carbon pricing, following the OECD report released in October 2021. As seen with the G20/OECD Base Erosion and Profit Shifting (BEPS) Project, international tax reforms are possible and can be achieved on a large scale – the ground-breaking political agreement on pillar two, to implement a global minimum tax rate, managed to align 137 jurisdictions. However, the journey has been a long one and in the context of climate change, time is of the essence.

In its Net Zero Strategy the government "recognises the importance of addressing the risk of carbon leakage so policy interventions do not lead to increase emissions elsewhere" with an "emphasis on an international, multilateral effort". While a plurilateral approach might take a long time to come through, the EU is pursuing unilaterally a new Carbon Border Adjustment Mechanism (CBAM) to put a price on imports, reducing the risk of carbon leakage and protecting the competitiveness of EU businesses.

It expects the CBAM to be fully operational by 2026, initially applying to highly polluting products: iron, steel, cement, fertilisers, aluminium, and electricity. Introducing something that looks and feels like a tariff would fall foul of international rules on trade, so the EU Commission explicitly notes that its CBAM is an environmental measure, not a tax or a tariff – its compliance with World Trade Organisation (WTO) will need to be further assessed. The reaction of other jurisdictions around the world has ranged from initially cautious like the US to more loudly against the proposal in countries like Brazil and China.

Currently, the UK government is watching how this CBAM measure develops and the House of Commons, Environmental Audit Committee's launched a call for evidence on it during October 2021.

Levers the UK government could use in the coming years

According to the think tank Green Alliance, in a recent report, a new green VAT rate would be the best way to accelerate a just transition towards net zero, as the system already exists, works well for businesses and the tax administration, and is well understood by people. Indeed, the UK VAT system is capable of fast adaptation as we saw during the global pandemic. VAT rates for hospitality, accommodation and attractions were reduced initially to 5% then to 12.5% before reverting back to 20% by March 31 2022. These rate reductions combined to support businesses and aid consumers by lowering prices and was quickly and ably managed by HMRC and businesses alike. It is a simple lever to drive consumer behaviour. The European Commission is currently looking into the possibility of allowing member states such a green VAT rate.

Innovation will be critical in the transition to carbon neutrality, as a Scottish report highlighted recently: "up to 75% of the emissions reductions we need to achieve net zero are dependent on technologies which are immature, have not been deployed at scale or have not even been invented yet." In Deloitte's CFO survey in October 2021, some 87% of chief financial officers declared the climate transition as an opportunity, with 40% rating it as a 'significant' or 'very significant' opportunity. In addition, the key theme of Deloitte's most recent CFO survey is that 2022 will be a year of rising business investment, which would have significant impact if a large portion of this was towards eco-friendly or net-zero measures.

Using the capital allowances system could incentivise investment in green assets. Keeping the 130% super-deduction for capital expenditure but limited to specific eco-friendly assets beyond 2023 could provide the certainty needed for businesses to build this measure into their budgets for the coming years. Such an incentive, anchored in certainty, would create a circular effect encouraging carbon reduction across the wider economy.

Similarly, an enhanced R&D expenditure credit based on defined green criteria (e.g. carbon footprint reduction) could incentivise and reward innovative companies investing in green projects. Together with a 130% super-deduction, those incentives would significantly enhance the UK's role as a manufacturer and exporter of carbon-reducing equipment and technology which would be a win-win situation for the UK government.

The corporation tax film tax relief regime in the UK provides a case study which could be replicated to help drive a bigger industry around net zero. This encourages productions into the UK by providing an additional tax deduction of up to 100% of UK production expenditure, with the additional deduction able to reduce a company's profit or increase its losses. The relief is easy to administer, certain and reliable so the benefits can be built into businesses' production budgets as a matter of course. The scheme has been regarded as a success supporting over £5 billion of investment into British films with a 70% increase in the film production workforce since its introduction in 2007. It is a clear example of a fiscal measure that is achieving a policy objective; imagine what this approach could do to transform investments in net zero advances.

The steps ahead

The next three years will be critical to ensure carbon neutrality targets are on track to be met by 2050. The UK government is determined to follow through with its ambitious targets to address the climate crises but concrete changes to what is already a very comprehensive and resilient tax framework could unlock immediate ripple effects. The coming spring statement in March 2022 could be an opportunity to proceed with a green VAT rate, an enhanced R&D expenditure credit based on green criteria, targeted enhanced capital allowances, and a new tax relief based on the film tax relief, which would all encourage consumer choice and investment in net zero.

Unilateral environmental measures can and do have positive impacts, but it is important these do not disadvantage a country from a competition perspective, nor result in emissions being pushed elsewhere. Given the importance of this, a multilateral approach, potentially through a new fast tracked joint WTO/OECD inclusive framework, agreeing both carbon pricing and a carbon leakage mechanism such as a CBAM-style measure, could provide an effective global approach to tackling the climate crisis.

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Claire Galineau recently re-joined Deloitte as an associate director in the tax and trade policy group specialising in international taxation and climate change taxes. She trained with Deloitte in Luxembourg and in the UK for five years before spending three years in-house at a large UK company. She also has experience with competition law and state aid issues having worked on the Luxembourg and UK controlled foreign companies investigation throughout her career.

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Considering joint value creation in the tech industry

Yves Hervé and Philip de Homont of NERA Economic Consulting discuss transfer pricing solutions for situations where multiple entities make unique and valuable contributions to a business.

The challenge of assessing unique contributions in modern TP

One key development in the OECD Transfer Pricing Guidelines (OECD TP Guidelines) – and consequently in many national tax rules – has been the introduction of new rules on 'intangibles'. Intangibles are loosely defined as anything that is (i) neither a physical nor a financial asset; (ii) used commercially in a way that third parties would likely remunerate, and (iii) that in some way can be owned or controlled. Per the regulations, taxpayers must reflect these intangibles in their transfer pricing (TP) setup abusinnd in particular need to consider which entities contribute to the development, enhancement, maintenance, protection, and exploitation of these intangibles (so-called DEMPE functions).

These new rules affect a large number of multinational enterprises who rely on various unique and valuable intangibles to set themselves apart from their competitors. Brands, patents, know-how and similar items typically are key value drivers precisely of those international companies that are successful internationally. Moreover, these intangibles are often created by various entities who conduct various development, enhancement, maintenance, protection and exploitation (DEMPE) functions. Overall, the effect is that various different entities are in some way involved in the core joint value creation and taxpayers must reflect this in their TP.

While the OECD and further tax rules are quite explicit in that these factors need to be taken into account in the TP setup and documentation, there is unfortunately no specific guidance in the regulations that would indicate precisely how these factors should be reflected. Thus, practitioners will need to rely on economic methods to find a reasonable and defensive setup.

Several different methods can be applied, but in practice there are several challenges: Observable third-party market transactions, such as the licensing of comparable brands are rare and comparability is often somewhat questionable, precisely because the taxpayer's intangibles are unique. Cost-based methods to reflect different contributions by each party are somewhat objective as they are measurable, but often costs may be a poor measure of ultimate contributions to success, especially when different categories are compared. Industrial economics provide practical solutions to isolate and quantify individual contributions to joint value creation based on internal company data.

Application to the tech industry

The tech industry in particular is characterised by business models where technology platform, brand attraction for users and data exploitation from active user profile intermingle to develop and monetise digital models. This no longer only applies to the pioneering giants like Google and Facebook, but to an ever-growing number of tech companies whose business models have been boosted by COVID-19.

In case key intangible contributions arise from different group companies, the determination of relative value contributions through cooperative game theoretical analysis is particularly suitable when the parties negotiate the economically fair sharing of a conjointly generated profit in the tech industry. A fair allocation of profits is consistent with the OECD arm's-length standard, and in many arm's-length situations where independent parties accepted joint profit sharing, the Shapley value has been considered a fair allocation key. One solution outcome of cooperative game theory, it measures the average marginal profit generated by a party through its intangible contributions relative to the marginal intangible contributions of the other parties.

