

Summary Record

Taxation Commission Meeting, Monday 16 October 2023

9:00 – 16:30 | Geneva and Virtually

Opening Session

1. Welcome and Opening of the Meeting

John Connors, ICC Chair of the Global Tax Commission & Luisa Scarcella, Global Policy Lead - Taxation

Opening remarks from the Commission Chair (John Connors), and ICC Secretariat (Luisa Scarcella, Global Policy Lead – Taxation and Trade) who welcomed participants onsite and online to the meeting. Notable changes in the ICC Tax Commission leadership were highlighted and John Connors was introduced as the new Commission Chair.

Citing an increase in the workstream and appreciating the importance of regional representation, the Commission now has representation at the leadership level from each of the continents – with Linda Evans, Stephanie Sweet, Thomas Quatrevalet, Alejandro Machorrio, and Vivian Mbowe joining the existing leadership team consisting of Rocío Bermúdez Becerra, Tom Roesser, Matthew Herrington, and Veerinderjeet Singh.

The Commission Chair highlighted the role of the ICC as a voice of businesses that informs the global tax environment and tax debates, and which is also seen as a trusted advisor to stakeholders including policy makers and administrators. Briefly introducing the diversity of subjects on the agenda, he further encouraged active participation from national committees and individual members.

2. Strategic Vision for the Global Tax Commission

John Connors, ICC Chair of the Global Tax Commission

A strategic vision document for the Tax Commission has been prepared and the draft has been shared for comments.

Presenting ICC's strategic vision statement, John Connors highlighted ICC's commitment to the core principles and values of the business tax community. The strategic vision places a significant emphasis on viewing tax policies from a business perspective, with a primary focus on supporting and facilitating multilateral trade and investments. The

vision also strives to create an environment that enables businesses to operate freely and responsibly across the globe, encompassing objectives like eliminating double taxation, maintaining a stable and straightforward tax system, and upholding the rule of law. Moreover, the emphasis is on the importance of providing clear access to arbitration and dispute resolution.

The sense of corporate responsibility that businesses bear in contributing to societal and governmental goals, such as employment, wealth, and prosperity were also highlighted. Finally, the Commission Chair encouraged feedback and endorsements from members, aiming to make this strategic vision a framework for ongoing engagements at the local, regional, and global levels, emphasising the vital role businesses play in the broader tax policy debate.

International Tax Developments

3. OECD Update on Two-Pillar Solution & Next Areas of Work

Achim Pross, Deputy Director OECD's Centre for Tax Policy Administration (CTPA)

Achim Pross discussed the inclusive framework and pillars that have been introduced to stabilise the international tax system. The consensus-based **inclusive framework** promotes diversity and broad participation, ensuring a multitude of perspectives despite its operational challenges.

Discussing Pillar One, the recent release of a multilateral convention to implement **Amount A** was highlighted. The convention focuses on large multinationals – reallocating taxing rights for market jurisdictions over a portion of profit in excess of 10% of revenue of the largest and most profitable companies operating in their market. The approach marks a departure from relying solely on physical presence as a determinant for taxing rights, acknowledging the realities of digitalisation and globalisation.

Novel concepts have been integrated into the system, focusing on design rules and administration aspects. A new approach includes an integrated tax administration aspect, thus reducing post-filing compliance activities. A nuanced view of the current changes in taxation was presented, underscoring the complexities and novel approaches being integrated. While acknowledging the challenges, there was also optimism regarding the future operational efficiency and resolution of longstanding issues in cross-border taxation:

While complexity is attributed to the novelty of the system, it recognises that this is mainly due to the fact that it focuses on taxing net rather than gross.

It is expected that operational complexity might decrease once familiarity and systems are established - with certain computational aspects automated or simplified.

The complexity of the proposed system mainly impacts the largest and most profitable companies and sophisticated tax administrations. Developing countries and weaker economies will bear a relatively lower burden.

