International Tax in the Time of COVID-19

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This discussion piece considers some of the potential consequences for international taxation of the Covid-19 pandemic and the economic recession. It considers tax measures that states may wish to take, as well as the impact on the institutional structure of international taxation and the way in which we do international taxation. It considers the introduction of excess profit taxes and progressive wealth taxes, as well as changes to the OECD agenda. Finally, it considers whether some of the new ways of working developed during lock-down will have long-term implications for international taxation.

Keywords: International tax, coronavirus, COVID-19, excess profit tax, wealth tax, OECD, institutional structure.

These are some thoughts about the future of international tax in the time of Covid-19. It looks to the future and asks what impact the virus may have on international taxation; it does not look specifically at measures adopted by governments as immediate and short-term responses to the appearance of the virus.

This is being written towards the end of May 2020, at a time when there is still great uncertainty about the future course and impact of Covid-19. At present the number of new cases appears to be under control in many Far Eastern countries, is on a decline in most European countries (including the UK), but still appears to be increasing in parts of the United States, in Latin America and South Asia. The impact in Africa seems to have been relatively small, at least for the present moment. It is also unclear how long the virus will continue to impact on daily lives; for example, whether there will be secondary outbreaks or possibly a second wave with a more virulent form of the virus later this year.

The Spanish Flu at the end of the First World War was first noted in 1917, spread quite rapidly in the early half of 1918 but then died back during the summer of 1918 only to reappear in a more virulent form in the latter part of 1918 to be carried around the world by soldiers returning from the Western Front. The Spanish Flu claimed the largest number of its victims in Africa and India, with the virus gradually losing force and disappearing only in 1920. There are things to be learnt from examining the impact of the Spanish Flu (though no source appears to have discussed any impact on tax systems), while at the same time remembering that current conditions are very different from those of the 1920s.

At the time of writing, it is also unclear if and when a vaccine or even a completely effective treatment will be developed, and, for that matter, how long any immunity will last and whether that immunity will protect against potential, newer forms of the virus.

There are, thus, very many uncertainties about looking to the future and the impact of the virus on the international tax system. However, there are many occasions when plans have to be made against a background of uncertainty, and the uncertainty does not mean that some attempt at future prediction and planning should not be undertaken. What it does mean, perhaps, is that any planning has to be flexible to take into account rapidly developing and changing circumstances. Longer-term plans, that may require groundwork and careful implementation, need to be started, even if they are subsequently abandoned or need to be dramatically amended.

What is clear at the present moment already is that the virus is having immense and damaging economic consequences. Very many countries are seeing large government deficits building up. Measures to ease the cashflow of businesses by deferring the payment of various taxes and delaying compliance work is impacting severely on government receipts. At the same time, governments are paying for more healthcare, and in some cases are taking over part of the wage bill of employers in order to ensure that staff can be retained pending the eventual reopening of businesses. In some countries, social security payments

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are dramatically increasing in line with the large number of unemployed who have lost their jobs, possibly permanently. Governments are borrowing to meet this fall in revenue and rise in expenditure at rates never before seen: the United Kingdom borrowed more in April than in any prior month in history, and the UK budget deficit for the year is currently anticipated to be slightly short of EUR 300 billion.

The Covid-19 virus has led to the lockdown of the economy in a number of countries at a time when other global economic trends were already looking threatening. An economic recession looked a possibility at the start of the year, and now seems an unavoidable certainty. Geopolitical developments are not assisting: the fall in the price of oil hit some countries and their government revenue; the worsening relations between the US and China are having ramifications for world trade and the prospect of future business for export commodities. There are threats to businesses exporting goods to and from China.

Some businesses that have closed as a result of the lockdown will never open again, and their staff will have lost their jobs permanently. This will further deplete government revenues and increase social security payments for some time. Even businesses that survive may have incurred significant losses which will reduce corporate income tax payments for some time to come. There is already talk that the current recession may prove to be as bad as that of the 1930s. In some senses one can say that the Spanish Flu outbreak of 1917–1920 and the Great Depression that began in 1929 have come at the same time.

1 Some implications for international taxation

There are some implications for the international tax system that one could already identify. With very large budget deficits, governments will be looking at ways of raising their tax revenues wherever they can. Fortunately, borrowing rates for most governments are relatively low at present so that the cost of servicing the large debts may be manageable for the time being. However, that is a situation that is not certain to continue indefinitely, and governments will wish to take whatever opportunities they can to raise tax revenues and reduce borrowing.