The great advantage of applying Shapley value in the tech industry is that it can be based on the evaluation of internally available big data whose economic value can be assessed by the data analytics specialist of the respective multinational enterprise (MNE).

Let us consider a simplified example of a company with a strong platform technology, owned by TechCo, that is marketed under a strong brand owned by BrandCo. For simplicity, we assume the user base data is also monitored and exploited by BrandCo. Under Shapley value, this means four scenarios are analysed:

i) The entrepreneurial profit that would be generated by both companies without the intangible contribution (this is usually 0);
ii) The profit that the TechCo would generate without the Intangible contribution of the BrandCo;
iii) The profit that the BrandCo would generate without the TechCo's Intangible contribution; and
iv) The profit that both companies generate jointly by using both intangibles (i.e. the profit actually generated).

The relative value contribution according to the Shapley value concept results from the comparison of the profits with and without the participation of the respective company in these scenarios. For example, if one company were already able to generate relatively high profits on its own, while the other company would only generate relatively low profits on its own, it would be expected that the first company would be able to assert greater bargaining power in negotiations in a third-party situation. This is shown in Figure 1.

Figure 1

	Without TechCo	With TechCo
With BrandCo	iii) Profit only based on BrandCo	iv) actual conjoint profit of both companies
Without BrandCo	i) profit without either intangibles	ii) Profit only based on TechCo

Schematic indication of Shapley Value Method. White arrows show the marginal contributions of BrandCo; Black arrows show the contributions of TechCo. The relative value of these differences provides an indication of bargaining power.

The application of the Shapley value analysis requires a precise differentiation of the scenarios described and the profit that can be achieved in each case. In our illustrative tech example, assume the MNE has a business model where it monetises having users engaging on its technology platform being accessed by external third-party advertisers.

If one compares the full brand contribution with the full technology contribution in a simplified Shapley value analysis, it can be seen that both BrandCo and TechCo could not generate any entrepreneurial profits on a stand-alone basis. A technical platform is worthless without a brand to market it because there is no target group for advertisements.

Conversely, a brand without a technology platform product is also worthless, as there is no way to commercialise and monetise the brand purely abstractly. Brand and technology are therefore not only integrated with one another, but are completely dependent on one another; the company's profit only arises from the interaction of both intangibles.

Since both parties are completely dependent on each other from this point of view, there is also no indication that either of the parties would have a stronger position when negotiating between unrelated third parties; the Shapley value analysis would accordingly attribute half of the profits to brand and technology owners respectively.

In real life, the intangible contribution can be assessed more precisely. Not all parts of the technology are to be valued equally as 'unique and valuable' intangibles. In particular, the basic technical aspects of the product can be technically relatively easy to replicate and many competitors regularly copy technical features from one another. It can therefore be questioned whether the entire technology can actually be 'controlled' or 'owned'. Even if technology patents are subject to a certain degree of protection, the main features can often be replicated with comparable results.

However, not all technical components can be easily copied. In the example, the technology contributor might own some specifically proprietary technology that gives rise to higher value and is not easy to copy. On this basis, the technology can basically be divided into two elements (i) replicable technology; and (ii) proprietary technology.

The brand also comprises (i) relatively simple, replicable brand images, such as the pure registration of a general brand name, but also (ii) the particularly valuable consumer associations, i.e. the long-term willingness of consumer to pay a brand premium – especially for technologically superior products.

The differentiation of the intangibles enables a data-based application of the Shapley value method. In particular, it is possible to create a simulation of sales and profits if the difference between the 'simple' and the more valuable intangibles in both categories is taken into account. In analogy to the situations considered above, the following scenarios result in the Shapley value analysis:

i) If both BrandCo and TechCo only contribute basic data and technologies), there will be no entrepreneurial profit since no marketing opportunities and thus no uniquely attractive business model can arise. In fact, the combination of 'basic data' and 'replicable technology' would not result in any significant entrepreneurial profit: Without the more valuable aspects of the intangibles, only rudimentary business could be pursued, and the busines model would not be attractive. A simulation of the income shows that the expected sales just absorb total costs. This fact demonstrates that the simpler aspects of the intangibles are actually of low value.

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ii) The TechCo alone could fall back on the proprietary technology, while for regulatory reasons exploiting just the baseline and not the most valuable information provided by users attracted by the valuable brand. A simulation of the profits by the group's data analytics team shows that the company would not achieve the actual profit, but could still achieve around 85% of the actual profits.

iii) The BrandCo alone would like full exploitation of all aspects of available user base, but could not use the proprietary technology to be able to achieve extra profits. The data analytics team assesses that the BrandCo would be able to achieve around 10% of the actual result.

iv) Both companies can jointly use the proprietary technology as well as access to the most valuable data. Since this corresponds to the actual situation, the joint profit in this constellation is the actually earned profit.

Overall, the picture emerges in which both companies could generate a profit for themselves, but achieve additional profit from the joint cooperation. Nevertheless, it is noticeable that the contribution of the TechCo is to be assessed as higher, as it would both generate a high hypothetical profit on its own and is also able to commercialise the valuable brand aspects much better than the BrandCo alone can.

The Shapley value analysis compares the marginal contributions of the intangibles: For the brand there is an increase in profit from 0 to 10 (without the TechCo contributions) or from 70 to 100 (with TechCo), i.e. a total limit contribution of on average 20; For the technology there is an increase in profit from 0 to 70 (without the contributions from the BrandCo) or from 10 to 100 (with the contributions from the BrandCo), i.e. an average increase of 80. Overall, in this case, the basis of the relative limit contributions a division of the total profit of 20:80 in favour of TechCo.

Figure 2

	Without TechCo	With TechCo
With BrandCo	iii) Profit only based on BrandCo: 20	iv) actual conjoint profit of both companies: 100
Without BrandCo	i) profit without either intangibles: 0	ii) Profit only based on TechCo: 80

Summary

The Shapley value method can be a powerful tool to calculate arm's-length profits shares of highly integrated business models, in particular when multiple entities own interconnected intangibles for which no outside data is easily available. Its application is mathematically straightforward, but does rely on identifying appropriate profits in various different scenarios.

Although demonstrated specifically for the digital industry in this article, the method can generally be applied to various scenarios and industries and provide a practical way to meet the new TP challenges surrounding intangibles.

The Future of Tax

The Future of Tax conference brought together tax professionals from the financial services industry to discuss the impact of innovative technologies and policy initiatives.

The Financial Services Tax Conference held by Hansuke Consulting covered the crypto industry. Investors need a clear tax framework for crypto-assets, including cryptocurrencies and digital assets such as non-fungible tokens (NFTs), reports **Leanna Reeves**.

Meanwhile, fund managers have been grappling with the difficulty of DAC6 administration. Many companies have cross-border transactions that fall within scope of the regime’s hallmarks, reports **Danish Mehboob**.

Taxpayers need a clear tax framework for crypto-assets

Investors in cryptocurrencies and other digital assets such as NFTs need a tax framework with clear rules and definitions in order to get the certainty they need to do business. Tax authorities have other ideas.

Governments around the world are considering how to tax cryptocurrencies and other crypto-assets. Many governments have opted to take a hard line on crypto-assets over concerns of tax evasion and money laundering. However, the tax implications of crypto-assets have not been fully explored.

A comprehensive tax framework for crypto-assets would improve certainty for investors, but there may be practical issues related to platforms and the growth of non-fungible tokens (NFTs) still need to be addressed by regulators.

