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ASIA VOICES: PERSPECTIVES ON TAX POLICY 2024

CHRISTOPHER GEE
YAP JIA HUI

Institute of Policy Studies

Lee Kuan Yew School of Public Policy
National University of Singapore

IPS Exchange

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Institute of Policy Studies
Lee Kuan Yew School of Public Policy
National University of Singapore
1C Cluny Road House 5
Singapore 259599
Tel: +65 6516 8388
Web: www.lkyspp.nus.edu.sg/ips
Registration Number: 200604346E

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ASIA VOICES: PERSPECTIVES ON TAX POLICY 2024

IPS Working Group Convenors

CHRISTOPHER GEE
YAP JIA HUI

Contributor
MATT ANDREW

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BACKDROP

In January 2022, the paper "Asia Voices: Perspectives on Tax Policy" was published by an Institute of Policy Studies (IPS) Working Group. The group was convened to coordinate and encourage perspectives and actions from Asia regarding the Organisation for Economic Co-operation and Development (OECD)'s reform to address base erosion and profit shifting (BEPS) risks. The paper outlined the theoretical principles and debates that underpin international taxation. More specific to BEPS, it discussed issues of harmful preferential tax regimes in the Asian context as well as provided alternative views to the largely critical perspectives of tax incentives. The paper gave explanation and evidence about positive externalities of global investment hubs such as Singapore and the contribution of tax incentives to the economic transformation in Asia.

As discussions within the OECD progressed, it was increasingly clear that Pillar Two of the Global Anti-Base Erosion Model Rules (GloBE or BEPS Pillar Two) was more likely to be implemented before the first pillar. Pillar Two will impose a minimum effective tax rate of 15 per cent for all multinational enterprises (MNEs) that have revenues of 750 million euros or more. In principle, this move was meant to eliminate the "race-to-the-bottom" competition among countries that lower their tax rates against one another in a bid to attract investments.

In December 2022, the Working Group convened its inaugural "Asia Voices: Perspectives on Tax Policy" seminar focused on discussing the impacts of Pillar Two on developing Asia.

ASIA VOICES SEMINAR 2024

The 2024 seminar continued the conversations on Pillar One, with a focus on the new taxing right, known as Amount A. The half-day seminar discussed the policy considerations in relation to different ways which Pillar One might play out. Alternatives such as digital services taxes, permanent establishments, and United Nations (UN)-led options were also discussed.

Three speakers with experience in the OECD and the UN provided updates on the development of these policies and discussed these

different scenarios that might play out depending on the success of Amount A’s roll-out.

Executive Summary

EXECUTIVE SUMMARY

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 BEPS.

The online seminar held in March 2024 shifted the discussion to Pillar One, with a focus on the taxing right known as Amount A. Three speakers with experience in the OECD and the UN provided updates on the development of these policies and discussed different scenarios that might play out depending on the success of Amount A's roll-out.

The seminar was conducted under the Chatham House Rule, meaning the identities of the speakers will not be revealed, even though information from the seminar is free to use. The slides included in this report are therefore attributed to the speakers, but their identities are not specifically mentioned.

This report sets out the key discussion points that were covered as well as additional commentary from the IPS Working Group.

TECHNICAL OVERVIEW OF PILLAR ONE AMOUNT A

The first section provides an explanation of the definitions, and processes that are relevant to Pillar One. These were technical details largely drawn from publicly available documents published by the OECD, which provided step-by-step explanations on how Amount A would be calculated. A core aspect of Amount A is the Multilateral Convention (MLC) that is required to implement Amount A. In this section, provisions for tax certainty through the MLC were also described.

THEORETICAL AND PRACTICAL CHALLENGES OF A MULTILATERAL SOLUTION

Given the critical role that the MLC plays, the second section delves into the details ranging from theoretical deliberations surrounding

multilateral tools like the MLC to seven practical challenges of ratifying it in today's economic and geopolitical setting.

On the theoretical aspect, economist Dani Rodrik's explanation of the different levels of globalisation provide a way to understand why a multilateral, deeply integrative solution like Amount A has been needed to curb issues like global taxation issues in the digital economy (Rodrik, 2010). Following his argument that hyper-globalisation is not tenable in today's geopolitical setting, the idea of "thin globalisation" was explored. This form of globalisation recognises the different agenda and goals of states, and hence enacts a less demanding global solution to issues. The way thin globalisation might work in Asia's tax space requires the willingness to forsake robustness of mechanism to achieve simplicity and ease of administration for developing's countries with lower capabilities; another way is to recognise the different views that different economies have on the attribution of profits.

On the practical front, it was discussed that the biggest obstacle that the OECD faces for Amount A roll-out is to have the MLC ratified and signed by a critical mass of jurisdictions; the MLC requires ratification by at least 30 states accounting for at least 60 per cent of the ultimate parent entities of MNEs initially expected to be in-scope for Amount A. At the time of the seminar, even major economies are still taking a "wait-and-see" approach with regard to signing the MLC. This is mainly because the number of in-scope MNEs are spread disproportionately throughout the world. If jurisdictions with large numbers of in-scope MNEs do not ratify the MLC, it will be of little significance for other jurisdictions to commit to the convention. Given that the MLC requires signatories from a critical mass of jurisdictions, in particular the United States (US), there is no certainty if or when Amount A would come into force.

FUTURE POSSIBILITIES

In the last section, the "what ifs" were considered, where participants reviewed scenarios with Amount A and the MLC, and what they mean for jurisdictions and businesses having to consider present and next steps.

If the MLC fails to be ratified, the worst scenario could be a lack of consensus relating to taxing the digital economy, resulting in double taxation and complication of unilateral measures. Nonetheless, there was optimism that even if the multilateral solution was not achieved, it would not mean chaos and mayhem for the world.

In fact, for businesses and developing countries with limited capabilities, finding simpler ways to coordinate existing bilateral treaties might be “good enough”. Moreover, diverting the attention and resources towards aligning and harmonising existing unilateral tax measures on a regional level might be particularly significant for Asian economies given the trends in its digital economy.

In light of these possibilities, the last section focuses on the roles of different organisational bodies like the UN Tax Convention to coalesce perspectives of different stakeholders to initiate these alternative approaches. The strengths and limitations of the UN Tax Convention were discussed. This led to the concluding point — that regional organisations such as the African Tax Administration Forum (ATAF) are important to support the work of the UN in enabling this to be a fruitful platform to represent and deliver the different perspectives in shaping the global taxation system. While there are some well-established organisations from Asia, a full representative body with participants from policymakers, businesses, academics and other non-government organisations is still lacking. This contributes to the lack of voices from Asia on tax policy that our work is, in part, intended to fill.

Chapter 1

Technical Overview of Pillar One Amount A

TECHNICAL OVERVIEW OF PILLAR ONE AMOUNT A

OVERVIEW OF PILLAR ONE AMOUNT A

Pillar One is a formulary method that determines a portion of residual profits of large multinationals (MNEs) with global turnover of at least 20 billion euros, to be reallocated to the market jurisdiction where end users are located. This amount determined by the formula is called Amount A.

This novel taxing right will introduce significant modifications to the arm's-length principle[1] that has been a longstanding way of allocating profits to be taxed in the global tax system. The need to reform the traditional taxation standards stem from the challenges brought about by globalisation and digitalisation, whereby business profits are no longer exclusively circumscribed by physical presence (Andrus & Richard, 2022).

Addressing these challenges, Amount A aims to achieve greater fairness, stability and tax certainty. In terms of fairness, Amount A serves as a way to reallocate profits of MNEs to market jurisdictions, regardless of the physical location of the business (OECD, 2020). Here, the MLC aims to increase stability and certainty by replacing the patchwork of unilateral actions as well as serve as a platform for dispute resolution.

