Briefing

International review for March

Speed read

Countries are reacting to the Covid-19 outbreak by attempting to mitigate the impacts on individuals, business and the economy. Multinationals are also taking varied responses to the outbreak. Despite all current uncertainties in the global economy, there are updates on the taxation of the digitalised economy, and the OECD has said its work will continue uninterrupted. The UK published the final provisions of its digital services tax in Finance Bill 2020 and there are updates from Spain and Austria. The OECD is also working on draft rules for the gig economy.

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Covid-19 and its tax impact

Twelve years have passed since the global economic and financial crisis and it looks like Covid-19 is pushing us in a similar direction. There are going to be negative effects (we are already seeing them unfold) on both the demand side and supply side of the economy; changes to working environments and operating procedures; and drops in business investment. All of this is having a dramatic economic impact. We are seeing jurisdictions the world over quickly responding to the coronavirus pandemic via monetary and fiscal policy in an attempt to weather the storm and assist businesses and individuals navigate to safer waters. Let's firstly take a look at how jurisdictions are reacting from a fiscal perspective.

National responses

The immediate and short-term negative cash-flow impact on businesses is one of the biggest impacts of the pandemic. Many national measures are attempting to address this. For instance, the French tax authorities announced that companies can postpone, without penalty, the payment of the next instalments of direct taxes. The measures applies automatically and allows for a deferral of three months. However, the extension does not apply for VAT, assimilated taxes or withholdings of employees' individual income taxes by employers. Netherlands, has extended their tax payment deferral to individual income tax, VAT, turnover tax and tax on wages and corporation tax if the entrepreneur provides a written statement reporting the challenges and issues that it has encountered due to the coronavirus crisis. Legislation in Denmark allows companies to defer payment of tax and VAT for an expected total of DKK 165bn. Other measures have been introduced in Croatia, Malta, Portugal, Spain, Switzerland and Sweden. Despite most of the measures not amounting to tax exemptions, the temporary reliefs aim to enhance a company's cashflow.

Not only is tax collection being temporarily paused, but many domestic tax authorities are also halting their tax enforcement mechanisms. The French tax authorities have announced that, in general, no new tax audits will be started during the Covid-19 lockdown period and that new procedural actions (notifications and assessments) will not be initiated except in specific cases. For tax audits currently in progress, companies could even consider replying that they are not in a position to respond to tax authorities' requests. In Italy, the tax authorities issued urgent measures to suspend all formal audits of tax returns, as well as assessment, inspection, collection and litigation cases, until further notice. Ireland has announced that interest on late payments of tax is suspended with respect to January and February VAT remittances and for both February and March PAYE (employers) liabilities and current tax clearance status will remain in place for all businesses over the coming months. In Germany, enforcement measures (for instance, attachment of bank accounts) or late payment surcharges should be waived until 31 December 2020 as long as the debtor of a tax payment due is directly affected by the effects of the coronavirus.

Other measures in Europe include:

- Relief from interest or late-payment penalties for taxpayers that are able to demonstrate that a liquidity issue is linked to the Covid-19 situation (Austria).
- Loss-making companies in 2020 can, subject to certain conditions, carry back losses for that year against the two previous years' taxable profits. Relief will be allowed for up to NOK 30m of corporate losses in 2020 (Norway).
- The ability to deduct losses incurred in 2020 by filing an amended corporate income tax return, and a tax loss incurred in a given year will be deductible from income earned in five consecutive years (Poland).

The UK has also had its own response. On 11 March, the UK chancellor delivered an 'essential' Budget, offering swift and decisive action to help businesses through the economic disruption caused by Covid-19. The government announced a raft of measures to help small businesses weather the storm: covering statutory sick pay in full, the business interruption loan scheme, and business rates cuts. The Covid-19 corporate finance funding scheme has also been created to provide funding to large businesses through the purchase of short-term corporate debt in the form of commercial paper. The government also announced that HMRC will reimburse 80% of 'furloughed workers' wage costs, up to a cap of £2,500 per month. Like the UK, many jurisdictions are also introducing non-tax measures to incentivise the markets.

Across the Atlantic, the Canadian finance minister was scheduled to deliver Canada's 2020 federal budget on 30 March 2020. However, Parliament has been suspended for five weeks, until 20 April 2020, in response to the coronavirus. At the time of writing, there is no information as to when a new budget date will be announced. Moreover, in Canada's newly launched Covid-19 response fund, released 11 March 2020, businesses may be able to make flexible arrangements with the Canada Revenue Agency if they face difficulties related to Covid-19 when they are trying to meet their payment obligations.

The US is also introducing a raft of measures. On 18 March, President Trump signed the so-called 'phase 2' coronavirus bill that includes temporary tax credits for certain employers and self-employed individuals for emergency paid leave. Under Trump's 13 March 'emergency declaration', relief from income tax payment deadlines is being provided to US taxpayers who have been adversely affected by Covid-19. US state and local jurisdictions are also issuing guidance for taxpayers on extensions of time to file and to pay upcoming state and local taxes.

