

## Trade and Investment Knowledge Hub

Commission on Taxation

### Summary Record

Meeting on Tuesday, 28 April 2020 | 13.00 – 16.00

VIRTUAL MEETING

#### 1. Welcome and Opening of the Meeting

- The Commission Chair, Christian Kaeser (Siemens), welcomed participants to the virtual meeting, noting broad representation from 23 countries.
- The Summary Record from the last Commission meeting (*Geneva, 18 October 2019*) was approved.

#### 2. ICC Knowledge Solutions Department – vision and strategy 2020

Emily O'Connor, Director, Trade and Investment provided an update on the strategic vision for the ICC Knowledge Solutions Department and its 2020 work programme and external engagement plan in the light of the COVID-19 pandemic.

- ICC Work Programme has been reorganised into central themes to facilitate easier management of the work and to make it more understandable for companies (eg. 21<sup>st</sup> century trade, competitive markets, entrepreneurship, financing the future, business in society, climate action and green economy. The reframed work programme will be shared in due course.
- Taxation, competition and intellectual property have been grouped together under competitive markets to enable policy frameworks and technical work.
- The Knowledge Solutions Department benefits from a range of policy expertise across topics. The work is divided into tools and resources for business, advocacy, technical and regulatory affairs.
- There are three areas of focus for delivery: content creation, impact and influence, and to engage meaningfully in partnerships.

Ms O'Connor also provided an update on ICC's strategic response to the pandemic and the Commission on Taxation's contributions to this effort.

- From the onset, ICC Secretary General, John Denton called for a whole-of-organization approach in response to the pandemic.
- Whilst there will still be some business as usual, the organization has been geared to respond to the crisis with work divided into three categories: i) immediate measures to stem economic disruption to business; ii) short-term steps; iii) mid-long term steps; how to build systems better in order for companies and governments to better cope with the economic crisis.
- For immediate measures ICC looks to shape public policy responses focusing on health and the economic fallout, to limit the spread of the disease, avoid further disruptions and ensure business continuity. Other areas of focus include developing new partnerships and creating tools and resources for business.
- A particularly important response to COVID -19 is the recently launched [ICC campaign](#) to "Save Our SMEs", with an immediate focus on bringing attention to the scale of the effects of the pandemic on MSMEs, ensuring that emergency measures and stimulus

packages reach small businesses and their workers at the speed and scale required, and providing tools to MSMEs to help them navigate this difficult period.

- The campaign provides tools, guidance and support to SMEs which are hardest hit by the crisis.
- For content creation to help support businesses, the Taxation Commission developed valuable, practical recommendations for governments to consider in this context: [ICC statement on related tax measures in response to COVID-19](#)  
[ICC Statement of tax measures to Save Our SMEs in response to COVID-19](#)
- It was noted that the Platform for Collaboration on Tax has a helpful compilation of existing tax measures governments have taken in response to the crisis and has been referenced in the ICC documents.
- Other Commissions are also developing recommendations in their policy areas (eg trade finance, customs, trade, force majeure clause, competition, etc).
- ICC has been positioned as a trusted source of advice to business and has strengthened existing relationships or developed new collaborations with international organisations, including an unprecedented partnership with the World Health Organisation (WHO) to disseminate guidance from WHO and provide data for real-time business actions. This includes a [survey](#) to determine what actions businesses are taking in response to the crisis.
- The ICC Academy has also been rolling out a series of COVID-19 related webinars (eg force majeure clause, trade finance, etc).
- There is also a new dedicated [ICC COVID-19 website](#) which includes an ICC Business Continuity Guide and a range of useful policy tools in response to the crisis.
- Some technical aspects related to tax such as the potential creation of permanent establishments by those working from home have been raised with the OECD and UN. The OECD has noted that a PE should not be created as a result of these extraordinary circumstances.

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

Commission Chair, Christian Kaeser, provided members with an update regarding ICC's engagement with the Belt and Road Initiative Tax Administration Co-operation Forum, including the recent ICC report [Digitalisation of tax administrations: A business perspective](#), which is expected to feed into the next BRITACOF and the Business and Industry Dialogue scheduled to take place on the margins of this event. The report is quite comprehensive, benefiting from membership expertise on the topic, the quality of which has been commended by BRITACOM.

Suhua Huang, Deputy Director General, International Tax 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 an important way to improve governance in international taxation, create a more supportive environment for investment and boost global economic growth.

