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4 Goals For Gov'ts To Pursue In The UN Tax Convention

By **Kevin Pinner**

Law360 (April 26, 2024, 6:47 PM EDT) -- The United Nations' framework convention on international tax cooperation should resolve digital taxation, incorporate tax transparency conventions, seek consensus on tax allocation issues but adopt best practices by simple majority, and help fund development goals, officials and experts told Law360 as governments began negotiations Friday.

Governments are gathering at U.N. headquarters in New York through May 8 to draft terms of reference for the framework convention on international tax cooperation by August. (Photo by NICOLAS MAETERLINCK/Belga/Sipa USA)

Governments are gathering at U.N. headquarters in New York through May 8 to draft terms of reference for the framework convention on international tax cooperation, or FCITC, by August, when the General Assembly is slated to adopt them before beginning to negotiate substantive matters next year.

The top official at an intergovernmental group for developing countries argues that **digital services taxes**, or DSTs, are a better way to raise revenue for developing countries than what's known as the Pillar One reallocation approach by the Organization for Economic Cooperation and Development, which the OECD disputes.

A top academic on global tax issues told Law360 the U.N.'s FCITC should take over managing the implementation of the most comprehensive existing multilateral convention for all forms of international cooperation to tackle tax evasion and avoidance.

It's necessary to seek the **widest possible consensus** for decisions made on taxing rights, transfer pricing and illicit financial flows under the FCITC, but ratification isn't required to issue helpful guidance on areas such as tax incentives that balance revenue with growth and tax transparency, the official as well as academics and others argue.

Finally, a wide range of governments said decisions made under the FCITC should be oriented around helping fund the 2030 Sustainable Development Goals, a wide-ranging set of social and economic pursuits that governments adopted in 2015, including reducing inequalities, eliminating hunger worldwide and taking climate action.

Digital Taxes

Taxation of the digital economy is a central issue that **lacks a finalized multilateral approach**, and studies have shown developing countries can raise far more using a unilateral DST, Iyabo Masha, director of the Group of 24 on International Monetary Affairs and Development, told Law360. The G-24 is the **top group for developing countries** to coordinate on fiscal and monetary policy.

"From a developing country perspective, the important lessons are that the OECD Pillar One on digital taxation does not generate much revenue for developing economies and does not provide a level playing field for domestic startups," Masha said. Pillar One is an OECD-developed income reallocation regime intended to replace countries' digital taxes.

The OECD, host of negotiations on global tax policy for many years, produced a two-pillar solution to tax challenges arising from the digitalization of the economy in 2021. Amount A of Pillar One is an unfinished treaty to reallocate taxing rights on about 100 large multinational companies, while Pillar Two is a 15% global minimum tax that became law on Jan. 1 in some 30 jurisdictions.

Research has shown that a 5% DST would raise five times **more revenue** for developing countries than Pillar One, under which DSTs are forbidden, according to Masha. An OECD official who declined to be named told Law360 just the opposite — that "independent studies" suggest Pillar One would raise more revenue for developing countries at less administrative cost compared to DSTs.

The U.S. government does not favor DSTs, which it sees as an unfair attempt to tax American tech companies, and has threatened trade sanctions over the measures on European allies such as France. U.S. companies, too, say that by targeting revenue rather than income, DSTs cause double taxation.

OECD studies have shown developing countries stand to gain more as a proportion of tax revenue compared to developed countries from Amount A of Pillar One, according to the organization's official. The measure is **expected to split** between $12 billion and $25 billion in tax revenue across the globe.

"This is due to specific provisions built into the design of Amount A. For example, due to various de minimis provisions, developing countries are almost entirely exempt from any obligation to surrender taxing rights; and due to the tail-end revenue provisions, developing countries also receive additional allocated taxing rights than developed countries on average," the official said.

At the same time, many experts have said Pillar One lacks the political support necessary for ratification, namely two-thirds of the U.S. Senate. Considering this scenario, the U.N. Tax Committee — a group of experts, rather than officials — created protocols for taxing the digital economy in 2021 and released a draft **fast-track instrument** for adopting them into bilateral treaties in March.

