

Trade and Investment Knowledge Hub

Commission on Taxation

SUMMARY RECORD

Virtual Commission Meeting on Thursday 15 April 2021 | 14.00 - 17.00 CET

1. Welcome and Opening of the Meeting

Commission Chair Christian Kaeser welcomed participants to the virtual meeting, noting broad participation of members from at least 30 countries.

Mr Kaeser honoured the memory of Cym Lowell, previous Vice Chair of the Taxation Commission who passed away in February 2021. The ICC Secretariat and Taxation Commission members will remember him fondly as a good friend and great colleague.

2. ICC Knowledge Solutions Department – vision and strategy 2021/2022

Andrew Wilson, Global Policy Director and Permanent Observer to the United Nations provided an update on ICC's global policy strategy for 2021, in the context of the ongoing health and socio-economic crisis and presented the key priorities for ICC.

- With the severe effect of the pandemic on local economies and the business community, ICC is deeply committed to serving as the voice of the real economy in shaping policies that offer the potential to shape a resilient, inclusive and durable post-pandemic recovery, in which taxation will have an important role to play.
- ICC's three-pillar strategy aims to grow the economy, revive global trade and enable sustainability.
- The Policy Committee of the ICC Executive Board has several priorities, namely: MSME Digitalisation, Climate Action, Trade & Investment, Inclusion and Rule of Law.
- ICC is committed to enhancing the Commissions' value add and impact by:
 - Modernisation of commission processes and governance where needed
 - Enhancing corporate engagement in partnership with ICC NCs
 - Focus resource on distinctive content generation and real-world impact
 - Scale advocacy efforts making full use of links to key IGOs
 - Ensuring joined-up work across ICC Commission and strategic integration with key institutional priorities.
- Mr Wilson recognised the active engagement and valuable contributions of the Taxation Commission membership in providing their expertise for developing policy content as well as support in advancing ICC's role and engagement with key international organisations such as the OECD, UN and BRITACOM.

FOR ACTION: ICC would welcome suggestions from members to provide real economy insights and policy expertise, better mobilise the network, drive the work forward, reach key decision-makers, engage national committees and broaden the membership while considering industry and geographical diversity.

3. BRITACOM and the Belt and Road Initiative (BRI)

Suhua Huang, Deputy Director General, International Taxation Department, State Taxation Administration, People's Republic of China, presented further developments on BRITACOM and its commitment to the establishment of long-term taxation co-operation for participants of the BRI as well as an update regarding going events/activities in response to the COVID-19

pandemic, and plans for the next BRITACOF and the Business and Industry Dialogue scheduled to take place in 2021.

- Emphasis on digitalisation of tax administrations. Data can be used in many ways, including assisting in the pandemic recovery, and monitoring the impact of any measures through real-time reporting.
- The second BRITACOF was postponed from 2020 to 2021 and will take place virtually in July or September this year. Tentatively, the third conference is scheduled to take place in Algeria. The main theme for this conference will continue to focus on digitalisation.
- For the second BRITACOF, the Secretariat has drafted a new action plan – the existing action plan had identified five topics of interest: raising tax certainty, expediting dispute resolution, capacity building, tax compliance and digitalisation. For the second action plan, there is a need to narrow down the scope of topics. Mr Huang mentioned that he would like to accommodate in-depth studies of specific topics, where there is consensus among BRI jurisdictions.
- A virtual High-Level Conference was held on 15 December 2020 featuring new challenges, opportunities, and the future of tax digitalisation in the context of the global pandemic. A joint statement was issued on the common understanding reached on strengthening multilateral tax cooperation, digitalisation of tax administrations, among others. The outcome of the Conference was a Blueprint for the next steps. Commission Chair Christian Kaeser was part of the panel discussion sharing how tax digitalisation serves national governance in response to COVID-19.
- BRITACOM has provided online training opportunities to members and will continue to do so in conjunction with in-person training when these are possible. For instance, a training was held on dispute resolution with the participation of IMF. BRITACOM will also host seminars building on the five task force reports.
- Mr Huang thanked ICC for its valuable contributions and participation over the past 3 years. He reaffirmed that ICC has a key role to play in the second BRITACOF and associated events, such as hosting the Business and Industry Dialogue, as well as contributing expert knowledge and views on behalf of the business community.
- ICC contributed an article to the BRITACOM journal on expectations of businesses with respect to the digitalisation of tax administrations in 2020 as well as another article to the 2021 edition on tax considerations for investments.
- Mr Kaeser confirmed that priorities for BRITACOM align with ICC's strategic pillars: reviving global trade, growing the economy and contributing to prospering society in a sustainable manner.
- ICC also participated in several virtual BRITACOM events, including the High-level Conference in December as well as an event held on 15 April 2021, where Christiaan Van der Valk, Chair of the ICC Working Group on Continuous Transaction Controls, presented on ICC's work in this area and related links with SAF-T.