This was the topic of a discussion at The Future of Tax conference held by Hansuke Consulting. "Countries have different approaches to taxing crypto-assets and virtual currencies. We have been looking at the treatment under a variety of taxes: income tax, VAT, property taxes," said Julien Jarrige, advisor to the director for tax policy at the OECD, asked the audience.

In October 2020, the OECD published a report aimed at assessing the tax treatments and emerging tax policy issues related to virtual currencies. The study noted that policymakers failed to consider the full implications of crypto-assets. This is why G20 leaders called on international organisations for a more detailed assessment of risks.

The OECD also looked into emerging issues including the growth of stablecoins and central bank digital currencies (CBDCs).

The overall market capitalisation of virtual currencies accounted for $390 billion as of October 2020, according

Leanna Reeves

to CoinMarketCap. During the same time period, there were 10 million transactions occurred each day.

At the same time, the exchangeability of cryptocurrency with fiat currency and their resemblance to other forms of financial assets has highlighted the need for a tax policy framework to be established. This could lead to greater consistency in the treatment of assets, prevent tax avoidance, and improve transparency.

The report stated that most countries consider cryptocurrency as property for income tax purposes, meaning they would tax them the same way as other forms of intangible property. For example, income incurred from mining or exchanges could be taxed as capital gains.

Jarrige said the traditional qualification characterisation is significantly relevant as regulators use it to assess the appropriate tax treatment of currencies.

Reporting challenges

There is a general lack of guidance in regards to taxing virtual currencies – but some countries including the UK have had more comprehensive guidelines than others, according to Jarrige.

HM Revenue and Customs (HMRC) has published a manual aimed to outline the tax implications around crypto-assets for both businesses and individuals. By contrast, the US has competing definitions of crypto-assets from different agencies.

The Internal Revenue Service (IRS) considers the digital asset a property while the the State Corporation Commission (SCC) characterises it as a commodity, leaving the industry with a minimal regime related to the taxation of virtual currencies.

US taxpayers with foreign assets within scope are required to file the details under the Foreign Bank and Financial Accounts Reports (FBAR) and the Foreign Account Tax Compliance Act (FATCA). But the lack of guidance and lack of clear definition has made it difficult to assess whether such digital currencies qualify as a foreign asset.

Shortly after FACTA was implemented in the US, the OECD approved the Common Reporting Standard (CRS) on July 15 2014 – in response to the G20's request. The G20 had demanded jurisdictions to collect information from their financial institutions to later exchange the information with other jurisdictions.

Cryptoassets raise tax challenges

The automatic exchange of information (AEOI) led to tangible results, with more than 100 countries exchanging information each year including 75 million financial accounts – leading to millions of additional tax revenue.

Generally, the industry has about 18 months to adapt to new regulations, such as the FATCA – giving them time to comply with the regulation and prepare documentation ahead of the deadline. Introducing regulatory change in the cryptocurrency landscape would also require similar time if compliance is to be successful, according to Sulolit 'Raj' Mukherjee, vice president and global head of tax at Binance US.

"Here, you have to start collecting information within a year, which is a significant change. The regulated exchanges will have to get the data ready, the KYCs updated and make system enhancements in order to comply with the broker dealer information reporting requirements," he said.

While regulatory progress has been done over recent years, certain elements have still not been captured. "We have been working to ensure that there will be a tax transparency framework for crypto-assets. The goal of that is to have a reporting framework and lower the tax compliance risk and better detect tax evasion. The information will complement the current OECD/G20 CRS," said Jarrige.

"The discussions are focusing on the scope of crypto-assets to be covered, the definition of reporting crypto-asset service providers, and the type of transactions," he told the audience.

"This standard would complement and be designed as a single and comprehensive framework and adopted by jurisdictions that have already – or not – adopted the CRS. There is also interest at the G20 level," he added.

Pricing difficulties

The definition of 'broker dealer' will need to be defined more specifically by regulators, said the global head of tax at the cryptocurrency exchange company. as the reporting rules in Section 6045 of the US Internal Revenue Code (IRC) consider the broker dealer to be contingent on an agency relationship and certain actors in the crypto world, such as miners, do not have that status.

As taxpayers can also transfer outside platforms to 'cold storage', the idea that each transaction is reportable fails to be realistic and must be articulated.

"The valuation of digital assets is a problem. The prices of these assets are volatile and they are not the same on each platform," said Wendy Walker, solution principal at Sovos Compliance.

"What valuation is appropriate? In the traditional markets, we had clearing mechanisms to help normalise the price fluctuation that could produce a more accurate report," she said. "This is something we don't have here."

"The other players – the decentralised market where there is no third party – who is going to report those and how is there going to be accountability for that?" Walker asked the audience.

As certain platforms exchange more volume of cryptocurrencies than others, the difference in the trading volume affects the pricing of the digital assets – a supply and demand consequence. As the crypto market is not fully regulated by authorities, it also makes it difficult to pin down the actual price of currencies and assets.

Meanwhile, growing interest in NFTs has created another set of problems for tax authorities. NFTs are unique tokens attached to an asset that can take the form of a variety of digital representations. Each token is a unique piece with its own distinct value and cannot be exchanged with another. Artists who create NFTs can receive income or royalties.

Similar to cryptocurrencies, NFT ownership is tracked through the Ethereum blockchain. The digital token is an investment in which the investor can sell it for a profit.

"Buyers who are wanting to acquire NFTs will use Ethereum to do so. In the US it means a gain/loss tax event will occur once they sell the ETH to acquire the NFT," said Walker. "Sellers of NFTs receive Ethereum as payment of the NFT. They first recognise the gain and loss (for the NFT) and then they track the basis for the Ethereum token they received."

While artists selling NFTs might consider the token as ordinary income, the amount earned could be subject to self-employment tax in the US as the artist has sold an asset rather than produced an asset based on gain and loss.

"NFTs using a gallery could be considered a royalty income. There is also a marketplace that facilitates the sales between sellers, buyers, and artists," she said.

The characterisation and valuation of NFTs have been difficult and identifying the appropriate tax treatment remains a key challenge for authorities.

"It might not be appropriate to tax all NFTs the same way given the divergence of each. They are unique, indivisible, and not interchangeable. That is already the main difference with crypto currencies. Should NFTs be taxed, and when? We need to consider the cases where there is a value independent of NFT and where the value is created or significantly increased by the NFT," said Jarrige.

"There are still questions that we need to clarify. We are at an early stage of discussing these with the countries," he added.

All in all, regulators must address these tax implications and conversations with jurisdictions need to evolve as the value of crypto-assets continues to reach records. An improved framework would provide investors with more certainty.

However, it would also help tax authorities to raise greater tax revenue to cover the costs of emergency spending during the COVID-19 pandemic. It would help them prevent tax avoidance and evasion. Market experts hope to reach a conclusion in 2022.

Fund managers find the administration of DAC6 still outweighs reporting problems

Tax directors find identifying 'at-risk' transactions is a bigger burden than reporting them. Many companies have cross-border transactions linked to the EU that fall inside the scope of DAC6's broad hallmarks.

Fund managers are contending with various transparency measures under the EU's anti-tax avoidance directives (ATAD I & II), but directive 2018/822 (DAC6) has overburdened the financial industry more in 2021.

There are high volumes of transactions and processes that still need to be documented to mitigate audit risks. The administrative burden of preparing documentation is proving to be more challenging than the reporting itself.

"The reporting may be the easiest part, but the work you do up to that point such as building the document trail for audit defence is the most challenging as well as interesting," said Gavin Kan, head of product tax at M&G Investments, at The Future of Tax Conference held by Hansuke Consulting.

The DAC6 directive requires intermediaries, including taxpayers, to report any potentially aggressive tax events to their national tax authorities. Intermediaries could include accountants, tax advisors, banks, lawyers, and wealth managers, who help facilitate cross-border transactions.