The steps and processes involved were explained, emphasising the inclusiveness of the system, considerations for various economies, and mechanisms to ensure clarity, certainty, and the avoidance of double taxation. Special attention is given to developing economies, ensuring the system's adaptability to various needs and contexts:

Step 1: Determining whether the company falls within the scope

Step 2: Determine sales and identify market jurisdictions

Step 3: Calculating the overall amount of profit and allocating a defined portion (25%)
Adjustments and offset mechanisms are included to avoid duplications in profit allocations.

Step 4: Identifying relieving jurisdictions and allocating the obligation to relieve double taxation - A system is in place to avoid double taxation, focusing on which country provides relief and how it is provided, offering countries some flexibility in methods.

Step 5: Filing, payment, and tax certainty process - Single tax return documentation package and a coordinated certainty process are in place.

Amount B was then briefly discussed – its aim is to simplify and streamline the arm's length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low-capacity jurisdictions (LCJs). Highlights from the public consultation were discussed - focus is on simplifying existing transfer pricing rules despite the potential cost to accuracy in individual circumstances. This is a trade-off made after collective discussions, emphasising manageable rules for businesses. The idea is to start with simple rules and application, minimising disputes and uncertainties related to taxation.

Pillar Two – two rule sets:

GloBE rules: 15% effective tax rate on a jurisdictional basis, applies to all income for large businesses. It is a domestic law provision and a common approach. Around 30 countries have already adopted the implementing rules, and 15 more countries are in the process, having draft legislations.

Subject to tax rule: 9% nominal rate that applies on a transactional basis, is with respect to certain related party payments, all companies but there is a de minimis threshold, a treaty provision; and provided the conditions are met, can be required by developing countries to be included in their treaties.

Its implementation is expected to gain revenues up to 200 billion, benefiting various countries by reducing profit shifting incentives, even if they don't specifically apply the rules.

Compliance approaches will be important in the implementation of pillar two.

Pillar two aims to bring a systemic solution to address profit shifting and encourages considering decluttering specific anti-avoidance rules.

Both pillars involve complexities, with transitional measures and phased approaches being introduced for manageability. Special attention has been given to developing economies, and flexibility is built into the system to adapt to unique business and country scenarios.

Additionally, a broader OECD agenda was discussed – including carbon mitigation, fairness, tax administration, global mobility, decluttering CIT (as a move to remove obstacles), and domestic resource mobilisation in order to ensure the system's comprehensiveness and sustainability.

4. UN Update on Tax Committee of Experts and UN Resolution on International Tax Cooperation

Michael Lennard, Chief of International Tax Cooperation and Trade in the Financing for Development Office (FfDO) of the United Nations

Michael Lennard started his address by briefly discussing the draft resolution on tax cooperation presented by the African group. It was highlighted that the resolution would be open for debate and discussion in a series of member-state-driven meetings. The resolution may also recognise the importance of civil society (including business according to UN rules) in future work related to tax cooperation.

Some misconceptions about the United Nations Secretary General's report were addressed, emphasising that the two versions of the report were a part of the general editorial process of the UN, with no real difference in the two versions. He further explained that the report was a response to a specific request from member states for intergovernmental discussions on tax issues at the UN. Another clarification provided was on the resolution adopted last year – calling for intergovernmental discussion on tax at the UN – which was a consensus resolution and not a majority resolution, meaning there was no strong opposition, and explained the concept of consensus in the UN context (like how the Subject to tax rule was a consensus decision).

The report aimed to address how international tax cooperation could become more inclusive and effective. Inclusiveness means not just being at the table but also having a

say in decision-making, and effectiveness involves achieving results that reflect what stakeholders have agreed upon. The report also recognised the importance of fair and effective dispute resolution. The report suggested that the UN was the appropriate forum for these discussions due to not only its membership and diversity, but also because of how the Secretariat is compiled, with an emphasis on including the underrepresented.

There was a mention of the composition of influential groups like the steering group within the inclusive framework, with concerns raised by developing countries about representation. Developing countries' concerns regarding the need for sufficient time and resources to address tax issues adequately were discussed, given their limited resources compared to larger countries. Language barriers were also mentioned as a challenge in such discussions.