FOR ACTION:

- Provide global business perspectives to ongoing work within BRITACOM (e.g., contribution to the BRITACOM annual report, capacity building initiatives, business surveys, participation at next BRITACOF (TBD)/hosting the Business and Industry Dialogue), related to digitalisation of tax administrations and additional topics of relevance.
- BRITACOM will liaise with ICC regarding further opportunities for input and support, including consultation on how to map tangible action plans to help businesses pave the way for global strategies.

4. UN Committee of Experts in Tax Matters

Michael Lennard, Chief of International Tax Cooperation, Financing for Development Office (FfDO) of the United Nations provided an update on the work of the UN Committee of Experts on International Cooperation in Tax Matters.

- The 22nd session of the UN Tax Committee is taking place from 19-23 and 26-28 April which will be the last meeting of the current membership of the Committee. A new membership will be announced in May to assume responsibility in July.
- Most of the issues for discussion concern the finalisation of guidance products of the Committee, including:
 - Handbook on dispute resolution and avoidance
 - Transfer Pricing Manual and Guidelines on Government-to-Government Aid that will be launched during the 22nd session
 - Taxation of the digitalised economy: Conference room paper 1 seeks a balanced proposed Article 12B for the UN Model, with a simplified net-based approach. There will be a paper on consequential amendments - if this will be approved adjustments in other areas will be required.
 - Conclusion of the Handbook on Carbon Taxation
 - Update on the Extractives Handbook
 - Treatment of Software payments as royalties: there has been a lot of discussion on this topic, and the issue is how much can be done by this membership of the Committee and the nature of the minority view disagreeing with some of the OECD commentary on software payments as royalties. There may be a recommendation to the new membership to continue work and it will decide how to take it forward. There will probably be an expanded minority. ICC input has been posted on the website
 - The first session of the new membership will be in October and the expectation is more guidance on topics such as: digital taxation and what domestic legislation should deal with, methods to improve tax administration, the relationship between tax and SDGs as well as environmental taxation. There might be a recommendation to take on work on software technologies
 - It is still to be determined as to whether the October session will be held in Geneva or virtually.

An overview was also provided by Raoul Renard, Government Affairs Manager, regarding the [UN Panel on International Financial Accountability, Transparency and Integrity](#), as well as the [Final UN FACTI Panel Report](#) released at the end of February 2021.

- The report includes 14 recommendations to reform, redesign and revitalise the global architecture to foster financial integrity for sustainable development.
- ICC has engaged with the Panel at strategic points throughout the process through a written submission, as well as oral interventions through representatives from the Taxation and Anti-Corruption Commissions at regional consultations.
- Key tax recommendations:
 - The international community should initiate a process for a UN Tax Convention (Recommendation 2)
 - Improved tax transparency by having MNCs publish accounting and financial information on a country-by-country basis (Recommendation 3B)
 - MNCs should pay their fair share of taxes. The UN Tax Convention should provide for effective capital gains taxation. Taxation must be equitably applied to services delivered digitally. This means taxing MNCs based on group global profit (Recommendation 4A)
 - Create fairer rules and stronger incentives to combat tax competition, tax avoidance and tax evasion with global minimum tax (Recommendation 4B)

- Create an impartial and fair mechanism to resolve international tax disputes under the UN Tax Convention (Recommendation 4C)
- Establish a centre for monitoring tax rights to collect and disseminate national aggregate and detailed data on a global basis (Recommendation 11A)
- Establish an inclusive and legitimate global coordination mechanism at ECOSOC (Recommendation 14A)
- Create an inclusive intergovernmental body on tax matters under the UN (Recommendation 14B)
- The political impact of the report remains unclear. The process lacks the legitimacy of a member state process and there appears to be a fairly muted response by UN member states. The report was mentioned briefly in the finance for sustainability report, although there is no endorsement of any particular recommendations.

FOR ACTION: ICC will continue to maintain a watching brief on any developments post-publication of the report and advise members of any developments as they arise.

5. **OECD: Developments on taxation of the digitalised economy**

Martin Kreienbaum, Director General of International Taxation at the German Federal Ministry of Finance, Chair of the OECD Committee on Fiscal Affairs and the Inclusive Framework on BEPS provided an update regarding ongoing deliberations within the OECD Inclusive Framework to develop a global, consensus-based solution to address the tax challenges of digitalisation.

