

## IFA/OECD

In the IFA/OECD seminar held on the 7<sup>th</sup> of September, followed by a lunch dialogue, the panelists proceeded to an in-depth discussion regarding the Pillar 1 and 2 solutions with a strong emphasis on the necessity to achieve a critical mass of participating countries in order for those solutions to reach their global goals.

The seminar started with the interventions of Mr. Pascal Saint-Amans and Mr. Achim Pross, who addressed questions related to Pillar 1. Their conclusions were that Pillar 1 could be added to the existing tax system, but that this would require strong tax certainty. As the Pillar 1 solution aims to be implemented as an addition – and not replacement – to the existing tax system, it does hence not aim at replacing the arm's length principle. In order to be efficient, the implementation of the Pillar 1 rules need to take the form of a multilateral convention, with all the complexity this encompasses. Pillar 1 would help to stop the proliferation of unilateral measures at domestic level (i.e., DST, transaction taxes, etc.), which contribute to the increase of tax uncertainty at international level.

Their intervention was followed by statements from representatives from France, Singapore and the US related to the status of those solutions in their respective countries. France and Singapore strongly support those efforts, have been actively participating in their development since inception and are in favor of its implementation. Both countries however emphasized on the importance of tax certainty and reaching a critical mass in order for it to be effective. The US, on the other side, has made it clear that Pillar 1 is not the focus of its current tax policy objective, which focuses rather on Pillar 2. The US however adhere to the necessity to achieve tax stability in a similar manner (i.e. by stopping unilateral measures, achieve legal certainty and sustainability of the tax system) and continue to support the efforts in this respect.

Strong concerns were also raised by the panelists with respect to Pillar 1, linked with, for example, (i) the distortionary potential of the Marketing and Distribution Profits Safe Harbor; (ii) the composition of the critical mass, which should comprise both sufficient relieving jurisdictions and the ones home to in-scope MNEs; and (iii) the timing and difficulties for the implementation of a multilateral convention.

The discussion then shifted to questions related to Pillar 2. The conclusions were that Pillar 2 could – and most importantly would – be implemented, and that the threshold for a critical mass is here lower to have an impact. This was even referred to as the "devilish logic of Pillar 2": once participating countries include the ones headquartering MNEs, the non-participating countries will face the choice of relinquishing part of the tax potential or the adhere to the rules of Pillar 2, creating a domino effect. Through the implementation of the GILTI and BEAT measures, the US may be viewed as such a "first mover" with respect to the concepts underlying Pillar 2. However, other European countries have already started the process through domestic referendums on the matter and amending the constitutions as required.

The question of sovereignty of the states is deemed as a central topic for the implementation of the minimum tax under Pillar 2 and was heavily discussed by the panelists, bearing the premise in mind that tax is now inevitable, it's rather about which country shall tax (*"If you don't tax, I'll tax"*).

From a business perspective, one of the concerns is the administrative burden at the time of collecting and digesting the data needed for Pillar 2. The OECD will publish shortly a model return covering the key data files with the aim of having one common return at international level.

Finally, Pillar 2 may create an issue with respect to tax competition. Both developed and developing countries should keep their competitiveness to attract and retain foreign investments. Hence, further developments on this matter under the Pillar 2 scope should be expected in the near future.

To conclude, the Pillar 1 and 2 solutions (i) are based on a strong need to harmonize the level playing field that minimizes distortions; (ii) aim at bringing more stability; (iii) need a critical mass in order to be effective; and (iv) will be efficient only if linked with a robust dispute resolution mechanism and strong legal certainty.

The session was concluded with a standing ovation to Mr. Pascal Saint-Amans, who is retiring after 15 years of services at the OECD.