- The BRI helps facilitate connectivity of infrastructure and technical standard systems, enhances policy co-ordination for implementation of the initiative, seeks to improve investment and trade facilitation, and remove investment and trade barriers.
- Useful statistics for the BRI between 2013-2018: US\$6 trillion in goods trade; US\$120 billion in services trade; US\$80 billion foreign direct investment in BRI countries; 240,000 local jobs created; US\$2 billion of local tax revenue.
- The purpose of BRITACOM is to build a growth friendly tax environment to advance the overall mission to facilitate trade and investment, foster economic growth of the BRI jurisdictions and contribute to the fulfillment of inclusive and sustainable development as set out in the UN 2030 Agenda for Sustainable Development.
- The first BRITACOF conference was held in April 2019 in Wuzhen, China, with representatives from 85 jurisdictions, and 16 international organisations, including ICC

(represented by Christian Kaeser). An official Wuzhen Statement and Action Plan (2019-2020) were key outcomes of the conference. The Wuzhen Action Plan builds on the key areas identified including furthering BRITACOF-related work.

- The second BRITACOF was planned for May 2020 in Kazakhstan, including the Business and Industry Tax Dialogue, but has since been cancelled in view of the COVID-19 pandemic. The next BRITACOF will likely be held in May 2021.
- 12 training workshops were held in 2019 covering topics such as dispute resolution, tax treaties and BEPS, doing business and tax services, VAT/GST, transfer pricing. Some of these workshops were hosted together with OECD, IMF and World Bank.
- A multilateral seminar was held on 6-8 November 2019 in Beijing with 21 delegates from 7 jurisdictions and the Advisory Board. The theme for the second conference was endorsed and ICC was invited to facilitate the Business and Industry Dialogue.
- The five task forces have each developed interim reports that are ready for submission, covering good tax administration with the aim to improve engagement between taxpayers and tax administrations and provide feasible solutions.
- Six new observers to BRITACOM have been confirmed, including ICC. The ICC Taxation Commission Chair, Christian Kaeser, has been nominated on the Advisory Board.
- A special edition of the BRITACOM update “Fighting Covid-19” will be published on the BRITACOM webpage. ICC has been requested to provide input to the journal.
- A virtual meeting will likely take place on 20 May with key stakeholders, including ICC, to share experiences on how to deal with Covid-19 challenges from a tax administration perspective.
- ICC’s valuable contributions to BRITACOM’s work is recognised and ICC has a key role to play in improving engagement and enhanced co-operation between taxpayers and tax authorities. A greater ICC role in BRITACOM includes: formal observer status, facilitating the Business and Industry Tax Dialogue, knowledge interflow in BRITACOM Update (newsletter) and tax journal, speaking at BRITACEG events, contributing to task force reports.
- ICC is committed to providing relevant input to improve engagement between taxpayers and tax authorities and will liaise with member experts on specific topics for input on reports, to provide perspectives on technical matters, as well as speaking opportunities at BRITACOM events such as the Business and Industry Tax Dialogue.

#### 4. OECD: Developments on taxation of the digitalised economy

Commission member Georg Geberth 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.

- Some countries and industry representatives have suggested that the OECD should consider delays in advancing their work on digital taxation, particularly as governments and taxpayers channel their resources to addressing the COVID-19 pandemic. However, the OECD remains committed to delivering a global, consensus-based solution to address the tax challenges of digitalisation by the end of 2020, as mandated by the G20.
- Digital contact groups have been established to discuss the architecture and technical aspects for the Pillar One and Pillar Two proposals. 50-60 companies are engaged as well as advisory firms to provide technical expertise to ongoing deliberations.
- The OECD has endorsed the Pillar One approach. The biggest change since the last meeting is that automated digital services (ADS) are now included together with consumer facing businesses, to capture cloud computing and other digital services.
- Discussions on the threshold are still ongoing, but it is likely to be retained at €750 million gross revenue, which correlates with the threshold for country by country reporting (CBCR).
- The nexus might differ for bigger and smaller countries.

- The tax base will start with the International Financial Reporting Standard (IFRS).
- There should be symmetric treatment regarding losses.
- There are some technical challenges regarding the types of taxes that should be covered, for example where CIT differs in some countries.
- Some countries, such as India, have moved ahead with DSTs and there is a question as to whether DSTs should be covered. It is expected that once agreement has been reached and Pillar One and Two are put in place, DSTs will be repealed.
- With respect to blending, there has been significant support within the Inclusive Framework for jurisdictional blending, which would be more complicated for companies. The OECD might envisage simplification measures and look at how essential the activities of a company are in a country. For example, if less than 5% of global profits are made in one country, Pillar Two should not be applicable.
- It is important for the business community to remain engaged with the OECD as the technical details are being deliberated on.

