



**Thursday, August 31**

**Seminar H: Recent Developments in International Taxation**

**Chair:** Daniel Gutmann (France)

**Speakers:** P. Koerver Schmidt, X. Oberson, D. Quiñones, W. Taylor, M. Valadão, P. Van Dijk, S. Wilkie

**Secretary:** Jonathan Barros Vita (Brazil)

The Panel on “recent developments in international taxation” dealt with topics which were not subject to in-depth analysis in other Panels of the 71<sup>st</sup> IFA Congress.



The Panel dealt with the impact of transparency on domestic legislations following BEPS. This Panel traced some of the important trends in Latin America region (LATAM)

relating to automatic exchange of information (AEOI). It was stated that most LATAM jurisdictions concluded FATCA Inter-Governmental Agreement (IGAs) in 2014 and while some are in force (e.g. Mexico, Columbia, Brazil), several remain “Agreements in Substance” or have been signed, but are not in force (e.g. Peru, Chile, Costa Rica).

On the topic of AEOI under CRS, it was stated that CRS was facilitated following FATCA. It was explained that adoption of the CRS was spearheaded by “Early Adopters”, jurisdictions traditionally committed to EOI. This was followed by a second group of adopters including Brazil, Chile, Costa Rica, Panama and Uruguay (in addition to “offshore” jurisdictions such as Belize, Aruba, and Curacao). It was pointed out by the Panel that adoption was mainly by jurisdictions which tended to favour secrecy. Further, as of 2017, it was stated that Argentina, Colombia & Mexico were jurisdictions that were reporting while as of 2018, Brazil, Costa Rica, Chile (legislation pending), Panama (shared framework for FATCA) and Uruguay (mirrors reporting for Uruguayan residents) joined in the reporting.

Regarding repatriation of foreign assets in LATAM, it was explained that the trend in various LATAM jurisdictions has been to supplement enhanced or newly enacted provisions designed to tackle BEPS and prevent tax abuse with regimes allowing taxpayers to disclose and/or repatriate previously undeclared foreign assets with reduced/no penalties and reduced/no repatriation tax. The Panel discussed the example of Argentina which introduced a tax



disclosure regime under which individuals could disclose foreign assets as well as undeclared funds located in Argentina (deposit required in some cases). Special tax ranging from 0% to 15% based on asset value, disclosure date, and/or repatriation and investment in public debt/mutual funds (with 3-6yr holding periods) was imposed while criminal/Administrative penalties and unpaid taxes were waived. This regime was considered highly successful in disclosing foreign assets (\$116.8bn), which represented a 10X increase in total declared foreign assets, approx. \$9.5bn revenue, and \$8.2bn in domestic investment. Mexico also launched an Asset Repatriation Program in January 2017 following a previous program in 2016 (which required full payment of unpaid taxes but waived penalties). It provided 6 months for the repatriation of income obtained and held abroad until 31/12/16 in exchange for a single 8% tax and holding the funds for at least 2 years in qualified domestic investments.

The Panel speaker explained features of European proposal relating to public CbCR. He opined that though it will take time, there is political will in Europe to make it happen. Further, the general consensus was that tax transparency is here to stay with administrative CbCR now becoming public CbCR. The panel also noted different facets of the transparency.



Regarding CbCR in LATAM, it was explained that recent reforms in multiple LATAM jurisdictions such as Columbia, Chile, Peru, Mexico, Uruguay and Brazil have introduced CbCR alongside the master and local TP files. However, it was clarified that there was no movement or public



debate on public CbCR in Latin America. The Panel expressed that Brazil expects problems with CbCR. The Panel also noted French Constitutional Court ruling against public CbCR and raising a question on the constitutional validity aspects of CbCR in various jurisdictions.

Subsequently, Panel discussed about the emergence of CFC rules in LATAM region. Regarding CFCs in Brazil, it was explained that the issue of the constitutionality [art. 74] was brought before the Supreme Court (STF), and it was held that it is constitutional with respect to controlled companies located in “tax havens”; it is unconstitutional concerning associated companies located in jurisdictions other than “tax havens”. Thereafter, CFC rule was changed in 2013 & new rules are in line with the decision.



The Panel also discussed issues relating to taxation of Private Equity Funds in post BEPS world, constitution of permanent establishments for data centers & services and taxation of fees for technical services.

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Regarding the future of Transfer Pricing, it is still important to keep our mind clear on the basics while considering the changes in technology & how artificial intelligence & robotics is going to shape the way business is done. Accordingly, everyone will have to make a collaborative effort to find out a new way of ensuring a harmonious tax system so that at the end of the day, businesses don't suffer and there is also tax certainty.

CbC Report is very important but what is concerning are the chances of misuse of the information. While Rules have now been created, going forward there is a need to interpret these rules correctly/ in proper spirit. This, because if they are not interpreted correctly, there will be greater chances of misuse of information. Regarding digital economy, although OECD believes only in Functions, Assets & Risk (FAR) analysis, market place cannot be ignored and therefore it should lean towards Functions, Assets, Risk & Markets (FARM) analysis. Exchange of Information across jurisdictions is going to play an important role going forward in tax compliance as well as for effective implementation of taxing rules. Also, the Inclusive Framework should hold more conferences in developing countries so that the capacity there is getting developed and uniformity in interpretation of rules can be advocated. Further, the successful experience of Latin American countries coming out with voluntary disclosure schemes (with lower rates as compared to India's 45%) only goes to show that if you make the rate of tax reasonable, people are voluntarily ready to pay the tax.



On the fair tax debate, law should be created in a manner that it should consider the moral impact & if you try to be unreasonable, the law will be interpreted unreasonably. A balanced and consultative approach is necessary to ensure that everybody wins at the end of the day.