

Digital Economy Direct Taxation: A Question of Marketing, Political Muscle, or Practical Merits for Market States

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As the Blueprint on Pillar I illustrates, the political and technical complexities inherent to the solution sought by OECD are of such magnitude, that such a sole fact opens the window to an alternate, workable outcome to market states; and in this sense, a coordinated treaty response from market states patterned after a source-based withholding appears to be fairly superior to the EU response, based on an archaic European stand-alone DST, alien to the income tax system. (1)

Back in 2015, the optionality reflected in the Final Report of BEPS Action 1 gave rise to all types of diverging innovative schemes that, fortunately, did not extend massively beyond the European economies and certain Australasian countries. The only reason why the global situation today is not worse than it could have been was the decision of a number of market jurisdictions within the inclusive framework, which privileged reaching a harmonized, lasting, and definitive solution under the OECD umbrella.

Although at present, the emerging economies' expectations are still focused on OECD's 2.0 process, the convenience to harmonize the final outcome, shared by all members of the inclusive framework, now directly collide with a new global scenario where: (i) emerging economies share a desperate need to find new sources of revenues to fight the effects of the downsizing of the global economy in post-Covid19 times, and in that context, are turning their interest to the DE most profitable segments; and (ii) their empathy towards the OECD Unified Approach sharply diminishes as a complex, and unsatisfactory outcome to them is envisaged under Pillar I.(2)

The OECD Inclusive Framework of BEPS' proposal on Pillar I staggers partly because of the unexpected Covid19 sanitary crisis and its impact on progress, which have delayed the final outcome for an additional year, and partly because of internal tensions, and conflicting views. Disagreements are well evidenced in the loose ends of the Blueprint on Pillar I. At its most recent meeting, the inclusive framework agreed that there should be a reallocation of taxing rights to market jurisdictions, but how taxing rights should be allocated was not addressed in detail. The highlight of the meeting was day two's interesting panel discussion among the Ministers of Finance, but the discussion did not come close to a negotiation. (3)

The first choice for countries within the inclusive framework would still be to align themselves with an OECD's unified response. However, this conforming trend is currently zigzagging and could be rapidly fragmented since the emerging economies' aspirations on nexus, allocation of income, and simplification remain unattended after the public consultation on Pillar One. (4)

Considering the convenience of conceiving a feasible, workable, and simple international income tax system that effectively grants peripheral economies a meaningful, fair share in the global income coming from businesses of the new economy, the conventional (treaty-based) implementation of a source-based withholding, in line with the UN Proposal for a new article 12 B in the UNMC, appear to be an attractive alternative to the OECD's complex and uncertain solution.

The attributes of the withholding conventional system clearly overcome those of an EU-type DST, though the EU appears not to give up in its efforts to create an EU-DST, as the recently released EU Commission's initiative shows.

OECD keeps the marketing force and inner influence over the inclusive framework, the EU, in turn, has the political muscle to insist on an EU DST, but the simplicity and workability merits are with the UN Proposal of article 12B. A fascinating scenario to contemplate ahead, where the final global or regional-based choice will depend on a variety of reasons beyond complexity.

(1) For a discussion on the UN Proposal, see Teijeiro, *Automated digital services-The UN Proposal at glance*, *Kluwer International Tax Blog*, August 20, 2020.

(2) Joining market economies, a call for simplicity widens within the business community, as reported in *Bloomberg Tax*, Daily Tax Report: International, Ali, P&G, J&J *Tax Heads Push Alternatives to OECD Digital Tax Effort*, January 14, 2021; and it also comes from the US tax official side, *Bloomberg Tax*, Daily Tax Report: International, Gottlieb, *Digital Tax Revamp Scope Divides U.S. Firms, IRS Official Says*, January 18, 2021. In this piece, Peter Blessing, Associate chief counsel (international) at the IRS Office of Chief Counsel, is quoted speaking in a personal capacity, at an event hosted by the International Bar Association and telling "I see Pillar One as being extraordinarily complex, and I don't see buy-in on our side of the ocean at this point."

(3) Accord. Kingma, *The 11th Meeting of the Inclusive Framework on BEPS: Inclusiveness in international tax matters?*, *Kluwer International Tax Blog*, February 3, 2021. For a replay of the meetings see <http://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-on-beps-meeting-january-2021.htm>

(4) In this sense, it is worth mentioning that a Public Consultation on a digital levy was launched by the European Commission on January 18, 2021, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12836-Digital-Levy/public-consultation> See also, Gardner, *EU Preps to Tax Big Tech; Expands Call for Digital Tax Feedback*, *Bloomberg Tax* <https://news.bloombergtax.com/daily-tax-report-international/eu-preps-to-tax-big-tech-expands-call-for-digital-tax-feedback>