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I am delighted to inform you that Intertax, May 2019 issue, has been published. There you may read a critical editorial by Yariv Brauner, on the recent OECD developments on Digital Economy and Taxes: "*Developments on the Digital Economy Front: Progression or Regression?*".
You may also find excellent double-blind peer-reviewed articles on different relevant international tax topics; two debates (one on a Destination-with-Credit Formula for the CCCTB; the other one on the US GILTI and BEAT); a case note on the recent *Oy A VAT case* by Robert C. Prätzler and Florian S. Zawodsky, and a literature review note, on *Corporate Tax Residency and Mobility, Edoardo Traversa (editor), EATLP International Tax Series, IBFD, 2018*, by Stjepan Gadžo.

You may read the abstracts of the articles, and of the manuscripts debated below:

Lucas de Lima Carvalho, ***Spiritus Ex Machina: Addressing the Unique BEPS Issues of Autonomous Artificial Intelligence by using "Personality" and "Residence"***

This article challenges an assertion made by the OECD in the Final Report of Action 1 of the BEPS Action Plan, as well as in subsequent reports and policy notes. While the OECD claims in those documents that the digital economy only "exacerbates" BEPS issues, we argue that the digital economy may also create unique BEPS issues related to Autonomous Artificial Intelligence (specifically, the unique issues of "disappearing income" and "powerlessness to tax"). Autonomous Artificial Intelligence is defined as an Artificially Intelligent system that (i) is capable of performing tasks commonly associated with human intelligence and beyond, (ii) is not directly or indirectly controlled by human beings, and (iii) has full managerial power over its own actions and resources, which may be contained, but not controlled by human beings or by entities (legal or otherwise) representing the interests of human beings. The paper provides policy recommendations to address the BEPS issues related to Autonomous Artificial Intelligence, as well as comments on their impacts for tax administration, for enforceability and for the broader structure of domestic and international tax law.

G.F. Boulogne, ***Debt Push-Downs in Times of BEPS Action 4 and the ATAD***

Debt push-downs are a common feature of mergers & acquisitions transactions. This article will address a key concern raised by debt-push downs: the *de*crease in the target company's taxable income (through the interest deduction) is often not paired with any *in*crease in taxable income. Given this concern, this article will discuss the Dutch approach of discouraging debt push-downs, whereby a specific measure was abolished on 1 January 2019 in light of the implementation in Dutch law of the earnings stripping measure contained in the ATAD; a rule that reflects the BEPS Action 4 recommendations. This move, from *specific* to *generic*, raises more general questions: how do debt push-downs fit within the policy notions underlying BEPS Action 4? Does the new earnings-based approach take away the concerns raised by them? Does the ATAD require Member States to take action against debt push-downs? The article concludes with outlook on the ability of multinational corporations to push down debt in current times

Irma Johanna Mosquera Valderrama, ***The EU Standard of Good Governance in Tax Matters for Third (Non-EU) Countries***

This article analyses the standard of good governance in tax matters introduced by the ECOFIN Council in 2008, with a view to tackle tax fraud and tax evasion. At that time, the standard included transparency, exchange of information and fair tax competition. Later on, several OECD and EU developments have changed the content of this standard. As of April 2018, the standard of good governance includes also the 4 Minimum Standards of the Project to tackle base erosion and profit shifting practices by multinationals (BEPS). This standard has been introduced by the EU as a pre-condition for third (non-EU) countries that receive EU development aid, conclude strategic partnership agreements, free trade and economic partnership agreements and more recently as a standard that determines whether the third (non-EU) country should be included in a single EU common list of non-cooperative jurisdictions. This article aims to answer two questions (i) whether the standard of good governance in tax matters is an import and/or export of EU norms? and (ii) what is the legal status of this standard vis-á-vis third (non-EU) countries? Finally, this article provides conclusions and recommendations for further research.

Miguel de Jonckheere, Arjen Schep and Anneke Monsma***, Open versus Closed Competence to Tax: A Comparative Legal Study of Municipal Taxes in Belgium and the Netherlands***

This article describes and compares the possibilities under Belgian and Dutch law for taxation by local authorities. The most striking difference is that Belgian local authorities may decide on their own as to which taxes they wish to impose, save for interdictions imposed by law, whilst local authorities in the Netherlands can levy only those taxes allowed by national law.

