FOUNDATION FOR INTERNATIONAL TAX CONFERENCE

MUMBAI, 5 DECEMBER 2019

Good morning everyone, and many greetings to all of you in Mumbai, from London.

Just as I have done for the last couple of years, my friend Professor Roy Rohatgi has asked me to provide a brief greeting message by video on behalf of the International Fiscal Association. I have always greatly enjoyed my travels to India, and so am very sorry not to be there with you today. I hope however that this video message will serve as a reasonable substitute.

I'm sure that you will all be looking forward to a fantastic conference and I've no doubt the event will indeed fulfil your expectations. It is a truly extraordinary time of great change in the world of international tax, and you will have a top flight array of speakers and discussions to inform and entertain you over the coming days.

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A few words then about IFA. We are now some three months on from a superb Congress in London. The Congress venue was the wonderful Royal Festival Hall on the South Bank of the River Thames, perfectly situated for Central London and all its facilities. I expect many of you will have been there. In the end, we had a fine attendance of around 2,400 delegates who enjoyed an excellent technical programme as well as a feast of social and cultural events.

Our two main subjects were, respectively, the implementation of BEPS Action 4, on the deductibility of interest, and the ever topical subject of Investment Funds. These two key themes were accompanied by a great range of seminars including some quite innovative topics. For example we heard about the tax treatment of Space as well as sessions on tax and Sharia law and Brexit. The three regular seminar fixtures on our programme, namely the IFA/OECD, IFA/EU and Recent Developments in International Tax sessions were, as always, hugely popular with our participants.

On the social side, delegates enjoyed an evening at London's famous National Gallery in Trafalgar Square, followed by a superb concert of British music through the centuries at St Paul's Cathedral by the Cathedral Choir and the Royal Philharmonic Orchestra. The Young IFA Network, or YIN, had an extremely well-behaved party at 100 Wardour Street, and we concluded the Congress with a lovely dinner at the quintessentially English Hurlingham Club. One other important event during the Congress was the inaugural lunch hosted by the Women's IFA Network, or WIN. The Congress coincided with the centenary of the practice in the UK of law by women, and the lunch was substantially oversubscribed with some hundreds of delegates coming to hear the inspirational words of our keynote speaker Melanie Hall QC.

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As 2019 approaches its end, we look forward to the IFA programme for 2020. Perhaps we can call this "2020 vision". Of particular importance will be our regional conferences. These will take place in Hong Kong for the Asia Pacific region, in Mauritius for Africa/Asia, in Quito for the Latin American region, and in Milan for the second conference of the European region. As always, a huge amount of work is going into the preparation of these important events and I'm sure those of us who manage to attend the conferences will be extremely well rewarded.

As regards our flagship Congress in 2020, I hope that many of you will be able to make the exciting journey to Cancun in Mexico. The two main subjects for Cancun will be "Reconstructing the Treaty Network", and "Exchange of Information: issues, use and collaboration". Not to distract from the scientific programme, but the Cancun organisers also promise a truly unique experience of Mayan and Mexican culture, and leisure activities including a golf tournament for devotees arriving early for the Congress. Shockingly, I have been instructed that our conventional business attire dress code is being abandoned in favour of contemporary Mexican casual wear. Think guayabera, not sombrero.

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IFA continues to expand its membership, and its international coverage and ambitions. At the last count, we had approximately 13,500 members and 72 national branches. The most recently joined national branch was that in the Democratic Republic of Congo, and Africa remains a key area of developmental focus for IFA. Next year we plan a joint training programme and conference in Cameroon in collaboration with IBFD. And we will be closely monitoring our evolution in Africa up to the key focal point of the 2020 IFA Congress in Cape Town.

The IFA Branch Development Fund, which our friend Porus Kaka was instrumental and generous in establishing, is now undertaking an active programme. Recent events have been held in Sarajevo in Bosnia-Herzegovina and in Kiev in Ukraine. We also plan an event based in Brussels with the new DRC branch.

After the resounding success of the IFA Travelling Lectureship Programme in Eastern Europe in 2018, a new TLP will be held across the Caribbean and in Colombia next year. And then the David R Tillinghast Research Programme will inspire events in Canada, Singapore and South Africa.

After this exhausting but exhilarating globe-trotting journey, IFA will return again to Europe for its Annual Congress in 2021 in Berlin, Germany.

