Answer-to-Question-_1_

Report on The Main Challenges for Domestic Adoption of OECD's Pillar Two with A focus on The Prospect of A Global Minimum Corporate Tax Rate)

Following BEPS 1 project which are characterized by the peacemeal works of technical tinckering of the issues in international taxation, BEPS 2 project came as a more systematic and comprehensive solution by bypassing the challenges encountered in the conventional approach of coordinating international taxation, through taxing on the "economic rent" / global minimum corporate tax rate. BEPS 2 came under the context of ever-growing digital economy, which poses a major threat to the current international tax ecosystem and which "invalidated" the brick-and-mortar taxation model developed in the past century. BEPS 2 project is based on two pillars: Pillar One and Pillar Two. This report dicusses the challenges for demestic adoption of Pillar Two, which adovocates a global minimum tax rate.

Before analyzing the challenges, it's worth to understand the context of global minimum tax rate - why this proposal and how does it help in enhancing international taxation? Global minimum tax rate aims to address the phenomenon that multinationals pay no or low taxes in either source state or residence state (as well as counduit states), by exploiting eg., hybrid mismatches that leads to profits legally untaxed at nowhere, or artificial transfer pricing that shift profits to low/no tax jurisdictions. By enforcing a global minimum tax rate, the participating states look at taxpayers's tax liabilities globally - and have the right the tax the income which have not been sufficiently taxed by the other states. This approach ensures that a minimum (fair) amount of tax is paid by the multinationals, which discourages abusive tax planning and brings a more level-playing field for businesses of different backgrounds and capacities.

However, notable challenges can be conceived in the domestic adoption. The fact that the global minimum tax rate has not been impletented after years (if not decades).

The first challenge is the infringement to tax sovereignty. States have the liberty to set its tax rate and decide the amount of tax that businesses (as well as individuals), domestic or foreign, should pay in relation with certain undertakings that has a nexus with the said states. Some states also strategically levy no/low tax for purposes such as attracting foreign investment and boosting local economies (an extreme example can be found in tax haven states eg., Burmuda). By enforcing a global minimum tax rate, the no/low tax states with power to tax will be forced to tax more or otherwise lose the tax advantages that granted, because the other states will levy the part below global minimum. Hence, tax sovereignty is infringed and chanlleges in adoption can be expected.

The second challege is the wrestling in the allocation of power to taxation. A global minimum tax, although sounds intuitively attractive, does not address who to tax which and what amount. Up until the minimum tax (globally), the no/low tax regimes forfeight the tax revenue by shifting the "insufficiently taxed part" to the counterparty states. This will invevitably lead to states compete to fill in the void (of untaxed part below global minimum), especially when the minimum rate is higher. Then the problems in international taxation continue to play, and instead of race to the bottom (double non-taxation), this may lead to race to the top (cap) - international double taxation.

The third challenge is the conflict of interest between developed countries and developing countries. If we look at the large multinationals which pay a minimal tax globally - the residence states have largely been developed countries while the developing countries largely take the role of source states, and taxes in source states are often avoid through eg., avoiding a tax residence or shifting the income away by inner-group transfers. The developed countries are the beneficiaries and the developing countries are at loss. while a global minimum tax rate is expected to place more tax revenue in source states, for which the residence states which rely on taxation of foreign/remitted incomes (for example, US) can be expected to object. Espcially that developed states have a larger voice in setting international taxation orders (eg., the body of OECD). The UN model is generally understood to be more friendly to developing countries (source state), while it's role in international tax affairs is shadowed by OECD works.

A last comment is that challenges in (domestic) implimentation of global minimum corporate tax rate can be found in a similar manner in those in the implimentation of global formulary apportionment of tax revenue, which runs in conjuction with this global minimum tax rate in the BEPS 2 project.

Answer-to-Question-_3_

The increased prevalence of crypto-assets warrants considerable consideration by governments in (international) taxation issues. The crypto-assets, although prevalent, are in general or absolute not officially recognized as a legal financial means. Even some states allow the holding as well as trading in crypto assets, those (fluid/current) assets do not assume the characteristics of an asset which are recognized by major financial instituations and readily exchangeble. The following international tax issues can be expected.

1. The valuation
In tax, "arm's length" is the norm in valuing assets whenever cost valuation is not appropriate (eg., in related-party transfers or measuring current market values). Arm's length valuation is already proved to be chanllenging to esbalish (or disapprove) when applying to physical assets, while the crypto-assets bring the challenges to another level. Due to it's volatility and the fact that they are not backed by a real asset - the value of those assets over a length of time is nearly impossible to measure to any reliable extent. This leads to a sequence of results in taxation eg., the recognition of capital gains in crpto-assets, and adjustment of transfer values for tax purposes for those done in crpto assets (currencies).

2. The legality
Differenct countries hold different attitudes to crypto assets, with respect to the different classes of assets and the permissible activities. Most countries have a void in legislation in relation to crypto assets. It can be expected that with the increased prevalence of crypto assets, frictions as a result of difference in legislations will be more and more prominent which

invevitably impacts tax works too - for example, the anti-crime operations or even the means of tax levying.

An example can be found in China. In 2021 China shut down bitcoin exvacation, which led to a significant drop of value of bitcoins as well as shock to the parties involved in the chain of bitcoin trade.

3. The secrecy

Trade/exchange in crypto assets can be done in a covert way, and the supervision is unlikely to catch up with the technical development. Actually, secrecy and hard-to-trace are the proud features of crypto assets which won a growing number of followers. Concerning tax, it can be perceived that cryto assets bring challeges in establishing the status of funds/assets (as opposed to eg., bank deposits) and tracing the payments (considering the levy of withholding taxes)

One phenomenon can be observed that in countries with tight foreign currency controls, transfer through crypto assets are popular means of payments. Also, crypto assets provide excellent media for money laundering activities.