Next Steps:

- A proposal by Nigeria for the African group regarding international tax cooperation was expected to be made available soon. The proposal is expected to address the options presented by the Secretary General.
- The Secretary-General's report presented three options: a comprehensive tax convention, a framework convention with protocols, and a framework body.
- A fourth possible pathway mentioned in the report is the creation of an ad hoc informal working group to further discuss the issue if consensus cannot be reached and there is no vote. It was emphasised that this process is member-state-driven and is not influenced by the Secretariat or the UN Tax Committee.
- There is a recognition that international tax cooperation needs to be more inclusive and developing countries have expressed concerns about the current state of multilateral tax cooperation.
- A series of meetings will take place, and by the end of the year, they hope to reach a consensus resolution that will lead to the establishment of a body with specific terms of reference.

The importance of stakeholders, including civil society (which includes businesses according to the broader UN definition), was acknowledged in the report. Finally, discussions on DSTs were brought up, considering their increasing relevance and the need for a coherent and fair international approach; along with a dispute settlement system that both the taxpayers and the government can have confidence in.

Regional Tax Developments

5. European Commission

Benjamin Angel, Director for Direct Taxation, Tax Coordination, Economic and Evaluation, European Commission

Benjamin Angel emphasised the significance of implementing Pillar 2, with a dedicated effort to ensure common interpretation among member states. Some countries may delay implementation if they fall below the threshold of 12 ultimate parent entities in scope. The European Union supports the United Nations playing a larger role in international tax matters but urges it to avoid duplicating existing efforts and focus on revenue mobilisation. He further mentioned that there are currently many tax directives on the table, with a particular focus on direct taxation. There are ongoing discussions regarding preventing the misuse of shell companies for tax purposes and expediting the refund of excess taxes paid. While the exact timeline for agreements on these tax developments remains uncertain, fine-tuning the details of the directives remains a priority.

Additionally, three new significant business-friendly tax legislations and initiatives were highlighted. Firstly, there is a proposal for "Head Office Taxation (HOT)" aimed at simplifying cross-border activities for Small and Medium-sized Enterprises (SMEs) within the single market. It addresses the high taxation and regulatory obstacles that currently discourage cross-border business. The proposal suggests that SMEs interact exclusively with their domestic tax administration, making it easier for them to operate across borders. This measure has the potential to significantly impact GDP growth if even a small percentage of SMEs engage in cross-border activities. First round of the legislation will start in November.

Secondly, he discussed the tax on Transfer Pricing. It clarifies that there is no intention to challenge the OECD's role as a standard setter for transfer pricing guidelines. Instead, the proposal seeks to address the complexity arising from member states implementing these guidelines with small differences. This complexity has led to a surge in disputes, with around 2,300 ongoing cases. The proposal aims to establish common principles and behavioural rules within the EU to reduce disputes, double taxation, and administrative burdens for businesses.

Lastly, there is a mention of the "Business in Europe Framework for Compensation (BeFit)" legislation. BeFit aims to replace existing corporate tax rules for entities with turnovers exceeding 750 million euros. While it seeks to normalise and harmonise tax rules, there may still be room for some national adjustments in specific areas, such as pensions. The goal is to simplify and harmonise tax regulations for large businesses operating within the EU while allowing for some flexibility in certain aspects.

Furthermore, there was a mention of the establishment of a team responsible for making decisions on the taxation of multinational concerns within the EU. This initiative is seen as an important development for businesses as it aims to reduce the risk of disputes.

Non-legislative topics include discussions on the treatment of cross-border workers within the EU, which is experiencing significant changes due to evolving work patterns. This may lead to legislative ramifications in the future. International efforts are also ongoing via the Code of Conduct group to extend the geographic scope of tax restrictions and criteria for beneficial ownership.

Overall, these tax initiatives are designed to simplify tax processes, enhance predictability, and encourage cross-border business activities within the EU, benefiting both businesses and member states.

