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Opportunities and Challenges: Tax Cooperation and Governance for Asia-Pacific Countries

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An informal technical meeting was organised on April 8th 2021 by the Secretariat of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) for tax officials from the Asia-Pacific, to discuss the relevance of the Panel's recommendations in the context of the region as well as to familiarise tax officials with its final report.

The High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (hereafter FACTI Panel) convened jointly by the President of the United Nations (UN) General Assembly and the President of the UN Economic and Social Council was launched in March 2020 with the aim to effectively foster financial integrity for sustainable development. The final report by the Panel which came out on February 25, 2021 is a product that was informed by a host of consultations with member states, civil society organisations, the private sector and academia. The report contains 14 evidence-based recommendations and priority actions to tackle the issue of illicit financial flows as well as calls for democratic international rules, institutions and standards that benefit all countries, urging governments to agree to a "Global Pact for Financial Integrity for Sustainable Development".

Background

An informal technical meeting was organised on April 8th 2021 by the FACTI Panel secretariat for tax officials from the Asia-Pacific to discuss the relevance of the FACTI Panel's work and their recommendations in the context of the region as well as familiarise tax officials with the report. It was attended by representatives from the African Tax Administration Forum (ATAF), South Centre, UN Tax Committee, Asian Development Bank (ADB), UN Economic and Social Commission for Asia and the Pacific (UNESCAP) and the UN Development Programme (UNDP) - Tax Inspectors Without Borders, and tax officials from Indonesia, Malaysia and Bangladesh.

‘Systemic Problems Require Systemic Solutions’

The meeting began with a presentation by Prof. Shahid Hafiz Kardar, FACTI Panel Member who laid down the objectives of setting up the Panel as well as walked the attendees through the recommendations made by the Panel to combat illicit financial flows. The Panel argues strongly for making a decisive shift away from isolated actions to address systemic problems requiring systemic solutions. In keeping with the spirit of legitimate financial rules and standards building on previous efforts and frameworks, Prof. Kardar outlined the 14 progressive and technically feasible recommendations to reform, redesign and revitalize the fragmented global architecture so that it can effectively foster financial integrity, sustainable development, values of accountability, legitimacy, transparency and fairness.

In the context of recovery from the multidimensional impacts from COVID-19, the report underscores the need to generate and mobilise public funds for the financing of the Sustainable Development Goals (SDGs). Prof. Annet Oguttu, a FACTI Panel Member, further argued for a more coordinated and inclusive approach at the global level so that all countries can benefit. She highlighted tax related recommendations in the report which pertain to matters of legitimacy, transparency, fairness, information sharing, data and global governance. Breaking them down: firstly, on issues relating to legitimacy, the lack of universality in tax norm settings is a major shortcoming. Secondly, international tax norms particularly tax transparency standards should be set out through an open and inclusive legal instrument with universal participation. Thirdly, recommendation 3(A) prescribes to improve tax transparency by having all private multinational corporations (MNCs) publish accounting and financial information on a country by country basis. Fourthly, taxpayers, especially MNCs, should pay their fair share of taxes with taxation to be applied equitably on services delivered digitally. MNCs should be taxed based on group global profits. She concluded by underscoring the need for a process to be initiated by the international community for a UN tax convention.

Discussion on Avenues of Tax Cooperation and Recommendations by the FACTI Panel on Taxing the Digital Economy and Capital Gains

Mr. Thulani Shongwe, Head of Resource Mobilisation at the African Tax Administration Forum (ATAF), acknowledged the existing divide between developed and developing countries in the Global South as the crux of the matter. The current structure of legislations and regulations on the African continent gives rise to multinational companies applying aggressive tax behaviour. From the ATAF's perspective, member countries are advised to develop stronger legislations and regulations alongside adopting a model tax agreement which aims to allocate more taxing rights to the source country. He said ATAF stands ready to assist the developing countries in their coordinated efforts to secure taxing rights for developing countries and also in securing equitable taxing systems for the world.

Taking it forward, Mr. Abdul Muheet Chowdhary, Senior Programme Officer at the South Centre, focused on the increasing role of cross-border digital services to the contribution of global gross domestic product (GDP) and the need to raise revenue for Asia-Pacific countries by taxing them effectively. The export of cross-border services is dominated by developed countries. While some developing countries do export digital services, the majority of the developing countries continue to have a deficit in digital services trade. This deficit in services is a problem as these result in losses of revenue for source countries.