4. Safety

With the growing share of transaction volume, crypto assets can pose a threat to the safety of the financial system. This would especially be the case if certain jurisdictions/financial institutions grant crypto assets the same legality as conventional assets such as gold and cash.

Answer-to-Question-_4_

OECD is not a legislative body. In the arena of tax, it provides guidance through eg., the Model Tax Treaty to its members. However, its influence has been so large that it significantly influnced (if not shaped) the domestic tax legislations as well as international tax coordinations (through eg., bilateral tax treaties). OECD's influence goes beyond OECD member states or G20 - OECD became the pinoneer in international (direct) taxation and it can be exemplified by the wide participation of its MLI (Multi-lateral Instrucment) initiation, and the explicit reference to its standards by the other international organizations as well as individual states in setting their own tax regulations or giving explanatory notes (eg., in the EU directives and the Irish domestic tax code). It can be argued that it's impossible for international bodies (with respect to their tax policies) and individual states to disregard OECD works, should they desire to harmonize (cross-border) taxation and bridge themselves with the globe in today's economy.

However, OECD's fundamental differences with a legislative international body cannot be overlooked. Although it can be argued that OECD shadows the even more salient bodies such as UN in international taxation, it does not have legal capacity in enforcing any tax ruling to its member states. In comparison, the EU, as a quasi-legislative body, can legally enforce its legislation in tax through its directives. The highly-harmonized indirect tax system in the EU is even a more contrasting example, which provides the legally binding tax rulings that OECD is not eligible in imposing the similar to its member states or audiences.

I'd like to agree with the statement that OECD has emerged as a supranational institution that limits state sovereignty be default. The reason is that the growing recognition, adoption, and parcipation of OECD works worldwide are self-reinforcing. OECD is no longer perceived as a small club of rich countries only - it sets good example of tax governance and it's the inevitable choice for countries to bridge them with the OECD principles/standards should they desire to enhance their own tax systems as well as international tax works. A good tax eco system signals advancement in governance and assists in the better integration with globalization.

However, I disagree with the opinion that the trend is by design. The aim of OECD is to assist in harmonizatoin and promote best practices, while it does not infringe the sovereignty of its participants. Although some technocrats contributing to OECD works may have the intention to build a quasi-legislative supra-national tax regulation, the works produced by OECD are largely principle-based, open to discussion, free to join, and kept being modified according to all the feedbacks.

Answer-to-Question-_6_

Dear Rita,

I advise you to appeal the TRA's adjustment. The reasoning and discussion are given below.

Having established that (as agreed with TRA):
1. Talia Ltd's Trivian branch is your employer.
2. The branch had been registered as an "external company" in Trivia.
3. You are tax resident in Purcia, while not a tax resident in Trivia, according to the both domestic laws and for purposes of the DTA between the two.
4. You spent 90 days in Purcia and the remaining 275 days in Trivia, in the relevant tax year.
5. Prior to the relevant tax year, you lived and worked in Purcia.

TRA does not have the binding right to tax your whole annual income in the relevant tax year, pursuant to the DTA (based on Art. 15 of OECD Model 2017, which the DTA follows), for the below reasons:

1) In principle your income should be taxed in Purcia. However, exception is that your employment is excercised in Trivia, in which situation Trivia may have the right to tax the income.
2) In the aforementioned situation, there are conditions that if you do meet, your income shall only be taxed in Purcia (Art. 15.2 and 15.3 of OECD Model 2017). Based on my check, you do not meet Art. 15.3 condition as you are not employed in the sector of international (ship or aircraft) traffic, neither do you meet Art. 15.2.a as you were present in Troivia for more than 183 dyas

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in the relevant year. You are likely in breach of Art. 15.2.b and 15.2.c based on the aforementioned facts. Although further exploration can be made in regard to these clauses (eg., the intepretation of entity classification from Trivian domestic law as opposed to the general criterias of creating a fixed establishment for tax purposes, and the contractual relationship between your branch and the Purcia head office with regard to payment of your salary), Art. 15.2 is already not met due to the clear breach of the term a.

3) In conclusion, your income should be in principle taxed in Purcia, but due to longer-than-183-day stay in Trivia, your income may be taxed in Trivia. It's not yet clear whether your whole annual income is to be taxed in Trivia or it should be taxed on a pro-rata basis.

Advise:

1. I suggest that you check the DTA carefully - does it specify that TRA ought to tax your whole annual income due to the longer-than-183-day stay?

2. Check with the tax authority in your home country (Purcia) for:

A. a clarification of the DTA.

B. how do they tax your income - does Purcia also tax the part earned there, thus create double taxation should DTA tax on the whole annual income?

C. in the mirror case should a Trivian resident stay longer than 183 days in Purcia, does your tax authority tax the whole annual income or on pro-rata basis?

It should be emphasized that in principle your income should be taxed in Purcia (Art. 15 of OECD Model 2017). In addition, the fact that you stayed and lived (only) in Purcia may strenghthen the argument that your presence in Trivia is temporary (what's the future plan of your employment?). After carrying out the suggested consultations as mentioned above, unless it's affirmed in DTA or other mutual agreement between both tax authorities that your full annual income should be taxed in Trivia - it can be argued that a pro-rata basis is a more resonable approach that is in line with the principle of DTA as well as your personal circumstance.

Please let me know if you will have any further questions.

Kind regards,