HOW AMOUNT A WORKS

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

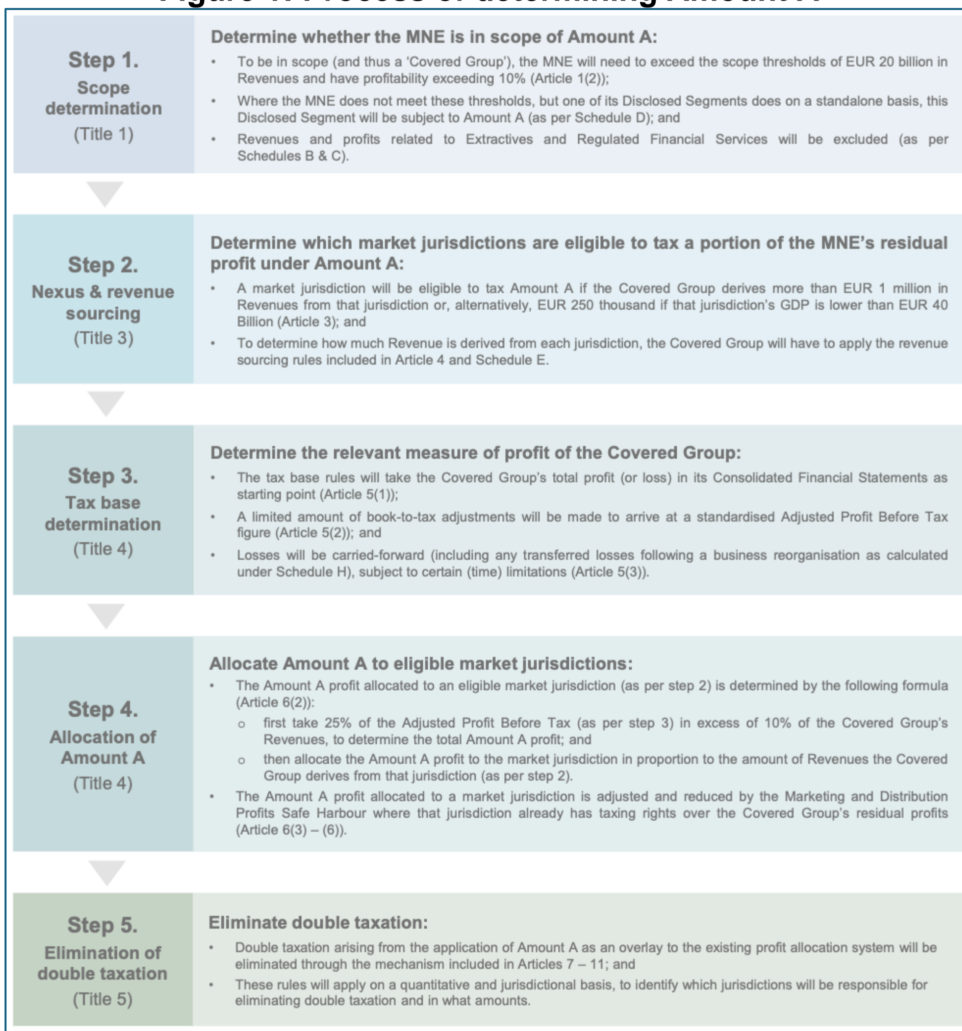
For these in-scope MNEs, they will have to reallocate 25 per cent of their excess profits to identified market jurisdictions where the revenues are sourced. This excess profit is defined as what the MNE groups earn in excess of 10 per cent of its revenue.

[1] The arm's-length principle requires enterprises to transact amongst themselves using prices and conditions that would also be adopted by other similarly situated unrelated parties.

Determining Amount A and In-Scope Multinationals

Determining whether an MNE is in-scope is the first step according to the five-step process (OECD, 2023).

Figure 1: Process of determining Amount A



Source: OECD (n.d.b)

1. Scope determination

The first step of scope determination requires the use of a number of quantitative metrics to determine the size of the MNE group and its profitability. Activities such as defence businesses or regulated

financial services are out of scope of Amount A and will also be eligible for an exclusion in this step.

2. Identification of eligible market jurisdictions

The second is to identify market jurisdictions that will be eligible to tax the MNE's "excess" profits under Amount A.

This requires the use of different revenue sourcing rules based on the particular revenue that the MNE earns from its business activities. For example, if the in-scope MNE's revenues come from online advertising businesses, its source rule will be based on the real-time location of the viewer. Relevant indicators include the use of the geolocation or IP addresses of the device of the viewer at the time of display (OECD, 2020).

3. Calculation and allocation of profit

Having identified the in-scope MNEs and market jurisdictions that are eligible to tax these enterprises, the third step would be to calculate that portion of "excess" profit that should be taxed under Amount A.

This is where the formula applies — 25 per cent of the portion of the in-scope MNE's profit that exceeds 10 per cent of the MNE's revenues will be allocated among eligible market. This allocation will be done in proportion to the amount of revenues that the MNE derives from each identified market jurisdictions.

In this step, the Marketing and Distribution Safe Harbour (MDSH) provision will be required as a first step to adjust for double counting. Under the MDSH, eligible market jurisdictions that already have taxing rights over the in-scope MNE's "excess" profits under any existing rules will not be able to tax the MNE under Amount A. This therefore reduces the profit amount allocated to market jurisdictions to avoid double counting.

4. Elimination of double taxation

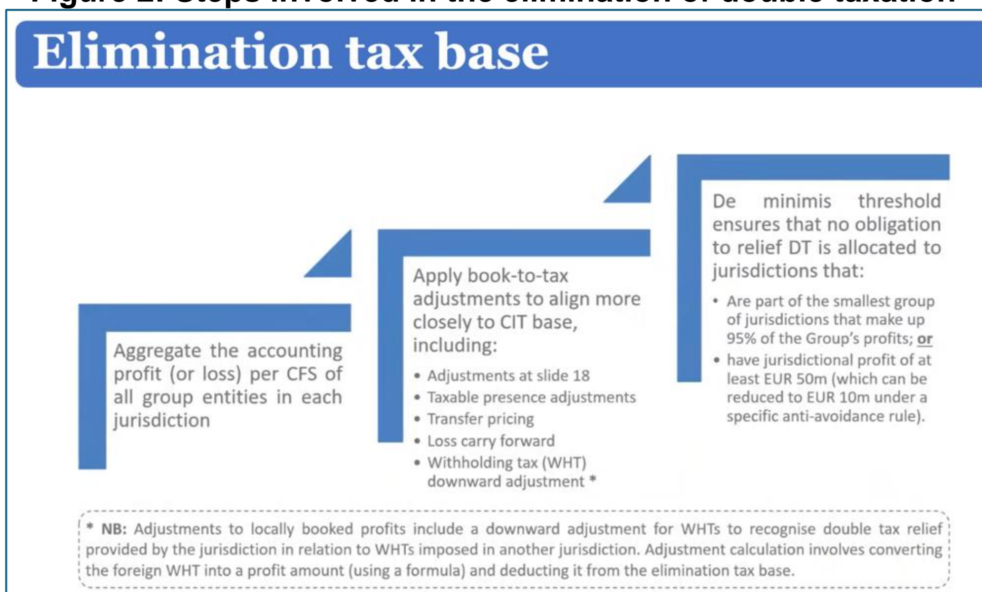
The next step is to further eliminate any instances of double taxation through the following process:

i. Identifying the relieving jurisdiction
ii. Calculating the elimination tax base
iii. Determining the return on depreciation and payroll

iv. Calculating excess profit in tiers
v. Allocating relief
vi. Attributing relief to entities

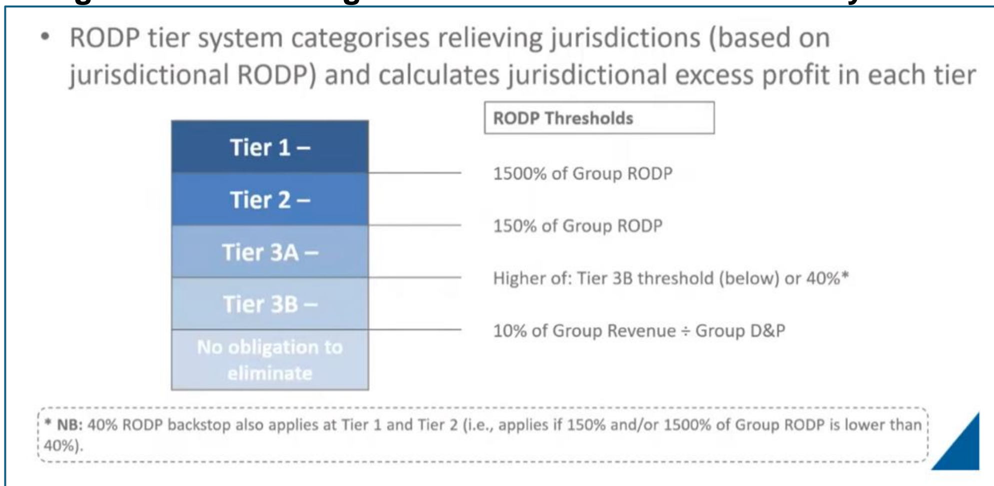
The process of allocating relief to entities involves a tier system where jurisdictions with profits in the highest tiers will be given the first rights to double taxation relief.

Figure 2: Steps involved in the elimination of double taxation



Source: OECD (n.d.b)

Figure 3: Relief obligations are allocated in a tiered system



Source: OECD (n.d.b)

This calculation of tiered profitability is based on the jurisdiction's return on depreciation and payroll (RODP). What this involves is summing up the accounting profit of all group entities in the jurisdictions, followed by calculating the depreciation and payroll of the MNE in the jurisdiction.

