G-24 warns that global tax deal will fail without better terms for developing countries

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By Doug Connolly, MNE Tax

An international tax agreement on new profit allocation rules and a minimum tax will "not be sustainable even in the medium run" unless the terms allow developing countries to see fair shares under both pillars of the deal, the G-24 contended in September 19 comments submitted to the OECD Inclusive Framework Secretariat.

This means having a sufficient share of profits reallocated to market jurisdictions under Pillar One, and a broader "subject to tax rule" under the Pillar Two minimum tax. The G-24 also suggested that unilateral digital services taxes should be phased out, rather than cut off, under an agreement to coincide with the implementation of Pillar One. Moreover, developing countries should not be expected to withdraw those unilateral measures unless the terms under Pillars One and Two offer sufficient revenue gains for such countries.

The G-24 represents the interests of developing countries in economic issues and consists of 28 member countries plus China (as a "special invitee"). Six of the G-24 countries are also G20 members: Argentina, Brazil, China, India, Mexico, and South Africa. In addition to those in the G20, a further 12 of the G-24 members are also "Inclusive Framework" members: Colombia, Cote D'Ivoire, Egypt, Gabon, Haiti, Kenya, Morocco, Nigeria, Pakistan, Peru, Sri Lanka, and Trinidad and Tobago.

In previous comments, the G-24 had advocated for a share of more than 30% of profits to be reallocated to market jurisdictions and for a broader scope for reallocation. The Inclusive Framework agreement reached in July did not adopt the G-24 proposed scope amendment and set a potential range to be allocated to market jurisdictions of 20%–30% of residual profits (i.e., profits in excess of 10% of revenue).

Given how the July 1 preliminary agreement turned out, the G-24 stressed that the reallocation percentage must land at the top end of the range. "Any share of less than 30%," the G-24 stated, "will NOT ensure any meaningful revenue for developing countries – particularly small and emerging economies." In this respect, the comments cite the recent International Monetary Fund study finding that some developing countries could lose revenue under the Pillar One proposal.

Regarding Pillar Two, the G-24 stated that it favors a high minimum effective tax rate and also a high minimum rate under the subject to tax rule. The July 1 agreement proposed a minimum rate for the subject to tax rule – a treaty-based rule to apply a minimum rate to certain types of payments – of 7.5% to 9%. To address base erosion concerns of developing countries, the G-24 stated that it supports including the subject to tax rule as a minimum standard. It also prefers a simple transaction-based rule with no materiality threshold nor low return exclusion that would limit its application.

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The G-24 also expressed support for including an elective binding dispute resolution mechanism for certain issues for developing countries but suggested that the emphasis should be on dispute prevention.

Overall, the G-24 stressed that ensuring successful agreement requires having a truly inclusive process that addresses the concerns of developing countries and potential unintended consequences. Moreover, the G-24 stated that "[i]t is imperative that all jurisdictions, especially developing countries, understand what they are committing and agreeing to."

Of the G-24 members that are engaged in the Inclusive Framework, two – Kenya and Nigeria – are among the six Inclusive Framework members that have so far declined to sign on to the Inclusive Framework statement. Peru, which also initially declined to endorse the agreement on July 1, has since signed on.

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Doug Connolly is Editor-in-Chief of MNE Tax. He has more than 10 years of experience covering tax legal developments, previously working with both a Big Four firm and a leading legal publisher. He holds a law degree from American University Washington College of Law.

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