At the same time, governments will want to encourage the development of new businesses to provide employment for those who have lost their jobs and to provide a source of corporate profits to be taxed in the future. The danger here is that too much taxation will stifle the growth of those new businesses. There has to be a delicate balance between taxes to fund government expenditure and the reduction of deficits, and tax exemptions or reliefs to encourage new growth. Historically, governments around the world have a poor record at targeting tax holidays and exemptions to encourage appropriate growth.

Before looking further at specific tax measures that governments may wish to consider, it may be best to lay out some comments on global, geo-political developments and their impact on the institutions involved in international taxation as a background to more specific discussion of tax measures.

2 Geo-political developments

At this stage in the course of the virus it is impossible – and would be foolish – to try to predict precisely what impact it will have on the geo-political world order. However, it is reasonable to assume that it will have a substantial impact, and the direction of travel may be possible to discern even at this stage.

The ways in which different countries in different parts of the world and with different political systems have responded to the virus will, no doubt, give political scientists and the general population much to ponder. On the one hand, an autocratic and non-democratic government in China has been able to use its traditional forms of control over the population to control the spread of the virus within the country and to reopen its businesses earlier than many other parts of the world. These traditional control systems in China may also allow it to mobilize resources, nip secondary or tertiary outbreaks in the bud, and deal with any internal political dissent. On the other hand, it is exactly those autocratic and non-democratic elements that undermine China's international position. The continuing questions about China's initial reaction to the first appearances of Covid, the close relationship between China and the World Health Organization, China's unwillingness to agree to independent investigations of the causes of the outbreak, and its opportunistic use of the cover of the crisis to stamp down on civil liberties in Hong Kong: all of these undermine any efforts China is making to win friends around the world by providing assistance to other countries facing outbreaks of the virus.

At the same time, a number of fully-democratic governments have been able to tackle the virus effectively without any of the repressive measures or lack of transparency. Countries that have done very well include Australia, New Zealand, Singapore, and South Korea. The success of these countries mean that no one could take as a lesson from the responses to this crisis that autocratic and non-democratic governments are better placed to respond to such crises.

What is quite puzzling, but also rather intriguing, is how some governments led by populist leaders without much of an effective opposition have fared so very badly in dealing with the virus. The response of the UK Government has been farcical to the point of tragedy. Error after error seems to have been made, compounding a failure to utilize the time that the UK had when seeing what had happened in China and what was going on in Italy and Spain, to adequately prepare the country. There is a more complex narrative that will, no doubt, appear in the long-term as a result of a public inquiry, but it is difficult to avoid a slightly simplistic analysis that the UK Government was over-eager to assume that this virus would be little worse than the annual bout of flu that strikes this country, and that their desire to 'protect the National Health Service' (suffering from many years of under-funding as a result of Conservative administrations) led the Government to take certain measures – such as the halting of other essential treatments and the transfers of patients to convalescent homes when it was not clear that they were free of the virus – which have made the death toll far worse.

The Trump administration in the US, however, makes the incompetence of the Boris Johnson administration almost pale into insignificance. The inability to provide domestic leadership within the US has clear implications for the US's global position, and that is discussed further below. Other populist leaders such as Bolsenaro in Brazil and Modi in India are, at the time of writing, also facing rising numbers of confirmed cases and, tragically, rising numbers of deaths from the virus.

3 International leadership

In terms of international leadership, there are already some clear ramifications from the Covid-19 outbreak.

There has been a total failure of leadership on the part of the US. Even if Donald Trump had shown any desire to provide international leadership (which he has not) it is doubtful whether his pronouncements would carry any authority. His position has robbed the US of international influence, and that has implications that extend as far as the rather refined world of international tax. If he is re-elected later this year, it is hard to see how he could rescue any vestige of moral authority during a second term; if he is replaced, a different administration would have an immense uphill task to restore credibility. For the foreseeable future, one has to assume no leadership role from the US on the international stage.

At the same time, and for exactly some of the reasons identified above, China has no claim to assert an alternative leadership role. The lack of transparency over the start of the virus, the suppression of Hong Kong, the threats to other countries, all have ensured that, even if China wanted to, it lacks the moral position to provide leadership. It would also be contrary to Chinese tradition to seek some form of global leadership role. Leaving aside the attempts to export Maoism around the world, China has never really tried to project an ideology or a pattern of life beyond the countries in its immediate region. China has been seeking to increase its influence, particularly in resource-supplying countries in Africa, in recent years, and it has certainly used its ability to supply medical equipment and personnel in an attempt to win friends. However, these efforts in one direction are counteracted by Chinese government policies in other directions: you cannot court Islamic countries whilst on the other hand supressing Uighurs in Xinjiang.