In Tier 1, the relief obligation is allocated using a waterfall approach, meaning the highest jurisdiction is going to be allocated relief obligations until its RODP matches the second highest RODP jurisdiction. Those two are allocated relief obligations until their RODP matches the third highest RODP jurisdiction. This process continues until the jurisdictional RODP Tier 1 jurisdictions reaches 1,500% of the Group RODP or until all Amount A allocations have been relieved. In Tier 2, any remaining relief applications are allocated on a similar pro-rata basis. If Tier 1 is insufficient to fully provide relief, sub-tiers 3A and 3B of the remaining relief obligations can also be allocated on a pro-rata basis.

5. Filing obligations, payment and claiming relief

The last step has to do with compliance — payment of taxes, documentation and claiming the relief from double taxation.

There will be a single return and document package that covers all the MNE's Amount A tax liabilities across the world. The Designated

Payment Entity (DPE) will also be the single entity through which the payments of Amount A will be made to market jurisdictions. These mechanisms are in place to streamline process and achieve the goals towards tax certainty and stability.

Lastly, where jurisdictions are to provide relief from double taxation, the relief is to be claimed through domestic tax processes but subjected to guardrails in the MLC.

To reconcile Amount A with existing profit allocation rules and deliver its obligations, the multilateral convention is a critical instrument to implement Amount A. Ideally, the convention will ensure that implementation of rules and interactions between jurisdictions are consistent and made as simple as possible. This includes the removal of any obstacles that may be present in order to reallocate profits in existing tax treaties.

The convention would also provide those guardrails to ensure that double taxation arising from Amount A allocations is eliminated.

ENSURING TAX CERTAINTY

Figure 4: Three mechanisms to ensure tax certainty under Amount A

Advance certainty	An advance certainty review provides an MNE with binding multilateral certainty that its methodology for applying specific provisions of the MLC will be accepted for a specified number of years, subject to agreed critical assumptions continuing to apply. This certainty will also cover relevant elements of the MNE's internal control framework.
Scope certainty	A scope certainty review provides an out-of-scope MNE with binding multilateral certainty from Parties named in the request, that it is not in scope of Amount A. This removes the risk of unilateral compliance action in jurisdictions where the MNE sources revenues. A follow-up scope certainty review based on simplified documentation is available to extractives and regulated financial services groups that have already been reviewed.
Comprehensive certainty	A comprehensive certainty review provides an MNE with binding multilateral certainty over its application of rules on Amount A in all Parties to the MLC. This ensures a consistent treatment of the MNE across jurisdictions and the full elimination of double taxation.

Source: OECD (2023)

Even though the steps, thresholds and formulas are clearly set out, confusion is still highly likely with decentralised enforcement and inconsistent interpretation of the rules. One of the key functions of the MLC would therefore be to ensure there is tax certainty in the allocations under the Amount A system.

Three mechanisms[2] have been proposed to provide certainty for in-scope and out-of-scope MNEs in relation to Amount A: scope certainty, advance certainty and comprehensive certainty reviews.

First, there is a scope certainty provision that will be undertaken by a scope review panel that aims at giving certainty to out-of-scope MNEs that they are indeed out of Amount A's scope.

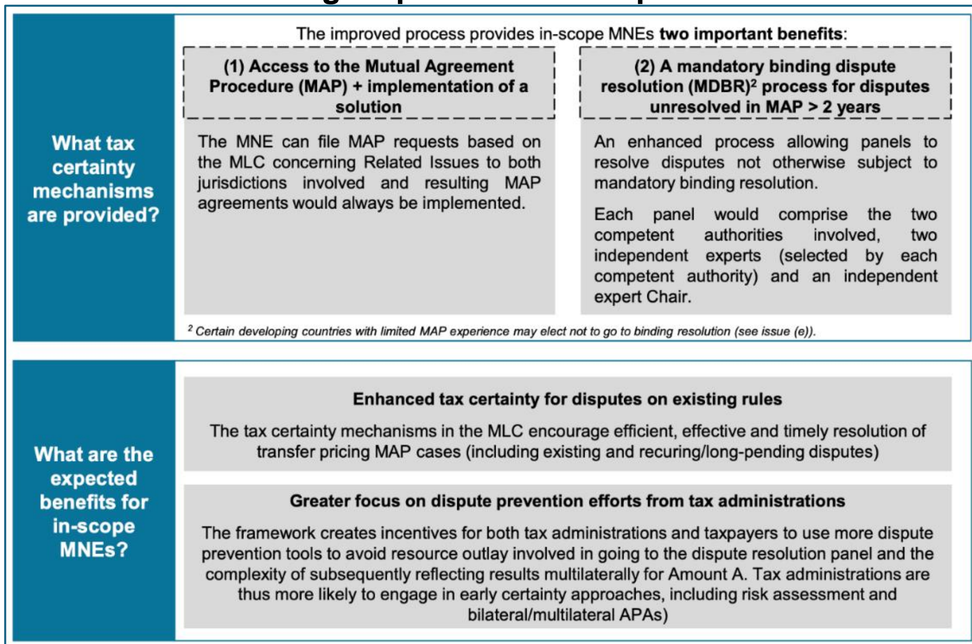
Second, for in-scope MNEs, there will be an advance certainty review that provides certainty that their methodologies will be accepted for a specified number of years. These certainty reviews cover how the

[2] Details of all three certainty reviews will be commenced and concluded have been made available online at https://www.oecd.org/tax/beps/understanding-on-the-application-of-certainty-for-amount-a-of-pillar-one.pdf (OECD, n.d.a)

Amount A calculation is made for the in-scope MNEs, particularly focusing on revenue sourcing, and excluding revenues. This gives MNE groups upfront certainty in advance with respect to their approach and methodologies in calculating their Amount A liability.

Lastly, the comprehensive certainty mechanism covers areas that are not already covered in the scope and advance certainty review processes, and enables a more comprehensive outcome under a review process to determine more contentious or more challenging issues under the Amount A rules that may be disputed. One example is when the Amount A calculations are reviewed and challenged in particular jurisdictions.

Figure 5: Access to Mutual Agreement Procedure (MAP) and binding dispute resolution process



Source: OECD (2023)

Apart from the three mechanisms above, the tax certainty framework under the MLC will also grant in-scope MNEs access to Mutual Agreement Procedures (MAP). In cases of disputes, the MNE can file MAP requests based on the MLC concerning issues related to Amount A to both the jurisdictions involved. The resulting agreements will

always be implemented by the signatory countries to the MLC (OECD, 2023).

There is also an enhanced process for further unresolved disagreements, which is subject to a determination panel that gives outcomes under a mandatory binding dispute resolution (MDBR) process for all these potential disputes under Amount A. That guarantees a multilateral binding certainty process to any MNE group that submits a request.

To complement the foregoing, there are tax certainty provisions for issues related to Amount A, particularly for transfer pricing, permanent establishment or withholding tax characterisation disputes that are covered by the tax treaty. That results in an adjustment that might either impact the Amount A relief that is provided by jurisdictions and the extent to which such relief is applicable; or in material adjustments under the Amount A rules.

Chapter 2

Theoretical and Practical Deliberations of a Multilateral Solution

THEORETICAL AND PRACTICAL DELIBERATIONS OF A MULTILATERAL SOLUTION

ABOUT THE MLC

If ratified, the MLC will be an advancement over the Multilateral Instrument of BEPS Action Plan's Action 15, which aims to create a multilateral instrument to implement BEPS rules through a single amendment of all relevant tax treaties. This multilateral solution is necessary to ensure that the tax reform can take place without having to renegotiate every existing bilateral treaty, which will be a tremendous practical and political undertaking (Brauner, 2023).

The Inclusive Framework published the MLC in October 2023. The published MLC was incomplete due to difficulties in resolving certain technical concerns on a consensus basis. Nonetheless, the document was made public to ensure transparency and to facilitate jurisdictional consultation and decision-making processes.

At the time of the seminar, the Inclusive Framework was working towards the adoption of the MLC text, with internal members carrying out internal consultation processes to resolve the remaining issues. The OECD's aim is to resolve the outstanding issues as quickly as possible in order to prepare for the MLC text to be ready for signatures.

Figure 6: Effects of MLC on existing unilateral measures

Question	Answer
What happens with existing DSTs?	The MLC (Annex A) includes a list of existing measures that the Parties commit to withdraw when Amount A starts applying.
What happens with future DSTs or similar measures?	**How will future measures be qualified as a DST or Relevant Similar Measure?** Three cumulative criteria to define the measures: 1. the tax is applied by reference to market-based criteria (e.g. location of customers and users); 2. it is ring-fenced to non-resident or foreign-owned businesses; 3. it is outside the scope of tax treaties. **Who determines whether it's a DST or Relevant Similar Measure?** Determination of the measures is made by the Conference of the Parties. The MLC guarantees a decision is taken within 12 months. **What happens in case the Conference of Parties decides that a measure is a DST or a Relevant Similar Measure?** When the Conference of Parties determines that a measure is a DST or a Relevant Similar Measure, the party is denied Amount A allocation until the measure is withdrawn.
What about non-traditional nexus (e.g. Significant Economic Presence)?	Significant Economic Presence concepts and similar types of nexus rules that are in scope of tax treaties are not treated as DSTs under the MLC (third criteria of DST above). However, because their effect and objectives overlap with Amount A, Parties to the MLC will not apply them to in-scope MNEs once the MLC comes into effect.

