

Asia Voices: Perspectives on Tax Policy Seminar 2024

By Yap Jia Hui

On 26 March 2024, the IPS Working Group convened its third Asia Voices: Perspectives on Tax Policy seminar. The first two seminars focused on the Asian perspectives pertaining to Pillar Two of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS).

The online seminar held in March 2024 shifted the discussion to Pillar One, with a focus on Amount A. Three speakers with backgrounds in the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN) provided updates on the development of these policies and discussed different scenarios that might play out depending on the success of Amount A roll out.

This summary report sets out the key issues that were covered.

Technical Overview of Amount A and the Multilateral Convention

Given the technical complexity of Pillar One, there was emphasis on the need to explain and clarify the terms and policies that were discussed.

As a summary, Pillar One could be described as a formulary method that determines a portion of residual profits of large multinationals to be reallocated to the market jurisdiction (where end users are located). This amount determined by the formula is known as “Amount A”. Amount A refers to 25 per cent of excess profits, which are in turn defined as what the multinational enterprises (MNEs) earn in excess of 10 per cent of its revenue.

Amount A is only applicable to very large MNEs with global revenues of over €20 billion and that are very profitable with total profits greater than 10 per cent of their global revenue.

A global corporate tax like Amount A is a novel taxing right and therefore requires a multilateral tool to coordinate and address the existing bilateral treaties. The ratification of the Multilateral Convention (MLC) is therefore vital for Amount A to become a legitimate taxing right.

Current State of Play

Required milestones for Amount A to materialise

At the time of the seminar (in March 2024), the OECD was said to be finalising the resolution of technical issues pertaining to the MLC in order for it to be memorialised and agreed on a consensus basis.

The second milestone to get Amount A off the ground is to get the signatures and ratification of a critical mass of jurisdictions. This refers to the province of domestic parliaments and legislatures, which would take substantive amounts of time to achieve the required ratifications.

Noting that there are great scepticism surrounding the ratification step, it was clarified that the OECD has no back-up plans for a failure of the MLC. The goal is to push toward a ratification.

Push towards greater diplomacy in negotiation processes

The work of the UN Tax Convention was discussed in the context of needing greater representation and serious consideration of the perspectives of countries, especially for consensus to be achieved and hence successful ratification.

The UN Secretariat recognises the technical expertise of the OCED, which cannot be replaced. What it aims to do however, is to leverage its diplomatic expertise to ensure that member states, particularly the less well-resourced ones, have their views meaningfully expressed and considered at decision-making platforms.

Areas of work that are still relevant for the UN to encourage viewpoints from less vocal countries include those to do with the scope of the Significant Economic Presence concept and the UN model Article 12B on automated digital services.

Possibilities of unsuccessful MLC

Lastly, the possibilities of a failure to ratify and bring the MLC to pass was also discussed.

A rather pessimistic view was taken in that the failure of MLC would mean collapse of any multilateral cooperation leading to a retreat to bilateral actions. The challenges of globalisation and digitalisation such as double taxation will then come in full force.

More specifically, the Digital Services Taxes (DSTs) in UN Article 12B, or virtual Permanent Establishments (PEs), were mentioned as alternatives that different jurisdictions might adopt, leading to an uncoordinated combination of tax policies.

However, this strong belief in the value of multilateralism to curb the challenges of globalisation and digitalisation was challenged from the point of its practicality. The main difficulty that the MLC now faces is that it is not truly multilateral given that its rise and fall could be dependent on economies with large digital services MNEs. Geopolitical tensions around the world also makes it difficult for such deep levels of coordination to take place in the tax sphere.

As such, it was suggested that some form of multilateralism should still be aimed for, but common frameworks should not come with extremely binding agreements that make it difficult for jurisdictions to agree upon. Referring to work by the African Tax Administration Forum, having regional consensus building towards these global frameworks was concluded as a possible way to achieve this.

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