

ADIT: This year's Joint International Tax Conference

Briefings

23 August 2022

A global audience of nearly 150 tax professionals and international tax law students tuned in for the 12th Joint International Tax Conference, which took place online on 14 and 15 July. The conference was once again held in partnership between King's College London (KCL), the CIOT, ADIT and the International Fiscal Association (IFA)'s UK Branch, appealing to a diverse audience of members and students from around the world.

Chaired by Jonathan Schwarz, barrister at Temple Tax Chambers and director of KCL's International Tax Law LLM programme, this annual event has become a fixture in the calendar for many international tax specialists. The conference attracts some of the most influential thought leaders in the field, while providing an invaluable opportunity for the next generation of international tax leaders, including students at KCL and members of the ADIT community, to gain real-world insights into the practical application of international tax concepts.

This year's conference featured keynote speeches from the Head of the OECD's Transfer Pricing Unit, Manuel de los Santos, and Liselott Kana, Co-Chair of the UN Tax Committee and Head of the International Tax Legislation Department within the Chile Ministry of Finance. Manuel and Liselott were joined by an international roster of expert speakers from across the legal, accountancy and corporate sectors, who between them explored a number of emerging topics in the international tax discourse in a series of panel sessions.

The first day's agenda included analysis of the key current issues in transfer pricing, and a deep-dive into some recent international cases featuring tax law professors and senior lawyers from Europe and North America. The second day saw discussion of the likely international tax prospects for businesses outside the scope of the OECD's two-pillar solution, followed by a look at the taxation of digital nomads following the pandemic.

CIOT President Susan Ball gave an address, while the delegates were also able to enjoy an online networking session, meeting with the speakers and helping to keep the conversation flowing even in the absence of the traditional drinks and canapés!

If you missed the live event but would like to view recordings of the sessions, these are available to purchase at: <https://cvent.me/rv1GOQ>

The programme included a panel session entitled 'Pillar I and II: What about the rest of us?', chaired by Jennie Rimmer CTA(Fellow) ATT, Head of Tax at Canopiuis:

Image

The image is a screenshot of a Zoom meeting. It features four slides from a presentation, each with a small video feed of a participant in the bottom right corner. The slides are:

- Slide 1: Income from automated digital services (Article 12B UN Model 2021)**
 - Article 12B, Para. 2, UN Model 2021: "... income from automated digital services arising in a Contracting State may also be taxed in the Contracting State in which it arises ... but if the beneficial owner of the income is a resident of the other Contracting State, the tax so charged shall not exceed ... per cent of the gross amount of the payments ..."
 - Article 12B, Para. 3: alternative location of "qualified profits"
 - "50 per cent of the amount resulting from applying the profitability index ... to the gross annual revenue from automated digital services derived from the Contracting State whose such income arises"
 - Probably not to be adopted at business segment, enterprise or group level as the base may be
- Slide 2: Main tax issues in our jurisdictions**
 - Increased number of queries with crossing of information
 - Inverted burden of proof creates difficult challenges (e.g. Tanzania)
 - Challenges around PE and location of key strategic employees
 - Competence of employees with dual roles and WHH
 - Double taxation of cross border payment
 - Transfer Pricing audits
- Slide 3: Agent PE (before BEPS 7)**
 - Insertion (2002) of Para. 23.1 of the commentary: "authority to conclude contracts in the name of the enterprise does not suffice the application ... to an agent who enters into contracts liberally in the name of the enterprise ... applies equally to an agent who concludes contracts which are binding on the enterprise even if those contracts are not actually in the name of the enterprise"
 - Effects on case law
 - French Council of State (14 December 2020): Ambulatory interpretation of the French-UK treaty on the basis of the 2003 and 2006 amendments to the OECD Commentary
 - Italian Regional Court of Lombardia (12 September 2016) and Italian Supreme Court (21 December 2018): Activities contributing to the conclusion of a contract where there the agent is not formally acting in the name of the foreign enterprise
- Slide 4: Pillar I and II - What about the rest of us?**
 - International taxation for businesses outside scope of Pillar 1 or 2
 - The Indirect Dimension – Issues Beyond the World of Direct Taxation