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Ana Paula Dourado (General Editor of Intertax) · Thursday, June 6th, 2019

I am delighted to inform you that the June-July 2019 double issue of Intertax has been published. It includes the editorial by Stef van Weeghel, *Digitalization in a Broader Tax Perspective;* double-blind peer-reviewed articles on corporate tax systems, the MLI, cross-border losses and EU law, liability in EU VAT, and taxation of cryptocurrencies. You may also read two country notes on *Implementation of the Inclusive Framework on BEPS in Indonesia;* and *Three Emblematic Measures in Portuguese Business Taxation*; a case note on the CJEU, *Vetsch Int. Transporte GmbH;* and a book review (on *Business, Civil Society and the 'New' Politics of Corporate Tax Justice: Paying a Fair Share?*, R. Eccleston & A. Elbra (editors), Edward Elgar, 2018).

Abstracts of the editorial, articles, and of some of the other manuscripts are available below:

Stef van Weeghel, *Digitalization in a Broader Tax Perspective*

The tax challenges resulting from the digitalization of the economy are mostly framed and perceived in connection with corporate income taxes and how these are avoided and/or end up in the hands of the wrong fisc. While these challenges are very real, there are other challenges, and perhaps also opportunities, arising from digitalization, in different spheres of taxation. Two of these are the tax gap (i.e. the difference between tax that is commensurate with the relevant economy and the prevailing tax rules compared with tax actually collected) and tax as a means of redistribution of income and wealth in a society that is perceived as increasingly unequal and where the middle class is said to be under threat. All three spheres are briefly addressed in this editorial.

Rainer Bräutigam, Christoph Spengel & Kathrin Stutzenberger, *The Development of Corporate Tax Systems in the European Union from 1998 to 2017 – Qualitative and Quantitative Analysis*

The process of economic integration and associated legislative acts, competitive pressures as well as the consequences of the financial and sovereign debt crisis have considerably shaped Member States' tax systems during the last two decades. Our paper combines a qualitative and quantitative analysis of the development of European tax systems based on a unique and comprehensive dataset for the EU-25 Member States between 1998 and 2017. Especially among the EU-15 Member States, we still find evidence for the often-cited trend of tax rate cut cum tax base broadening. In this context, we identify interest deduction limitation rules and limitations to loss offset as main drivers of tax base broadening. These mechanisms possibly reinforce the risk of economic substance taxation in crisis or loss situations. Furthermore, Member States increasingly rely on the

enhanced taxation of dividends at shareholder level to prevent potential revenue losses from lower corporate income tax rates.

Richard Xenophon Resch, ***The OECD BEPS Multilateral Instrument and the Issue of Language***

This article discusses the OECD BEPS Multilateral Instrument (MLI) in respect of its policy to implement equally authoritative English and French texts. It evaluates this choice against the background of the policies implemented in the final clauses of all existing bilateral tax treaties and proposes possible solutions to resolve the problems resulting from the MLI final clause. The global tax treaty network is modelled based on a sample of 3,358 tax treaties currently concluded.

Roland Ismer & Harald Kandel, ***A Finale Incomparabile to the Saga of Definitive Losses? Deduction of Foreign Losses and Fundamental Freedoms after Bevola and Sofina***

The Court of Justice of the European Union (CJEU) has developed a rich case law on the impact of the fundamental freedoms on the need for deducting foreign losses. The contribution analyses the CJEU's case law both with respect to loss relief in the residence and in the non-residence state and shows that the case law is consistent. Such losses only need to be taken into account in the residence state when they are comparable to domestic losses and to the extent definitiveness implies the source state cannot fulfill its primary responsibility to grant loss relief. The recent decisions in Bevola on loss relief in the residence state and Sofina in the source state fit into the Court's line of reasoning.

Satenik Melkonyan & Filip Schade, ***Flow-Through Holding Companies in Light of the Parent-Subsidiary Directive: The Thin Line between Tax Planning and Tax Abuse***

The fight against aggressive tax planning has become a global priority in recent years. On the initiative of the OECD and, particularly, through implementations at the EU level, many loopholes have been closed. However, as the current developments in this field show, no politically acceptable level of taxation of multinationals is in sight. This article scrutinizes a tax structuring technique which can – even in the post-BEPS era – lead to unfavourable results from a fiscal perspective. First, the disputed tax planning scheme is described (Section 2.). In particular, the authors show that by using partially tax-exempt companies under Article 2(a)(iii) of the Parent-Subsidiary Directive as flow-through holding companies, the general partner of the latter can achieve a fully tax-free repatriation of profits within the EU. Subsequently, the article addresses the question as to whether this result can be tackled by currently available legal anti-abuse means (Section 3.). The authors' findings suggest that the taxpayer-friendly settled case law of the EU Court of Justice (ECJ) makes it almost impossible for current anti-abuse rules to cover this technique. Finally, the authors recommend that the personal scope of the Parent-Subsidiary Directive be limited, which should provide an effective solution for such structures, while also being suitable for political consensus among the Member States (Section 4.).

