

Summary Record

Taxation Commission meeting, Friday 21 October 2022, 9:00 – 13:00, Geneva and virtually

Opening session

1. Welcome and opening of the meeting

Opening remarks from Commission Chair (Christian Kaeser), and ICC Secretariat (Luisa Scarcella) who welcomed participants onsite and online to the meeting. The Commission Chair thanked Raelene Martin, previously coordinating the ICC Global Tax Commission, for the excellent work and welcomed Luisa Scarcella that took up her role.

2. ICC Global Policy Department – strategic priorities 2022/2023

Andrew Wilson (ICC Global Policy Director) provided an update on ICC's global policy strategy for 2022/2023 and presented the key priorities for ICC. The department is undergoing a renewal of commissions, establishing a commission-centric approach for global activities and promoting synergies among the different policy commissions.

The three strategic foundation elements for next year are set to be expanding the membership base, extending ICC content and increasing external impact. Another key priority is to encourage growth in cross-commission work with projects that bring together different expertise, with currently 11 multi-commission projects.

There was also an update on the area of sustainability, to which Raelene Martin recently moved as the new ICC Head of Sustainability. The ICC is actively hosting a business pavilion at COP27 to foster dialogue between businesses and governments to meet climate change. The first framework on sustainability of trade finance, and its pilot, are also being launched at COP27 and in November.

Finally, in the context of the Russia-Ukraine war, it was highlighted how the ICC has been involved in the design and implementation of a flagship grain initiative to unblock agricultural trade. There has also been engagement with the UN to preserve global food security.

International/Regional engagement

3. UN Committee of Experts in Tax Matters (9.10-9.30)

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

Michael Lennard reported how the UN Committee of Experts session went as expected, with suggestions being accepted, and the discussion also focusing on windfall taxes and on the energy sector. In regards to the taxation of the digital economy, the fast track instrument for workstream A has been seen as a priority. Other topics covered in the meeting were:

- The subject to tax rule;
- The arbitration provision in the UN model;
- Working on more guidance on trade investment agreements
- Nomad workers. ICC future involvement on issues of nomad workers, especially for developing countries was also welcomed.

In response to questions from members, it was explained that:

- With the tax and investment committees in transition, there is no mention of digitalization of tax administration, there could be a paper on that. On the investment side, the committee is open to engaging with businesses and there are a lot of discussions.
- In dispute avoidance and dispute settlement, there is a push, especially from Africa, for a multilateral tax convention, a system trusted by all countries.

4. OECD (9.30-9.55)

GUEST SPEAKER: Felicie Bonnet (Senior Advisor, International Co-operation and Tax Administration, Centre for Tax Policy and Administration, OECD)

One year after the October statement agreeing on the development of a 2-pillar solution, most progress has been made on group rules. Many countries are on the road for implementation and legislation of the GloBE Rules. Possible unilateral adoptions have created a path for multilateralism and coordination. Aspects of the framework include:

- Administrative guidance, supplementing and supporting interpretation. By 2022 priority guidance will be developed, and further guidance will continue later.
- Safe harbours, to collect data on effective tax rates. By 2022 the safe harbours and simplifications will be established, to later continue establishing more simplifications.
- GloBE returns, also providing for the possibility of central filing and avoiding unnecessary burdens. By 2022 the structure will be developed, and later the guidance, information exchange and administrative framework.
- Dispute resolution, needed especially when the MNE is subject in several jurisdictions to the rules, otherwise we should not expect many disputes, mostly prevented. By 2022 the OECD will start exploring the options for a dispute settlement mechanism.
- Capacity building, going on in 2022 and to continue further.
- Peer reviews in the future

Looking beyond, we can expect coordinated approaches to compliance, supplementing common return and mechanisms for dispute resolution and rule coordination. Possibly there might be some implications for BEPS actions, such as Action 5; 8-10; 12 and 13.

Joint international tax conference

Georg Geberth provided an update on the 2022 joint ICC, Business at OECD and Business Europe international tax conference that took place on 21-22 July 2022. The next conference will take place in June 2023 and more information will be shared with the members in due time.

