



BRUSSELS | MARCH 2019

1. OECD Public Consultation on the Taxation Challenges of the Digital Economy

As part of the ongoing work of the Inclusive Framework and the Task Force on the Digital Economy, the OECD organised a [public consultation](#) on 13-14 March on the tax challenges arising from the digitalisation of the economy, with 400 invited stakeholders from business, professional and trade associations, practice, NGOs and academics. The discussions focused on the key questions identified in the OECD consultation document and the issues raised in the [written submissions](#) received as part of the consultation process. Over the two days, experts and four panels of speakers debated the design and administration considerations of the proposals for revised profit allocation and nexus rules presented under the first pillar (i.e., user participation, marketing intangibles and significant economic presence), as well as the policy rationale and objectives of the second pillar proposals on the global anti-base erosion proposal.

Digital businesses expressed reservations about the scope of the user participation proposal and the 'arbitrary' distinction in ring-fencing particular business models. Conversely, non-digital companies articulated concerns about the scope of the marketing intangibles proposal by modifying the application of the arm's length principle. The common ground in discussions concerning the revised profit allocation rules was the importance of simplicity, certainty, the absence of double taxation or unilateral measures and presence of mandatory dispute resolution mechanisms in any future solution. Considering that proposals one and two (user contribution and marketing intangibles) bear similar features, it was suggested these proposals could be implemented through adjusting the present framework without the need to dismantle the whole international tax system. Some participants suggested alternative proposals, and even formulary apportionment, to the extent an agreement on the formulary elements was possible.

The participants agreed on the flaws of the existing fragmented approach to taxation of the digital economy, and there was general acceptance of the need to redouble efforts to reach a global governmental agreement. Considering the ambitious timeline, the OECD announced meetings of the Task Force on the Digital Economy would be held more frequently, and another consultation setting out more detailed technical contributions is expected to be held by the end of 2019.

On 12 March, shortly before the meetings, the EU finance ministers formally abandoned the proposal to introduce an immediate, temporary, EU-wide tax on the revenue of large multinational firms in the digital sector. The tax would have applied until a global consensus was reached on a long-term solution of how to tax multinational digital firms.

The EU will now focus on the broader international tax discussions underway at the OECD and G20 level. EU Ministers said that if progress is not made by the end of 2020 on global efforts to revise the international tax system, the EU will revisit the issue at that time.

The original EU proposal for an EU-wide digital services tax, presented in March 2018, contemplated a 3% levy on the revenue of large multinationals that sell online advertising or operate online sales platforms.

2. Australian Taxation Office Releases Guidance on Compliance for MNEs

The Australian Taxation Office (ATO) recently released a [Practical Compliance Guideline \(PCG 2019/1\)](#) that outlines ATO's compliance approach to the transfer pricing outcomes associated with the activities of inbound distributors of goods purchased from related foreign entities for resale, and distributors of digital products or services where the intellectual property in those products or services is owned by related foreign entities.

The guidance will be relevant to MNEs required to file a Reportable Tax Position (RTP) schedule with the ATO, MNEs involved in or planning for formal field-based risk reviews, including Streamlined Assurance Reviews, and MNEs with existing Advance Pricing Agreements (APAs) or involved in applying for an APA.

MNEs are expected to take immediate action to assess their risk rating under the guidance, determine what reporting is required, and what action should be taken.

3. Kenya's High Court Rules Tax Agreement with Mauritius Unconstitutional

Kenya's High Court has invalidated a tax agreement with offshore haven Mauritius, claiming that the double tax avoidance agreement was unconstitutional. According to the Court, Kenya's government had failed to follow constitutional requirements for ratification.