Source: OECD (2023)

One of the most important aspects of the MLC is that parties to the convention will not be able to impose digital services taxes (DSTs) or any similar unilateral measures, regardless of whether the companies are in the scope of Amount A. If the MLC is successfully ratified, the elimination of unilateral measures and harmonisation of thousands of bilateral treaties with a single instrument will make the MLC a significant multilateral feat (Alschner, 2019).

However, there will be complication; and much work will be needed to ensure consistency and clarity in each decision to replace the DSTs. For example, determining whether an existing measure is a DST might not be straightforward. Where there is uncertainty, the Conference of the Parties will review that existing measure and decide whether it is considered a DST or a relevant similar measure that will have to be withdrawn under the MLC. Three factors have been identified as cumulative criteria that define a DST or relevant similar measure:

i. The measure is applied by reference to market-based criteria
ii. The measure is ring-fenced to non-resident or foreign-owned businesses

iii. The measure is outside the scope of tax treaties

The MLC guarantees that determination as to whether a measure is a DST will be taken within 12 months. When the Conference of Parties determines that a measure is a DST or a relevant similar measure, the party will then be denied Amount A allocation until such time the measure is withdrawn.

In relation to this, it has also been specified that Significant Economic Presence (SEP) rules that are in scope of tax treaties will not be treated as DSTs under the MLC. However, parties should refrain from apply the SEP to in-scope MNEs once the MLC is in force.

MLC AND THE GLOBALISATION PARADOX

Figure 7: The novelty of the MLC

Changes brought about by MLC

Amount A is deep or hyper globalization (Dani Rodrick)

1. ***Political:*** tearing open the last bastion of the Westphalian sovereignty
2. ***Economic:*** breaking monopoly, aligning the new international tax system in proximity to fairness, answering to the G20 call for fairness.
3. ***Legal:*** public international tax laws
4. ***Administrative:*** multilateral cooperation + international institutional governance
5. ***Technical:***
   - New nexus;
   - Deviation from ALP;
   - Allocating reward from international integration; and
   - Unitary taxation with formulary apportionment of the concentrated profits.

Source: Speaker's presentation

Taken at surface value, MLC as a multilateral tool and the OECD's effort appears to tick all the boxes indicating a robust, globalised economy.

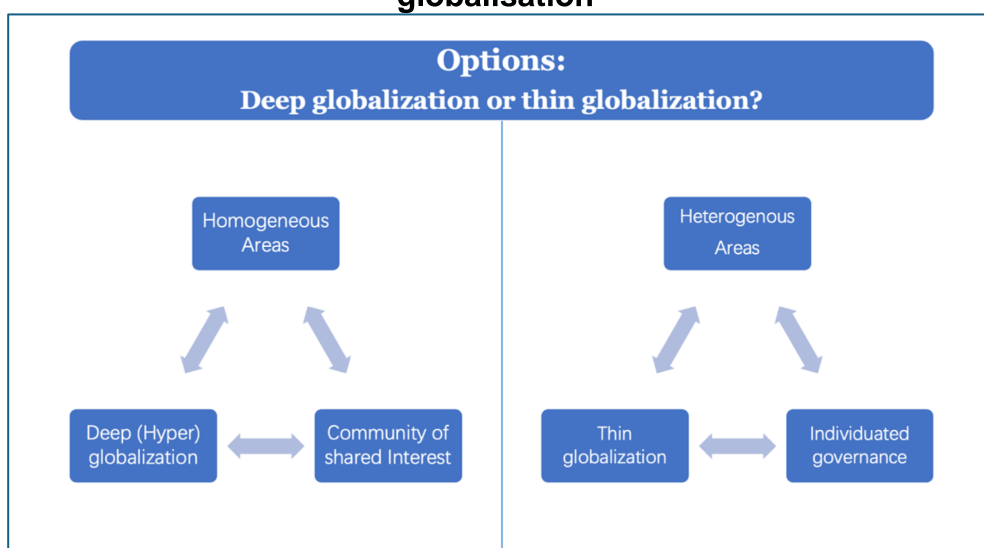
However, a more critical analysis of multilateralism — what its benefits and trade-offs are; what is practical in the present political economy; what forms this multilateralism takes — would yield more fruit in the search for solutions to present challenges. As a recap, the main

challenges that BEPS Pillars One and Two target are insufficient or ineffective taxation brought about by digitalisation and globalisation.

In the seminar, "the globalisation paradox" by Dani Rodrik was referenced as a way to understand these challenges and the Amount A solution that was discussed.

In short, Rodrik's illustration showed how there is a political trilemma in the world economy — we cannot simultaneously pursue democracy, national determination and economic globalisation at the same time (Rodrik, 2010).

Figure 8: Dani Rodrik's framework on different levels of globalisation



Source: Speaker's presentation

In the BEPS context, Amount A, which requires a ratification of the MLC, could be seen as a form of hyper-globalisation.[3] This form of globalisation refers to a deep integration where trade agreements extend beyond the traditional focus on import restrictions to impinge

[3] As seen in Figure 4, reasons for describing Amount A as a form of hyper-globalisation have to do with how it aims to bring about deep integration in ways that upend many traditional ways by which international taxation has worked. On the political, economic, legal, administrative and technical fronts, Amount A calls for unprecedented cooperation amongst nation states.

on domestic policies; and where developing nations come under severe pressure to open their markets to foreign trade and investment.

According to Rodrik's observation, issues that concern a community of shared interests — such as climate change and a pandemic — require deep globalisation to bring about solutions. Beggar-thy-neighbour tax policies, such as race-to-the-bottom tax competitions,[4] might also require deep globalisation-type solutions to curb the issue.

If it is true that Amount A itself is a form of hyper-globalisation, then we will have to choose between national determination and economic integration. The point of referring to Rodrik's argument, however, is not to discuss the choice that jurisdictions should take. Instead, it takes on Rodrik's further arguments, that the great diversity of our current world simply renders hyper-globalisation incompatible with democracy.

Rodrik's argument is therefore that "a thin layer of international rules that leave substantial room for manoeuvre by national governments is better globalisation" (Rodrik, 2010). What this theoretical postulation of a "thin layer of international rules" might mean for the taxation of digital economy is that the network of rules should not demand deep integration that is not reasonable for states. In Section 3 of this report, discussants mentioned "good enough" frameworks that businesses and jurisdictions would be satisfied with. These scenarios looked at coordinated networks of DSTs and significant economic presence, which might allow more flexibility than what the MLC currently presents.

COMMENTARY

This brief commentary aims to stretch the discussions from the seminar by offering possible arguments for the suggested "thin globalisation". It provokes debate on what this form of globalisation

[4] However, the issue that Amount A tackles is not about a race to the bottom in tax competition. Rather, it is about the lack of coordinated actions by market jurisdictions to tax business models that have no physical presence. Therefore, it can be questioned whether Amount A and the issues that it aims to resolve warrant hyper-globalised solutions.

looks like in managing the challenges of taxing the digital activities in Asia; why it works and why it might not.

First, as described above, a system with the characteristic of thin globalisation would recognise that states have different economic, political and social agenda, and goals that might often conflict with the demands of international integration (Rodrik, 2024).

Understanding and meeting the diverse agendas and goals of all countries is a tremendously difficult task. However, that might be what it takes to achieve the fair global taxation system upon which the whole BEPS initiative has been founded.

Simple and Flexible Taxation Systems for Developing Asia

Figure 9: Areas of improvement opportunities for developing countries in Asia

Table 1: Challenges to Taxation in the Focus Countries

Similar challenges to taxation across seven dimensions in focus countries

Improvement opportunity by country: Large | Some | Limited

	Challenge	Country				
		Cambodia	Indonesia	Myanmar	Philippines	Thailand
Tax structure	Role of subnational taxation[a]	Large	Some	Large	Large	Large
	Tax progressivity[b]	Large	Large	Large	Some	Some
Tax compliance	Informality[c]	Large	Large	Large	Some	Some
	International tax avoidance and taxation of cross-border services[d]	Some	Large	Some	Large	Large
	Vulnerability to VAT fraud[e]	Large	Large	Large	Large	Large
	Administrative capacity[f]	Some	Some	Some	Some	Limited
Ease of tax	Administrative burden of tax compliance[g]	Large	Some	Large	Some	Some

VAT = value-added tax.

