

Asia Voices: Perspectives on Tax Policy Seminar 2023

By Yap Jia Hui

Following the inaugural “Asia Voices: Perspectives on Tax Policy” seminar in December 2022, the Governance & Economy Department of the Institute of Policy Studies (IPS) held an in-person event on 20 October 2023. This seminar continued the conversations on Pillar Two of the OECD’s Base Erosion and Profit Shifting Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (BEPS 2.0) and its impacts on revenues and tax incentives. More specifically, the session placed the discussions in the context of the impacts, possibilities, and challenges of a regional response towards BEPS 2.0.

The seminar consisted of three sessions, each taken from the perspectives of academics, policymakers, and the corporates respectively. The first panel of academics provided an introductory overview of developments in Asia and Europe. The second panel focused on the perspectives of regional policymakers on the development of BEPS as well as possible cooperation within the region. The last panel session consisted of representatives from corporations that shared their perspectives on the effects of implementing Pillar Two on multinational enterprises operating in the region.

Three key points could be noted from the sessions.

Uncoordinated moves by Asian jurisdictions create challenges

The first is that countries in all regions generally have yet to align their interpretation and implementation of the GloBE rules. One of the reasons has to do with the nature of BEPS, which was described as a race whereby first movers stand to gain in collecting revenues. The revenue impacts of each country are also not only affected by the mechanisms they introduce, but also that which other countries choose. The global consensus of the Inclusive Framework notwithstanding, countries may choose to adopt different elements of the GloBE rules. For example, some European Union (EU) countries will gain more in implementing both Income Inclusion Rule (IIR) and Qualified Domestic Minimum Top-Up Tax (QDMTT) while others will choose only one. Apart from a few countries which have announced their GloBE adoptions early, there is not yet visibility on what the choices would be.

The differing positions of Asian countries also inform the different pace and ways of implementation. Generally, these positions and considerations of the Asian countries could fall under four categories.

The first group includes developed jurisdictions such as Singapore and Hong Kong that are hubs for many large in-scope MNEs. These jurisdictions will likely be active in implementing both IIR and QDMTT as they have the imperative to secure their tax bases. The second group includes Malaysia and Indonesia, who are laying the groundwork to include the rules into their domestic laws. The third group includes manufacturing hubs such as Vietnam, Indonesia, and Thailand that will have to find ways to ensure that their in-scope MNEs which bring critical foreign direct investments, remain incentivised to stay in their countries. The last group comprises countries that have not signed up to the OECD/G20 Inclusive Framework – Cambodia, Lao PDR, Myanmar, and the Philippines. These countries are still reaching out to various international organisations to understand the processes and implications of implementing Pillar Two.

Nonetheless, these are only general observations of what countries might do based on the nature of their economies. Actual implementation might still differ when practical challenges such as compliance costs, complexities of implementation and considerations of the intended and unintended consequences of the roll-out of Pillar Two become clearer. For example, countries that took first steps in pushing for Pillar Two are eventually dialling down their efforts to mere light-touch changes on existing frameworks.

Uncertainties anticipated for corporates and all

The greatest concern raised during the seminar was the huge source of uncertainty arising from the different possible approaches taken by different countries and lack of clarity on the impacts of Pillar Two implementation.

For policymakers, it remains difficult to assess the cost and benefits of each approach and the resulting behaviour of taxpayers. Academics in the field have only been able to make revenue estimates for static scenarios, which means they have not taken into account the dynamic reality where the behaviour of one jurisdiction may necessarily affect another jurisdiction.

For corporations, the different interpretations and hence implementation of the GloBE rules by different jurisdictions are particularly concerning. When different countries implement different versions of QDMTT for example, it is unclear as to who has the mandate to decide if the rules implemented would be qualified or not. Referring to the peer review process, there are uncertainties that policies might be rolled back or amended after being determined that they are found to be, for example, *unqualified* DMTT.

To this end, it was also repeatedly raised that there is not yet a dispute resolution for when such difficulties arise. Given that taxation is a sovereign right, they are excluded from bilateral investment treaties (unless otherwise mutually agreed), which possibly means that taxpayers would be left with no recourse.

Without clear idea on how the dispute resolution mechanisms under Pillar Two would ultimately pan out, coupled with uncertainty as to whether policies introduced by the respective jurisdictions might be rolled back in the end, concerns amongst corporates are that compliance costs will multiply when they have to constantly readjust.

Opportunities to be seized

Having laid out the state of uncertainty which we presently are in, the panellists agreed on the need to view Pillar Two in the right perspectives and get the priorities right.

Firstly, it was emphasised that seeing Pillar Two as a way to generate revenue would be misguided. Pillar Two is to eliminate the race to the bottom by removing incentives for countries to compete by lowering their tax rates below the agreed to 15%, resulting in companies shifting profits. Once that is addressed through jurisdictions and companies complying with the rules, countries should in theory, focus on more productive use of finite resources by investing in capacity building and the overall ecosystem. This means shifting from a mindset of maximising revenues through Pillar Two. In fact, it was repeated throughout the sessions that revenue impacts are not only uncertain but for some countries, could turn out to be an extremely costly way to bring in any revenues due to the complexity of Pillar Two relative to alternative types of taxation.

While minimising the incentives to shift profit and holding the line at a 15% effective tax rate, competition for investment will nevertheless remain. This again drives the emphasis to focus on issues such as cost of doing business, enforceability of rules, and stability. In the process of complying with Pillar Two rules, efforts in enabling and supporting companies should therefore go beyond each firm-level but be broadened to the ecosystem-level, encompassing tax administrators, tax advisors and taxpayers.

The right perspective of Pillar Two is to see it as a window of opportunity for important reforms. For one, this could be a time for jurisdictions to do a careful assessment of the effectiveness of existing incentives. On the other hand, corporations that have committed resources to complying with the rules should also be using this as an opportunity to improve their enterprise system to better support their compliance obligations.

The challenges of Pillar Two, or rather BEPS 2.0 in general, have also made clear the benefits of coordinated efforts and sharing platforms.

For example, while acknowledging that Asian countries are in different stages of implementation and hence coordinated response to Pillar Two would be unlikely, platforms such as the ASEAN Forum for Taxation could still be important for best practices to be shared. Sharing of experiences such as how each country will collect revenues from QDMTT are especially helpful to build the capacities of developing countries. Other potential areas of cooperation to explore included enhancing dispute resolution mechanisms and in areas related to compliance and reporting, to have a common reporting framework.

Between the authorities and corporations, seizing the opportunities to develop system and build capacities can also be geared towards increased trust between the two parties. With improved systems and transparency, more data points collected and shared across the parties could facilitate greater clarity for when and where taxes have to be collected. Ideally, this not only reduces uncertainties and compliance costs, but also reduces suspicions between corporates and the government.

The focus of Pillar Two, aside from the obvious setting a floor for corporate tax rates, should also encompass minimising friction in implementation and taking the longer-term view of building up the ecosystem for the Asian region.

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