Regarding the ruling, Alvin Mosioma, the Executive Director of Tax Justice Network Africa (TJNA), an African non-profit organisation, stated: *"This ruling is groundbreaking not just for Kenya but for other Africa countries. (...) Today's judgment validates our call for African countries to review all their tax treaties particularly those signed with tax havens. (...) Evidence has shown that contrary to their objectives, these DTAs have led to double non-taxation and resulted to massive revenue leakage for African countries."*

As part of the 2017 Paradise Papers investigation, the International Consortium of Investigative Journalists (ICIJ) revealed that profitable companies, assisted by law firms and accountants, used tax treaties to reduce monies paid to some of the world's poorest nations, many of which are in Africa. Emails from the investigation showed companies eagerly eyeing the Mauritius-Kenya treaty to pay less tax.

While some in favour of the treaty argued that the agreement would increase investment and jobs for Kenyans, critics claimed it would join a string of similar agreements signed between Mauritius and other African countries that reduce taxes available to poorer nations.

Kenya and Mauritius signed a tax treaty in 2012 that authorized reduced tax rates for companies established in the island nation. However, the treaty did not come into force before it was challenged in 2014, as Kenya had not notified Mauritius of the completion of the ratification procedures.

TJNA called on Kenya to now renegotiate other treaties, including those with the United Arab Emirates, Netherlands, China and South Korea.

4. Austrian Finance Minister Announces Plan to Move Ahead with Digital Tax

The Finance Ministry of Austria stated that the country will go ahead with a proposed tax on internet giants after plans for a European Union-wide levy fell through on 12 March.

Earlier this year, Austria had announced they would impose a digital advertising tax on tech companies of 3% on advertising revenue, but the plan was delayed in the hopes that the European Union would agree to a European-wide digital tax.

Hubert Fuchs, State Secretary of Finance, explained why a digital tax is so urgently needed: *"In Austria, companies pay corporation tax depending on their profits. Now, however, it is the case that major digital corporations in Austria report only very minimal profits. These are reduced as a result of global profit shifting. Profit-based taxation of major digital corporations is therefore ineffective. To compensate for this, therefore, in future, digital corporations will have to pay a digital tax."*

In his announcement, Austrian Finance Minister Hartwig Löger said: *"Rather than submit legislation to parliament immediately, however, the government will first hold meetings of experts including representatives of Austria's print and broadcast media, the advertising industry and the finance ministry to discuss the plans in coming weeks. (...) It is also possible that an existing 5 percent tax on advertising revenue for traditional print and broadcast media will be lowered to 3 percent."*

In his conclusion, Finance Minister Löger made clear that, despite Austria's national solution, efforts at the international level would not be curtailed.

5. 2019 OECD Report On Tax Revenue In Latin America and Caribbean Published

[Revenue Statistics in Latin America and the Caribbean](#) is a joint publication by the Inter-American Centre of Tax Administrations (CIAT), the Economic Commission for Latin America and the Caribbean (ECLAC), the Inter-American Development Bank (IDB), the Organisation for Economic Co-operation and Development (OECD) Centre for Tax Policy and Administration and the OECD Development Centre. This is the eighth edition, and the first produced through the European Union's Regional Facility for Development in Transition for Latin America and the Caribbean. This year's edition covers 25 countries.

The report was launched on 25 March at the XXXI Regional Fiscal Seminar in Santiago, Chile, and compiles comparable tax revenue statistics over the period 1990-2017 for 25 Latin American and Caribbean economies. Based on the OECD Revenue Statistics database, it applies the OECD methodology to countries in Latin America and the Caribbean to enable comparison of tax levels and tax structures on a consistent basis, both among the economies of the region and with other economies.

6. Countries Approve OECD Proposal on VAT/GST Collection by Digital Platforms

More than 100 jurisdictions, including regional and international organisations, attended the OECD's 5th Global Forum on VAT on 20 – 22 March in Melbourne, Australia, and [unanimously voted to endorse new rules](#) concerning the collection of VAT by online platforms/marketplaces and to allow for data sharing and enhanced co-operation between tax authorities and online marketplaces.