The reporting hallmarks under the DAC6 framework result in large amounts of data for routine transactions, many that were not designed to gain a tax advantage in the first place.

Danish Mehboob

For example, tax receipts for transactions of insurance companies and pension funds were not intended to be included but ended up within scope of the legislation anyway.

However, companies do not have to disclose the information unless they develop an in-house structure instead of using tax advisors. But more in-house teams are opting to control their own reporting and documentation.

"We decided we wanted to control our narrative," said Melanie Levy, global head of tax at Global Energy Partners. "We chose our UK fund manager as the primary intermediary where possible, but the UK relaxed the reporting rules and we had to look at Luxembourg quite a bit instead, which is where our investment platform is located."

"It was a huge burden to understand the goals and analyse all the transactions; and while we did not do a lot of reporting, there was a ton of documentation," added Levy.

Reporting is even factored into the design of products. "When creating a new product, we look at whether we can report as well as whether we want to report and then take that into consideration in the product design process," said Florian Herzberg, tax director at BlackRock.

"With a new product, it is always a question of whether to trigger high-volume reporting to tax authorities," he said.

More multinational enterprises (MNEs) are building processes to take control of their tax narrative in line with international tax transparency initiatives, as many needed an audit defence after the first filing season in Q1 2021 when working with a series of advisors in the EU.

Some DAC6 filings have already reached the Court of Justice of the EU (CJEU) for clarification. The Constitutional Court of Belgium has requested a preliminary ruling about exceptions to reporting tax arrangements.

As a result, tax directors have wide-ranging internal projects to educate colleagues and external partners on DAC6 responsibilities to avoid disagreements that increase the risk of non-compliance, as over-reporting by uninformed intermediaries could jeopardise a company's tax planning.

Minimising taxpayer risks

Many taxpayers and their intermediaries applied a blanket approach to reporting their cross-border tax arrangements and relevant transactions under DAC6 to avoid non-compliance penalties in Q1 2021 filings.

Under the blanket approach, intermediaries disclose all arrangements that have not been isolated for non-reporting. Nonetheless, many taxpayers are not avoiding structures that lead to a DAC6 reporting obligation, despite reputational risks associated with the blanket approach.

"It's been a constant challenge to keep up with the transparency measures… I came into this role when CRS and FATCA were first taking off and it has been a barrage of changes since then in line with BEPS," said Kan.

"I can understand why some would take the blanket approach to their DAC6 reporting," he added.

Concerns persist across MNEs that some intermediaries are prone to over-report their transactions, and tax teams point to mismatches in internal and external tax data that could cause friction between taxpayers and relevant intermediaries.

"As a business we have rolled out a wide project to understand and educate our partners on what DAC6 is and putting controls under new transactions," said Kan.

Taxpayers who are opting to take control of their narrative and training relevant intermediaries on their processes are setting up mandatory disclosure regulation committees. Meanwhile, other taxpayers are establishing internal reports and controls, and hosting in-house meetings across teams to make sure people are aware of what to monitor and report.

"Pressure on the Irish and Luxembourg funds boards about DAC6 has been an important development for the financial services industry from an in-house perspective, which really highlighted to fund managers that this is something they have to answer," added Kan.

The Irish and Luxembourg fund vehicles have captured the most attention across DAC6 disclosures in the EU. Yet the reporting gaps could mean there will be more joint audits to address over-reporting under DAC6.

Tax experts see this as a necessary step for tax certainty in the longer-term with the fast expansion of DAC obligations on large businesses in the EU, including the upcoming revisions.

"Most people will need to get insights from policy advisors I think," said Florian Herzberg, tax director at BlackRock. "Looking at how the implementation of new policies work is important, especially in financial services."

In-house tax teams are taking more ownership of their reporting and documentation processes, which may be an advantage in building up an effective audit defence strategy. Problems from the first DAC6 filing season prompted tax teams to provide more trainings to inform other departments and intermediaries of their responsibilities with documentation too.

In the long-term, MNEs might consider joint audits as the best way to achieve greater certainty about their cross-border arrangements. But this might just be one way of managing and preventing risk exposure rather than eliminating them altogether.

Cross-border transactions are under scrutiny

EXPERT ANALYSIS

Tax considerations for selling new energy vehicles in China

William Zhang of **KPMG China** considers the tax implications of common sales models as the country's NEV market expands.

China has been the world's largest new energy vehicle (NEV) market by sales volume since 2015 and is poised to maintain that pole position for years to come. The success of China's NEV market in that time has relied to a great extent on financial subsidies and favourable tax treatments.

On April 23 2020, several government authorities including the Ministry of Finance, the Ministry of Science and Technology, the Ministry of Industrial and Information Technology, and the National Development and Reform Commission jointly issued Circular Cai Jian No. 86, which extends the subsidies made to NEVs to the end of 2022.

However, the subsidy criteria for NEVs have been tightened. Given that the further development of the NEV market cannot solely rely on financial subsidies, relevant enterprises are looking at how to adapt their business models. This affects both pure NEV enterprises, as well as traditional auto sector original equipment manufacturers (OEMs) that are attempting entry into the NEV market. These include the large, established German, Japanese and US auto manufacturers, amongst others (referred to below as traditional OEMs).

It is well-known that third-party dealerships are central to traditional auto retailing. New NEV enterprises, by contrast, have been pushing a direct sales model which has quickly become extremely popular in China. For instance, Tesla has established many stores in shopping malls in China, spreading its brand and promoting its sales. As NEV buyers have gone from being a small group of early adopters to constituting substantial minority of car purchasers, traditional OEMs getting into the NEV space have also started to embrace this new sales model. The choice of distribution model has China tax implications. Common NEV sales models are set out below.

Traditional third-party dealer model

Under the traditional dealer model, the profit of dealers mainly comes from the price difference between procurement and retail, and sales rebates or bonuses from the OEMs. Some traditional OEMs (e.g. SAIC ROEWE) looking to enter the NEV market with their non-NEV brand can look to draw on their existing third-party dealership sales network, thus lowering costs of establishing new NEV distribution channels.

> "The direct sales store model can face the end-customers directly with a more intimate consumer experience"

While some other traditional OEMs (e.g. BAIC BJEV) have built independent NEV brands and established franchised NEV stores with specialised sales and after-sales teams, they also use in parallel the traditional dealer model for NEV sales. The common disadvantage of this approach is that the sales channel is still controlled by the dealers.

Since the customers do not have a direct communication channel with the OEMs, the OEMs cannot always meet customer demands in a timely fashion. Furthermore, due to variations in the sales strategies of different dealers and their positions in the market, the price of the same type of vehicle may vary between different dealers. This outcome lacks transparency for customers, and such variability of prices through dealers can adversely impact the consumer experience.

Direct sales store model

Some pure NEV players, such as Tesla and NIO, have completely set aside the traditional third-party dealer model and opted to set up direct sales stores as part of their own sales network. Under the direct sales store model, NEV enterprises integrate the online and offline worlds.