5. BRITACOM and the Belt and Road Initiative (BRI) (9.55 – 10.20)

GUEST SPEAKER: Yan Xiong - online (Deputy Director-General of the International Taxation Department in the State Taxation Administration (STA) of China)

Debrief about the 3rd Belt and Road Initiative Tax Administration Cooperation Forum (BRITACOF) conference, an opportunity for engagement on the topic of capacity building in the post-covid era, with active ICC contribution. This year's BRITACOF themed "Enhancing Tax Administration Capacity Building in the Post-Pandemic Era" was held between 19-21 September, 2022. Nearly 300 delegates, including heads of Ministry of Finance and Tax Authority from 40 jurisdictions and representatives from 12 international organizations, attended this event on site or online. The third BRITACOF was hosted by the General Directorate of Taxes of Algeria, aiming to build a growth-friendly tax environment, enhance tax administration capacity building in the post-pandemic era, promote tax administration in the Belt and Road Initiative (BRI) jurisdictions, and facilitate global economic recovery with taxation functions. ICC participated by organizing the business dialogue session to which members actively contributed and some members were also participants in another session, sharing best practices in the area of tax capacity building. The conference positively finalized with several outcomes: a joint statement of the Third BRITACOF, the BRITACEG curriculum system, the establishment of the BRITACEG Expert Group, the construction of BRITAs network, the Rules and Regulations on the BRITACEG, and the Annual Report of the BRITACOM (2022).

Looking ahead there will be the reinforcing of capacity building of the tax administrations and more focus on raising of tax certainty, improving the tax environment, and promoting digitalization, through events, seminars and the BRI Tax Journal.

6. European Commission (10.20-10.45)

GUEST SPEAKER: Jasna Voje (Policy officer direct taxation, European Commission)

Overview of the initiatives the European Commission is working on in direct taxation:

- Pillar 2: Discussing the alignment with OECD rules and the application of IIR and UTPR. The dialogue with countries went quite fast, the deadline was pushed further. The technical text/aspects are agreed but there is still need for a political consensus, to be found by November or December Ecofin. The proposal includes specific EU elements such as

compliance with fundamental freedoms and other elements such as conditions for equivalence or sanctions.

- Debt Equity Bias Reduction Allowance (DEBRA): aiming to mitigate tax-induced debt-equity bias and provide incentives to shift to equity on simple terms. The importance of the correlation with ATAD applying to the remaining amount was highlighted, as was the sound anti-abuse framework and applicability to all non-financial undertakings. Currently in article to article reading and ongoing technical discussions in the Council.
- UNSHELL: to address the (mis)use of shell entities for tax purposes. Currently in technical discussions and with different interests and no firm compromise, it is unlikely to remain as proposed.
- SAFE: looking at the role of enablers with the aim of defining aggressive tax planning in the face of different interpretations by member states, to target “ex ante” rules and to monitor enforcement procedures. Around 25 position papers were received on the public consultation and a proposal is expected by mid-2023.
- DAC7 - Council Directive (EU) 2021/514: touched upon the reporting obligations for digital platform operators, its scope and exchange of information. Amendment of provisions and introduction of a legal framework for joint audits or enhanced administrative cooperation.
- DAC8, scheduled proposal: finalizing agreements on certain elements of the proposal, to expect update by November. Highlighted the reporting obligations and information exchange for crypto-asset service providers and other amendments relating to CRS, compliance and potential loopholes.
- BEFIT: with the objective of simplifying processes for businesses in the EU, including transfer pricing, key features are under examination: scope, tax base, formulary apportionment and simplification of transfer pricing with non-EU jurisdictions. Public consultation was recently published.

Dispute resolution was also discussed, highlighting the importance of monitoring the application of the directive and how member states transpose rules

Future engagement opportunities/new initiatives

7. Tax dispute resolutions and arbitration (10.45 – 11.00)

GUEST SPEAKER: Robert Danon (Chair of the IFA Permanent Scientific Board and Professor of International Tax Law at the University of Lausanne)

Presentation of IFA activities and approach to dispute resolution. The focus will be on multi-stakeholder participation and dispute resolution mechanisms will be revisited in light of new systems, beyond the boundaries of international tax law going into institutional, procedural and substantive dimensions. IFA will bring up space for discussion on annual events and the 2024 Cape Town Congress, and will be a main topic in its project on Tax Treaty Interpretation. There is also upcoming collaboration with ICC and the OECD for a webinar on dispute resolution and arbitration, that should take place in January 2023.

8. Tax for SDGs (11.00 – 11.15)

GUEST SPEAKER: Ahtesham Khan – online (Head of the Tax for SDGs initiative, UNDP)

Presentation on the UNDP Project “Tax for SDGs”. A new taxation ecosystem is being built, attention is given to compliance and to understanding tax as the new social contract, as a means of trust between individual and state. Support to governments on how to use tax and fiscal policy as tools to achieve the SDGs in areas such as poverty mitigation, environment protection and strong social contracts. Leverage of several instruments for that goal, being capacity development, technical assistance, knowledge creation, institutional development, partnerships, access to capital and dialogues.