- The overall objective for the Inclusive Framework and international tax community is to reach a consensus-based agreement in the summer. Good progress has been made in terms of process and substance, particularly considering recent moves in the US. The US has presented a concrete proposal which would appear to have political backing in the US, which is important in terms of process.
- Pillar One and Pillar Two will be a package solution as opposed to standalone solutions for Pillar One or Pillar Two.

Pillar One

- Pillar One deals with the reallocation of taxing rights and new nexus, and the expectation and imperative is to reach a consensus by summer 2021. Discussions started on the basis of a €750million threshold, however, more recent developments are considering narrowing the scope with a much higher threshold (e.g., €5billion, €10billion, €20billion) to the effect that a much lower number of companies would fall in scope; likely 100 – 150 MNEs globally.
- As opposed to a qualitative approach discussed previously, the Inclusive Framework is now considering a quantitative approach including a combination of features: profitability rate and threshold, portion of profits to be distributed to market jurisdictions, among others. The idea is to have highly profitable MNEs in scope and no additional qualitative filter which leads to significant simplification for tax administrations.
- It will be important to demonstrate that the end result delivers on the mandate in developing solutions for taxation of the digital economy. In this respect, a reality check will be necessary to ensure that MNEs such as the “GAFAs” are in scope, which will serve as an important benchmark.
- Segmentation is still an open question – if it is determined that segmentation is needed a simpler solution will be needed. It may be less challenging with the broad filter and quantitative approach.
- Nexus is easier with the same approach as it would not be necessary to distinguish between Automated Digital Services (ADS), Consumer Facing Businesses, (CFB) and other activities.
- A narrative will be needed regarding consumer facing businesses and the mandate.

- Elimination of double taxation is still being discussed – it is not only a technical question but also includes a political dimension as the individual interests of countries may be different. The solution needs to be practicable and administrable.
- Tax certainty remains an essential consideration in the discussions.

Pillar Two

- Effective tax rate (ETR) is politically very difficult from the perspective of different players. The US campaign is for a minimum tax rate of 21% for US domestic law. There may be challenges for countries to accept a rate that is higher than the local domestic rate. A political dimension that will be discussed further in the coming weeks.
- Developments in the EU
 - EU member states have agreed on a recovery plan as a consequence of the pandemic which comprises €750 billion, consisting of loans that will be paid back by those countries who receive financial aid from this plan and €390 billion that will be repaid by the totality of the Member States.
 - Member States are considering a carbon border adjustment tax, financial transaction tax and a digital levy. There is a broad perception that a digital levy needs to deliver the fiscal revenues for a significant portion of the €390 billion plus interest over 30 years starting in 2028. The Member States have agreed that the digital levy should already serve as an own resource starting in 2023. A communication outlining more concretely what is envisaged is expected in the next couple of weeks. At the recent ECOFIN meeting, some finance ministers expressed the view that anything that would come out of the discussion on digital levy would need to be compatible with the broader international agreement that is sought within the Inclusive Framework for July this year.
 - The question arises as to whether there is room left for manoeuvre for EU member states; what is left for individual domestic measures for member states of the Inclusive Framework when an agreement has been reached on a Pillar One solution. Discussions will need to be held on what is acceptable in terms of domestic measures in the future. It is relatively clear that countries would need to roll back their digital service taxes.
 - Other questions for consideration include Article 12B of the UN Tax Convention and whether countries would be ready to accept it in bilateral treaty negotiations if there is agreement within the Inclusive Framework on a Pillar One solution as a comprehensive solution that would consume all taxing rights to be allocated to market jurisdictions or whether it would be in addition to the Pillar One provisions.
 - There is a possibility that if the Inclusive Framework does not come up with a clear answer to these questions, countries or blocks of countries will come up with their own solutions that may not be compatible with the OECD outcome. There is a risk that the EU discussions could conflict with the Inclusive Framework over the next few months.
- Next steps:
 - Technical meetings on both Pillar One and Pillar Two will be held from April to June. The goal is to have a statement agreeing on the key parameters/design features, as well as clarity on plans for implementation by June 30th or July 1st 2021.
 - The goal is to have the G20 Finance Ministers endorse the agreement on 9-10 July 2021.

Joint international tax conference

Commission member Georg Geberth updated members on plans for the 2021 joint ICC, Business at OECD and Business Europe international tax conference.

- The joint international tax conference will be held digitally in mid-July subsequent to the G20 Finance Ministers meeting. An invitation will be circulated between the end of April and the beginning of May. Panel discussions will largely focus on Pillar One and Pillar Two and the outcome of the G20 meeting.