The main purpose of this study is to enquire if the differences in tax competence are as substantial as one might expect at first glance. More specifically, the authors compare the existence, meaning and scope of some general principles and principles of tax law which are considered to limit the municipal tax competence.

The conclusion is that the scope of some principles and even their very existence seems to be affected to a considerable degree by the extent of the municipal tax autonomy. The Belgian open tax system has been widely constrained by general principles of tax law, that are absent or have less far reaching consequences in the closed tax system existing in the Netherlands. Further research is needed to determine whether the authors' findings can be extrapolated to other Member States who are operating systems of open or closed tax competence.

Martti Nieminen, ***Destination-with-Credit Formula: A Simple Add-On that Would Make the CCCTB More Resilient in the Face of Tax Competition and Tax Planning***

The common consolidated corporate tax base (CCCTB) regime proposed by the European Commission has the potential to tackle most of the key issues of international taxation. However, there is an inherent flaw in the design of the CCCTB. The system does not remove the incentive of Member States to engage in tax rate competition. On the other hand, the CCCTB leaves multinational enterprises (MNEs) with the opportunity for tax minimization through shifting of real activities. This article introduces an amendment to the CCCTB that would tackle these structural defects.

The CCCTB is based on a classic three-factor allocation formula that takes into account the location of labour, (tangible) assets and sales. The approach presented in this article is to include in the formulary apportionment system of the CCCTB an additional calculation method, namely the destination-with-credit formula. The starting point of the destination-with-credit formula is to allocate all profits to the Member State(s) of sales, as sales represents the least mobile factor of the current apportionment key. However, unlike from some previous proposals that concern a purely destination-based approach, the destination-with-credit method would be applied side-by-side with the three-factor baseline formula. This is possible because under the destination-with-credit formula, the Member State(s) of sales would be obligated to grant a computational credit for foreign taxes paid based on the other attributes of the baseline formula (labour and assets). This article first explains the basic structure, merits and flaws of the CCCTB proposal (Section 2.), describes and evaluates previously outlined solutions to the shortcomings of the CCCTB (Section 3.) and presents the destination-with-credit approach (Section 4.).

Mindy Herzfeld, ***Can GILTI + BEAT = GLOBE?***

The OECD is moving forward with consideration of a minimum tax as part of its solution to taxation of the digital economy. Part of a template for such a minimum tax may be the version enacted by the United States (U.S.) in 2017 as an expansion of its Controlled Foreign Corporation (CFC) regime, known as Global Intangible Low Taxed Income (GILTI). But the OECD version will undoubtedly be different from the U.S. iteration. It's likely that it would also include some aspects of a minimum tax being proposed by other OECD members such as Germany and France, namely a tax on outbound payments, in addition to a CFC-type regime. The United States also enacted an outbound minimum tax in 2017, known as Base Erosion Anti-Abuse Tax (BEAT). The two-part minimum tax being pursued by the OECD – a minimum tax based on a CFC regime plus an outbound minimum tax that's a variation on the BEAT – has been referred to as GLOBE.

This article summarizes the two features of the U.S. 2017 tax reform (known as the Tax Cuts & Jobs Act (TCJA)) that may be incorporated into a global minimum tax, namely GILTI and BEAT, from the perspective of how such provisions might be adapted to work in a global setting. It considers the challenges to taxpayers and policy makers raised by the U.S. law as enacted, and the attempts in recently issued regulatory guidance to address some of these concerns. It compares and contrasts the provisions enacted by the U.S. Congress with a number of parallel European developments, including the EU Anti-Tax Avoidance Directive (ATAD)'s CFC rules and the German royalty deduction barrier.

Adaption of the minimum tax components of the Tax Cuts & Jobs Act for worldwide use will require careful understanding of the policy choices, as well as the mistakes made, by the TCJA drafters in designing the regime, in order to ensure that they are not repeated.

Enjoy your reading!