6. BRITACOM and the Belt and Road Initiative (BRI)

Christian Kaeser, ICC Global Tax Commission former Chair and representative for BRITACOM

Christian Kaeser discussed the Belt and Road Initiative Tax Administration Cooperation Mechanism (BRITACOM), emphasising its nature as a cooperative platform rather than a supranational body, established to facilitate collaboration among member countries participating in the Belt and Road Initiative. Founded in 2019, the mechanism experienced delays due to the COVID-19 pandemic. Its fourth annual conference in September 2023, a flagship event, addresses critical issues such as tax certainty, digitalisation, and the improvement of the tax environment to attract foreign investments. Key priorities within the mechanism include the promotion of the rule of law and a strong focus on digitalisation, particularly in capacity-building efforts for tax officials in developing countries.

The curriculum offered by BRITACOM academies covers a wide range of tax-related topics, with contributions from experts in the field. The Belt and Road Tax Journal, an important publication, seeks to elevate the mechanism's profile and attract renowned authors to contribute. The speaker encouraged businesses to explore opportunities within the mechanism, including attending conferences and participating in the journal, while highlighting that the next annual conference is scheduled for September 2024 in Hong Kong, offering valuable networking and engagement prospects. High-level representatives from various countries actively participate in the mechanism, providing an excellent platform for collaboration and knowledge exchange among member nations.

7. Latin American and Caribbean Ministerial Tax Platform

Alejandro Machorro, Vice-Chair ICC Global Tax Commission

The presentation discussed the Ministerial Tax Summit held in the Latin American region, hosted by Colombia in July. Its primary aim was to create a regional platform for discussing international tax issues, fostering common positions among Latin American countries, and strengthening their influence in global tax policy debates. Key stakeholders, including the private sector and civil society, were engaged to formulate tax policy recommendations for finance ministers participating in the summit. These recommendations centred on three main tax policy priorities: taxation on the digital economy, corporate tax reform, and the resolution of tax disputes and incentives.

Following the summit, the top three tax policy areas identified for future focus were tax progressivity, tax incentives, and environmental taxation, including digital economy taxation. UNECLAC initiated a call for proposals to advance these priorities, involving working groups with officials from participating countries. Advisory groups for both civil society and the private sector are being established to facilitate ongoing discussions and engagement in ministerial sessions, with terms of reference currently in development and pending approval. The private sector is encouraged to actively participate in the advisory council, ensuring local business interests are well-represented in these discussions and policy decisions. Constructive proposals are sought in response to the call for proposals, addressing critical issues such as cross-border teleworking. This collaborative effort reflects a commitment to addressing pressing tax challenges in the region and enhancing Latin America's role in global tax policy discussions.

Commission work project reports & initiatives/ Transversal Projects

8. Tax implications of cross border teleworking

Tom Roesser, Vice-Chair ICC Global Tax Commission and Chair of the ICC Taxation of Cross-border Teleworkers Working Group

Luisa Scarcella presented the findings of a survey conducted in the first half of 2023, focusing on the tax challenges associated with cross-border remote working. Notably, the survey revealed that 67% of respondents allow employees to work remotely, with 57% permitting remote work for fewer than 30 days. The lack of tax certainty emerged as a key factor influencing a company's decision to allow remote work from abroad. Administrative complexities for both employers and employees were identified as significant concerns.

The primary reasons cited by employees for requesting remote work were having family members in different countries, owning a second home in a different country, and health reasons. These findings underscored the importance of tax certainty not only for business operations but also for employee well-being.

Members highlighted three main challenges: differences in tax laws, administrative complexities, and social security and insurance liabilities for remote employees and employers. To address these challenges, a "safe harbour" solution is proposed, which would exempt remote work from triggering tax or compliance obligations for a specific number of days. This approach aimed to provide flexibility for employees while offering clarity for employers.

The presentation also expressed concerns about alternative proposals, including one that could shift taxation based on the location of service performance and another that might introduce additional compliance and administrative burdens.

Tom Roesser, discussing the OECD Global Mobility Stakeholder Day meeting, acknowledged positive developments in discussions related to remote work taxation. However, he stressed the need for more educational efforts and the presence of alignment between business and survey results. He also raised concerns about certain proposals, particularly those that might create new tax liabilities for employers in the country of residence, potentially discouraging cross-border work.