6. European Commission

Commission member Krister Andersson updated members on developments within the European Commission related to:

- The European Commission Platform for Tax Good Governance
 - The Platform provides a useful opportunity to share ICC tools and resources, including the ICC Tax Charter.
 - On taxpayers' rights, a [survey](#) is available. To ensure fair taxation practices EU-wide, the Commission is recommending that EU countries simplify tax obligations and ensure taxpayers' rights are respected.
 - The EC has initiated a project on Corporate Social Responsibility, which could be adopted in the form of a directive by DG Justice for the Board of companies, restricting dividend payments and limiting the board's decisions regarding the matter.
- European Commission proposals for public CBCR
 - There is an agreement between the Council, the European Parliament and the Commission to come up with concrete rules
 - On country-by-country reporting, the European Parliament is asking for full disaggregation of MNE data and net turnover, while the Council would like aggregated data. From a business perspective, it is important to have safeguard clauses to retain sensitive information and competitiveness between business. This is an area of major concern and raises a principal issue as this directive was presented as an accounting directive and hence only needed a qualified majority for decision.

7. Developments on indirect tax issues

Commission member Joe Marden highlighted developments on indirect tax issues.

The detailed Indirect Tax Update was shared with members ahead of the meeting.

- EU VAT Forum/EU VAT Expert Group
 - A [consultation](#) is underway on a reform of VAT rules for financial and insurance services. It is planned to publish proposals for a new directive by the end of the year. Members are invited to contribute to the consultation.
 - Another important item is the Interim report on VAT in the Digital Age study. It is expected to be published this month with a public consultation in May. Members of the VAT Expert Group will be discussing this report at the FISCALIS event in October 2021.
 - One significant gap on the EU side is the single VAT registration component which will be watched closely.
- Potential areas for ICC engagement on indirect taxes
 - The Indirect Tax informal Working Group is exploring closer cooperation with other ICC Commissions. The Working Group continues to explore opportunities with regards to VAT and duties with the Customs Commission. One particular topic that merits closer focus is carbon taxation, but no particular actions have been taken yet. There is potential for cross-Commission cooperation with the Environment & Energy Commission as well as for work to evolve on green taxes more generally.
 - Possibility of a cross-Commission working group to explore work with respect to

Article 6 of the Paris Agreement and provide some recommendations regarding the effective design of carbon mechanisms, the need for consistency and reducing the risk of fragmentation. Key Commissions would be the Commission on Taxation, Environment & Energy, Customs and Trade.

- The [ICC Environmental Taxation Principles](#) (2012) would be useful to consider in this regard, as well as past work regarding fiscal incentives.

FOR ACTION: ICC to send a call for interest to members of the Commission and provide terms of reference.

8. Co-operative compliance

Members were provided with an update on the work of the Vienna University of Economics and Business/multi-stakeholder group on co-operative compliance:

- ICC has participated in the multi-stakeholder group on co-operative compliance. The group was divided into 5 key working areas:
 - Identifying criteria for access to co-operative compliance
 - Developing model legislation to facilitate the operation of co-operative compliance programmes
 - Creating a governance framework for a tax control framework and risk management
 - Developing methodology to measure the cost and benefits of such programs
 - Communicating co-operative compliance – obtaining trust from society
- The reports of the individual working groups have been incorporated in a handbook entitled: “*Co-operative Compliance: A multi-stakeholder and sustainable approach to taxation*”.
- The expectation is to have the final handbook published by July this year which will hopefully contribute to the ongoing dialogue in the OECD, EU and UN and other regional and international tax fora.
- The group last met on the 17th of March to discuss the final elements of the handbook, a policy brief as well as suggestions for follow-up work for the group. A follow-up workshop has been scheduled for 19-20 October – to be determined whether it will be held in Vienna or another virtual meeting.

9. Digitalisation of tax administrations/CTC Working Group

Commission member Georg Geberth updated members on engagement and developments related to digitalisation of tax administrations, including a new institute established at the German Federation of Industries (BDI) to focus on digitalisation in tax, which serves as a platform for exchange between businesses, developers and the tax administration.

- A German association has been founded comprising around 50 members from diverse backgrounds interested in digital processes in the context of tax administration. Eight committees have been created to work on special interest topics, including digitisation of tax standards, transactional reporting; how to design tax laws for better automation; education challenges and the need for knowledge on tax and IT areas; innovative technologies; distribution ledger in taxation; among others.
- There are clear links to the ICC work on continuous transaction controls.
- The association is focused predominantly on Germany but also on developments at the OECD.
- The idea could be of interest to other countries particularly in view of the fact that digitalisation will be an important topic for the OECD going forward, as well as broad digitalisation initiatives by countries.