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It seems appropriate to add a word or two about the international tax landscape at the end of 2019. I don't intend to trespass upon the technical content of the excellent sessions that you will be enjoying over the coming days; and of course the radical reform of the international tax architecture, through the programme of work of the OECD Inclusive Framework, will undoubtedly form a major part of your discussions.

However, I must remark upon the continued extraordinary pace of reform. Although some of this has been accorded the acronym "BEPS 2.0", it is in many respects going beyond notions of base erosion and profit shifting. We are now approaching the concept of a "global minimum rate of corporate income tax". When the BEPS project started, many were deeply sceptical about its ability to achieve meaningful change. How astonished should they now be at the prospect of a global minimum rate of tax, and indeed a project to which 135 countries have now subscribed.

For decades we have observed the struggle between the proponents of traditional approaches to arm's length pricing, and on the other hand formulary apportionment. Businesses have occasionally shrugged their willingness in principle to engage with notions of formulary apportionment, but the instinct has always been that it would be practically impossible to achieve a unified global approach. Political pressures to tax MNEs doing business remotely have resulted in proposed new concepts of nexus and new approaches to profit allocation. Much of this is indeed grounded in traditional transfer pricing law. However, to make the proposals workable, a measure of formulary apportionment has been put on the table in the OECD's "Pillar One".

The rationale is certainly one of simplification and workability. It will be fascinating to learn of the degree of consensus that OECD can achieve around this given the economic effects of the new proposals, and the different ways in which they will affect larger or smaller economies, or economies which are, to a lesser or greater extent, perceived as consumer market economies. The OECD work programme includes a critical (but as yet unveiled) economic impact assessment. For sure, many countries will separately be conducting their own economic studies to assess the potential effects upon their tax bases. The G-24, including India, have written to express doubts. Yet the ambition remains at OECD to achieve a substantial measure of political agreement by next month!

In the meantime, the rash of unilateral, uncoordinated national digital services taxes and the like continues to spread. Recent news on that front has continued to emerge, including from France, the Czech Republic, Italy, Turkey, Mexico, Canada, Uganda and so on. The UK is enacting its own DST with proposed future application from April next year. On the other hand, the US maintains its vociferous opposition to such measures, which may provoke retaliatory action in the US (think duty on imports of French wine?) or present impediments to future trade deals. This is of course a particularly delicate issue for the UK as it approaches Brexit. The European Union is also a key heavyweight promotor of reform in this area with its own DST proposals, potentially available to be launched if a global consensus cannot be reached soon. Margrethe Vestager, the incoming EU Vice-President and digital chief, recently expressed hope for a global agreement on digital taxation but threatened that if that does not happen the EU will table and push for a "European solution".

Turning back to the global minimum tax tabled by the OECD's "Pillar Two", the recent consultation for the moment raises more questions than it answers. Aside from the tantalising question of the headline rate, to achieve a uniform effective rate of tax a unified measure for establishing a corporate tax base will be required. There are some echoes here of the European common consolidated corporate tax base or CCCTB proposal. Can a way be found to achieve harmony around the use of internationally recognised financial accounting principles?

We are presented with a combination of taxation top-up principles via the "income inclusion" rule and a switch over rule to turn off the exemption method for double tax relief in favour of a credit method; and a rule targeting payments flowing to low tax zones via a combination of expense disallowance or withholding tax, and a "subject to tax" rule. If the proposals are to move forward, they will entail substantial modifications to domestic tax rules on a fairly consistent basis across the globe, as well as important changes to tax treaties. Presumably this will entail MLI 2.0?

Aside from the work of OECD and the Inclusive Framework, I would like to add a brief observation on other supranational initiatives. The combined efforts of OECD, United Nations, IMF and the World Bank in the Platform for Collaboration on Tax, launched in 2016, continue to acquire momentum. This is particularly important for the evolution of international tax principles and governance in developing countries. A recent example is the draft toolkit produced by the PCT on effective transfer pricing documentation requirements. Work is ongoing on capacity building, environmental taxation and promotion of the Sustainable Development Goals.

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These few simple observations conclude my role today as your "warm-up act". The conference will provide for you three days of in-depth discussion and debate, and thus some intense insights into the quite frankly startling international tax developments of our time.

So, farewell and best wishes from London, enjoy your brilliant conference, and I hope I may see many of you in Cancun, if not before. Enjoy!

Murray Clayson

President, International Fiscal Association