It is very hard to see any other candidates for global leadership. The European Union has come out badly from the crisis so far. A relatively new leadership was still settling internal arrangements when the crisis began; there have been on-going wrangles over the EU budget. The countries worst affected went into national-protection mode, and border controls went up very rapidly. There has been little if any evidence of any spirit of unity or the duty of sincere cooperation, partly because the European Union presented no coordinated response.

Aside from the incredible incompetence of its own government leadership, the UK is not in a position to provide international leadership. With Brexit, it has cut itself off from working with other European countries, and not even the coronavirus crisis has led a doctrinaire-anti-European Government to see the need for cooperation. Nor can the UK Government choose to side with a US that provides no leadership, or a China that tramples on the Joint Declaration over Hong Kong. Any long-term arrangements that the UK may make to operate through the British Commonwealth are still a pipedream.

All this means that there is no evidence of a coordinated international effort at the G20 level, in the same way that there was a coordinated response after the 2008 financial crisis. That was an economic crisis, and there were economic countermeasures that the G8 (and subsequently G20) governments could agree to take. Even if there were some semblance of world leadership at present, it is not clear what response the G20 would adopt either to the health crisis itself or to the damaging economic recession that is coming in its wake.

One of the recurrent questions since the start of the Covid-19 pandemic has been whether this is the death knell for globalization. This has, of course, huge implications for international cooperation in tax matters (though one would hardly say that this is necessarily the highest concern in the public mind). There are pointers in both directions on this issue.

On the one hand, responses to the virus have been nationally based, and there is an absence of international leadership. The virus spread rapidly as a consequence of international travel; northern Italy, for example, has trade links with the most-affected parts of China. There are indications that, going forward, governments will wish to ensure that they have adequate local production of essential supplies (medical in particular, but not only medical) against crises in the future. No country wants to be at the mercy of another that controls supplies of key medical equipment or drugs (or, for that matter, any other key products).

On the other hand, a virus such as this does not respect borders, and it needs an international response. The World Health Organization has played a key role in providing guidance and a forum for some degree of cooperation, despite the attempts of the US President to remove its resources. The general public probably recognizes that global problems such as this need global solutions, and that most national leaders are incapable or unwilling to look for a solution beyond their own borders. At the same time, many in the world population recognize that it is not just future pandemics but that there are other threats to human society which are global and which require global solutions: global warming is one, the control of global data is another (points that are highlighted further below).

There may well be a continuation of the existing reassessment of the benefits of globalization in the wake of the pandemic. However, problems that extend beyond national borders need solutions that are multinational: by definition, that includes international tax issues.

4 The Institutional Structure of International Taxation

All this has major implications for the institutions that work on international tax.

The OECD and its fiscal function have come out very well from the 2008 economic crisis. Jeffrey Owens was on hand to ensure that the OECD Centre for Tax Policy and Administration was ready to dictate a mandate to the G20 that contained some possible solutions to problems that were assumed (without any real evidence) to be related to the economic crisis. Jeffrey's successor, Pascal Saint-Amans has continued to use the link with the G20 and the process of engineering a mandate for the OECD's ongoing work. This has produced the BEPS project, along with a huge growth in resources for the tax-related work of the OECD.

However, there are two dilemmas here for this reciprocal relationship between the G20 and the OECD's Centre for Tax Policy and Administration.

The first dilemma would have caused issues regardless of whether the pandemic had come along: to keep tax at the forefront of the agenda of the G20 leaders, it is necessary that tax problems remain on the front pages of the world's newspapers. However, the longer those problems remain on the front page of the newspapers, the clearer it is that the OECD has failed to provide a solution. This is clearly visible in connection with the taxation of the digitalized economy, where there is a friction between the on-going failure to agree a global solution and the desire to keep that issue in the mind of politicians.

The second dilemma is highlighted above, and that is the absence of global leadership in response to the Covid-19 crisis, reflected in a lack of leadership from the G20. If the OECD engineers its mandate from the G20, it cannot obtain for itself a new and extended mandate if the G20 is either not operating effectively or its leaders cannot be convinced to keep tax issues high on the agenda.

