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Ana Paula Dourado (General Editor of Intertax) · Friday, November 5th, 2021

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

Edoardo Traversa & Benoît Timmermans, *Value-Added Tax (VAT) and Sustainability in the European Union: A Radical Proposal Design Issues, Legal Aspects, and Policy Alternatives*

This article aims to examine how the implementation of environmental taxes could build on the success of value-added tax (VAT) to become more efficient and consistent. This is not to increase the overall tax burden on citizens but to reorganize existing indirect taxation differently by better taking into account European Union (EU) environmental objectives, in particular regarding the circular economy. With its broad tax base, its systemic structure based on neutrality (which does not exclude differentiation), its wide acceptance among taxpayers, and its proven compliance process, the VAT has some features that could inspire environmental policymakers. It indeed impacts consumer choices at the broadest possible level while avoiding distortions.

The authors begin by identifying the reasons for the success and robustness of VAT. A new concept of 'green VAT' will then be proposed based not on the classical instrument of reduced rates for specific transactions as is already done and advocated by EU institutions (European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan. For a cleaner and more competitive Europe, COM(2020) 98 final (11 Mar. 2020). See also Opinion of the European Committee of the Regions – New Circular Economy Action Plan (2020/C 440/18), OJ C 440/107 (18 Dec. 2020), para. 23.) but on a coherent life cycle approach to all goods and services. This new approach identifies negative externalities by following the same value chain as the VAT. It aligns as much as possible with the administration and compliance methods already implemented by the VAT.

Finally, a possible virtual use of the new green VAT concept will be presented. It does not require any legislative changes. It takes the form of a 'virtual tax' that appears on the price tag of every product without being effectively paid and may be used as an indicator for the actual environmental cost of production.

Yvette Lind, *Attracting Multinational Tech-Companies Through Environmental Tax Incentives*

In this contribution, Sweden´s favourable tax regime which awards a significantly reduced electricity tax rate to data centres is examined. The findings of the paper are applicable to other jurisdictions, such as Denmark and Finland, as they are subject to similar conditions. Data centres are, when subject to the tax regime, subject to less than 2% of the normal electricity tax tariff. Multinational tech-giants benefit heavily from it while many domestic companies (colocation centres) are excluded due to its technical design and attached administrative case law. Initial calculations indicate there is tax savings of more than SEK 500 million (circa Euro 50 million) on an annual basis. Therefore, the tax regime acts as an international tax competition tool through its fiscal state aid function while, at the same time, eroding the tax bases and business life of northern Sweden. It does not initially appear to infringe on EU state aid rules nor the principle of non-discrimination. This Illustrates that there is still some margin of freedom for individual Member States to compete through tax measures. Additionally, tax policy objectives of the tax regime are considered and analysed. In particular, the impact it has had on not only international tax competition but also the economy of local municipalities, local business life, and progressive climate goals. A critical commentary focusing on sustainability is applied throughout the paper.

Tatiana Falcão, *Highlights of the United Nations Handbook on Carbon Taxation*

This article explores some of the highlights of the United Handbook on Carbon Taxation that was produced by the Subcommittee on Environmental Taxation under the mandate of the United Nations (UN) Committee of Experts on International Cooperation in Tax Matters. The article analyses the existing international environmental agreements and the principles of international environmental law that provide the legal backdrop for the development of a carbon tax approach. It further considers the conceptual dimension of the terminology employed to frame carbon taxes. In doing so, the article points to three main conceptual lacunes in this field, specifically, the absence of international consensus on the definition currently used for carbon pricing, environmental taxation, and fossil fuel subsidies. At the same time, it highlights the breakthrough definition proposed by the committee for ‘carbon taxation’, the first of its kind, even if only for the purposes of the Handbook.

In addition to providing a thorough review of the main policy approaches introduced in the Handbook in forwarding a carbon tax, the article also explores forward-looking areas in which further work can be done. Such areas include the application of carbon taxation in niche markets such as aviation and maritime transport.

J.J.A.M. Korving & C. Wisman, *ATAD Implementation in the Netherlands*

In this contribution, the authors provide an overview of the implementation of the EU Anti-Tax Avoidance Directives (ATADs) 1 and 2 in the Netherlands. After providing an overview of the implementation process, the authors will analyse and comment on the several amendments made to Dutch corporate income tax law. There is specific focus on the interest deduction limitation rule, controlled foreign company (CFCs), general antiabuse rule (GAAR), and hybrid mismatches. The authors will address certain ambiguities and highlight some potential issues from an EU law perspective. The authors will also briefly discuss recent developments such as the Netherlands’

proposal to unilaterally address certain transfer pricing mismatches and the impact of the ECJ case law on abuse and tax avoidance. This contribution will not examine tax treaty implications.

Stephen Daly, *The Implementation of ATAD by the UK*

Though the United Kingdom formally left the European Union on 31 January 2020, the departure was only substantively completed eleven months later when the transition period ended on 31 December 2020. The departure does not negate, however, the need for collective action at a supranational level to tackle supranational problems, as underscored by the UK's implementation of the Anti-Tax Avoidance Directive. This article teases out various aspects of the UK's implementation of the Directive.

Jesper Johansson, *Is NN A/S (C-28/17) a Potential Trendsetter?*

This contribution examines the decision of the Court of Justice of the European Union (CJEU) of 4 July 2018 in Case C-28/17 NN A/S concerning the compatibility of a Danish rule prohibiting double deductions of losses with the freedom of establishment in Article 49 of the Treaty on the Functioning of the European Union (TFEU). In this case, the Court found the rule to be compatible with the freedom of establishment unless its application deprived the group of any effective possibility of deducting the loss in either of the two Member States involved. While this article finds merit in the Court's reasoning, it also finds a few inadequacies mainly due to the Court disregarding differences in tax rates between Member States. Another finding is that, from a theoretical perspective, Denmark should not be required to allow the group to set off its loss considering the specific circumstances at hand in the underlying case. Furthermore, the judgment is presented as a potential trendsetter since it represents a development in the Court's case law on rules preventing double deductions of losses, now handled in the Anti-Tax Avoidance Directive (ATAD).

Dario Stevanato, *Italy's 1970s Tax Reform and Its Waning Legacy*

Italy, fifty years ago, passed a bunch of bills which overhauled its tax system. Thereafter, the old taxes, which had survived for about a century, were replaced by a set of 'modern' ones. The process was prompted by a law of delegation, which laid down the cornerstones of the tax reform to come: its principles – such as personality, progressivity, differentiation, simplification, and so on – were meant to steer the Country towards a new era of social justice and economic development. Things, regrettably, went otherwise.

With the important exception of Value Added Tax (VAT), whose implementation has always been dependent on European law, the guidelines of the 1970s Tax Reform were superseded in various ways, as summarized below.

According to the law of delegation, the Italian tax jurisdiction had to stick to the personal progressive income tax (PIT): this notwithstanding, it soon reverted to the old schedular approach. In regard of corporate profits, the many attempts to deal with double taxation have been eventually

dismissed. The idea of taxing income differently, whether earned or unearned, has been abandoned, or rather subverted, to the detriment of labour income. Tax returns of small businesses and self-employed are hardly likely to be controlled by the tax authority.

Italy, there are few doubts about that, seems to be in desperate need of a new tax reform.

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