[a] Indexed based on subnational governments' tax revenue as a share of total revenue. (Limited: ≥10%; some: 10%> x >4%; large ≤4%).
[b] Based on benchmarking of top tax rate relative to global averages. (Limited: >35%; some: 35%≥ x >25%; large ≤25%).
[c] Share of informal workers based on total workers. (Limited: <30%; some: 30%≥ x >60%; large ≥60%).
[d] Based on ISORA survey results and stakeholder interviews (Large: indicates as a high-risk area).
[e] Assessed based on VAT efficiency ratios and stakeholder interviews.
[f] Based on ADB. 2020. *A Comparative Analysis of Tax Administration in Asia and the Pacific*. Manila.
[g] Index of three indicators of the World Bank's Paying Taxes survey (frequency of payments, hours to comply, post-filing challenges: see Table 2. Limited: at least 2/3 indicators score as limited; some: not more than 1 score as large; large: at least 2/3 indicators score as large).

Sources: Asian Development Bank, International Labour Organization, Organisation for Economic Co-operation and Development, United Cities and Local Governments, World Bank, various sources; AlphaBeta analysis.

Source: ADB (2022)

Regional organisations like the Asia Development Bank (ADB) have sought to assess the needs of developing countries in Asia. In a 2022 report (ADB, 2022), for example, it argued that one of the most pressing needs of countries like Cambodia, Indonesia, Myanmar and the Philippines is to improve their domestic resource mobilisation. It was further argued that there are clear opportunities that can generate over US$216 billion in tax revenue for Southeast Asia. These opportunities include easing tax administration, enhancing compliance through tackling informality, and expanding tax bases through taxing digital services.

As a popular saying goes, “in developing countries, tax administration is tax policy” (Casanegra de Jantscher, 1990). The opposite is also true in that the kind of policy introduced also affects the administration of it. It is well known and understandable that compliance issues are more challenging in developing compared to developed countries. In an IMF Working Paper, for example, it was shown that policies with many exemptions might be particularly problematic for developing countries as these create opportunities for corruption (Keen, 2012). As seen in Figure 11, opportunities to improve administrative capacity in Southeast Asian countries are already low. A key aspect of building a fair taxation system that serves the needs of developing countries is by strengthening compliance instead of having more policies that complicate the process of tax collection.

Therefore, a fair taxation system that delivers the fiscal benefits is one with simple and flexible procedures. The flexibility aspect comes in terms of giving states the leeway to continue with bilateral treaties and other taxation tools that have already proven to work. While multilateral tools like the MLC can deliver similarly effective results in terms of revenue reallocation and collection, the process of withdrawing existing mechanisms, and communicating and implementing new ones, could pose additional administrative burdens for developing countries.

Perception of Attribution of Profits — Demand-Supply Factors

Another perspective of developing nations to be considered is how the natures of their economies shape the ways they view attribution of profits. For example, differences between the OECD and developing countries have emerged where countries like India argued that demand side factors like sales can be valid ground for attribution of profits. In a 2019 report reflecting a public consultation, the committee formed by the Indian finance ministry questioned the OECD’s approach for profit attribution (Ministry of Finance, Government of India, 2019).

More specifically, it has been argued that developing countries like India are markets with large subscriber base for technology companies, and therefore should have the right to the revenues of

these enterprises. To some extent, Pillar One does exactly that by reallocating profits to the market state.

However, for many developing countries, it is less likely that these residual profits booked in the MNEs are located in their jurisdictions. Even if they are, the accompanying mechanisms to eliminate double taxation operate by reference to locations where residual profits are booked in the MNEs. Therefore, any potential revenue gains from Pillar One will still be offset by these mechanisms, nullifying any benefits from reallocation of profits to market states (Andrew & Collier, 2022).

It is in such contexts that developing countries have pursued alternative frameworks, especially when there is much uncertainty as to when global consensus-based solutions might come to pass. The ATAF's Cross Border Taxation Technical Committee had developed a guide, called the Suggested Approach to Drafting Digital Sales Taxation, to help African countries that are considering implementing digital services taxes (ATAF, n.d.). The ATAF justified this suggestion by arguing that "there is significant risks for African countries in simply waiting to see whether the OECD Inclusive Framework can achieve an international solution" (ATAF, n.d.). The decision is not yet made as to whether these DSTs would be repealed if the international consensus-based solution is achieved.

The G24, which comprises of 28 developing countries like India, Sri Lanka and the Philippines, had also proposed a nexus concept of the significant economic presence (SEP)[5] combined with a new profit allocation approach based on either a fractional apportionment or a new withholding tax (Andrew & Collier, 2022). This approach aims to account for both the production (supply) and sales (demand) factors in determining the profits that should be taxable in a jurisdiction. As Andrew and Collier observed, "the proposal is also intended to be as simple as possible."

[5] Since April 2018, India had already introduced the SEP in its Income-Tax Act. Through the SEP, income of a non-resident that arises or accrues in India — which results in a "business connection" — will be taxable in India. This includes the transaction of any goods, services or property carried out by a non-resident in India, including the download of data (Deloitte, n.d.).

Clearly, there are concerns and trade-offs to both the Suggested Approach of the African region as well as the SEP approach of the G24. This section of the commentary does not aim to promote a best way to curb the challenges of taxing the digital economy. Instead, the argument is to consider “good-enough” policies — between a rigid top-down multilateral mandate and a fragmented world of overlapping unilateral measures — that consider the needs and capabilities of all stakeholders.

Challenges in Ratifying the MLC

At the time of the seminar (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. Only then will the MLC be opened for signing by the jurisdictions. The deadline for that was end of March 2024 with a potential signing ceremony targeted for June 2024.

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 will take substantial time to achieve the required ratifications. More specifically, this step requires the ratification by at least 30 states. This accounts for at least 60 per cent of the ultimate parent entities of MNEs initially expected to be in-scope for Amount A.

From the observations of the participants, it appears that even major economies are still taking a “wait-and-see” approach in regard to signing the MLC. This is mainly due to the fact that the number of in-scope MNEs are spread disproportionately throughout the world. If jurisdictions with large numbers of in-scope MNEs do not ratify the MLC, it will be of little consequence for other jurisdictions to commit to the convention. Given that the MLC requires signatories from a critical mass of jurisdictions, there was no certainty as to whether it is possible or when Amount A will come into force.

This consensus-based approach has been one of the most criticised aspects of the MLC and Pillar One in general. For example, in evaluating international tax reforms according to their robustness and

resilience, Schön argued that Amount A is not robust[6] given that it requires a critical mass of countries to join in order to be effective. According to Schön, international tax rules must be robust and resilient in order to cope with unforeseen challenges and robustness implies that the positive effects of coordination efforts are not dependent on global recognition of the solution (Schön, 2023).

Noting the substantial scepticism surrounding the ability for jurisdictions to get the MNC ratified, the OECD remains determined and there is no plan B for when these milestones are unachieved.

What this means is that intensive negotiations between the OECD and jurisdictions will continue, where the former seeks to understand what it will take for jurisdictions to ratify the convention. Again, the proliferation of considerations arise amongst jurisdictions, some of which run opposite of each other.

Interdependency of Amounts A and B

It was noted that for many jurisdictions, the critical interdependency in getting the ultimate ratification of Amount A lies in how Amount B would play out. In the words of the OECD, Amount B "aims to standardise the remuneration of related party distributors that perform baseline marketing and distribution activities in manners that are aligned with the arms-length principle" (OECD, 2020). Simplification and streamlining of transfer pricing rules are therefore the essence of Amount B. The implications of Amount B are important to jurisdictions because unlike Amount A, it is not subject to scope thresholds and therefore the rules apply to the covered transactions of any MNEs.

For some jurisdictions, in order for Amount A to make sense, key criteria are that Amount B must be seen to be robust enough to provide tax certainty to the full extent — and that it can apply to a broad suite of marketing and distribution arrangements across a broad

[6] While Schön argue that resilience is a problem for Pillar Two, the same can be argued for Amount A. According to Schön, resilience "implies that countries remain free to adapt to material changes in the discal universe of the non-tax word of international trade and politics" (Schön, 2023). Given that Amount A is contingent on a binding consensus-based multilateral agreement, it is likely to different to make the material changes that are necessary to adapt to future economic and political changes.

range of industries that have particular economic significance for that jurisdiction. This could either be because their businesses are seeking to have tax certainty in other markets, or that they are seeking to safeguard their taxing rights in their own jurisdictions. However, there are some jurisdictions that seek an opposite arrangement, which is to first have the MLC signed and ratified, and then Amount B can be more broadly applied.

The dynamic between Amount A and B is therefore another political negotiation that has to take place in order for the MLC to be successfully ratified.

Chapter 3

Future Possibilities

FUTURE POSSIBILITIES

Beyond discussing the challenges of ratifying the MLC and bringing Amount A to pass, the seminar also reviewed the scenarios without Amount A and the multilateral convention.