Commission work project reports & initiatives/Transversal Projects

9. Tax implications of cross-border teleworking (11.30 – 11.40)

Presentation by Commission member, Krister Andersson, and presentation of the ICC survey on the tax implication of cross-border teleworking.

Presentation on the implications of remote cross-border teleworking. States are not keen to exchange in a different tax arrangement, and OECD’s work is currently limited to Pillar I&II. It was proposed that the tax commission should focus on the tax aspect, leaving aside others such as social security contributions, pension rights and labor market rules. The importance of the topic for developing countries was highlighted, as regulation in the topic could stop the brain drain, apart from the tax revenues received.

The ICC is currently developing a survey on cross-border remote working to better understand the needs for businesses. It will be soon circulated among members.

10. Developments on indirect tax issues (11.40 – 11.50)

Presentation by the co-chairs of the ICC Indirect Tax Working Group, Marlo Van Ameersfoort and Joe Marden (Co-chairs of the ICC Indirect Tax Working Group)

Updates on indirect tax. The last EU VAT forum meeting took place and there has been an endorsement of the report on quick fixes which has now been published. As for the topic VAT in digital age, member states are picking up on requirements and a proposal is expected for November 16th, where invoicing will play a big role.

Looking forward, there is space for contribution from ICC by providing views and comments on the work of international institution and intergovernmental bodies (UN subcommittee on indirect taxes, BRITACOM) and by actively participating in capacity-building programs organized by those.

11. Transversal Projects (11.50 – 12.20)

Updates on transversal ICC projects of interest:

- Carbon Pricing (Anna Theeuwes, Co-Chair of the ICC Working Group on Carbon Pricing). A joint WG with the energy and environment commission with the objective of business activities internalizing carbon costs. Emphasis on providing a legal framework and not leaving it to an unspoken rule. After a first report on carbon pricing principles presented at COP26 last year, this year the working group prepared a second report on the design features of carbon pricing mechanisms, which will be presented at COP27. The document contains

several case studies structured in factsheets and assessment of different carbon pricing systems, to better understand the objectives and work in practice. It covers different elements of carbon tax/levy systems and emission trading systems. The case studies also provide a good geographical representation as they include Canada, Europe, South Africa, Indonesia, New Zealand.

- Tax & digitalisation/CTC Working Group (Georg Geberth, Chair of the Board Institut für Digitalisierung im Steuerrecht e.V). Georg Geberth provided a short update on the newly funded Institute for digitalization of tax law that he is chairing.
- Co-operative compliance project (Prof. Jeffrey Owens, Director of the WU Global Tax Policy Center WU GTPC). Currently looking at how in the tax control framework, eight countries are moving forward with the pilot.

National perspectives, possible new areas of work and any other business

12. A National Tax Administration perspective on the latest international tax developments (12.20 – 12.35)

GUEST SPEAKER: Fabian Baumer (Head of Tax Policy, Swiss Federal Tax Administration)

Pillar II will happen in Switzerland, and the country will need to modify its constitution to implement the rules. It was highlighted that there seems to be an unequal treatment, a dual tax system for SMEs and MNEs. While levying corporate income taxes following the proposed Pillar II rules will have a substantial economic impact, it will also constitute an additional administrative layer. For many jurisdictions, the additional tax revenues of Pillar II are minimal, and thus the fiscal impact of these efforts must be taken into account. The possibility of simplification should be considered, while providing for legal certainty.

13. Strengthening NCs engagement in knowledge sharing and tax policy advocacy (12.35-12.40)

Short presentation from Paolo De Capitani & Alberto Pluviano (ICC Italy, Tax Digest) and news regarding tax policy advocacy at NC level.

Presentation of ICC Italy's tax digest initiative, a quarterly publication with short articles about recent developments, like case law, new laws, and domestic elements at an international dimension. The ICC secretariat and the Chair of the Tax Commission, together with welcomed the invitation to work towards sharing information between national committees and further initiatives such as webinars and seminars.

14. Future engagement opportunities/new developments and projects (12.40-12.55)

Members were invited to share potential opportunities to leverage ICC's engagement at international level in line with ICC's global strategy. The brief discussion concerned three main areas:

- Tax incentives
- Tax & ESG standards
- Excess profits taxation

15. Date and location of next meeting (12.55 – 13.00)

A precise date has not yet been identified but it will take place in New York and during one of the days in which the next UN 26th Session of the Committee of Experts on International Cooperation in Tax Matters will take place (27-30 March 2023).