An immediate issue is whether the OECD will achieve agreement on the proposals for the taxation of the digitalized economy in 2020. It has already been announced that the OECD is no longer looking for agreement by June but by October this year: that probably makes agreement on all but irrelevant matters unattainable this year. June was probably the last point in time when the US Presidency might have not been sufficiently preoccupied with the election to devote enough attention to participating in a consensus. October will be right in the middle of the election, and it is very hard to conceive that the US will be interested in a solution to the digitalized economy, particularly one that may have a negative impact on a number of its global champions. Depending on the outcome of the US elections, it may be well into 2021 before the US Government may come on board (if at all) with any solution to the problem remaining from the BEPS project of taxing the digitalized economy. The very fact that progress on this matter is so dependent upon political developments in one country is an indictment of the consensus-nature of the process at the OECD, a point that is returned to below.

Even in 2021, will it be possible to get agreement on Pillar I and/or Pillar II? One is tempted to ask: who really cares? Focusing as they do on only the largest multinational groups, even if agreement could be reached on the proposals, the tax they would raise would (even on the most optimistic estimates) be little more than a drop in the ocean of the costs of dealing with the pandemic and recession. The BEPS project, as it has continued, has narrowed its focus more and more on the corporate income taxation of a relatively small number of (albeit very large) multi-national groups. Even if agreement could be reached, it would be several years before the results of this were seen in the coffers of the countries concerned, and there would be winners and losers amongst those countries. The proposals do little if anything for the developing world, where the demands for more expenditure on healthcare are going to be greater in the coming years. National governments will want something more extensive, more effective and more immediate.

Quite simply, the growth of various forms of digital service tax are much more attractive to governments. The OECD may be wise to admit defeat, and content itself with measures to ensure that these digital taxes are moderated (especially in the case of companies that have low profit margins), more targeted, and that there are measures for relief from double taxation. At present, for countries struggling to reduce their deficits, a digital service tax that can be implemented rapidly is far more attractive than a worldwide minimum tax that might come into play in five years' time.

Since the start of the pandemic, the OECD tax department has tried very hard to provide some international leadership. One has to applaud what it has done in this area, particularly in terms of marshalling information from national tax authorities about short-term measures taken to alleviate the economic impact of taxes during the pandemic, and more recently measures to help tax administrations come out of lock-down. Within the narrow scope of its continuing mandate in connection with double taxation conventions, it has provided some guidance on situations thrown up by the crisis, such as temporary restrictions on movement of personnel, which one might have thought would have been uncontroversial. If one were being cynical, one might say that the OECD has tried to ensure that it does not let a good crisis go to waste, and has tried to use the opportunity to bolster its position as the leading organization in international tax.

However, the pandemic has, if anything, reemphasized the fact that the OECD is not set up as an international tax organization, and that there are severe limits on its functionality. One of the limits has been highlighted above: that at its core it remains a consensus organization, so that opposition from any one of its member countries can block progress. Being a consensus organization (as opposed to one that proceeds by building coalitions of supporting countries, but which can tolerate dissenters and opponents, even powerful ones) may sometimes be seen as a strength: it ensures that every country is on board (or is at least not opposed to the development, or simply remaining silent). However, it means that the organization cannot move swiftly and is at risk of being taken hostage by one or more member countries, whose government may itself be a hostage to some business or other interests. Even in its work on the responses by national tax administrations to the pandemic, the OECD has had to rely upon measures taken by those national administrations and simply reported to the OECD (and not led by the OECD); it has worked with other representative bodies of tax administrations in publishing these data.

Unlike a potential world tax organization, the OECD has no general, ongoing mandate to undertake new projects. It can work within its traditional areas, such as double taxation conventions. It can coordinate other bodies such as the Forum on Tax Administration. If the G20 is not providing a leadership role, and the OECD cannot keep the interest of political leaders on tax matters sufficient to ensure that a mandate for new work comes out from the G20, it may have resources but it no clear mandate.

Since 2016 the BEPS project has expanded into the Inclusive Framework, which theoretically attempts to bring on board governments around the world. However, most reports that come out of this largely-non-transparent process suggest that meetings are still dominated by the original OECD member countries, and that non-OECD countries are increasingly frustrated by the process.