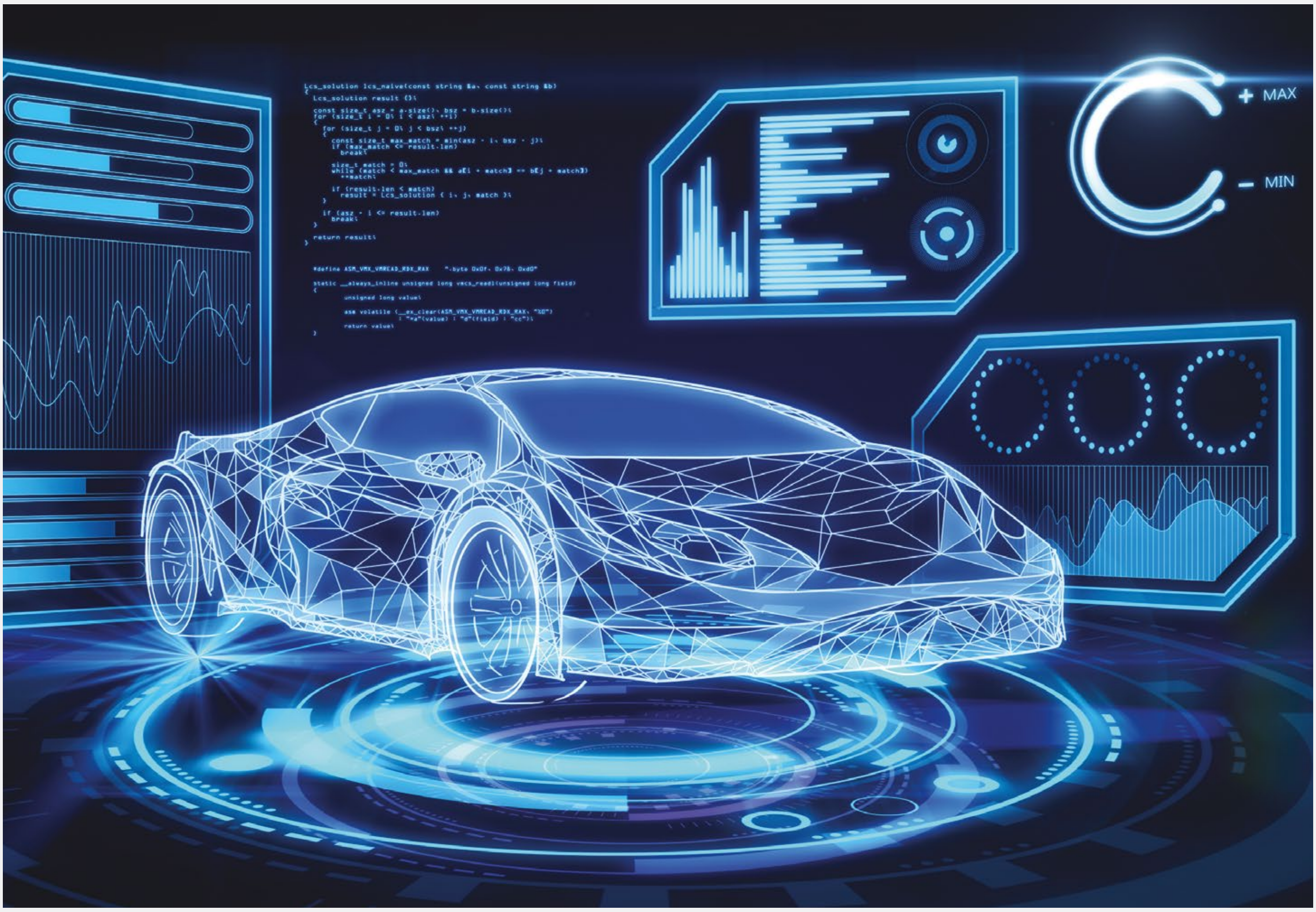
At the offline end, the NEV enterprises build experience centres, which are mainly engaged in pre-sales services and test drive, and service centres, which are mainly engaged in delivery and after-sales services. At the online end, NEV enterprises sell their vehicles via their official website and apps. The vehicles are all customised online, with a fixed sales price nationwide (though less types of vehicles can be offered).

The direct sales store model can face the end-customers directly with a more intimate consumer experience. This being said, as maintaining a large number of direct sales stores would mean high costs, and financial pressure from long construction periods, direct sales stores are more commonly set up in first-tier and second tier cities in China. New NEV players generally find that it is not financially feasible to set up direct sales stores all over China.

Agency sales model

The agency sales model is a compromise between the traditional third-party dealer model and the direct sales store model. The agency sales model may be viewed as a reformed version of the sales model for traditional OEMs, integrating traditional and innovative sales techniques and channels to build their NEV brands.

Under the agency sales model, the traditional dealers transform into agents for the OEMs. As such, the dealers receive a premium-based compensation instead of price difference and bonus. In



China is the leading global NEV seller

return, the OEMs will bear the majority of the risks of the current dealers, such as inventory risk.

For OEMs, the agency sales model not only enables them to utilise the existing sales network and channels of the dealers, but also enables direct sales with fixed prices to meet consumer demand. It is understood that some OEMs have launched agency sales model, such as ID series from SAIC Volkswagen, as a pilot of sales model reform.

Tax considerations

It is noteworthy that both traditional OEMs and new players are still at the stage of getting a handle on the future shape of sales channels for NEVs. Some traditional OEMs with traditional third-party dealer models have tried to set up direct sales stores on a pilot basis, with dealers remaining as their principal sales channel while direct sales stores simply act as supplements.

There are also new NEV players that cooperate with dealers to sell vehicles as agents to expand market shares, even though they have their own direct sales stores already. With these evolutions to sales models, a number of tax issues and opportunities have come to light.

- The choice of organisational form for newly established stores is important, e.g. these can be set up in the form of a subsidiary, operating branch, or non-operating branch. Administrative and tax costs will differ for each. Balanced against this is the question of whether a particular type of organisational form is permitted to conduct all of the functions chosen for the store. For example, branches are not allowed to conduct charging pile construction in some cities.
- Access to the High & New Technology Enterprise (HNTE) tax incentive is a further consideration. This provides for a 15% corporate income tax (CIT) rate in the place of the standard 25% rate. Obtaining this incentive requires that the goods or services provided by the incentivised enterprise meet the criteria for high or new technology products. Furthermore, the core technology, embedded in these products, must be owned by the selling entity and it must conduct ongoing R&D to develop this further. To the extent that the R&D efforts of particular NEV entities might focus on developing components for the vehicles, rather than on the entire vehicle development, detailed assessment is needed to see if these requirements can be met.
- The direct sales model throws up novel issues in relation to purchasers obtaining NEV licenses, vehicle purchase tax exemptions, and local subsidies. For example, take the case where a customer purchases an NEV from a branch office in Shanghai and obtains the invoice issued by the head office in Beijing. This could complicate the customer obtaining the NEV license in Shanghai and applying for local subsidies in Shanghai. Such issues could arise also in relation to the agency sales model.
- The shift from the dealer model to the agency sales model gives rise to several tax issues and risks, particularly on the VAT front. For example, say an agent receive a commission fee from an OEM based on sales volumes; this would be subject to VAT at the rate of 6%. At the same time, the agent must reimburse the OEM for rentals paid to the landlord, giving rise to VAT at 9%. In such case, the OEM and the agent might consider net basis settlement, giving rise to contractual and practical VAT invoicing issues.

While China is fertile soil for expansion in the NEV space, the market is fiercely competitive. To survive and thrive, NEV enterprises are innovating with their sales channels, demanding careful planning and analysis of the impacts from the tax, regulatory and business perspectives.

> **“While China is fertile soil for expansion in the NEV space, the market is fiercely competitive”**

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In particular, William has advised many multinational companies in the auto and industrial markets on their restructuring and merger and acquisition (M&A) activities. He has assisted them in performing various tax filings including advising on restructuring planning and investment/exit strategies, reviewing/preparing returns of major applicable taxes (such as CIT, VAT) and performing tax health check among other matters.

KPMG

Embrace NEV Opportunities in China

China's new energy vehicle (NEV) market has been rapidly developing since 2015. Drawing on our in-depth research on the NEV market, national tax policies, and tax treatments in local cities as well as the legislative trends at China policy level, KPMG China can assist clients in seizing the opportunities in the NEV space in China. Our services include:

- Tax planning and implementation assistance on sales networks
- Research on local policies for NEV
- Tax planning and implementation assistance for group restructurings
- Feasibility studies, application, and maintenance of various tax incentives, e.g., HNTE, R&D super deduction, financial subsidies, etc.