AN UNSUCCESSFUL MLC

Figure 10: Possible challenges arising from a failure to secure a MLC

Challenges if failure

- If no MLC, to respond to challenges of globalization and digitalization, varied alternatives will rear heads, posing challenges to administration and double taxation
- Alternatives: DSTs; UN Art 12B; virtual PE; equalization levy……
- Challenges to administration: no multilateral cooperation, no collective functional solidarity. Retreat to unilateral and/or bilateral actions.
- Challenges to double taxation: double taxation where there is a DST imposed in one jurisdiction but no relief in another?
- Failure of Amount endangers G20 leaders' collective call for the construction of "***a modern, fair and sustainable international tax system***".(G20 Statements)

Source: Speaker's Presentation

Figure 11: Comparison of main characteristics of different digital taxation

Comparison of main characteristics of digital taxation

Characteristics	Pillar 1(A)	DST	Article 12(B)	Virtual PE	ALP
Administration	Multilateral	Unilateral (no dyadic interaction)	Bilateral	Bilateral	Unilateral
Scope	Most sectors (wide)	Specified (narrow)	ADS (narrow)	Most sectors?	All
Tax base	Global residual profits	Global revenue	Revenue (gross) or profits (net)	?	Global profits
Revenue threshold	20 billion Euros	0-750 million Euros	Negotiable	?	None
Profit revenue	10%	None	Negotiable?	?	None
EoDT	Yes	No	Yes	Yes	Yes
Number of affected MNEs	Below 100	Far bigger	Far bigger than Pillar 1(A)	Big?	Big
Tax revenue for source state	Small	Bigger	Far bigger than Pillar 1(A)	?	?
Globalization (Deep/ Thin)	• Unitary • Globalism • Deep	Self-determinism	• Bilateralism • Thin	• Bilateralism • Thin	Thin

Source: Speaker's Presentation
(EODT: Elimination of Double Taxation; Virtual PE: Virtual Permanent Establishment; ALP: Arm's Length Principle)

The worst scenario presented was that the dangers of the digital economy — double taxation and complication of unilateral treaties — will come in full force if the MLC fails to be ratified. As an illustration of the messy world to come, a comparison of main characteristics of digital taxation (see Figure 6) was shared to show how different jurisdictions adopting different tools will mean that jurisdictions and MNEs will have to grapple with a host of differing thresholds, scopes and double-taxation elimination systems.

However, it was also argued that there need not be a dichotomy between signing the MLC and other mechanisms with frameworks that are still broadly coordinated. The networks of DSTs, the Significant Economic Presence (SPE) proposals, and UN Article 12B[7] have been

[7] The UN Article 12B was drafted by the UN Committee of Experts on International Cooperation on Tax Matters in 2020. It was proposed as an additional provision which would allow the source jurisdictions to tax income from the provision of automated digital services paid to non-residents. The tax amount that will levied by the source jurisdiction would require bilateral treaty negotiations between the source and residence jurisdictions (ATAF, 2020).

touted as possible mechanisms that can still be shaped to include more coordinative elements.

Figure 12: Number of enforced and proposed DSTs around the world

Global Taxation on Digital Services
As of 25 March 2024 (based on available public information)

Regions	Jurisdictions with enforced DST	Jurisdictions with proposed DST
Europe	10	3
Asia pacific	12	1
Americas	7	1
Africa and middle east	9	0

Disclaimer: the above table only covers the public available information on respective websites and this is not an exhaustive list.

Source: Speaker's Presentation
(DST: Digital Services Taxation)

As seen in Figure 16 and Appendix A, DSTs and withholding taxes have already been proposed or enacted in many Asian jurisdictions. The rationale might be similar to that explained by the ATAF in their suggested approach, which is that there are significant risks of lost revenue if jurisdictions simply sit and wait for the implementation of the multilateral solution.

Unlike what has been initiated through the ATAF's suggested approach (including templates and suggestions on drafting these mechanisms; collaborative discussions on the pros and cons of adopting these mechanisms), there has yet to be a body taking this leadership role to align and harmonise the DSTs and withholding taxes that have been proposed among Asian jurisdictions.

While the scope and promised gains may not be as extensive compared to a global multilateral solution, starting with this regional approach is definitely more achievable. Moreover, having coherence

on a regional level may be particularly significant for Asian economies given its digital economy trends.

In a 2021 paper by IMF, for example, it observed that the strength and extent of digital businesses in Asia are set to grow in the aftermath of the COVID-19 pandemic. The e-commerce and online financial spaces in particular, have seen major players emerging from countries like China, Japan and Indonesia.[8] Moreover, these Asian homegrown tech giants are mainly operating within domestic markets and rivalling the presence of US multinational enterprises (IMF, 2021).

These show that there are significant activities, revenues and profits flowing through the source and resident jurisdictions that are all within Asia's region. It therefore makes sense for efforts to be focused on understanding the kind of taxation system that works for Asia. Of course, this is not to say that Asia's companies and jurisdictions ought to operate only within its regional or country silos. The argument is that there are benefits and sense in aligning tax policies within the region, so that Asia as a region will be enabled to present its perspectives more convincingly to shape a fair international taxation system. In the same report by the IMF, it was suggested that compliance costs and trade tensions might be reduced if there is regional coordination of DSTs, such as in coordinating the central design features, scope of the rules, key definitions, registration, and payment obligations.

[8] "China has several of the largest e-commerce companies in the world, both measured in terms of market share or total sales. For instance, China's Alibaba Group and JD.com have about 38 percent of global e-commerce market share by merchandise volume, although the total value of Alibaba's transactions is smaller than that of Amazon. Alibaba operates China's most-visited online marketplaces, Taobao (consumer to consumer [C2C]) and TMall (business to consumer [B2C]), while JD.com's marketplace has a large in-house delivery network. Japan's Rakuten and Singapore's Sea Group (trading as subsidiary Shopee) are other major players in e-commerce. Asia is also home to some of the world's largest providers of digital services other than e-commerce, such as China's Tencent operating the WeChat communications, social media, and payment platform) and Baidu (China's largest internet search engine)" (IMF, 2021).

THE UN TAX CONVENTION

These outstanding issues and clear desires to further shape the global taxation space negotiate means that opportunities remain for stakeholders to influence the final details of Pillar One. It was mainly in this context that the work and future of the UN Tax Convention was discussed.

STRENGTHS AND LIMITATIONS OF THE UN TAX CONVENTION

First Protocols of the Tax Convention

Figure 13: Next steps towards a UN Tax Convention

Looking Forward

- Next steps:
  - The Ad hoc open-ended Committee on Terms Of reference for a UN Tax Convention:
    - Organizational Session concluded and reported;
    - First inputs received;
    - First Substantive Session, New York, 26 April to 8 May 2024 (9 meeting days);
    - Second Substantive Session, New York, 29 July to 16 August 2024 (15 meeting days);
    - Webpage: https://financing.desa.un.org/un-tax-convention.
  - Committee Reports to General Assembly in August/ September.

Source: Speaker's Presentation

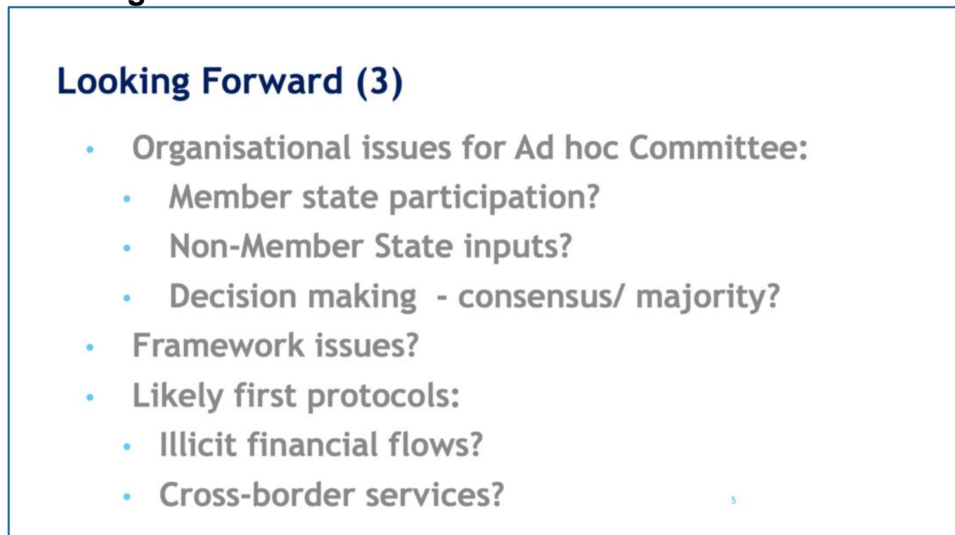
The involvement of the UN in the BEPS could be traced to the 2023 UN Secretary General's Report which stated there were no fully inclusive forum for international tax cooperation where countries could participate without preconditions (UN Secretary-General, 2023).