Curiously, the pandemic and recession could create a new opportunity for the OECD. Providing some leadership in terms of tax measures that would help countries to recover from the crisis and deal with the recession might be immensely valuable. However, if they were to do that, the OECD would have to abandon their obsession with the taxation of the corporate profits of multinational groups, and probably abandon the BEPS 2.0 (Pillar I and Pillar II) projects, at least for the present moment (and possibly for ever). The OECD tax specialists would need to be able to go to countries with a package of solutions, and it is not clear that they are set up to do so, nor that they are necessarily the right body to be doing that.

There are, of course, other international organizations waiting in the wings to provide assistance in this area. The IMF and the World Bank are both likely to be producing advice and assistance to governments as to how to deal with the economic impact of the pandemic and recession. The UN Financing for Development work is hampered by lack of resources. The UN Committee of Experts on International Cooperation in Tax Matters has far too narrow an agenda and its national experts bring to the table only, in most cases, expertise on tax treaties and transfer pricing. As currently constituted, the UN work on taxation cannot possibly offer even the foundations for a world tax organization. It would need a fundamental restructuring, with a substantial shift of resources, to become such an organization.

Does the pandemic and recession offer an opportunity or even an argument in support of a World Tax Organization? In other words, do we need a World Tax Organization in the way that we need a World Health Organization? In part, that goes back to the question of globalization or national solutions touched upon above. It is, no doubt, far easier to persuade leaders in some countries that we need international coordination of health measures than to persuade them that we need international coordination of tax measures. National tax administrations have, apparently, worked well in introducing short-term measures to ease the tax burdens of compliance and payment, no doubt looking at one another for suggestions how to go about this process. They have done so without any leadership, but with only a limited degree of coordination. World leaders would have to be very convinced that fiscal solutions to the economic impact of Covid-19 and the recession require such an international tax organization. As discussed above, there is a lack of leadership in general, and certainly it is hard to identify any leadership with regard to international tax that would take forward the establishment of such a World Tax Organization at the current time.

5 National tax measures in the light of COVID-19

What tax measures might national governments wish to adopt to deal with the large budget deficits as a result of the pandemic and recession? To reiterate: because interest rates may currently be low for government borrowing, the issue is not critical for some countries, but there is no doubt that governments will wish to reduce these deficits and make up for lost tax receipts. At the same time, the tax measures adopted must not prevent the growth of new industries providing new employment.

The underlying principles of taxation still apply: a wide range of taxes that collect revenue from multiple sources are more attractive than fewer and more visible taxes. Many countries may, therefore, be scouring the directory of tax measures adopted by other countries with a view to plugging any gaps. Taxes such as financial transaction taxes, digital service taxes, and various forms of advertising taxes may be popular to countries that do not already have them. At the same time, it may be appropriate to reconsider certain exemptions or reduced rate arrangements which result in a leakage of revenue, particularly in consumption taxes like VAT/GST. However, some (but not all) of those exemptions exist to reduce the regressive impact of VAT/GST; the poorest sectors of the economy have often suffered most from the pandemic, and it would be bad policy to remove measures designed to ease regressive taxation.

Excess profits taxes, or one-off windfall taxes, may make a relatively rapid appearance (or re-appearance) in some countries. There are businesses that have suffered very badly as a result of the pandemic; at the same time, there are some businesses that are absolutely booming – those providing online meeting services and delivery services are likely to have seen their profits jump, for example. In some cases costs have obviously increased as well, but that is not an argument for not introducing an excess profits tax: the tax is on excess profits, and if increased costs mean no profits, there is no excess to tax. After exogenous shocks to the economic system, such as wars, it is not unusual for countries to introduce quite high taxes on profits that have arisen in those unusual circumstances. A typical pattern compares the profits made by a business in that country during the period of the war or other crisis with the 'normal' profits made, for example, in the three years prior to the crisis. In the case of new businesses that have not existed for three years (which may be true of some of the online services), it will be necessary to use other economic data to provide a baseline. The general public will be well aware of those businesses that appear to have done well out of the crisis – in some instances, for example, the public will have seen their fees for the use of online services increase during the pandemic. There is likely to be popular support for excess profits taxes or windfall taxes, particularly if they can be linked to funding health care.

The suggestion that has been made that an excess profits tax might be introduced as an international tax measure (suggested as 'Pillar III of BEPS 2.0') is utopian, but probably unrealistic. Governments should have relatively little difficulty in identifying the excess profits that have arisen from sales and supplies of services in their own country, and are unlikely to want to give up an attractive and relatively immediate source of funds. It would take time to agree the principles and details of any new international tax, and now is not the time for a measure that might see results only several years down the line.