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AUSTRALIA

DLA Piper

Paul McNab

Privacy of corporate taxpayer information in the Australian tax system

Multinational enterprises often possess commercially sensitive information, the public disclosure of which could damage them competitively. This may range from contract terms to client names. Often this information is specific to a particular jurisdiction, or even more commonly said to not be directly relevant to a particular jurisdiction. The Australian Taxation Office (ATO), however, often demands global information from groups when reviewing the operations of their Australian entities.

Many groups are reluctant to share data that does not directly relate to Australia with the ATO, and this creates difficult relationship issues for the parties. The rights and ability of the ATO to coercively gather such information will not be considered. Strategies that might be adopted by the parties to resolve disputes over such access to information where they arise will also not be considered.

This article will set out briefly how sensitive information which is provided to the ATO is generally protected. This will be done by reference to the legislative rules and also to recent public developments on the topic. In the final analysis, this should give multinationals some comfort that, with care, a high level of privacy may be expected in relation to information shared with the ATO. Although at the end of the article one concerning development is discussed on which at taxpayer representatives should push for a change of public policy.

Legislative framework

Division 355 of Schedule 1 to the Tax Administration Act prohibits disclosure of a taxpayer's 'protected information' by an ATO officer. An officer who breaches these provisions is liable to imprisonment for two years. There are exceptions to this rule, including exceptions related to the administration of the taxation laws and related litigation. Disclosure to courts is permitted, and to certain other Federal Government agencies (chiefly related to criminal investigations).

Cases at the edge: How does this work in practice?

There have been several recent situations where these rules have been explored.

Public attacks on the ATO or its officers

In *Jordan v. Second Commissioner of Taxation* [2019] FCA 1602, the Federal Commissioner of Taxation, Mr Chris Jordan, made statements about litigation concerning a Mr Gould and a related entity Hua Wang Bank. Mr Gould sued Mr Jordan for defamation. Mr Jordan sued the ATO (yes, his own office) for access to ATO material that he wished to use publicly in mounting his defence. The court permitted the access on the basis that the disclosure was authorised as being for the purpose of civil proceedings related to a taxation law.

It appears Mr Gould and the ATO had been in dispute for many years. The public dispute between the parties appears to have been prompted (among other things) by statements by Mr Gould's lawyer that 'the ATO is like the Gestapo'.

Mr Jordan at a public lunch referred to these claims and said that a court had found the taxpayer group's behaviour involved "money-laundering, tax fraud and insider trading of Australian shares".

In the subsequent defamation trail (*Gould v. Jordan* (No 2) 2021 FCA 1289) the court found that although Mr Jordan had defamed Mr Gould, Mr Jordan's response was protected by a qualified privilege entitling him to "inform those whose judgment of (him) may be affected by the attack of (his) response to it in order that (he) may vindicate (himself)".

It seems clear that a taxpayer and their advisors may, through public attacks on the ATO or its officers, open themselves to public disclosure of aspects of their tax affairs by the ATO in mounting its defence.

Another exception, mentioned earlier, was the ability to disclose protected information in the course of court proceedings. While this is logical, it can create apprehension among taxpayers. Will the presentation of information in court lead to it being publicly available?

Again, there is much comfort to be taken from the court rules. The Rules of the Federal Court of Australia are those most commonly relevant to multinational tax matters. Division 2 of Part VAA of the Federal Court Act provides for suppression and non-publication orders, subject to a "primary objective of the administration of justice" being the safeguarding the public interest in open justice.

Orders can be made for a number of reasons including where "the order is necessary to prevent prejudice to the proper administration of justice" (Section 37AG(1)(a)). These include:

To ensure "that obligations of confidence be not lightly overruled and the legitim ate expectations of confidentiality as to private and confidential transactions and affairs be not lightly disregarded". (*ABC v. Parish* (1980) 43 FLR 129;

To prevent the 'revelation" or "leaking of trade secrets to competitors" (*ACCC v. Air New Zealand Ltd* (No. 4) [2021 FCA 1439; and

To prevent the "[disclosure of] market-sensitive information which would be of significant value to trade rivals" (ACCC v Cement Australia Pty Ltd (No 2) [2010] FCA 1082.

The public interest in open justice means that taxpayers must carefully consider the basis on which they will seek such orders.

Court cases regarding claims for legal professional privilege

There are two relevant situations currently being explored by the Australian courts.

The first involves disputes with the ATO over claims to legal professional privilege over advice. Two current claims involve advice given by PricewaterhouseCoopers in Australia, where the ATO has sought the documents (*C of T v. PricewaterhouseCoopers* (re JBS) VID364/2020; and *CUB Australia Holding Pty Ltd v. C of T* [2021] FCA 43).

In these two matters the ATO has sought certain documents that the taxpayer asserts are subject to legal professional privilege, and therefore do not need to be produced in response to formal information gathering notices (or 'statutory subpoenas' as they are known in some jurisdictions).

The appropriate place for such a dispute to be resolved is the court. But the court will need to review the relevant documents (or at least a sample of them). They will need to be placed in evidence. But the taxpayer will not want them to be seen by the ATO, or members of the public who might attend the hearings or look at the court file.

The court in both of those matters has gone to quite some trouble to ensure that the proceedings are conducted in such a manner that the confidentiality of the evidence is protected, including having non-parties excluded from certain parts of the proceedings, and many documents redacted when placed in the public court file.

Court cases regarding TP disputes

The second situation where these issues play out is in TP disputes. Where evidence about pricing and business processes may be commercially sensitive. The recent nine-day hearing in *Singapore Telecom Australia Investments Pty Ltd v. C of T*, VID1231/2019 is a case in point. Parts of the evidence were given while non-parties were absent from the court. And some evidence will not be generally available for public review.

Public disclosure in parliament

The final category is a newly developing one. The Senate of the Australian Parliament has demanded Mr Jordan (the Commissioner of Taxation) provide them with certain information about the tax affairs of corporate taxpayers who benefited from the Australian government's 'Jobkeeper' programme (an economic support initiative for the COVID-19 epidemic). Mr Jordan has refused, claiming "public interest immunity". The situation is perilous. If successful, the Senate's position will open taxpayer data to public disclosure in the Parliament of Australia. This will potentially undermine the administration of the tax system.

It will make foreign taxpayers less willing to share sensitive data with the ATO and may even increase the level of tax litigation in Australia. Since taxpayers may be reluctant to enter into a settlement to resolve a dispute, for fear of disclosure of the settlement and the information disclosed in the process. Settlements in Australia may be used to agree future year treatments, in the manner of an APA. Without attracting the obligation to report the settlement to other tax authorities that often comes with an APA.

On the other hand, parliament argues that it has an important duty, and the power, to review the proper operation of the executive arm of government. It is easy to imagine it wishing to review the terms of settlements, especially in TP disputes.

The Tax Administration Act may not protect taxpayers' interests in this dispute between the legislature and the executive.

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CHINA

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China tightens tax administration on employee share schemes and technology enterprises

During the period of greatest COVID-19 disruption in 2020, the Chinese tax authorities took a lighter touch on tax enforcement so as not to put additional pressures on businesses, as indeed was the case in many countries. Now, with the recovery of the economy, tax enforcement efforts are also recovering their full vigour, with particular focus areas being employee share schemes and technology enterprises.

New tax reporting requirements for ESOP arrangements

In China, companies implementing a new Employee Share Ownership Plan (ESOP) and looking to access individual income tax (IIT) deferral incentives for their staff must make certain filings.