In conclusion, the presentation emphasised ongoing discussions and the importance of comprehensive feedback from members to shape future policies in the area of remote work taxation. Stakeholders were encouraged to review the documents and provide thorough comments to ensure that proposed policies effectively address the concerns and needs of all parties involved.

9. Developments on Indirect Tax Issues

Marlon Van Ameersfoort, Co-Chair ICC Indirect Taxation Working Group

The working group has been experiencing a high level of activity lately, and their primary goal is to encourage participation from all members. They are keen to involve specialists and colleagues who are interested in their initiatives. Meetings are now held every six weeks, usually at 4:00 PM, in an effort to ensure representation from different regions. The topics covered in these meetings range from recent developments in Vietnam and Brazil to updates from the customs commission and the indirect tax working group. Notably, a subcommittee on internet taxation was established during the current mandate, marking the first time such a subcommittee has been created. Members of the group are open to engaging with various stakeholders, welcoming diverse perspectives and expertise.

Marlon Van Ameersfoort highlighted how the working group has been actively supporting the subcommittee on indirect taxes for the UN, providing valuable input on a range of topics. The importance of keeping tax systems understandable for businesses and advocate for harmonisation and practicality was emphasised, especially for multinational corporations. Invoicing, a crucial aspect of business processes, is considered within the context of technology solutions.

There is a need to implement such solutions carefully, allowing sufficient time for proper implementation and the development of associated legislation. While technology can expedite refund processes, the group underscores the importance of data security and the necessity for clear and controlled access to sensitive data. In conclusion, the working group is deeply engaged in discussions and initiatives concerning tax policies and technology solutions. They place a strong emphasis on practicality, harmonisation, and data security in their efforts, recognising the significance of these aspects in the ever-evolving landscape of taxation. The group expresses appreciation for the opportunity to share their perspectives and collaborate effectively within the business community.

Joe Marden discussed the European Commission's VIDA proposal, specifically focusing on low-code solutions and their objectives. The proposals aim to enhance the resilience of systems to fraud and digitalisation. These proposals are divided into three pillars and have an ambitious timeline for implementation in 2024 and 2028. The three pillars involve expanding the use of the single VAT registration number, simplifying components for businesses, and introducing changes to the platform economy. However, the most contentious and discussed aspect is the harmonised approach to digital reporting requirements and the creeping harmonisation of domestic systems. Member states broadly welcomed the proposals, but disagreement persists, and an agreement remains elusive, especially given the tight timeline. Some member states and the parliament advocate for reevaluating the timetable to allow sufficient preparation time for businesses. The compromise text appears to dilute some of the original aims, particularly in preventing the proliferation of bespoke reporting systems by member states. Harmonisation of domestic systems remains a challenge, and the timeline may be pushed back further. The way forward is uncertain, with much depending on the upcoming meeting in December.

10. Carbon Pricing

Anna Theeuwes, Co-Chair ICC Carbon Pricing Working Group

The Carbon Pricing Working Group is a collaborative effort between members of two ICC commissions: the Global Energy and Environment Commission and the Global Tax Commission. The group has been working together for three years and has produced two

reports on carbon pricing principles and critical design features for effective carbon pricing. They are currently working on a third report.

Anna Theeuwes described how the relevance of carbon pricing has increased due to rising energy and carbon prices, and newer sectors, such as those involving artificial intelligence and cryptocurrencies, are becoming more energy-intensive. This has led to the inclusion of new members in the working group.

The group is focused on addressing issues related to carbon leakage and linkage. The principles for carbon pricing include serving environmental and climate objectives, compliance with international agreements, transparent measurement and verification, the use of proceeds for environmental purposes, and addressing the impact on small businesses and vulnerable communities.

The group is also considering the level of carbon pricing and its potential inflationary effects, as well as ongoing work related to Article 6 of the Paris Agreement on carbon mitigation approaches. The importance of collaboration and feedback from various stakeholders in their work was highlighted, and inputs on the documents/reports were welcomed.

