The 11th Meeting of the Inclusive Framework on BEPS: Inclusiveness in international tax matters?!

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Open to public

On 27 and 28 January 2021, the 11th meeting of the OECD/G20 Inclusive Framework on BEPS was held. For the first time, a meeting of the Inclusive Framework was open to the public. Even though no negotiations took place during the public part of the meeting, access to this provided insight into the dynamics of the ongoing international tax dialogue.

How international tax standards were set

The OECD has been the leading international tax standard-setting body since its establishment in the 1960s. Nowadays, the OECD has 37 member countries and its Committee on Fiscal Affairs is its main tax body. In this committee, OECD members and non-members with Associate status work together on an equal footing on international tax matters. After the 2008 global financial crisis, the G20, which consists of 19 country members and the EU, got involved in international tax matters even more and took on the role of global tax agenda setter and political consensus builder. For the elaboration of its tax agenda, the G20 relies heavily on the OECD. Through its cooperation with the G20, the OECD managed to consolidate its role as the leading international tax standard-setter.

The progress made so far

Since the 2008 global financial crisis, the OECD and G20 have driven international tax cooperation forward, in particular in the fields of (i) tax transparency and the exchange of information for tax purposes, and (ii) base erosion and profit shifting (BEPS). In the context of the former, the OECD and the Council of Europe allowed non-members to participate in their Convention on Mutual Administrative Assistance in Tax Matters, which 141 countries and jurisdictions do right now, and the OECD transformed its Global Forum on Tax Transparency and Information Exchange into an inclusive body with 161 members to implement the set standards. In the context of the latter, the OECD and G20 launched their ambitious BEPS Project, consisting of fifteen different actions. The 44 OECD and G20 countries managed to reach agreement on these actions through the 2015 OECD/G20 BEPS Package. Since the package consists of soft law measures, it might appear to be weak. However, the BEPS 44 did commit to four minimum standards and to the establishment of the multilateral instrument to implement the treaty-related BEPS outcomes. Despite the limited inclusiveness in the decisions taken so far, the progress made on tax transparency and the exchange of information in the field of tax matters and on BEPS do present historical breakthroughs in the status quo of tax cooperation and coordination.

The Inclusive Framework

After the conclusion of the 2015 OECD/G20 BEPS Package (BEPS 1.0), the G20 and OECD decided that other interested and committed countries and jurisdictions should be able to participate on an equal footing in the OECD's Committee on Fiscal Affairs, and set up the Inclusive Framework accordingly. To provide for this new body, the OECD extended BEPS Associate status in the OECD's Committee on Fiscal Affairs to all interested and committed countries and jurisdictions. The Inclusive Framework is thus more or less the extended version of the OECD's Committee on Fiscal Affairs.

To become a BEPS Associate in the Committee on Fiscal Affairs, non-OECD members have to commit, *inter alia*, to the comprehensive BEPS package and to its consistent implementation, in particular to the four minimum standards. At this moment, the Inclusive Framework consists of 138 countries and jurisdictions.

By allowing interested and committed countries and jurisdictions to participate in the OECD's Committee on Fiscal Affairs on an equal footing, the OECD and G20 took an important step towards more inclusive international tax standard-setting. Yet, the OECD and G20 determined the conditions for this new inclusive form of international tax cooperation. The fact that non-OECD, non-G20 Inclusive Framework members have to commit to the four BEPS minimum standards that were set by the 44 OECD and G20 countries in order to become an Inclusive Framework member, is the most important point of criticism against this new inclusive form of international tax cooperation.

The Inclusive Framework's work programme

On the work programme of the Inclusive Framework are two important items: (i) monitoring the implementation of BEPS 1.0, in particular the four minimum standards; and (ii) the development of what can be considered BEPS 2.0. Not only Inclusive Framework members are part of the peer review and monitoring process under (i), but also countries and jurisdictions of relevance, which are "those whose adherence to the minimum standards will be necessary to ensure that a level playing field is achieved". This way, the Inclusive Framework tries to push its standards on countries and jurisdictions that have not agreed to them in any way. BEPS 2.0 consists of two pillars: Pillar One focusses on the question how taxing rights should be allocated in the digital era, while Pillar Two aims to impose limitations to tax competition by introducing anti-abuse rules that act as a minimum tax rate. If agreement can be reached on these sensitive items, BEPS 2.0 will become the most far-reaching and inclusive international tax reform so far. The deadline for BEPS 2.0 has been set by the G20 on July 2021.

The 11th meeting

The 11th meeting was opened by chairman Martin Kreienbaum. Thereafter, two OECD heavyweights Pascal Saint-Amans (the Director of the OECD Centre for Tax Policy and Administration) and Angel Gurría (the OECD Secretary General) reported on the progress made by the OECD and the G20 in the international tax field since the 2008 global financial crisis. Furthermore, on day one, presentations were held and panel discussions took place on: (i) Global Economic Context and Tax Policy post-COVID-19; (ii) Tax and Development; and (iii) Tax Morale.

Day two started with a panel discussion among the Ministers of Finance and the Chancellor of the Exchequer of Germany, Canada, Indonesia, Jamaica, the United Kingdom and Italy on the tax challenges arising from digitalisation and the future of international taxation. Furthermore, on day two, (i) updates were given on BEPS, tax certainty, transparency and administration, and (ii) a presentation was given and a panel discussion took place on tax and the environment.

The highlight

The highlight of the meeting was day two's panel discussion among the Ministers of Finance. Even though the discussion did not come close to a negotiation, it at least showed the attitude of the participants towards the BEPS 2.0 agenda. The discussion emphasized the need to come to global solutions this year. All panellists agreed that there should be a reallocation of taxing rights in light of the digital economy (Pillar One). How taxing rights should be allocated was not discussed, however. Furthermore, it seemed that reaching agreement on the Pillar Two proposals was not a top priority for (at least) the UK. In the discussion, it was nevertheless stressed that three recent developments may push the negotiations of BEPS 2.0 forward: (i) the need for additional revenue in light of the COVID-19 crisis; (ii) the unilateral measures taken by a growing number of countries to tax the digital economy anyway; and (iii) the change of administration in the US. Whether agreement can be reached within the ambitious time schedule set by the G20 remains to be seen, however.

Developing countries' participation

What struck me most from the meeting was not the Ministers' panel discussion, but the gratitude that the representatives of developing countries showed for the technical assistance provided by the OECD, in particular through the different programs of the Centre for Tax Policy and Administration's Global Relations and Development division, and the Platform for Collaboration on Tax, which is the joint initiative of the IMF, OECD, United Nations, and World Bank Group that provides technical assistance to developing countries on BEPS matters. Even though this shows that the OECD and the other international organizations are doing a great job on capacity development, it brings up two fundamental questions:

- Are developing countries able to work with the highly technical BEPS 2.0 proposals?; and even more important
- Are developing countries really in the position to participate on an equal footing with countries with a more developed tax administration and system?!