The agreed measures were contained in a [new report](#) of the OECD, The Role of Digital Platforms in the Collection of VAT/GST on Online Sales, which builds on the [2015 BEPS Action 1 Report on the Tax Challenges of the Digital Economy](#). As over two-thirds of online transactions take place by way of marketplace/platform, it is hoped the agreed measures will allow authorities to focus on the compliance of platforms, rather than the individual trader, and significantly increase the amount of revenue collected.

The OECD pointed out that the report does not aim to provide prescriptive text for national legislation. In fact, the report seeks to present a range of possible approaches and discusses associated policy considerations and its purpose is to serve as a reference point.

7. Ukraine Transfer Pricing Guidance Clarifies Treatment of Permanent Establishments

On 4 March, Ukraine's tax authority issued transfer pricing guidance addressing transactions between a foreign company and its Ukrainian permanent establishment.

The guidance reminds taxpayer that transactions between a foreign company and its Ukrainian permanent establishment are subject to transfer pricing rules if the amount of these transactions exceeds UAH 10 million (approximately EUR 328,000) annually. This applies whether the foreign company has annual turnover from all activities that exceed UAH 150 million (approximately EUR 5,000,000) in a year or not.

The guidance also explains that a permanent establishment can determine profit for corporate tax purposes by using a separate statement of the permanent establishment's activities or by using a notional deduction in the amount of 70% of income.

8. India and US Finalize Agreement to Exchange Country-by-Country Reports

India's Central Board of Direct Taxes (CBDT) announced on 15 March that India and the United States have finalised an [agreement](#) for the automatic exchange of Country-by-Country (CbC) reports.

CbC reporting is part of a wide range of international measures aiming to combat tax avoidance through more comprehensive exchanges of information between countries. The CbC reporting implements Action 13 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan.

The United States is one of the notable countries that has not entered into an agreement for the exchange of information with India, and the absence of the automatic exchange of a CbC reporting agreement meant that US-based companies would be required to file the CbC report in India.

As stated in the agreement, "This would enable both the countries to exchange CbC Reports filed by the ultimate parent entities of International Groups in the respective jurisdictions, pertaining to the financial years commencing on or after 1st January, 2016. As a result, Indian constituent entities of international groups headquartered in USA, who have already filed CbC Reports in the USA, would not be required to do local filing of the CbC Reports of their international groups in India."

This development comes as a great relief to Indian constituent entities of US-based multinationals, which are present in large numbers in India, as the US is one of the largest sources of foreign direct investment in the country. It also reflects the seriousness of the governments to collaborate and co-operate on tax matters.

9. OECD Releases First Beneficial Ownership Toolkit

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has released [the first ever beneficial ownership toolkit](#) designed to help governments, particularly in developing countries, comply with international transparency standards.

The toolkit, prepared in partnership with the Inter-American Development Bank, includes explanations of the technical and legal requirements concerning beneficial ownership, the criteria to be used to identify the beneficial owner, as well as explanations of existing measures which ensure the availability of beneficial ownership information and its role in automatic exchange of information regimes.

The OECD says the toolkit is the first practical guide freely available for countries implementing the international tax transparency standards. It will be frequently updated to incorporate new lessons learned from the second-round peer reviews conducted by the global forum, as well as best practices seen and developed by supporting organisations.

10. CFE Tax Advisers Europe Forum 2019

The CFE Tax Advisers Europe Forum 2019 will be held in Brussels on Thursday 6 June 2019, on the topic of "Creating Tax Certainty in an Uncertain World: Double Taxation, Tax Rulings & Dispute Resolution Processes".

The Forum will examine existing co-operative compliance under Action 14 of the BEPS Action Plan and Mutual Agreement Procedure, as well as the EU Dispute Resolution Mechanisms Directive. The Forum will further discuss means of avoiding disputes, such as confirmatory tax rulings, State Aid challenges to advance transfer pricing agreements (APAs) and exchange of information. The Forum will also question the impact of potential further

revisions of international taxation principles and corporate taxation reform contained in the EU anti-tax avoidance directives on tax certainty.

More details about the programme, line-up of speakers and registration process can be found [here](#). Register now to secure your spot!



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