Frank J.G. Nellen, ***On the Liability of the Uninformed Taxable Person in EU VAT***

In this contribution, the author analyses the information need of the taxable person in EU VAT. He explores the extent to which the taxable person depends, in the course of taxation, on the provision of information that is held by others. In addition, the author discusses ECJ case law in order to establish whether the taxable person can be held liable for the payment of VAT in case that person is unable to obtain all necessary information. ?

Louise Fjord Kjærsgaard & Autilia Arfwidsson, ***Taxation of Cryptocurrencies from the Danish and Swedish Perspectives***

The authors analyse the current classification of cryptocurrencies from the Danish and Swedish domestic income tax perspectives. Cryptocurrencies are analysed as they are typically applied in practice, where a categorization is made between coins, utility tokens, security tokens and asset tokens. In particular, it is concluded that despite the economic differences of different cryptocurrencies, they generally fall outside the scope of Danish and Swedish *lex specialis* regulation on taxation of capital gains and losses from the sale of certain assets, for example, shares and claims in currency. In both countries, there appears to be a presumption that most cryptocurrencies should be taxed as assets held for investment and speculative purposes. It is argued that such an approach is problematic not only in relation to the principle of neutrality, but also because it creates a barrier to realizing the economic potential of cryptocurrencies. The authors conclude that (i) the classification of cryptocurrencies poses challenges and uncertainty for tax purposes due to the lack of a regulatory framework, the absence of common definitions and the diverse technical structure of tokens and coins and (ii) the classification for Danish and Swedish tax law purposes should be based on a case-by-case assessment of the specific cryptocurrency.

Haula Rosdina, Maria R.U.D. Tambunan, Edi Slamet Irianto, ***Review of Implementation of the Inclusive Framework on Base Erosion and Profit Shifting in Indonesia***

Tax avoidance by multinational enterprises in Indonesia has led to a massive, ongoing loss of tax revenue. A type of tax avoidance known as base erosion and profit shifting (BEPS) has become a global issue and compelled the OECD to take measures by releasing the BEPS Action Plan and launching the BEPS Project. Indonesia declared its commitment to adopt appropriate parts of the outcome of the BEPS Project for developing countries in Indonesia's domestic tax rules, recognized as the Inclusive Framework on BEPS or BEPS Minimum Standards. This article analyses the implementation of the BEPS Minimum Standards in Indonesia and how the government has taken action to counteract tax base erosion. The author considers qualitative research and data collected through a literature study and in-depth interviews. Indonesia is in the process of implementing the BEPS Minimum Standards, as addressing transfer pricing issues and preventing tax treaty abuse are currently particular areas of focus for the government.

António Martins, ***Three Emblematic Measures in Portuguese Business Taxation: A Preliminary Quantitative Appraisal***

This article evaluates, at a preliminary level and from a quantitative perspective, three measures influencing corporate income taxation in Portugal: the treatment of intangibles, efforts to promote investment; the creation of a simplified tax regime for micro-firms, to reduce compliance costs; and the limitation of financial expense deduction, to reduce leverage. Using aggregate tax data made available by the tax authorities, the article assesses the influence of these measures in terms of firms affected and the taxable income they increased or exempted.

The simplified tax regime had a modest rate of success, given the small share of firms adopting it; the incentives to intangibles had a limited effect; and the limitation of financial expense deduction had a significant impact, given the leverage of many firms. The article presents empirical evidence of the consequences of significant corporate tax measures. *A posteriori* quantitative assessments of tax changes are useful for policy makers, taxpayers and tax professionals.

Alois Charpenet, ***Case Note: CJEU 14 February 2019, Case C-531/17, Vetsch Int. Transporte GmbH v Zollamt Feldkirch Wolfurt, ECLI:EU:C:2019:114***

It is not the first time that the Court of Justice of the European Union (CJEU) has had to determine whether fraud committed by one actor in a supply chain may affect the VAT rights of other actors in that same chain. In Vetsch, the Court had to decide to what extent fraud committed by purchasers of goods could prevent their fiscal representative from making use of a specific VAT exemption, thus making the representative liable for paying the VAT due.

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