EU response

On 16 March, the European Commission announced that it had sent for consultation to EU member states a draft proposal for a state aid temporary framework to support the economy

in the context of the outbreak. The Commission noted that the main fiscal response to the coronavirus will come from member states' national budgets and that the Commission will enable member states to use the full flexibility foreseen under EU state aid rules to tackle the impact of the coronavirus on EU economies. The new framework will enable member states to: (i) establish and provide schemes of direct grants (or tax advantages) of up to €500,000 to a company to address urgent liquidity needs; (ii) give subsidised state guarantees on bank loans; and (iii) enable public and private loans with subsidised interest rates. In addition, the new framework will also seek to support the banking sector, allowing banks to channel aid to final customers, in particular SMEs.

Multinational responses

Multinationals are responding to the outbreak. Some have put in place full or partial travel bans; others are imposing some form of home quarantine for colleagues travelling back from places like China, Italy and Korea, and/or ensuring that employees work from home. Workshops, seminars and other international get-togethers are being cancelled. The hatches are being battened down.

Many multinationals are concentrating on what the OECD would describe as value generating or 'risk controlling' activities and functions in geographical hubs, whether at regional or global level. These rely on people being physically in a central location. If they are not, this can lead to some well-known tax risks: they may trigger a permanent establishment of the central company in one or more countries; they may give themselves and their employers (and advisers) problems managing personal tax compliance; they may undermine the arguments that support the group transfer pricing policy or VAT model; and, in extreme cases, if the individuals are company directors, they may even threaten a company's tax residence.

For most multinationals, these risks are impossible to eliminate completely. Multinationals may consider: (i) tracking and recording whatever happens; (2) deferring big decision making forums, particularly where such meetings are attended in person; and/or (3) reconsidering operating and tax models.

The Australian tax authority has published guidance on permanent establishment, residence, central management and control issues and taken a sensible approach to the matter.

Taxation of the digital economy

Despite all the current uncertainties in the global economy and the focus of most countries being fixed on the pandemic, there are still updates to report on the taxation of the digitalised economy. On 19 March, the government published Finance Bill 2020 which includes the final provisions of the UK's much-anticipated DST. Chancellor Rishi Sunak was silent on the DST during the government's Budget speech on 11 March; however, the 2020 Budget Red Book confirmed that the DST would be effective from 1 April this year (notwithstanding earlier speculation that the tax might have been delayed or scrapped, given the US's disagreement with unilateral DSTs). The Bill now confirms many of the provisions of the draft legislation published last year, such as the 2% rate of tax; the revenue thresholds; the available relief for certain cross-border transactions and low-margin or loss-making activities; and the date by which DST is due and payable. There are some welcome clarifications and confirmations around scoping and compliance. The explanatory notes published alongside the Bill, as well as an HMRC manual, provide further detail.

Spain has long been looking to introduce its own DST. On 28 February, a panel of the lower house of parliament published draft legislation in this respect. The bill is now being considered by parliament, and amendments may be made during the parliamentary process. This is Spain's second attempt after an earlier draft was considered in January 2019. The draft DST legislation generally resembles the proposed EU directive, as well as the measures in France and Italy. The Spanish government expects that the proposed DST would raise approximately €968m per annum.

In Austria, the Ministry of Finance released information on 24 February concerning the rules for registration for and payment of the DST that came into force on 1 January 2020. It is expected that further clarifications through additional guidelines will be provided later this year.

The OECD has announced that it is adapting its working methods to allow countries to fully participate and still anticipate meeting their self-imposed deadlines. The Inclusive Framework decided to move ahead with a two-pillar negotiation in late January and provided a wealth of information on the intended architecture (amounts A, B and C) of pillar one, with limited detail on pillar two. Work on the 'unified approach' still needs to be undertaken, in particular, on defining the scope of the amounts with certainty; delineating the interaction between the amounts; and adequately addressing dispute prevention and resolution. Although the OECD highlighted what businesses would be in-scope for amount A, it is unclear whether amounts B and C are bound by the same threshold or scoping constraints. There are also many unanswered questions on the workings of pillar two. At the 1-2 July Inclusive Framework meeting in Berlin, there will be 'agreement on the key policy features'; an ambitious schedule to say the least.

The OECD has stated that despite implementing a range of precautionary measures at its Paris headquarters in the face of the Covid-19 pandemic, its work to address the tax challenges arising from digitalisation of the economy will continue uninterrupted.

Focus on gig economy

The sharing and gig economy is closely connected, if not intertwined, with the digital economy. The OECD has also been busy in this space. On 19 February, the OECD issued a public consultation document along with a request for comments on draft model rules for reporting by platform operators regarding sellers in the sharing and gig economy. The intention is for the uniform rules to serve as a standard tool for jurisdictions to collect important information relating to transactions and income realised by platform sellers. The market of online platforms is rapidly growing and is altering many business sectors; this presents an opportunity for tax administrations to track and tap into amounts (potentially previously untaxed) that were carried out in cash but are now being recorded in electronic form. The OECD notes that uniform rules, rather than a proliferation of unilateral ones, could lead to greater transparency and lower compliance burdens for tax authorities and taxpayers. Interested parties had until 20 March 2020 to provide inputs on its key design features.

Although the OECD's response to the consultation remains to be seen, we do know that this work is only part of the first block of a three-block policy framework designed by the OECD. The other two blocks include an international legal framework to support automatic exchange of information collected under model rules, as well as development of technical solutions to support both the exchange of information, and the performance of the due diligence obligations by platform operators. We therefore expect further developments in 2020. ■