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We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

Eric C.C.M. Kemmeren, *A Global Framework for Capital Gains Taxes*

Globally, tax systems are continuously discussed. That is more than a good thing! Taxes are in the midst of society and should, therefore, also be discussed in and by societies. Tax research can contribute to these discussions.

In a number of countries, such as New Zealand, the Netherlands and the United States, it is debated in society whether capital gains should be included in the income tax base and, if so, how this should be done. In this context, the author will discuss whether, as a matter of principle, taxation of capital gains should be part of a comprehensive tax system that taxes a comprehensive concept of real net income and, if so, what are the key issues in the design of capital gains tax regimes. Attention will be paid not only to general aspects, but also to some international aspects of capital gains taxes. This article will ultimately present a global framework for capital gains taxes based on the developed benchmark. In the author's view, this framework should be taken into account globally when designing a capital gains tax regime. It will contribute to creating a level playing field and to enhancing horizontal and vertical equality and equity.

Pablo A. Hernández González-Barreda, *A Historical Analysis of the BEPS Action Plan: Old Acquaintances, New Friends and the Need for a New Approach*

In 2012, public opinion focussed on what has been called 'aggressive tax planning of multinational enterprises'. Since then, the G20 and OECD developed the Base Erosion and Profit Shifting (BEPS) Action Plan – a phenomenon that has received enormous attention. Despite this attention, the efforts, methodology and outcomes, and the instruments used to implement them, pose very little innovation. This article analyses the issues raised by the BEPS Action Plan from a historical perspective, showing that they remain grounded on the same basis of discussions that took place decades ago. This is probably because the project was triggered by a decrease in tax revenue, and not by an actual study of the failures of the system. The only real innovation of the BEPS Project is the change in the public state of mind and attitude towards tax planning, as well as a totally new way of developing international tax rules through consensus with the participation of a broad number of countries. Future steps should take advantage of this actual innovation, get rid of previous analysis and, taking into account of the current economic situation, study (1) the structure of the tax system and tax burden; (2) the jurisdiction to tax rules and the source and residence principles; and (3) the relationship between private law and tax law, i.e. legal personality and recognition of foreign persons and contracts. Without such in-depth analysis, any changes would be changes that only deepen already existent failing principles forming the base of the current system.

Daniel W. Blum, *Controlled Foreign Companies: Selected Policy Issues – or the Missing Elements of BEPS Action 3 and the Anti- Tax Avoidance Directive*

The discussion of controlled foreign corporations (CFCs) in both the Final Report on Action 3 of the OECD's Base Erosion and Profit Shifting Project and the Anti-Tax Avoidance Directive (ATAD) has failed to address some high-level policy questions that are worth considering in more detail. Depending on the scope of the tax system (worldwide vs. territorial) and the means by which double taxation is avoided (credit vs. exemption), the crucial policy questions revolve around the issue as to which tax base should be protected and in which capacity (i.e. as the residence state or the source state). Moreover, the question as to whether deferral and income diversion should be curtailed as a matter of principle or only if the

deferred/diverted income is low taxed in the state of residence of the CFC must be answered. On an operational level, the means by which income is included require careful assessment. Depending on whether a CFC regime pierces the CFC's corporate veil or applies a deemed dividend approach, the interaction with both the relevant distributive rules and – in case of EU Member States – the EU Fundamental Freedoms, potentially limit the scope of a CFC regime. By tracing back the underlying structural tensions inherent in domestic corporate tax laws and highlighting the policy choices that legislators face along the way to enact coherent CFC regimes that counter both tax deferral and income diversion while respecting the existing network of rules governing the allocation of taxing rights in cross-border situations, this article facilitates a principled discussion and, thus, helps to overcome the widespread BEPS fallacy of accepting the technical outcomes of the BEPS project without questioning the underlying principles.

Sriram Govind & Shreya Rao, *Designing an Inclusive and Equitable Framework for Tax Treaty Dispute Resolution: An Indian Perspective*

Tax treaty dispute resolution is neither efficient nor equitable at the moment. This is particularly problematic in light of countries' adopting aggressive tax policies to tackle base erosion and profit shifting practices, resulting in an increase in disputes.

The MAP has had limited success, while discussions on new mechanisms to supplement the MAP (such as tax treaty arbitration) have proved controversial and have failed to bring developed and developing countries to a consensus. India has been one of the countries in vocal opposition to tax treaty arbitration, even as it staggers under the sheer volume of international tax disputes.

Against this backdrop, this article proposes a workable means of tax treaty dispute resolution, with specific focus on the concerns expressed by India. The authors first analyse available domestic and international mechanisms in India for resolving disputes, including the MAP under tax treaties. The authors then evaluate the pros and cons of non-binding or binding solutions to supplement the MAP under tax treaties. Next, they examine concerns raised by developing countries, with specific reference to Indian constitutional and legal concerns as regards a binding dispute resolution regime. In light of this analysis, the authors propose a possible

institutional framework for tax treaty dispute resolution tailored for India that takes into account these concerns and attempts to be both inclusive and equitable.

Matthias Trinks, *EU-VAT Exemption for Driving Lessons: Pending Case C-449/17, A & G Fahrschul-Akademie GmbH v. Finanzamt Wolfenbüttel*

In July 2017 the German Federal Tax Court lodged a request for a preliminary ruling on several questions regarding the VAT exemption for driving lessons. This case has the potential to fundamentally shape EU VAT law: while in Germany – like in most Member States of the EU – driving lessons are taxable, the requesting court tends to apply the tax exemption in Article 132(1)(i/j) of the VAT Directive. A corresponding decision by the European Court of Justice (ECJ) would therefore not only lead to ground-breaking tax consequences for suppliers of driving lessons, but for (almost) all kind of teaching services.