There is a full tax reporting in the case of public companies and a so-called 'recordal' filing in the case of private companies. With ESOPs seeing ever greater use and an increasing focus on IIT compliance by the tax authorities, these reporting and recordal requirements are now being enhanced in Circular Shui Zong Ke Zheng Fa [2021] No. 69. The enhanced filing requirements supplement those already prescribed in the existing

Circulars Caishui No. 35 (2005) and Caishui No. 101 (2016).

The authorities will now receive more comprehensive information on how the various entities, including employer, ESOP platform, investee entities, are inter-related. The ESOP arrangements of Chinese companies with inverted structures used for overseas listing, so-called 'variable interest entity' (VIE) structures, will also be caught by the new reporting.

Apart from enhancing enforcement, it is understood that China tax policymakers are looking to leverage the information they gather from the new reporting to evaluate whether, and in what manner, to extend the existing preferential IIT treatment for ESOPs. This is due to expire on December 31 2021. Enterprises are advised to monitor for developments in this space.

Scrutiny on HNTE status tightened

China's flagship corporate income tax (CIT) incentive is the 15% reduced CIT rate provided to high-and-new technology enterprises (HNTEs). This compares with the standard CIT rate of 25%.

Enterprises will often claim this in combination with the super deduction for research and development (R&D) expenses. Further enhancements were made in STA Announcement No. 28 of September 2021. Enterprises are allowed to claim the super deduction of R&D expenses incurred in the first three quarters of 2021 under the provisional CIT filing for the third quarter or the month of September (to be completed in October). Previously, R&D expenses super deduction could only be claimed in the annual CIT filing after the year end.

While the Chinese government provides generous tax incentives to HNTEs, recognition and review of HNTE status are becoming ever more stringent. On-site checks have been made in several cities such as Beijing, Qingdao, Haikou, Suzhou, Guangzhou, and Zhuhai. As disclosed on several official websites, 97 enterprises in Beijing, 220 enterprises in Jiangsu province, and 21 enterprises in Guangdong province have been disqualified from their HNTE status in 2021.

From September 15 2021 to October 25 2021, the national leading office for HNTE recognition and administration (i.e. Torch High Technology Industry Development Centre of Ministry of Science & Technology) conducted a nationwide inspection on the recognition and administration of HNTE by 36 local offices.

The inspection focused on whether the HNTE recognition and supervision performed by the local offices was in line with the existing rules and regulations, as well as the implementation of the relevant preferential tax treatment. We expect to see local offices, which in the past may have adopted a more flexible and tolerant approach to awarding HNTE status, take a more rigorous approach going forward.

Given this, enterprises should review the basis on which they secured their HNTE status to ensure this is robust and avoid the risk of the associated tax incentives being clawed back.

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HONG KONG SAR

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What do the latest pillar two rules mean for businesses?

On December 20 2021, the OECD/G20 Inclusive Framework (IF) on BEPS released the anticipated global anti-base erosion (GloBE) model rules which consist of the income inclusion rule (IIR) and the undertaxed payment rule (UTPR). The GloBE model rules differ in a number of areas from the original October 2020 blueprint on pillar two. It is anticipated that the explanatory commentary on the GloBE rules and the subject-to-tax rule will be released early 2022.

The latest GloBE model rules and how this may affect businesses in Hong Kong SAR are discussed, along with the general issues for Hong Kong SAR businesses to consider.

Domestic top-up tax

Jurisdictions can introduce a domestic top-up tax regime that operates in a way consistent with the outcomes of the GloBE rules. Instead of being treated as a covered tax, the domestic top-up tax payable under such regime will be credited against the GloBE top-up tax to come up with the jurisdictional top-up tax amount. This means that even if a multinational enterprise (MNE) group's jurisdictional effective tax rate (ETR) in Hong Kong SAR reaches 15% due to any domestic tax regime (DMT) regime in Hong Kong SAR, the group's compliance burden of computing the jurisdictional top-up tax amount is not relieved unless a safe harbour linked to the presence of such DMT regime will be introduced.

The Hong Kong SAR government has indicated it will look at measures to capture tax on activities in Hong Kong SAR. How this tax would be treated for the GloBE rules purposes will need to be carefully considered.

The expanded scope of the UTPR

The UTPR can now be applied to deny deduction (or make an equivalent adjustment in form of a deemed taxable income or an additional tax) of all tax-deductible payments (including payments made to unrelated third parties) instead of related-party payments only.

In addition, the maximum amount of UTPR top-up tax allocated to a constituent entity (CE) will no longer be limited by the amount of related party payments made. This means MNE groups will have little room to mitigate the UTPR tax exposure by rearranging the flow of their intra-group payments. This also signifies a policy shift from using the UTPR to address the BEPS issue arising from intra-group payments (from high-taxed CE to low-taxed CE) to using the UTPR as a means to ensure the low-taxed income of a MNE group is subject to tax at the minimum rate of 15%.

Treatment of tax losses

Tax losses carried forward are common in many groups operating in Hong Kong SAR, as Hong Kong SAR does not have any group tax consolidation rules. The GloBE rules treat the deferred tax asset arising from prior year tax losses (recast at the lower of the 15% minimum rate and the domestic income tax rate in general) as a covered tax, excluding the impact of any valuation adjustment or accounting recognition adjustment. There is an option to use a GloBE loss election which provides an alternative deemed deferred tax asset. The potential benefit of making such election should be explored.

Significance of accounting policies and treatments

The adjusted deferred tax accounting approach is now used to deal with accounting (book) to tax timing difference. In addition, the accounting treatments of certain items (e.g. whether to adopt the fair value accounting approach in respect of an asset or recognise an income in the profit and loss or other comprehensive income) may impact the computation of the jurisdiction ETR in a given year.

As such, in-scope MNE groups should review the accounting policies and treatments currently adopted and consider whether any changes will be desirable.

KPMG observations

The release of the GloBE model rules brings the international community one step closer towards the implementation of an unprecedented global minimum tax of 15% under the BEPS 2.0 project.

The model GloBE rules are complex and can have significant impact on in-scope MNE groups. Given the implementation timeline of the rules in 2023, tax leaders need to understand the potential impact of the rules on their groups. Tax leaders should also consider the pillar two impact together with the impact of the upcoming changes to the Hong Kong SAR tax system as a response to the EU's grey list for tax purposes.

For further details on the impact of GloBE model rules on industry-specific issues from a Hong Kong SAR tax perspective, please see KPMG's BEPS publication.

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INDONESIA

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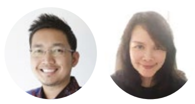

Fabian Abi Cakra and Irma Batubara

Changes to import duty, stamp duty, prohibited goods and telecommunications

New import duty rates for import from EFTA countries

Following the ratification of the Comprehensive Economic Partnership Agreement between the Republic of Indonesia (IE-CEPA) and European Free Trade Association (EFTA) countries, the Ministry of Finance (MoF) issued Regulation No. 152/PMK.010/2021 (PMK-152/2021) effective from November 1 2021 concerning the import duty tariffs on imports from EFTA countries.

Imports from EFTA countries to Indonesia will be subject to lower import duty tariffs compared to the general (most favoured nation) tariffs, which differ based on product type and their applicability periods. The appendix of PMK-152/2021 provides the list of the applicable import duty rates for each HS code.

The import duties for some products are subject to a Tariff Rate Quota (TRQ) scheme. Import duties for goods that are subject to TRQ are implemented as follows:

- Tariff of 50% of the general tariff, for goods qualifying as in-quota; and
- Tariff of 60% of the general tariff, for goods categorised as out-quota.

In-quota preference tariff is a preferential import duty tariff in the TRQ scheme which is determined for imported goods not exceeding the annual quota of the TRQ scheme. Whilst out-quota preferential tariff is a preferential import duty tariff in the TRQ scheme which is determined on imported goods exceeding the annual quota of the TRQ scheme.