In November 2023, the UN General Assembly passed the historic resolution tabled by the African Group. The resolution kickstarted the negotiation for an intergovernmental UN Tax Convention. At the time of this seminar, an Ad Hoc Committee has been formed to draft the terms of reference for the UN Tax Convention, which will be voted upon by the General Assembly (UN DESA, 2023). The work of Ad Hoc Committee is scheduled to be completed by August 2024.

The issues that the Ad Hoc Committee has to decide include how member states would participate, how inputs from non-member states could be included, and whether decision-making should be based on majority vote or consensus. Two key areas were also identified to be the main drivers of the Convention's work — tax-related illicit financial flows and cross-border services (UN DESA, 2024).

Funding and Representation Constraints

Figure 14: Issues for Ad Hoc Committee to discuss



Source: Speaker's Presentation

Among these organisation decisions that are to be worked out, the practical constraints were also laid out from the onset.

Constraints in funding and expertise were cited as main challenges for the Convention. The committee negotiating the Convention comprises eight members, with a possible expansion to 12 with the Convention. This will still be a far cry from the strength of the OECD, in terms of both manpower and technical expertise.

In terms of representation, the Convention will be obligated by the resolution to ensure inclusion of a wide group of stakeholders. This not only includes developing countries but also civil societies, businesses advisors and academics. A difficulty that is currently being negotiated is how these groups will participate in the UN process,

given that they must be officially recognised bodies to do even as official recognition may not be possible for many organisations.

Differences Between the work of the UN Tax Convention and the OECD

Learning about these budgetary and organisational limitations has provided the committee with clarity as to what the UN Tax Convention would undertake and what it should not.

For example, it was clear that the UN would not possess the level of technical expertise that the OECD would have; and therefore the Convention would not endeavour to overtake the OECD in these matters. A body like the UN might have leverage over the OECD in its diplomatic expertise. As such, the UN Tax Convention would focus on assisting member states to articulate their positions on issues, and ensuring that they will be onboarded as alternatives in the intergovernmental discussions. Again, the issues of illicit financial flows and cross-border services were raised as agendas that have often been dismissed but are important to the interests of developing regions like Africa (UNCTAD, 2022).

For UN-based bodies that undertake negotiations, a key value is to have members share the same limitations as developing countries, to better act in their interests. One of the main examples raised is that the UN aims to keep frameworks and compliance processes as simple as possible, given that it is highly limited in resources. The complexity and intensive timelines of BEPS have been one of the greatest challenges for developing countries to keep up and participate meaningfully in any negotiations.
In the public call for participation of member states in the Ad Hoc Committee, documents in Chinese, Spanish and Russian languages were available, going beyond the usual English and French working languages of the OECD. One of the first aims of the Convention is to "take into account the needs, priorities of all countries, in particular developing countries" as well as to ensure "sufficient flexibility and resilience" in the international tax system (UN DESA, 2023).

This commitment to simplicity, transparency and inclusivity is certainly also shared by the taxpaying businesses. The multi-disciplinary and

multi-stakeholder UN Tax Convention also aims to represent the interests of these corporates.

For example, businesses shared in the seminar is that they were more willing to accept “imperfect” taxation policies if these offered certainty and simplicity in compliance. As mentioned earlier, there were views that there need not be a dichotomy between a perfect multilateral system like signing the MLC and other mechanisms with frameworks that are still broadly coordinated. As long as there is certainty and the policies are broadly fair between countries in different positions, businesses would generally be willing to accept these “good-enough” solutions.

The Significant Economic Presence (SEP) pioneered by India was raised as an example of such a “good-enough” alternative. This option was seen to be particularly appealing as it contrasts with the existing Permanent Establishment (PE) definition, which has been seen to be out of date. The PE has been criticised as being too focused on physical presence in a business world where that no longer matters as much.[9] The SEP offers a way of modernising the PE definition in that it reflects the view that profits come from the interaction of the demand with supply, and that value creation does not lie solely at the point of production. The UN Article 12B was also mentioned as an alternative that better recognises the perspectives of taxpayers, as there ought to be some profit basis for automated digital services.

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[9] In illustrating this point, the speaker cited from the Four Economists’ Report to the League of Nations (1923) described the conflict between source and residence states over the right of taxation (Coates, 1924).
The quote goes, “The oranges upon the trees in California are not acquired wealth until they are picked, and not even at that stage until they are packed, and not even at that stage until they are transported to the place where demand exists and until they are put where the consumer can use them. These stages, up to the point where wealth reaches fruition, may be shared in by *[sic]* different territorial authorities.”

COMMENTARY

Regional Pillars

In discussing the UN Tax Convention, it was recognised that strong advocacy from the African Tax Administration Forum (ATAF) was what sparked the formation of this work. The potential and importance of regional groupings in contributing to global tax discussions was raised, especially as other intergovernmental bodies would be limited in their ability to promote the interests of developing countries. The G20, for example, would prioritise more pressing international issues like wars, making tax issues in developing countries less likely to be placed on the agenda.

The ATAF had coalesced the views of African countries about the desire for a legally binding instrument such as a convention, and pushed for that in the UN. It was said that similar moves to coordinate and advocate views within Latin America and the Caribbean are also forming.

Views from Asian countries, however, have been lacking. Although countries like Singapore, the Republic of Korea and China are represented on bodies such as the Ad Hoc Committee for the UN Tax Convention, a unified Asian organisation that coalesces views of governments, businesses, civil groups, academics, etc., is still absent.

“Exit” and “Voice” in Pillar One

Observers are largely pessimistic about the ratification of the MLC and therefore the materialisation of Amount A. Even at the publication of the text of the MLC, consensus have not been achieved and the push of African countries for the UN Tax Convention is a clear display of the dissatisfaction of jurisdictions. The scepticism surrounding this enormous multilateral effort is therefore not unfounded.

In arguing that the OECD has neglected to include non-OECD countries in the international taxation, Yariv Brauner, Professor of Law at the University of Florida, cited the Hirschman paradigm, which describes how unsatisfied players in organisation either “exit” to find

better alternatives or that they will exercise their “voices” to fix the failure (Hirschman, 1970, as cited in Brauner, 2023).

The trajectory of BEPS advocacy (with movements in Africa, Latin American and the Caribbean) appears to be one of jurisdictions striving to assert more voice through their regional groups. This might be because the option to exit from international regime is economically and politically costly, especially for developing countries that are more likely become dissatisfied players.

In his argument, Brauner postulated another form of “exit” — an exit from the multilateral solution and towards adoption of unilateral DSTs. For jurisdictions implementing the DSTs as well as businesses that seek to comply, this could be considered a lose-lose situation, especially if the multiple-DST situation is a final resort, which has no coordination.

What this means for the OECD is straightforward — the voices of these other stakeholders must be taken into serious consideration to avoid them turning to the “exit” alternative. The OECD’s failed negotiation of the multilateral agreement on investment in 1995 should be a reminder that non-governmental organisations can have significant influence in making or breaking the effort (Neumayer, 2010).

Therefore, if the Hirschman paradigm is accurate in the taxation space, both the OECD and affected jurisdictions should take heed to ensure that even as more voices are included in discussions, they go beyond that of governmental bodies. Ideally, inputs from businesses, academics and practitioners from developing countries should also find their place in the formation of international taxation policies.

No doubt, this will require a tremendous effort given the diversity within each region. This might be especially the case for Asia, which comprises developed and developing countries with very different economic drivers and capabilities (Gee & Woo, 2022). The progress and experiences of other regional bodies like the ATAF and the Regional Tax Cooperation Platform for Latin America and the Caribbean (LAC) could serve as helpful references in setting up a similar body representing Asia.

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Appendices

APPENDICES

Appendix A

Summary chart of latest direct and indirect tax measures as compiled by KPMG (as of 22 March 2024) (KPMG, 2024).

Country	Status	Year of announcement	Brief description
Cambodia	Announced	2021	Cambodia's Ministry of Commerce confirmed that it had agreed on December 23, 2020, to establish internal teams to "learn more about mechanics and procedures in collecting taxes on digital services" globally and regionally, with input from relevant ministries and the private sector.
Hong Kong	Enacted	2020	The Hong Kong Inland Revenue Department (IDR) has: 1) set out what it considers to be the key value creators of an e-commerce business; 2) confirmed that, in the absence of any specific provisions in the Inland Revenue Ordinance (IRO) that deal with the taxation of e-commerce, the tax consequences of e-commerce transactions are to be determined in accordance with section 14 of the IRO; 3) provided some practical guidance on how to determine the locality of profits in the

Country	Status	Year of announcement	Brief description
			context of e-commerce transactions; 4) took the view that in the context of e-commerce, the decisive criterion to determine the existence of a PE may be whether the activities of a fixed place of business form an essential and significant part of the e-commerce business as a whole or whether those go beyond preparatory or auxiliary activities.
Indonesia	Waiting for global solution	2020	On June 8, 2020, the Indonesian Directorate General of Taxation issued FAQs on: i) the expansion of the criteria and significant economic presence (SEP) for PEs for income derived from Indonesia by foreign digital entities that don't have a physical presence in Indonesia; ii) the application of the SEP principle in Indonesia; and iii) the future plan to impose income taxes on electronic transactions performed by foreign entities. The Finance Ministry said that Indonesia is waiting for a global consensus on digital taxation rather than implementing a digital services tax of its own.