Charly Gordon, Deputy Director, Innovation for All, shared insights on relevant work streams in the context of the ICC Working Group on Continuous Transaction Controls.

- The objective of the ICC joint Working Group on CTCs is to promote consistency and compatibility of CTC processes across borders in an effort to reduce the administrative burden for businesses and ensure tax administrations can perform their missions. The group is unique in that it is comprised of private and public sector members. The group members work collectively to create a greater understanding and alignment between national and regional CTC models to ultimately facilitate business operations.
- In 2020, the Working Group published the report "[ICC Continuous Transaction Control \(CTCs\) Practice Principles](#)" as well as a stocktaking report on the Implementation of CTCs.
- Building on this work, the Working Group is currently focusing on links between CTCs SAF-T and e-accounting; and examining CTCs B2C transactions in another sub-group.

10. Transversal Projects

- Update from Damien Bruckard, Deputy Director, Trade and Investment, on ICC work related to trade policy advocacy
 - ICC is engaged in many of the WTO negotiations at a technical level around MSMEs, WTO reform, [services domestic regulation](#), among others.
 - State of play at the WTO: new Director-General, Dr Ngozi Okonjo-Iweala, who has been taking an active role, especially on vaccine distribution.
 - WTO is in a period of flux, there are some difficult political issues that WTO is grappling with, mostly with respect to intellectual property protections for medical equipment and vaccines. Also needs to deal with the dispute settlement system.
 - ICC engages with the Director-General's office and on technical discussions but is also creating a few platforms for business engagement over the course of the year, including the Trade Dialogues in June, where business is invited to present its vision how the WTO should respond to the pandemic and what it should deliver on at MC12 as well as new ideas the WTO should be looking at in the future. Finally, ICC will also create a Business Forum with WTO, a full-day event on the side-lines MC12 in December 2021.
 - One other priority is export restrictions on vaccines. ICC is strongly opposing export restrictions on vaccines and proposes that international organisations and governments set up a clearing house to monitor the health of vaccine supply chains so bottlenecks can be identified and allow for manufacturers, governments, pharmaceutical companies to plan better, as well as the creation of a B2B platform to connect manufacturers in developing countries that have the capacity to produce vaccines with more advanced manufacturers in other parts of the world.
- Update from Raoul Renard regarding WTO e-commerce negotiations
 - On the Joint Statement Initiative (JSI) on Electronic Commerce, in February India and South Africa published a communication on the legal status of the initiative and their negotiated outcomes and that they will not be bound by the results of the negotiation. Co-conveners Australia, Singapore, and Japan rejected the need for a mandate on a specific legal basis or architecture for the final agreement. The issue has been postponed until more disciplines are agreed upon.
 - Since the onset of COVID-19, negotiations have been broken down into small groups to advance work on particular provisions. The target milestone is to achieve 10 completed provisions by July, realistically at least 6 will be achieved. Progress has been made on e-signatures, e-authentication, open government data, paperless trade and e-contracts. There is a proposal in the negotiations put forth by Singapore and New Zealand on e-invoicing in which the Members would recognise the importance of standards and would ensure that the implementation

of measures related to e-invoicing in jurisdictions is designed to support cross-border interoperability. The measures should be based on international systems, guidelines or recommendations where they exist. ICC is very supportive of this and to provide insight to negotiators to contextualise the proposals.

- ICC hosted a webinar on “Electronic invoicing: enhancing trust and efficiency in international commerce” for negotiators and businesses.”

11. Future engagement opportunities

The Commission Chair shared areas of ongoing and potential future engagement opportunities, namely:

- Consider possibilities for future engagement related to rebuilding the economy post-COVID particularly with respect to taxation and the implications for business and growth in the long term.
- Possibility to identify areas related to taxation with respect to the UN SDGs and leverage ICC’s existing work in this area ([ICC Position Paper on Tax and the SDGs](#)).
- Digitalisation of tax administration, dispute resolution, digital economy, carbon taxation.

FOR ACTION: Members are invited to inform the ICC Secretariat and Commission Chair of potential opportunities to leverage ICC’s engagement at the international level in line with ICC’s global strategy.

12. Date and location of next meeting

Dates of the next meeting will be communicated in due course. It is hoped that it would be possible to hold the meeting in a hybrid format, in October and close to the UN Meeting of the Committee of Experts on International Cooperation in Tax Matters.