## 5. Joint international tax conference

Commission member Georg Geberth updated members on the annual joint ICC, Business at OECD and Business Europe international tax conference. In view of the COVID-19 pandemic, it has been decided to postpone the conference this year to take place instead on the last Friday in June 2021.

## 6. UN Committee of Experts in Tax Matters

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

- The UN Tax Committee was expected to meet 27-30 April in New York, however meetings were cancelled due to the COVID-19 pandemic. Meetings have been scheduled for 23-26 June, and will most likely be virtual. Whilst it will probably be a smaller meeting, interested stakeholders such as ICC will be included to ensure continued engagement.
- The transfer pricing paper has been completed and is expected to be online shortly. It includes new work including examples on financial transactions.
- Other papers including the work on environmental taxation and extractives are also expected to be circulated in advance of the meeting.
- Work on the UN model is expected to be settled early in May and will be available online shortly after.
- ICC Taxation Commission Chair, Christian Kaeser, had raised the issue with the UN Tax Committee regarding the impact on permanent establishment as a result of COVID-19 as employees work remotely. It has been proposed to follow the next version of the OECD model on unintended preferences, which is quite relevant in current circumstances.
- The tie-breaker rule has also been discussed internally and the rule has been removed from the UN model. The issue is related to the use of domestic law to determine residence.
- The OECD has released guidance related to the impact of COVID-19 on tax treaty issues. The UN Tax Committee may develop a paper on tax issues related to COVID-19, taking into account work done by the OECD, IMF, etc.
- The subcommittee on digital taxation has not met since the last meeting in October. There are many different views on the best way forward for digital taxation. There may be a paper produced, but it is unlikely there will be a subcommittee meeting planned. There are, however, still plans to hold a virtual capacity building session for developing country advisors, which will include developments within the Inclusive Framework. The impact of COVID-19 will be relevant, as well as the consideration of losses and withholding tax in this context.

- Further work on tax and trade/investment agreements will not be proposed for the mandate of the current Committee, but will be relegated to the next membership of the Committee in 2021. It could still be helpful to have some initial discussions and collaboration with UNCTAD and ICC will be important in this respect.
- UNCTAD will hold an event in December and the UN Tax Committee will take account of exchanges at the event as there may be a link with developments towards multilateral agreement. If there was a multilateral agreement coming out of the Inclusive Framework, how that would relate to investment agreements is important.
- At present, plans are still in place to hold the 20-23 October meetings in Geneva, however plans to hold a physical meeting could change depending on how the COVID-19 situation evolves.

Peter Chowla, Senior Economic Affairs Officer at the UN Department of Economic and Social Affairs, provided an overview regarding the UN Panel on International Financial Accountability, Transparency and Integrity (FACTI).

- The initiative was launched by the President of the General Assembly and the President of the Economic and Social Council. It has a one year mandate to look into illicit financial flows and looks into issues such as corruption, tax issues and money laundering.
- The panel is not an expert panel, but rather a high level political panel. It has 17 representatives and is chaired by the former President of Lithuania and Prime Minister of Niger. The panel will address technical topics. The constraints are not technical, but political – finding political solutions that can garner consensus.
- The Panel held one video conference on the 24<sup>th</sup> of April and has agreed to split the work in three clusters, namely i) Improving cooperation in tax matters; ii) Accountability, public reporting and anti-corruption measures; and iii) Cooperation and settling disputes.
- There is strong engagement and interest in tax governance issues related to how the norms are set, with some skepticism from developed countries that the problems are not related to international governance but more with respect to implementation at national level. There is a difference of opinion on what the issues are.
- ICC will follow developments as they evolve.

## 7. Developments on indirect tax issues

Commission members Marlon van Amersfoort and Joe Marden provided an update on recent VAT developments across the globe and next steps regarding potential areas for ICC engagement on indirect taxes.