The earlier that businesses are made aware that, if they have earned excess profits during the crisis they will be expected to disgorge a significant amount of them, the better. Clarity on this matter assists business planning and also ensures that the market correctly values those businesses net of excess profits taxes or windfall taxes.

The possibility of an excess profits tax has only really been suggested since the start of the current crisis. By contrast, there have been calls for wealth taxes for several years as the most direct and effective way to reverse the large disparities in wealth apparent in a number of countries. There is some reason to expect that the consequences of the pandemic and recession may strengthen calls for a steeply-progressive wealth tax, at least in some countries. Coronavirus has impacted on the poorest parts of the population more heavily than the wealthier parts both in terms of the transmission of the virus among those who find it more difficult to socially distance, and the loss of already precarious employment. In poorer areas of London, for example, an individual was three times more likely to catch the virus and die from it than in wealthier suburbs.

This need not necessarily be a recurrent tax, but a one-off wealth tax to fund medical and social care is likely to prove popular in a number of countries. Going forward, an annualized wealth tax at a progressive rate would encourage those who enjoy substantial income from capital to deploy that capital in ways that generate a higher return in excess of the level of wealth tax: that may prove important in encouraging new businesses targeted at the post-Covid economic situation.

Certain business sectors that have suffered very badly from the crisis are likely to look to government for a stimulus package in the form of tax reliefs. The airline industry, for example, may ask for the temporary or permanent suspension of taxes on airline tickets; restaurants and other businesses that have been closed for many months may ask for some relief from taxes on the occupation of business premises not just for the period that they were closed down but also for a period when, because of social distancing, they cannot operate at anything like full capacity. New start-ups will want to be encouraged to take on staff who have lost their jobs in more traditional businesses that have not survived the recession: they may need to provide these new staff members with new skills (for which the businesses will want to seek government support).

Some calls to utilize the tax system to mitigate the effects of changes in the business environment, with the loss of traditional jobs and the growth of new sectors, existed before the arrival of Covid-19. The need to create new employment, and with it new sources of business taxes and employment taxes, has made this process particularly urgent.

There may be a common reaction to assume that part of the deficit in revenue can be made up by actions to combat tax avoidance and evasion. However, it is possible that diminishing returns have already set in for the resources employed in some countries to combat avoidance and evasion. Depending on the level of compliance in a country before the pandemic, it is doubtful that measures to combat avoidance and evasion will go very far in meeting the budget deficit. Inevitably, new taxes, higher tax rates for existing taxes, and reduced exemptions will be needed in order to compensate for the fall in revenue. That being said, it is very unlikely going forward that there will be very much tolerance by governments, by tax administrations and by the public in general for the shenanigans of large corporate groups which have attracted public attention in previous years. One narrative that seeks to explain the corporate tax avoidance problems of the last twenty years is that the US tax system was overdue for reform, and the position of the US tax system was protected in part by its veto over developments at the OECD. For reasons explained above, the US has lost international influence and that may be reflected in its inability to shelter businesses that it might regard as its national champions.

6 The pandemic and developing countries

The pandemic and the recession have also highlighted the gross disparities of wealth between countries, reflected, for example, in the wildly different ratios between doctors, hospital beds, ventilators and the population in different parts of the world. Strangely, at the time of writing, some of those countries that have had the greatest difficulty in dealing with the coronavirus – Italy, Spain, Sweden, the UK – are among some of the wealthiest countries, that have been able to spend funds on their health services (though they have not necessarily all done so, or done so on a sustained basis). If the virus spreads further and more widely in countries that do not have those resources, then a very obvious and human response is that, going forward, one has to ensure that those countries will have the resources to provide adequate medical care for their population. However, this may be a longer-term issue: too many wealthy governments will face large budget deficits of their own to be entirely magnanimous in the short-term and cede taxing rights to developing countries.

In the longer-term, however, developing countries have to be secured the resources that they need to provide adequate health and social care for their populations. This isn't just a matter of humanity, it is also a matter of self-interest: diseases can travel from the developed world to the developing world and then come back again in secondary and tertiary waves. If we are all to be made safer and wealthier, then we need to secure supplies of goods and services from these countries, and to ensure that their populations enjoy a fair share of the wealth generated. That includes not only ensuring that the governments have the ability to raise taxes, but also that those governments spend those taxes wisely. Too much attention has been paid for too long only on the revenue side, and not on how we ensure that those governments employ the revenue for the good of their people and not, in some cases, for the benefit of a small elite.