Country	Status	Year of announcement	Brief description
Laos	Rejected	2023	The Laotian Government is redrafting local regulations to focus on VAT regime only and drop the Deemed Profit Tax (DPT) requirement. Thus, non-resident digital services providers, without a physical presence in Laos, will not be required to pay tax on income sourced to Laos.
Malaysia	Enacted	2021	note on the tax treatment of digital advertising provided by non-residents. Payments made to a non-resident digital advertiser will be subject to withholding tax if the non-resident does not have a PE or a business presence in Malaysia. Domestic withholding tax rules vary depending on whether the payment is deemed to be a royalty or for non-resident services.
Pakistan	Enacted	2023	On June 26, 2023, Pakistan enacted its Finance Act 2023. The Act includes measures to remove the word 'fixed' from the definition of "permanent establishment" (PE) in its income tax law. For this purpose, the Act introduces a new clause for 'virtual business presence' in Pakistan. This is defined to include any business where transactions are conducted

Country	Status	Year of announcement	Brief description
			through the internet or any other electronic medium, with or without having a physician presence.
Philippines	Proposed	2023	To impose a creditable 1% WHT on one-half of the gross income payments (remittances) made by online platform providers to suppliers of goods and services selling through a platform.
Singapore	Waiting for global solution	2020	The Inland Revenue Authority of Singapore (IRAS) has clarified the tax treatment based on existing provisions of the Income Tax Act (ITA) of the following taxes imposed by foreign jurisdictions on digital transactions for persons subject to tax in Singapore: - taxes imposed as income tax are not deductible under section 15(1)(g) of the ITA; and - taxes imposed as turnover tax, such as India's equalisation levy and the UK's DST, are generally deductible under section 14(1) of the ITA.
Thailand	Proposed	2019	Proposed a 5 per cent withholding mechanism for the taxation of e-commerce

Country	Status	Year of announcement	Brief description
			supplies of goods and services in the country, including online advertising, gaming, shopping, and others.
Vietnam	Enacted	2022	payments made to non-resident or foreign suppliers without a permanent establishment in Vietnam carrying out e-commerce, digital-based business and other services with organizations and individuals in Vietnam are subject to tax in Vietnam at a rate that ranges between 0.1 per cent–10 per cent depending on the type of business activity. Foreign suppliers without a permanent residence in Vietnam can register with tax authorities: an online portal for tax registration became available on March 21, 2022. If a foreign supplier fails to declare and pay tax, the commercial banks, credit institutions or payment service providers will be required to provide information to the tax authorities about the transactions involved.

Appendix B

ASIA VOICES: PERSPECTIVES ON TAX POLICY WORKING GROUP

The Asia Voices: Perspectives on Tax Policy working group has been formed by the Institute of Policy Studies to contribute meaningful, policy-relevant research on important cross-border and regional tax issues as they relate to Asia and especially the developing countries in the region.

The Institute welcomes comments from tax practitioners, academics and policymakers with an interest in corporate tax policies in Asia. Those interested to collaborate with or join this working group may apply by contacting Christopher Gee at christopher.gee@nus.edu.sg.

The biographies of the working group members responsible for the publication of this report are set out here (by alphabetical order of their surnames).

Matt ANDREW is a Teaching Fellow at Auckland University and also currently a PHD Candidate. Prior to this, he was the head of the OECD's Tax Treaty, Transfer Pricing and Financial Transactions Division. There, he was responsible for overseeing the OECD tax policy developments in relation to tax treaty and transfer pricing matters.

Christopher GEE is Senior Research Fellow at the Institute of Policy Studies, National University of Singapore (NUS) where he leads the Governance and Economy Department. He has published several papers on retirement financing, strengthening old-age income support and aspects of fiscal policy. Christopher previously worked in investment banking, leading equity research teams covering Singapore and Malaysia, and the Asian real estate sector. He has a BA (Law) from the University of Nottingham and holds the CFA charter. He also holds a joint appointment with the NUS Department of Real Estate.

Darren KOH is one of the editors of *The Law and Practice of Singapore Income Tax* (LexisNexis, 2020, third edition). He is both a

Barrister and a Chartered Accountant of England and Wales. His career has taken him around the world from London to Hong Kong, Kobe, Geneva, Singapore and Cincinnati, and back again to Singapore. His career stretches from tax advisory roles to in-house, client-side regional and global tax roles as well as handling war reparation claims filed against Iraq after the first Gulf War. He obtained his Master of Laws and joined the School of Business of SIM University (now the Singapore University of Social Sciences) as Head of Area — Taxation and Business Law. He is now the Vice-Dean of the School of Law as well as the Head of Programme — Master of Taxation.

Paul LAU is a partner at PwC Singapore. With over 25 years of experience in practising tax, he has advised financial institutions, investment funds and multinationals in a broad range of transactions, including corporate restructuring, mergers and acquisitions, transfer pricing, treasury operations and capital markets instruments. He has written widely on taxation matters. Among others, he co-authored the capital market transactions chapter in *The Law and Practice of Singapore Income Taxation* (LexisNexis, 2013) and authored the capital allowances chapter for the 3rd edition of the said publication, as well as the taxation chapter in Theory and Practice of Islamic Finance (Saw Centre for Financial Studies, 2008). He chairs the Tax and Levies Committee at Singapore Chartered Tax Professionals. He holds a bachelor's degree in accountancy from Nanyang Technological University and a master's degree in international taxation from University of Sydney Law School.

Justin TAN is a Senior Lecturer at the Faculty of Law, NUS, where he teaches cross-border taxation. He holds an LLB (NUS, First Class Honours), BBA (NUS) and an LLM in tax from New York University, where he was a Vanderbilt Scholar. He practised tax law at Baker & McKenzie Wong & Leow, advising on the international tax aspects of cross-border transactions. He continues to act as a consultant with Baker & McKenzie Wong & Leow's tax practice group.

Samantha TANG is a Sheridan Fellow at the Faculty of Law, NUS. She received a LLB from NUS, and is a PhD candidate at Melbourne Law School. Samantha's research interests are the corporate law of Commonwealth jurisdictions, with a special focus on shareholder

stewardship, and environmental, social and governance (ESG) investing.

Chris WOO is the Tax Leader for PwC Singapore and Myanmar, and a member of the firm's leadership team and the Asia Pacific tax leadership team. He is a board member of the Singapore Chartered Tax Professionals Panel Discussions and an Accredited Tax Advisor in Income Tax. He has over 30 years of experience particularly in deals tax and corporate restructuring to meet the tax needs of strategic, financial and private equity clients from Asia, the United States and Europe. He has led many regional and global projects in various industries to maximise long-term value and tax efficiency for multinationals engaged in realigning their global business structures, supply chains, assets and key personnel. He has been active in moderating and speaking in various discussions regarding recent international tax developments. He brings practical industry experience from his work as international tax director for a large US MNC based in the US and Singapore.

Michael VELTEN is a financial services tax partner with Deloitte Singapore and is the firm's Southeast Asia Financial Services Tax Leader. He also leads Investment Management and Real Estate for Deloitte Southeast Asia. From 2106 to 2021, Michael was the firm's Asia Pacific Financial Services Tax Leader. He has 35 years of finance, legal, tax and management experience; almost 30 years of which have been spent working in Asia having been based in Kuala Lumpur, Hong Kong and Singapore. He started his career in Melbourne, where he was a senior associate with a leading Australian law firm. He holds a Bachelor of Commerce, Bachelor of Laws and Master of Taxation from the University of Melbourne. He holds a Master of Laws from the National University of Singapore and a Master of Business Administration from the University of New England. More recently, he completed an Executive Certificate in Public Policy at the Harvard Kennedy School.

WOO Jun Jie is a Senior Research Fellow in the Governance and Economy Department at the Institute of Policy Studies, NUS. His research interests include urban policy, economic development and crisis management in Asia. He has published several books on Singapore's development as a global financial centre. His research

has also been published in leading SSCI journals. He received his PhD from the Lee Kuan Yew School of Public Policy, NUS. He holds an MSc in International Political Economy from the S. Rajaratnam School of International Studies at Nanyang Technological University and a BSc (First Class Honours) in Economic and Management from the London School of Economics.