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Ana Paula Dourado (General Editor of Intertax) · Friday, August 19th, 2022

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

Zhe Chen & Bart Peeters, A Study on the Protection of Taxpayer Rights in an Era of Enhanced Exchange of Information: How Can the Chinese Approach Be Improved?

This study explores taxpayer protection under the exchange of information (EOI) in China. From a comparative study between Chinese law and European law in general (combining EU law and the ECHR as interpreted by the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR)), possible improvements for the Chinese approach are suggested. The protection of taxpayers' rights is divided into three different layers: confidential treatment of personal data, involvement of the taxpayer in the EOI-processes, and the right to remedy of taxpayers that have been treated incorrectly. Within these layers the study recommends to provide additional measures to attempt to effectively address data leakages or unjustified use of them, improved passive and active access for taxpayers into the EOI-process, and ex ante and ex post remedies in the event of violations.

José-Andrés Rozas & Joshua Pownall, A European Internet Access Tax

The OECD's plans to address the challenges posed by the digitalization of the economy are progressing towards a complex system. The work of this international organization is based on two pillars – reallocation of rights and global minimum taxation on corporate profits – which should lead to the adoption of a common international model. Its outcome is uncertain; however, its implementation could require a significant amount of reliable information on the size and territorial distribution of the digital market.

This purpose – the configuration of a digital tax census – could be fulfilled by the introduction of a European internet access tax that is a registration tax. Its taxpayers would be the holders of network access rights through telecommunication infrastructures located in the EU territory, and the service providers would function as substitutes for the taxpayers with the right – but not the obligation – to pass on the tax debt to the user. It would necessarily have to be a reduced tax with the objective of census purposes and a tax period of no less than three months. Based on a Catalan experience, which was unsuccessful due to its scope and characteristics, this article explores its possible implementation in the EU, within the framework of the search for solutions to the tax challenges posed by the digitalization of the economy.

Willemien Netjes & Dominik Freyer, Tax Transparency Is Here to Stay: An Analysis of the Public CbCR Directive

On 21 December 2021, the 'Public CbCR Directive' entered into force. According to this new directive, companies within its scope will have to publish a public country-by-country report including income tax information for each European Union Member State where the company has a presence. Whereas most companies in scope already prepared such a report, until now this was shared only with tax authorities for the purpose of enabling a high-level tax risk assessment. On the contrary, the new directive requires companies to publish the tax information on their website in order to be shared with investors, civil society and the general public.

Ahead of this directive however, it can be witnessed that an increasing number of companies is already publishing tax information on a voluntary basis, despite the fact that publishing such information can lead to greater scrutiny and can potentially harm a company´s reputation. This contribution is a formal discourse of how the Public CbCR Directive initiative is a logical consequence of years of corporate tax transparency discussions and how it fits into broader global environmental, social, and governance (ESG) trends.

Katerina Perrou, The Implementation of the ATAD in Greece

This article examines the implementation of the anti-tax avoidance directive (ATAD) in Greece. It reviews the additions to and the amendments that had to be made in Greek law resulting from the implementation of the ATAD. It does so in an analytical and critical manner by exploring all of the ATAD provisions, examining the way that they were implemented into Greek law, and how they differentiate from the previous rules (if they existed at all). It examines the compatibility of the said provisions, as they have been transposed in Greece, with EU law and their compatibility with the Greek Constitution, especially in relation to the interest limitation rule, the exit tax, and the general anti-abuse rule (GAAR).

Dejan Popovi? & Svetislav V. Kosti?, Rome Double Tax Convention: The First Multilateral Treaty for the Purpose of Avoiding Double Taxation

This paper presents the story of the world's first multilateral double taxation treaty, a treaty concluded in Rome after the end of World War I by all the successor states of former Austria-Hungary with the exception of Czechoslovakia. On the centennial of this treaty the authors first present its historical, legal and economic background and attempt to determine which of the quite few already existing double taxation treaties served as the model for a document which preceded the work done under the auspices of the League of Nations on the topic of double taxation. Concluding that it was the 1899 Austria-Hungary/Prussia double taxation treaty which served as inspiration for the drafters of the 1922 Rome double tax convention, the authors continue to analyse and compare their individual provisions. Subsequently, the authors turn to the question of why this multilateral treaty never came into force and present interesting historical data found in the archives of Yugoslavia. In the end, the authors conclude that the tale of the Rome double taxation convention reminds us in our modern environment about the values of common sense even in adverse political circumstances and clearly shows that multilateralism should not be abandoned as a prospective option.

Bar?? Bahçeci & Demirhan Burak Çelik, The Question of Interaction Between the Tax and Criminal Proceedings in the ECtHR Case-Law

This objective of this study is to analyse the definition and the application of the concept of sufficiently close in substance and in time by the European Court of Human Rights (ECtHR) in terms of tax penalties. The Court implements this concept in Article 4 of the Protocol Number 7 of the European Convention on Human Rights (ECHR) and intends to regulate the interaction between the two sets of (tax and criminal) procedures that deal with the penalization of the same matter. The progress of the case law is examined from the Glantz and Nykänen judgments in 2014 and the Kristjansson judgment in 2021. Two research questions are addressed: What is the connection in substance, and what is the connection in time? For the first question, the case law points out that the connection in substance requires the repetition in collection evidence. However, the boundaries of the relationship that should be established between the two sets of proceedings are uncertain and debatable. For the second question, the temporal connection has not yet been defined in case law, and its application overlaps with the scope of the right to a fair trial. Thus,it is seen that the boundaries in the both contexts need to be redrawn in order to eliminate the current ambivalence.

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