The impact of the pandemic and the recession that has begun has coincided with a focus on justice in international taxation. The timing may not be entirely propitious: too many governments will have their own budgetary deficits to worry about to spend much time considering grandiose schemes for replacing the exist principles of international taxation. Academic musings, written sometimes by those who have limited practical experience, are not likely to win many advocates amongst politicians. However, and once again following Churchill's aphorism not to let a good crisis go to waste, international tax specialists should be conscious of the public attention on the need to improve healthcare, create jobs, and ensure that everyone both contributes to the reconstruction and benefits from the wealth created. This creates real opportunities. It is not a time, however, for half-baked ideas but for practical solutions that can be implemented by a significant number of countries relatively quickly.

For some of us who are not exactly over-enamoured by the arm's length principle, the pandemic and the recession may offer an opportunity to see the nails finally put into the coffin of transfer mispricing. The response from some transfer pricing specialists that, in the current economic circumstances it will be extremely difficult to produce comparative data and provide clear guidance for businesses may prompt some people to say: so, what else is new? If the atypical economic conditions of the next few years make transfer pricing analysis difficult or impossible, then some workable replacement has to be found. The alternative is likely to be a mushrooming of the number of disputes over application of the arm's length principle; the employment of more transfer pricing specialists is hardly the type of job creation schemes that governments are looking for.

7 New ways of doing international tax

During the lockdown period many of us have become accustomed to new methods of working. Face to face meetings have been replaced by video meetings. Business travel has become merely a recollection. Courts are functioning, if at all, using video links for hearings. Aside from the environmental advantages of the reduced amount of travelling, some of these new methods of working are clearly superior.

Subject to securing the confidentiality of the medium of communication, there is absolutely no reason why video links should not be used to resolve international tax disputes going forward. If tax authorities can communicate simply and easily through video conferences, sharing documents with one another as they go along, this could significantly improve the efficiency and speed of the mutual agreement procedure. There already existed before the pandemic a major problem with the growing numbers of MAP cases; the new ways of working may prove an efficient means of clearing some of this backlog.

For some of us, working from a home office will in the long-term remain more attractive than travelling in to an office. Some of the work-arounds that have been necessary because of the lockdown may well become permanent. If they become permanent, then we may need some permanent guidance on the tax implications. For example, can we not all agree that a home office from which an employee works is never at the disposal of the employer enterprise and can never form a permanent establishment? This is not simply a matter of the circumstances created by the lockdown, but a permanent position. It should apply even if the employer pays for the home office and its equipment and even if, perhaps, a personal assistant joins the employ or executive at that home office. Working from home offices removes the requirement of travelling and that is environmentally attractive: identifying them as permanent establishments and then trying an almost impossible task of attributed profits to them is counterintuitive and counterproductive. Is it not time to accept that the corollary to the recognition of a significant digital presence is that an insignificant physical presence at a home office should not constitute a permanent establishment and a sufficient nexus for taxing profits in a country?

In a similar vein, identifying the location of the central management and control (or, if you like, the place of effective management) of an enterprise at the physical location where directors or senior executives meet has had to be reconsidered in the context of the coronavirus and the lockdown. Is it not time to reconsider this permanently? It would be a fascinating exercise to seek to identify how many airline flights each year are taken by executives travelling to attend meetings so that they can confirm that the central management and control of a company took place in Country X. During the lockdown, meetings have still taken place by video links. In effect, the place of central management and control(CMC/POEM) has become elective (in fact it always was, it simply had to be established by physical presence). Going forward, one might simply recognize this by saying that, where the members of a board of directors meet and take decisions affecting the business of the company, the meeting should be regarded as taking place where the chairman is located, or where the head office of the company is situated. If that appears to give too much of a choice to the company to determine its place of residence, then perhaps it is time to reconsider whether tests of central management and control (or place of effective management) based upon the location of decision-taking make any sense or (even more radical) whether it is time to abandon the fiction of corporate residence for tax purposes and tax companies only on a source basis. As a starting point, at least, it should be recognized that participation in a meeting by video link is not sufficient of itself to locate CMC/POEM in that country, and this should be recognized not just at times of lockdown.

The new ways of working may, and sometimes should, change for ever the ways in which we do international tax law. Many international conferences have been cancelled this year, including the IFA Congress in Cancun. In some cases, these conferences have been replaced by video conferences, allowing hundreds of people to listen to presentations, pose questions to speakers, and even have a period of chatting in a virtual bar. One asks oneself what is lost and what is gained by having these conferences held on a virtual basis?