- An overview of indirect tax-focused measures for COVID-19 was shared with members in advance of the meeting. SMEs have been impacted significantly and there are various actions being taken in the area of facilitating better work. Medical supplies are to be exempt temporarily in the EU. ICC developed a statement drawing attention to possible tax measures to support SMEs during the crisis.
- The EU VAT Forum is looking for new topics to address – members are invited to convey any topics of interest. In October 2019, a new expert group was appointed.
- The VAT Forum met on 16 January 2020. Reports on VAT double taxation disputes and administrative sanctions were presented. There has been a fair amount of pushback from some member states, but the Forum managed to convince them that it would be helpful for member states to know about penalties, so they will move forward.
- VAT expert group: the incoming Commission has started using new language and focusing more on technical solutions and simplifications instead of legislative measures. A document has been published exploring future directives of VAT and how to lift burdens on businesses.

- A roadmap to fight tax evasion was published by the Commission in February, that outlines key comments on indirect taxation. Language in the EU has been under the banner of avoiding fraud but some measures may be disproportionate, so hopefully there will be a shift in direction.
- Cross-border tax disputes are highlighted by the Commission in the roadmap. They are looking at dispute resolution services and cross-border VAT rulings and are looking for cases/practices.
- There is a strong focus on the digital agenda with a lot of work on e-commerce. Other developments are in terms of compliance, such as on continuous transaction controls.
- The development of carbon footprint, sustainability and responsible business such as alternative energy sourcing, remain important issues. These have cross border effects for supply chains.
- Connectivity with the ICC indirect tax group – it is important to maintain the link between customs and indirect tax to ensure that issues are addressed and that developments are fit for purpose and do not create unnecessary burdens.

## 8. Carbon Taxation

Members were provided with an overview on carbon taxation in the context of ICC's efforts to align Trade and Climate Change policy, as well as the UN Tax Committee work on carbon taxation.

Sandra Hanni, Knowledge Manager, Inclusive & Green Growth Hub, provided an update on ICC activities related to climate change.

- ICC has been the official Focal Point for Business and Industry at the UN Framework Convention on Climate Change for over 20 years and in that context ICC plays a unique convening role within the UN climate negotiations and strives to ensure that (i) business is at the table and that (ii) the business perspective is taken into account in the climate negotiations – both at international level and national level.
- In order to achieve the goals of the Paris Climate Agreement to limit the global temperature increase to 1.5°C above pre-industrial levels, all participating countries are required to set national GHG emissions reductions targets – nationally determined contributions (NDCs).
- One of the keys to this increased ambition lies in the implementation of Article 6 of the Paris Agreement. It is the last piece of the Paris Agreement to be resolved and was the focus of much attention in the last two UN Climate Change Conferences and will also be a key issue at the negotiation at COP26 in Glasgow next year.
- Article 6 aims at promoting integrated, holistic and balanced approaches that will assist governments in implementing their national emissions reduction targets through voluntary international cooperation. This cooperation mechanism, if properly designed, should make it easier to achieve reduction targets and raise ambition. Article 6 could also establish a policy foundation for an international emissions trading system, which could help lead to a global carbon market system.
- More concretely, under this mechanism, countries with low emissions would be allowed to sell their exceeding allowance to larger emitters, with an overall cap of greenhouse gas (GHG) emissions, ensuring their net reduction.
- The successful completion of the work on Article 6 at COP25 is crucial for business. Clear guidance on Article 6 can help set the course for the much-needed ambitious actions to address climate change, as well as help provide the policy foundation needed for the private sector to further drive investments in sustainability and a net-zero carbon economy.
- There are many unresolved issues that countries need to agree on in the upcoming UN Climate Changes Conferences. Some of them are technical but the major issues remain political (double counting; transfer of credits from the old systems established under the Kyoto Protocol).
- Even without agreement on rules under Article 6, it is evident that international cooperation on markets continues. Countries and regions around the world are developing and

extending their emissions trading systems (EU Emission Trading System under the New Green Deal), carbon pricing and bilateral cooperation on carbon markets.

- ICC organised a series of consultations in 2019, bringing together high-level business leaders, policy makers, academic experts, economists and thought leaders to discuss the nexus between international trade and climate change. Together with the WTO, ICC also hosted a [breakfast roundtable](#) at Davos in January 2020 to discuss the private sector's role in shaping trade and climate policies. An Issues Brief is currently being developed to reflect on the different perspectives and examine a range of possible market solutions – including [carbon pricing schemes](#), [climate waivers](#), [border adjustment measurements](#), and [carbon clubs](#).
- Reference articles and documents are included below:
  - [ICC Primer on Article 6 – For Business](#)
  - [ICC Business views on Article 6 – For Parties](#)
  - ICC podcast
  - [ICC Livecast - Putting a Price on Carbon \(COP25\)](#)
  - ICC webstories
  - [Article 6 – What is it and why is it important?](#)
  - [Business' engagement in climate action: Article 6 sets stage for greater ambition](#)
- The UN Subcommittee on environmental taxation has almost completed Chapter 2 on policy considerations regarding the introduction on carbon tax, certainty on priced carbon, border taxation issues and other issues related to carbon tax. A meeting was held at the end of January in Paris.
- A suggestion was made for ICC to consider exploring carbon tax more comprehensively, looking at the whole tax system and what works from a climate friendly perspective to encourage research and development. Members were invited to express interest in a potential working group on the topic. The importance of alignment and synergy with ICC's broader work on the issue was reiterated.