New list of prohibited goods for export and import

To manage the traffic of prohibited goods and support the performance of the National Logistics Ecosystem, the MoF has issued Regulation No. 43/KM.4/2021 (PMK-43/2021) detailing the list of the goods prohibited to export from and import to Indonesia, effective from November 15 2021, with the listing details in appendix.

The group classifications of goods produced that are prohibited to export from Indonesia include certain produced goods from wood, rubber, marl, subsidised fertiliser, mining products, cultural heritage and scrap metal.

While the group classifications of goods produced that are prohibited to export from and to import to Indonesia are, for example, sugar, rice, substances that damage the ozone layer (BPO), hazardous and toxic materials, medical using mercury, etc.

Appointment of stamp duty collectors and administration of stamp duty returns

The Ministry of Finance has issued implementation regulation of new Stamp Duty Law Regulation No. 151/PMK.03/2021 (PMK-151/2021) effective from October 27 2021 regarding the procedures for appointment of stamp duty collectors and the administration of stamp duty returns, as follows:

- Taxpayers fulfilling the criteria of facilitating the issuance of securities in the form of cheques and/or issue/facilitate the issuance of certain documents at a total of over 1,000 documents per month;
- Certain documents are securities transaction documents, including futures contract transaction documents with any name and in any form; statement letters, along with copies of said letters; and documents which state an amount of money with a nominal value of more than IDR 5 million ($349), as receipt of money or acknowledgment of debt settlement;
- Taxpayers fulfilling the criteria above can be officially deemed by the Director General of Tax (DGT). Taxpayers fulfilling the criteria but not yet appointed, taxpayers can submit an online notification;
- Collect stamp duty amount reported and pay by the 10th and 20th of the following month, respectively;
- Include details of the instruction manual, notification/revocation of appointment as stamp duty collector, refund and overbooking of stamp duty, the format of the stamp duty reporting.

The provisions for signing the stamp duty reporting, administration penalties/sanctions, and amendment of stamp duty reporting refer to the prevailing general taxation laws and regulations.

IMEI notification and registration procedures

The Director General of Customs and Excise (DGCE) recently issued Regulation No. PER-13/BC/2021 (PER-13/2021) effective from December 9 2021, which revokes the previous DGCE Regulation No. 5/2020 (PER-5) regarding the procedures for the Notification and Registration of the International Mobile Equipment Identity (IMEI) codes of telecommunication devices (the devices). These notifications and registrations are required for telecommunication devices to connect to a national mobile network.

IMEI notification is relevant to devices that are obtained through the applicable customs procedures in DGCE offices. The procedure for submitting IMEI notifications for the devices in PER-13 is substantially similar to the procedure as outlined in PER-5. However, PER-13 now requires IMEI to be submitted to IMEI control system through a DGCE online platform of the Computer Service System (SKP).

The IMEI registration is stipulated as follows:

- For the devices carried by passengers or carrier crews shall be submitted through a DGCE electronic registration form;
- For devices hand carried by foreign tourists, officials or representatives of foreign countries and international organisations in Indonesia registered through communication and informatics for the IMEI; and
- For the devices imported through postal service providers through a consignment note (CN-22/CN-23 or PIBK).

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TAX RELIEF

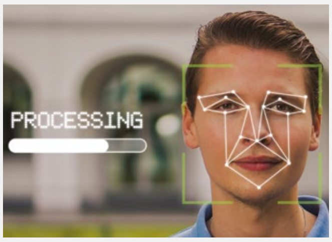
Because tax doesn't have to be taxing. A less-than-serious look back at some of the quirkier tax stories from the past month.

IRS gives up on face scans for non-tax reasons

US taxpayers will not be expected to file face scans as part of filing their tax returns in the future since the Internal Revenue Service (IRS) has dropped the not-so-controversial plan.

The IRS was going ahead with a plan to require US taxpayers to take face scans and include them as part of filing their returns. The IRS was going to work with face-scanning company ID.me as part of an authentication process.

The IRS thought collecting blurry selfies might improve their services. It all seemed so certain back in November 2021, but it was not to be. Many Democrats and Republicans were united in opposing the plan they saw as an infringement on individual privacy.



Face scans cancelled

Eventually IRS Commissioner Chuck Rettig decided to abandon the plan. "The IRS takes taxpayer privacy and security seriously, and we understand the concerns that have been raised," said Rettig.

"Everyone should feel comfortable with how their personal information is secured, and we are quickly pursuing short-term options that do not involve facial recognition," he stressed.

Many people are relieved at the news that they will not have to share their mugshots with the IRS. The plan may be dead in the water, but the IRS has said it will be seeking other methods of authentication.

Tax Relief just hopes that this will not mean demanding fingerprints from every US taxpayer. ■

Musk gets charitable for tax benefits, claim cynics

Elon Musk, still the world's richest man, has donated $5.7 billion in Tesla shares to charity. The donations may have tax benefits, according to cynics.

Musk has joined the ranks of the most philanthropic people in the world. He is second only to Bill and Melinda French Gates, who gave $15 billion in 2021. Nevertheless, this thankless act of charity has been met with unbridled tax cynicism.

Musk could be in line for tax benefits since shares donated as charitable donations are not subjected to US capital gains tax.

Not actually Elon Musk

Others have suggested that Musk may have donated the stock to donor-advised funds and not directly to charitable groups. The speculation continues.

Let's not be too harsh. Musk said he would pay more than $11 billion in taxes in 2021 after he sold-off $16.4 billion worth of Tesla shares. He did so after holding a Twitter poll asking followers whether he should sell 10% of his stake in the company.

Sometimes you just have to put your investment decisions to the good-natured people of Twitter. It might cost you a bit more in tax, but then you might just be able to find a way to offset those costs. ■

Top taxpayers of 2021

Every year *Tax Relief* awards taxpayers and tax professionals for their best fiscal efforts in the last 12 months. Previous winners include non-fictional businessman **Donald Trump** and fictional character **James Bond**.

Cheryl Tweedy, known to many as **Cheryl Cole**, gets the award for **Most Musical UK Taxpayer**. Tweedy had five solo number one singles in the UK at the peak of her success. She has been embroiled in a dispute with HMRC over claims she paid capital gains tax instead of income tax and national insurance. The case is ongoing.

The award for **Most Taxable US Rapper** goes to Jeffrey Atkins, better known as **Ja Rule**, since the rapper and his wife Aisha Atkins paid back $3 million to the IRS in June 2021. The couple had been found to owe the money to the IRS in April that year.

The award for **Most Fanciable Tax Professional** goes to **Pascal Saint-Amans** (if you don't know who he is, please close this magazine). Saint-Amans has won this award for the 10th year in a row. The consensus shows no sign of changing. ■

Matalan founder loses Monaco tax battle

Matalan founder John Hargreaves has lost his battle with HM Revenue and Customs (HMRC) over the tax implications of his move to Monaco and the sale of Matalan shares. HMRC is claiming up to £135 million ($179 million) in back taxes.

"Part of Mr Hargreaves' object in moving to Monaco was to ensure that he was no longer resident in the UK for tax purposes so that he could dispose of shares without becoming liable to capital gains tax," said the court papers.

Nevertheless, Hargreaves could keep fighting. The multimillionaire has three weeks to take the case to the Court of Appeal.

The case goes back to 2000 when Hargreaves was looking to sell £237 million worth of shares in Matalan when the company went public in 1998. The Big Four firm reportedly advised Hargreaves to move to the alleged tax haven and offload the shares in one bulk transaction.

Fancy living here?

HMRC launched an investigation soon after it turned out Hargreaves was working at Matalan's head office in Liverpool three days a week. If only Hargreaves had started this arrangement during the pandemic, this whole drama could have been avoided. ■