Overall, the Carbon Pricing Working Group is focused on creating a framework for effective carbon pricing that addresses environmental goals and economic considerations while minimising carbon leakage and promoting linkage between different carbon pricing systems

Future Work Programme

11. Update from the Secretariat on other matters and upcoming events

An update on upcoming events for the remainder of the year and beyond were provided.

a. 21-26 October: IFA Annual Congress

- P2 Implementation around the world Panel: The panel will feature representatives from various regions, including the U.S., Europe, Australia, and developing countries.
- Panel/Conversation on International Tax Disputes Prevention and Resolution
- Participation in tax mobility panel

b. 23-24 October: Cooperative Compliance: Providing Greater Certainty to Tax Administrations and Businesses

Organized by the WU Global Tax Policy Centre in cooperation with ICC, CATA, and hosted by Anglo American.

c. 3-4 December: Conference on Investment and Tax arbitration (In-person only)

Conference on Investment and Tax arbitration with Lausanne University and Georgetown University. The conference will take place at Georgetown University, Washington DC. It is an invitation-based conference with up to 10 spots per partner institution. This conference will bring together experts from the arbitration and investment arbitration fields.

d. End November/Beginning of December: Event with UN delegations.

Enhancing international tax cooperation through public-private dialogue
Towards the end of November and beginning of December, there is the possibility of holding a small event with UN delegations. This event aims to establish a dialogue between the UN community and the tax business community and represents a new form of political involvement. It's intended to be a trust-based conversation rather than a political one. If not possible due to the politicised negotiations on the UN Tax Resolution it will then be postpone to March.

12. Members proposals for new areas of work/engagement/projects or improvements

Dispute prevention and resolution

John Connors discussed the importance of dispute resolution and mentioned the proposal received from the India delegation on this topic. The Commission intends to collaborate with the Commission on Arbitration and ADR. He also referred to the upcoming Georgetown conference in December as a source to gather ideas for proposals and also the proposal of a working group to further address the issue.

The significance of dispute resolution in the context of tax and trade arbitration and the challenges businesses face in having their voices heard in dispute resolution processes was highlighted. There is an aim to work on this area as part of the commission's efforts.

Tax and Sustainability (ICC Sweden)

John Connors highlighted how, in recent years, sustainability and the United Nations' Sustainable Development Goals (SDGs) have become top priorities for both governments and businesses. While it's acknowledged that governments alone may not be able to deliver on the SDGs, they still play a vital role in raising revenues for investments in a greener economy and diversifying the environment and the economy. Taxes are a fundamental means to generate these revenues. However, businesses are also crucial in implementing the necessary changes envisioned for sustainability. Beyond the broad

perspective of businesses' purpose in these efforts, there are practical challenges that need addressing. He emphasised the aim to propose and desire further engagement on the intersection of tax and sustainability. The question is how to do this effectively, focusing on actionable steps that enable us to have a substantial influence in global institutions like the UN.

Henrik Blomqvist, the Director of Policy, and Deputy Secretary General of ICC Sweden, discussed a paper published by ICC Sweden, focused on the interplay between tax policy and sustainability. The paper identifies challenges businesses face in Sweden when trying to achieve climate goals, invest in green initiatives, and promote circularity and resource efficiency. The paper aims to initiate a discussion on this topic nationally and globally. He presented several case studies highlighting how current tax rules disincentivise sustainable investments, such as carbon capture and storage, carbon credits, resource efficiency, and R&D in green technologies. He recommended policy changes to promote sustainability investments and called for a broader perspective on tax policy and sustainability. Henrik suggests that other national committees should engage with their tax committees and recommended structuring the work on tax and sustainability similarly to other commissions that delve into specific issues and best practices.

The need to incentivise and bridge capital investments in new technologies and infrastructure for the environment was highlighted by John Connors. He noted how the classification of expenses as gifts or business expenses has significant implications for investments in renewable and environmentally friendly projects. Furthermore, different approaches taken by countries were listed, like R&D tax credits, deductions, or super deductions and how these can create the right environment for investment in renewable energy. The objective is to create an environment conducive to investment in renewable energy and enhance self-sufficiency.

The ICC Secretariat will share a form to sign up for the Taskforce that will work on updating the Tax and SDG report.

Next meeting

The details of the next Commission meeting will be communicated soon.