## 9. Co-operative compliance

Commission member, Jeffrey Owens, provided an update on work to raise the profile of co-operative compliance to enhance tax certainty, ongoing work with the University of Vienna/ multistakeholder group, as well as future workshops.

- Five working groups were created to examine the main issues facing countries and companies considering putting cooperative compliance (CC) programmes in place to address: i) identifying the criteria for access to CC programs; ii) developing model legislation; iii) governance and the role of the Tax Control Framework; iv) developing a methodology to measure the costs and benefits and v) gaining the trust of civil society and politicians.
- The workshop in Vienna in December provided an opportunity to discuss the working group reports, identify best practices and provide guidelines for the next stage of the work.
- The intention is that the report would provide practical guidance in each of the five study areas which could then be used by governments and business who wish to implement CC programmes.
- A virtual meeting is planned for the 16<sup>th</sup> of June to review consistency between the different chapters. The report is expected to be finalised by early 2021.
- Pilot studies are still ongoing with four African countries: Zambia, Nigeria, Kenya and Ghana. In addition to these countries discussions are also being held with Malaysia, South Africa, Chile, Honduras, and Peru for potential pilot study programmes.
- A meeting has been held with the European Commission who are exploring the possibility of an EU-wide co-operative compliance programme. As it is expected that the EC will launch a programme in the next few months, the EC has been encouraged to consider the work of this group in this context. A parallel meeting was also held with business

representatives and it would be important for business to remain engaged in these developments.

## 10. ICC Work Programme/Transversal Projects

Raelene Martin from the ICC Secretariat provided an update on the working group for continuous transaction controls.

- ICC has been working on this topic within a multistakeholder group to collectively understand and identify solutions for ensuring that trends and the use of technology has a positive impact on trade, as well as advance the common goal of reducing tax burdens on business while also facilitating tax collection by countries.
- The working group is led by Christiaan Van der Valk (Sovos) and Lee Hurst (Vodafone) and convenes members of the Digital Economy, Taxation and Customs & Trade Facilitation Commissions, as well as other experts in CTCs from the public and private sector.
- The working group has developed two documents, the first one being a set of Practice Principles for Implementation of Continuous Transaction Controls (CTCs) to be used as an advocacy tool for outreach to governments considering designing CTC systems to raise awareness of the impact and opportunity when developing these tools in collaboration with business.
- This work does not promote CTCs but aims to provide practical guidance to ensure lessons learned from early CTC implementations in Latin America and other geographies are taken into account so as to ensure a balanced approach providing benefits to all stakeholders.
- The second document is a more detailed, ICC Stocktaking Report of the Implementation of CTCs, to capture significant trends and level-set the discussion with recommendations on future action. The document provides concrete guidance to understand what the higher level policy principles mean in practice and will be targeted specifically at CTC practitioners and will be restricted for controlled use in cases where such level of detail can be addressed productively.
- Both documents have been circulated to Commissions for review and will likely be circulated for a second round of consultation within the next week, and it is hoped that they will be finalised and approved by June this year.

Crispin Conroy, ICC Representative Director, ICC Geneva Office provided an update regarding ongoing WTO e-commerce negotiations.

- The WTO has not currently been operating to full capacity. The Director General has the heads of delegation together to decide how to move forward, albeit virtually.
- In relation to e-commerce there has been regular contact with the next round of the discussions the week of the 27<sup>th</sup> of April.
- On 5 and 7 May, ICC will hold virtual panel sessions on e-payments and e-documents, with the objective of continuing ICC's momentum on the topic.

## 11. Date and location of next meeting

The UN Tax Committee meetings are currently scheduled for 20-23 October in Geneva. Members will be informed in due course of a potential physical meeting alongside these meetings depending on the evolution of the pandemic and associated travel restrictions.