Briefing

International review for June

Speed read

The US Treasury Secretary has called for a suspension of talks on pillar one of the OECD's two-pillar approach to international tax reform. This is a major blow to the prospects for reaching a multilateral solution by the end of 2020, although it remains to be seen whether the US is simply driving a hard bargain on the elective safe harbour approach and can be brought back to the negotiating table if concessions are made. With talks on pillar one on a knife-edge, the stakes on digital taxation are continuing to rise with more countries looking to implement unilateral solutions and the Office of the US Trade Representative announcing the opening of an investigation into the digital service taxes introduced by ten countries, including the UK.

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Taxation of the digital economy

Despite the disruption being caused across the globe by the Covid-19 pandemic, the OECD has remained steadfast in its commitment to delivering a consensus-based solution for pillar one before the end of 2020. Back in March, it was confirmed the OECD Secretariat team was still working full steam on the project and virtual meetings and adapted working methods would be used to allow all participants to continue working towards reaching a political decision on the key components of a multilateral consensus-based solution at the Inclusive Framework plenary meeting scheduled for 1-2 July 2020 in Berlin.

However, preparations for this meeting were dealt a major setback earlier this month when US Treasury Secretary Steven Mnuchin sought to suspend talks with European countries on pillar one until later in the year, throwing the plans for the crucial July meeting into disarray. According to reports in the financial press, Mnuchin sent a letter to the finance ministers of France, Italy, Spain and the UK, warning talks on pillar one had reached an 'impasse' and that the US and other governments needed to focus their efforts on dealing with the economic fall-out from Covid-19, with the US unable to agree, even on an interim basis, changes in the global taxation framework which would affect leading US digital companies.

The summer months were always going to be a critical period in the negotiations and the latest developments cast significant doubt over whether a consensus-based solution can now be reached before the end of 2020. There was growing scepticism over whether a consensus could be reached in 2020 following the US Treasury Secretary proposal that pillar one be implemented on a 'safe harbour' basis in a letter to OECD Secretary-General Gurría in December 2019. This caught many by surprise and caused widespread concern amongst other Inclusive Framework members. It seems that the added economic and political pressures arising from Covid-19 have caused a further hardening of the US negotiating position whilst strengthening the desire amongst the large European economies to increase their tax-take from the leading US digital companies.

The stakes have never been higher with the US reiterating its opposition to European countries levying unilateral digital taxes and reportedly warning it will respond with 'appropriate and commensurate' counter-measures. This came on the heels of an announcement at the start of June that the Office of the United States Trade Representative (USTR) was opening section 301 investigations into the digital services taxes adopted or proposed in Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey and the UK. The USTR is concerned that the aforementioned digital services taxes 'discriminate against US companies; are retroactive in nature; and constitute possible unreasonable tax policy by diverging from norms reflected in the US and international tax systems'.

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If the USTR determines the digital taxes to be discriminatory, it will review and take appropriate action. A marker was laid down when the USTR concluded the first segment of its section 301 investigation into France's DST in December 2019 and considered imposing tariffs of up to 100% on $2.4bn worth of French imports, until a deal was reached that saw the USTR agree to delay tariff imposition after France agreed to suspend further collections of its DST pending OECD negotiations.

There are no signs to date of the UK postponing the introduction of the UK digital services tax with the legislation in Finance Bill 2020 expected to be enacted shortly.

However, the Czech Republic has recently opted to reduce its DST to 5% and delay its introduction until 1 January 2021.

With concern growing over the prospects of a consensus being reached by the OECD, other countries like Thailand and the Philippines are moving closer to introducing unilateral measures and European Commissioner, Paolo Gentiloni, commented in a recent press conference that if there is failure with the OECD/G20's proposals, the EC will go its own way and develop an EU-wide plan in 2021.

It will be interesting to see how things develop over the next month and in particular how the European finance ministers respond to the stance taken by their US counterpart.

Delay to DAC 6 reporting deadlines

In my last update (*Tax Journal*, 5 June), I reported on the proposals for an optional three months delay to the initial reporting deadlines under the EU mandatory disclosure rules (DAC 6). Since then, in a Coreper meeting on 3 June, EU member states reached a compromise on an optional maximum six months deferral of reporting deadlines. The European Parliament voted in favour of the proposed deferral on 19 June. The final step for the deferral to become applicable is that formal unanimous agreement in the Council of the European Union is required and the legislative procedure is expected to be finalised before 1 July 2020. It is up to each member state to opt for and communicate the deferral. At the time of writing, Belgium, Luxembourg and Lithuania have announced their intention to opt for a six months deferral, Ireland has confirmed its intent to defer but not specified the length of the delay, and Finland has surprisingly decided it would not be taking up the deferral option.

Covid-19

It is fair to say that most things in the tax world continue to revolve around Covid-19 disruption and the economic fallout from Covid-19. We have continued to see announcements regarding postponement of filing and payment deadlines and guidance being issued by tax authorities on permanent establishment and residency issues arising from ongoing travel restrictions.

However, we are now starting to see a shift in emphasis by government policy makers towards economic stimulus packages. The German Federal government submitted a draft Second Coronavirus Tax Assistance Act earlier this month which includes a proposal for a six-month reduction of VAT from 19% to 16%, as well as from 7% to 5% for the reduced VAT rate (in both cases, from 1 July 2020 to 31 December 2020). I expect temporary VAT rate reductions to become a recurring theme as European economies look at ways to stimulate spending. There have been press reports that the UK chancellor is also considering a temporary reduction in VAT.

Other areas under consideration are temporary relaxations in loss restriction rules (carry back and forward periods and limits on offset), preliminary loss carry back measures to aid cashflow for businesses, targeted enhancements to R&D incentive regimes, and further moves to align tax policy with decarbonisation commitments. There are also likely to be growing calls for temporary derogation from the interest limitation rules based on EBITDA which have proliferated around the world as a consequence of BEPS Action 4 and ATAD (within the EU). ■

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- News: US investigations into 'discriminatory' digital services taxes (3.6.20)
- DAC 6: six types of ambiguity (Dominic Lawrance & Elinor Boote, 20.5.20)
- 20 questions on tax and Covid-19 (Peter Clements, Sarah Bond, Josh Critchlow & Laura McDaniel, 22.4.20)
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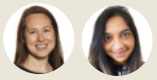

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