The G-24 hasn't taken a position on incorporating those provisions into the FCITC, Masha said, but its members will likely find common ground.

"The debate on digital taxation is far from closed," Masha said.

Transparency Conventions

The Convention on Mutual Administrative Assistance in Tax Matters, or MAAC, which standardizes the way competent authorities exchange information on taxpayers, should be managed under a U.N. tax convention, Sol Picciotto, a professor at the U.K.'s Lancaster University, told Law360. He said this could be accomplished by adding the MAAC as a protocol to the U.N.'s FCITC.

The MAAC is a free-standing multilateral convention that calls for implementation to be managed by a coordinating body that operates "under the aegis of the OECD." The coordinating body, a subgroup of representatives from the nearly 150 jurisdictions that are parties to the convention, could decide to shift that role to the U.N., which could improve on the "highly opaque" current situation, according to Picciotto.

"There seems to be no reason why the coordinating body should not decide to bring the [MAAC] under the umbrella of a [U.N. FCITC], as a protocol, [and] bring its administration under the secretariat to be established under the [FCITC]," Picciotto said in **a paper** released Monday. "This would in effect mean the merger into the [FCITC] of the Global Forum, which is organizationally independent of the OECD."

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a group of 171 jurisdictions that conducts peer reviews of two standards created with the MAAC as their legal basis: exchange of information on request and automatic exchange of information. The MAAC is also the legal basis for three multilateral agreements on a common reporting standard, **exchanging country-by-country reports** and automatically exchanging financial account information.

Making Decisions

So far, much of the debate at the U.N. has centered on whether the FCITC should adopt decisions by consensus or simple majority voting. During a conference last month, Benjamin Angel, director for direct taxation at the European Commission, said the U.N. should make its decisions about the framework by consensus because the end product would likely need to be ratified by wealthier countries to make a difference.

Rasmi Das, chief commissioner of income tax at the Indian Revenue Service, said he agreed with Angel as far as tax allocation issues are concerned, but said majority voting can be used to adopt guidance on best practices. Masha and Picciotto said they agreed with Das.

Ratification would be required to address two G-24 priorities for the convention — illicit financial flows and transfer pricing — but not to address a number of other issues that would fall under the description of a "code of conduct" or best practices, Masha said.

A key priority for the G-24 that could be addressed this way is strengthening tax treaty provisions, especially tax incentives, which, according to Masha, are a key source of tax revenue loss. The U.N. FCITC could improve on fairness and efficiency of the existing standards for automatic exchange of tax information, capacity building and technical assistance in the same way, she said.

Funding Development

Several groups of governments said Friday that they hope the FCITC will help fund the 2030 Sustainable Development Goals, including the African Union, which spearheaded the convention, the European Union, which initially opposed it, and several countries from Latin America and the Caribbean.

The U.N.'s FCITC should be aligned with, and help to achieve, the Sustainable Development Goals, a representative of the EU said Friday. Representatives of U.N. member states do not typically identify themselves as individuals during meetings and are instead referred to by the country or organization they represent.

"The work should therefore start with a thorough analysis of issues that can strengthen the inclusiveness and effectiveness of international tax cooperation and that can support the achievement of the Sustainable Development Goals and the mobilization of domestic resources," the EU representative said in **a statement**.

Haiti's representative, who spoke on behalf of the Caribbean Community, an intergovernmental organization with 15 member states, said governments in that region hope to reorient the global tax system around development goals such as the Sustainable Development Goals.

"The general policy considerations of member states of the U.N. should not aim to reflect the fiscal regulations of the OECD, but to establish a tax framework that ensures international cooperation with a view to an equitable platform for global development, not only in spirit, but also in substance," Haiti's representative said.

The OECD did not respond to questions raised about transferring secretariat duties for the MAAC to the U.N.

The tax authority of New Zealand, chair of the MAAC's coordinating body, did not immediately respond to a request for comment.

The Global Forum did not respond to a request for comment.

--Editing by Tim Ruel and Roy LeBlanc.