What is gained is clear: the time and environmental cost of the travel are saved, and the fact that participants can attend from many parts of the world who would not be able to afford the time or the cost to do so otherwise. What is lost is the personal interaction between participants. This includes the opportunities to have a drink, a coffee, or a meal with other participants. However, being remote does not make that in any sense impossible. It has become so easy to send out an invitation for a video conference, and there is no reason why two or three participants could not each open a bottle of wine or beer, make themselves a latte, or even sit down for a meal together in different countries (though the time difference may mean that one person is eating breakfast while the other is eating dinner). One can imagine future IFA conferences where gracious hosts organize a cultural treat, such as a virtual concert performance, and then invite selected 'attendees' at the conference to join them for the event and for (bring your own) drinks after.

Leave aside the personal contact with other people at a conference, one of the biggest advantages is the updating of information and the ability to be in the room when, for example, an announcement is made. There is no reason why those elements cannot equally be achieved on a virtual basis. Local IFA branches that are able to host a congress (and that is by no means every branch) will lose out from the extra revenue. However, there are significant compensating advantages from opportunities for many experts in the fields to attend without the time or cost that the travel entails.

Many of us who are involved in the academic side of international tax will have spent time recently delivering lectures through video links. To an extent these offer the same advantages and disadvantages as holding international conferences by video link: on the one hand one loses the one-to-one contact between a teacher and a student that one might have at a coffee break or a meal break; on the other hand, students do not have to travel from Vancouver or Melbourne to attend a lecture in Oxford (they simply have to stay up half the night or go to bed very late). Teaching over a video link involves slightly different skills and management from teaching in a classroom, but it is definitely doable. At present, during the lockdown, it is essential: in the future, it may simply be preferable. The one-to-one aspect can be replaced by chats and individual video meetings. There are definitely savings of time, and there may be other efficiencies as well.

For some of us who teach the same topic at multiple universities, there is certainly a saving of time not only in not having to fly to Amsterdam, Lausanne, Oslo and Vienna, but also the possibility of delivering a single course of lectures to students from multiple universities. This development may even lengthen the number of years for which an academic can deliver lectures, offering a series of lectures by video link in retirement years, when the individual would no longer be able or willing to fly to other countries to deliver those lectures (though the author has yet to decide whether this is desirable or not; does he really wish to continue lecturing into his dotage – which some may think has already occurred?).

8 The crises around the corner

Dealing with the budgetary implications of the pandemic and recession will, undoubtedly, occupy government treasuries for the next several years. However, and as a final comment, it is important not to lose sight of the fact that there are a number of other world crises just around the corner, and that tax systems can play an important role in avoiding the crises or helping to find a solution.

One of those crises in waiting (some would say it is already here) is global warming, and we are aware that environmental taxation can be one of the elements in a potential solution. Many would say that too little attention has been paid to the issues of environmental taxation by the OECD during the recent period of focus on multinational companies. In the wake of the coronavirus, environmental taxation deserves more attention. It is a potential source of funds for governments that are looking to tap every resource they can to fill the budget deficit. On the other hand, though, airlines and passenger transportation businesses have been badly impacted, and will seek tax exemptions to help them recover. Finally, some of the work-arounds based on video links are environmentally attractive and should be encouraged through the tax system (and certainly not have adverse consequences). During the lockdown the pollution levels in a number of major cities, where these levels were previously dangerous, have been dramatically reduced. That of itself should teach us that we should be encouraging behaviours in the longer-term that reflect those of the lockdown.

Another world danger that is less frequently identified is the threat to our personal data from the possibility of hacking or simply inadequate data protection. In a sense this increases the more that we exchange communications and hold discussions over the internet, and in forms that can be recorded by participants. The way in which automatic exchange of information for tax purposes has developed shows the tax authorities have paid grossly inadequate attention to data protection. We need to be alive to the possible damage that we could all suffer if personal identification data, financial information, passwords, etc., were compromised and available to criminal groups or malign interests (including some governments). We should not allow the concerns of recovery from Covid-19 and a recession to undermine the protection of those data.

The coronavirus is an international pandemic, and it has ramifications for tax systems and the international tax regime. However, there are other dangers that will continue to cross borders; national tax systems, and the practice of international taxation, have to be part of the solution and not part of the problem.