Kluwer International Tax Blog

Marxist Tax Ideas in a Non-Marxist World

Georgios Matsos (Matsos & Associates) · Monday, August 27th, 2018

On May 11th a very interesting conference with the topic "How Source and Residence have Developed: Rethinking the Principles of International Income Taxation" has taken place, in Bergamo, organised by the Department of Law of the University of Bergamo and by the University of Heidelberg.

Having not stayed until the discussion, I could not comment on the ideas that Eric Kemmeren has presented during the Round Table of the morning session.

In a few words – and if I understood correctly – Eric Kemmeren suggested that income from capital should not be taxed at all, as capital "does not do anything".

After some additional brainstorming since May, I decided to take the chance to respond to such revolutionary input through a blog post.

As a matter of fact the idea that capital "does not do anything" and, consequently the main production factor with "value" is labour, is not really new. It has been thoroughly developed and analysed by Karl Marx.

While capitalism, as the word itself reveals, is based on the idea that capital is a major, if not the most important factor of production, Marxism suggests that only labour produces "value". In the same context, "surplus value", which is the difference between the value earned by a business entity and the part of the same value earned by the labourer, is a sort of "theft" of the labourers' work.

Marxist ideas have been globally denied not only because they failed in practice, but also because many theoretical arguments speak against them: Labour needs investment and investment needs capital. More sophisticated and more advanced investments, require respectively more capital. Production factors, including labour, cannot be mobilised without investing capital, because they will simply not be rewarded until enough revenue flows from a business activity. This would be possible only within a framework of social ownership of material production factors other than labour, as such framework was conceived by Karl Marx. But social ownership would then eliminate the basic motive behind investment: Generation of profits.

So the world finally generally adopted the capitalist ideas and rejected the Marxist ideas. Under the capitalist ideas capital is not only "doing something": It gets rewarded, financially rewarded for being used. Lenders receive remuneration (i.e.: interest) for lending their capital to other entities,

while equity providers receive in principle all business profits.

Thus, if capital does produce revenue from a financial and a legal point of view, how can taxation move so far away from financial reality and deny that capital at the very end does produce income?

Capital goes much further from simply "doing something": Through the basic company form of "company limited by shares" (the Aktiengesellschaft (AG) / Société Anonyme (SA) / Naamloze Vennootschap (NV) of continental European jurisdictions) capital governs our financial world: The ultimate control of the world's big and small companies does not belong to labour, but to the ones owning the majority of capital invested to companies in the form of equity. Capital owners decide about "life and death" in a company and no one else.

As an older song has expressed it, "money makes the world go round" and this is – beyond the moral correctness or non-correctness of the statement – an undeniable truth.

Do we want our tax systems be alienated from the financial reality? Kemmeren obviously suggests to disregard income flows generated by the financial rewarding of capital and to tax instead income only there, where (to use BEPS-terminology) "value is created". Now we can read this famous phrase in a different sense: In the sense that value is allegedly created only by labour and by material production factors other than capital. But since value is at the end distributed, among other, also to capital providers, how can a discrepancy from such financial reality become sustainable both on a practical and on a theoretical point of view?

As a matter of fact, Kemmeren's ideas are a natural development of the BEPS-Programme's main goal to tax income "where value is created". It is finally the underlying basic idea of the BEPS-Programme, which implicitly denies that value is created, among other factors, also by capital.

The tax community has to be, thus, grateful to Eric Kemmeren not only for saying openly what was already deeper implied in the BEPS-Programme, but also for revealing the implicit failure hitherto of the BEPS-Programme to accomplish its goals and produce tangible results in combatting tax avoidance. The tools used initially by the BEPS-Programme targeted mainly the elimination of artificial arrangements leading to Base Erosion and Profit Shifting. But when taxpayers reacted by e.g. turning artificial arrangements to true arrangements (for example: by physically relocating themselves to low tax jurisdictions instead of just creating a passive CFC), the main underlying anti-BEPS ideas go much further and affect the fundaments of international taxation and of tax law.

Leaving apart the discussion about the correctness of the Marxist idea of whether capital "is doing anything" or not, the main question remains if it is a bad thing to tax income from capital.

As a matter of fact, the main problems arise when income from capital gets taxed in cross-border situations. If taxation of income from capital did not form the basis of international tax avoidance, then the discussion that Eric Kemmeren has opened, would simply not have opened.

Capital itself and the taxation of income deriving thereof should not be blamed for creating opportunities for tax avoidance. It is rather the free circulation of capital that should be blamed. Generally applicable free cross-border circulation of capital is a relatively new idea. Even within the framework of the European integration, free circulation of capital was the last among the so-called "fundamental freedoms" that was implemented on July 1st, 1990. Rightly so, as the free circulation of capital opened immense opportunities for lawful (or not lawful) circumvention of

mandatory provisions of law, including tax provisions.

Thus, instead of discussing about not taxing income from capital at all, the discussion should be about the limits of the free circulation of capital on a European and on a global level. Anti-tax-avoidance measures are anyway means that restrict free circulation of capital. The true discussion is to what extent such restrictions are justified.

To make sure you do not miss out on regular updates from the Kluwer International Tax Blog, please subscribe here.

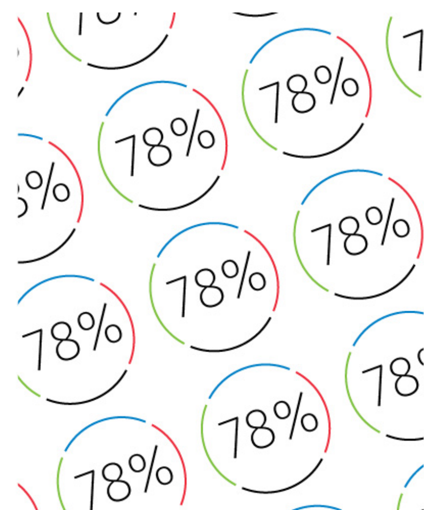
Kluwer International Tax Law

The **2022 Future Ready Lawyer survey** showed that 78% of lawyers think that the emphasis for 2023 needs to be on improved efficiency and productivity. Kluwer International Tax Law is an intuitive research platform for Tax Professionals leveraging Wolters Kluwer's top international content and practical tools to provide answers. You can easily access the tool from every preferred location. Are you, as a Tax professional, ready for the future?

Learn how **Kluwer International Tax Law** can support you.

78% of the lawyers think that the emphasis for 2023 needs to be on improved efficiency and productivity.

Discover Kluwer International Tax Law.
The intuitive research platform for Tax Professionals.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Monday, August 27th, 2018 at 12:00 pm and is filed under BEPS, Tax Policy
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.