The costs of business services are tax deductible and this is an increasing problem if the profits are shifted to conduit jurisdictions. As a result of the pandemic, services have become increasingly digitalised and there is an accelerated shift towards e-commerce and other digital platforms which is here to stay. Therefore, it is imperative to tax the incomes derived from these digitalised services. Presenting an in-depth analysis on the limitations of existing tax treaties, he highlighted that source taxation of the profit of the non-resident is possible only if there is a physical presence i.e. a 'permanent establishment'. For taxing technical services, Article 12A of the UN model talks about withholding taxes on fees for technical services. However, for much of automated digital services, there is a gap in how they can be taxed. One of the solutions referred to was Article 12B proposed by the UN Tax Committee which is more favourable for developing countries. He added that the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework in the Pillar II approach falls short of addressing revenue needs of developing countries. Aligning with the FACTI Panel's recommendation and reiterating Prof. Oguttu's point, Abdul emphasized on recommendation 4(B) that talks about the need to initiate a UN tax convention providing for capital gains taxation and taxation of the digital economy.

Aurore Arcambal, the Tax Integrity Specialist at the Asian Development Bank, laid down the importance of domestic resource mobilisation and international tax cooperation for the region. She pointed out that among other developing regions, Asia-Pacific is the only region that does not have any regional tax associations to develop a regional dialogue on tax matters. She further added how while globalisation and digitisation are beneficial they also pose additional taxation challenges that can be addressed through a series of reforms complimented by a strong commitment to international tax cooperation to combat tax evasion and avoidance. Shedding light on the 2020 proposal of establishing a regional tax hub in the Asia-Pacific by the Asian Development Bank due to be launched in the 54th Annual Meeting in 2021, she concluded with highlighting a greater need to focus on supporting tax integrity and tax transparency in the Asia-Pacific.

Mr. Rajat Bansal, in his capacity as a UN Tax Committee member, started off by highlighting how developing countries including the ones in Asia-Pacific are dependent on financial resources for sustainable development. He further spoke on the issues around allocation of taxing rights for developing countries from the point of view of domestic resource mobilisation, concurring with the importance of international norm settings as highlighted by the Panel. Reflecting on the minimum tax proposal recommendation in the FACTI Panel report, he pointed out how the minimum tax proposal will remove the anomalies and curb the illicit financial flows. When looked at from the point of view of taxing rights it may not prove to be so beneficial; some countries may argue that having a minimum tax does not require the need to reallocate the taxing rights because the income of the enterprise is getting taxed at a minimum rate.

He appraised some significant developments in recent times in the UN tax committee like Article 12B on taxation of the digitalized economy and taxing software payments as royalties. The previous committee had introduced Article 12A, taxing fees for technical services by the country of source, something that has not been done by any other committee. Taxation of capital gains from indirect transfers will be introduced as a provision in the UN model tax convention and is another FACTI Panel recommendation. This will help in taxing capital gains on indirect transfers in the countries from where the value is derived from those assets which are transferred between two non-resident entities abroad.

Regional Developments in Exchange of Tax Information

Ms. Esther Koisin, the Director of the International Taxation, Malaysia shared the country's experience in international cooperation through exchange of information mechanisms.

Showcasing successful national initiatives, on the onset of the exchange of information for financial accounts the Malaysian government launched the special voluntary compliance whereby the taxpayers who have not declared their income, had been given the opportunity to do so with minimum penalty. The positive contribution of a widened treaty network as well as sharing this information between jurisdictions and other countries will encourage to support this cooperation.

Mr. Mekar Satria Utama, the Director of International Taxation (DGT), Indonesia focused on the importance of international tax cooperation and transparency matters in the attempt to address the growing global concern on tax avoidance and tax evasion practices. Effective exchange of information is among the necessary tools to deal with those challenges in terms of tax transparency; improvement in the Automatic Exchange of Information (AEOI) network is a key point to attain wider scope in gathering information from abroad. He highlighted that in 2020 alone Indonesia received financial information for the year 2019 from 85 jurisdictions. In turn, Indonesia sent financial information to 71 partner jurisdictions in the same year. Regarding withholding tax information, Indonesia has started the exchange of these kinds of information even before signing the first Memorandum of Understanding (MoU) to govern this particular matter. On withholding taxes under double tax agreements, Indonesia wishes to conclude more MoUs with partner countries in the future to enable them to legally transmit and receive information on withholding tax automatically. Going forward, Mr. Utama stated that Indonesia commits to comply with the international standard of Exchange of Information and continues to strive for transparency for tax.

The discussion was concluded by UNESCAP's response to the report as well as the meeting. Mr. Zheng Jian spoke on the lack of regional cooperation in the Asia-Pacific and highlighted a report submitted to UNESCAP member states in the Intergovernmental Committee on Macroeconomic Policy of 2019, where important gaps were brought forth, the first being the taxation of the digital economy and the issue of tax competition remaining largely unaddressed by the international tax cooperation by that time in 2019, and the second being that the developing countries, especially the smaller, least developed countries are often underrepresented, disadvantaged, and also inadequately supported in international norm-setting and negotiating processes. He underscored that the need to coordinate in a more inclusive and timely way will be a challenge going ahead.

Prof. Oguttu in her closing remarks noted that while that there are developments taking place, coming up with a pan regional platform just as is the case of ATAF will go a long way in assuring that Asia-Pacific countries are actually participating and implementing some of the international provisions that are being set.

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