CONCEPT NOTE

WEBINAR
Build Your House on Your Own Pillars
Key Issues for Developing Countries at the OECD Inclusive Framework Negotiations on the Taxation of the Digital Economy

Tuesday 15 June 2021 – 1 PM to 3 PM (CET)

A. Background

The digitalization of the economy has meant that companies no longer need to be physically present in countries to be able to derive profits from them. Goods and services can be provided online; this has created tax challenges as existing international tax rules require the physical presence of non-resident companies as an essential requirement for countries to be able to tax them. This phenomenon has been accelerated since the COVID-19 pandemic as more economic activity becomes digitalized.

The 139 member OECD Inclusive Framework (IF) aims to provide a solution to the taxation of the digitalized economy by July 2021, and no later than October 2021. The proposed "Two Pillar" solution currently being negotiated seems to be challenging and complex, and in many ways could be a paradigm shift for international taxation. It seeks to introduce a new taxing right in Pillar One focused on reforms to existing nexus and profit allocation rules, while Pillar Two is focused on a global minimum tax. The Two Pillar approach would also introduce new elements into international taxation, such as limited formulary apportionment, multilateral dispute resolution and the allocation of taxing rights through a multilateral agreement.

The discussion has proceeded at a brisk pace with the danger that the concerns of developing countries are not adequately reflected in the solution. This could result in an imbalanced agreement which would deprive developing countries of revenue from the fast-growing digitalized economy. The OECD's own revenue assessments indicate a modest increase of US$ 50-80 billion per year in corporate income tax, with limited gains for developing countries in Pillar One and clear benefits to developed countries in Pillar Two. Such an outcome would be both a travesty and a tragedy, as the stimulus behind the Two Pillar Approach was to find ways to end corporate tax avoidance which disproportionately affects developing countries.

The new U.S. proposal under the Biden administration has implications for developing countries, as it reduces the scope of Amount A, from the existing 2,300 Multinational Enterprises (MNEs) to around 100. It also reiterates the call for ending unilateral measures and a 'binding, non-optional dispute prevention and resolution process'. These need to be critically examined to ensure they do not harm developing countries.

In the meantime, ATAF has submitted a revised proposal for Pillar One from its perspective as a forum of African tax administrations, which puts in question many of the tenets of the proposal in the OECD Blueprint of Pillar One.

It is only if developing countries align their positions that the solution reached in the Inclusive Framework could fully take into account the needs of developing countries. As the deadline for a solution draws near, it is important to discuss the key issues for developing countries, including possible common elements and 'red lines' in this negotiation. Alternative policy options from other forums, such as the UN's solution on taxation of automated digital services, also need to be explored.

This webinar, organized by the South Centre and the Global Alliance for Tax Justice, will feature prominent voices of the Global South who will share their views on the key issues in the Two Pillar approach. The webinar will cover various aspects of the solution, with the speakers being a diverse mix representing tax administrations, academia and civil society.

B. Key issues

The webinar will cover the following topics:

1. Source and residence countries in global profit allocation: where will tax be paid, who will pay and how to deal with remote sales? Shifting goalposts on thresholds and the possibility of a deemed routine return for a remote nexus.

2. What would be the Pillar One Blueprint's level of re-allocable profits and what will be redistributed to market jurisdictions? Questions of profitability and allocation ratios.

3. Who gets the first claim on undertaxed income? Rule order under Pillar Two and the Subject to Tax Rule.

4. 'Certainty' of arbitration? Dispute resolution in Amount A. What would the 'binding, non-optional dispute prevention and resolution process' mean for developing countries?

5. Are alternatives available? Exploring the UN's solution on taxing Automated Digital Services.

6. Why transparency and institutional legitimacy matters in international rule making and norm setting.

C. Format of the webinar

The webinar will be a panel discussion followed up with a Q&A session, on Zoom. Preliminary questions or commentaries for panelists are welcome to inform the discussion.

Registration: https://zoom.us/meeting/register/tJAlcuGrrDwoE9YjHBEhFvPPgTRl17BO-HtF