Kluwer International Tax Blog

The Contents of Intertax, Volume 51, Issue 10, 2023

Ana Paula Dourado (General Editor of Intertax) · Wednesday, September 20th, 2023

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

Tsilly Dagan, *GLoBE: The Potential Costs of Cooperation*

This article argues that the fact that the 2021 global tax deal (focusing on Pillar 2) is cooperative is not in itself proof of the deal being beneficial (and certainly not equally beneficial) for all parties. Developing countries particularly may benefit less and possibly even lose from the agreement. The article focuses on two features of cooperation that may tilt the playing field in favour of developed countries: agenda influence and structural incentives to cooperate. Since the OECD had control over both the agenda and the ways in which the game was structured, it is not surprising that the deal served the interests of its members. Moreover, the mechanism of Pillar 2 encourages participation and discourages future defection. In the current stage of the international tax regime, this is considered a virtue. However, it might also harbour future risks such as lock-in and cartelistic effects that might benefit the leaders of this initiative (the OECD in this case) at the expense of others.

Moreover, the current regime grants significant power to those with their hands on the steering wheel. Such power could be used to disadvantage others. In the absence of mechanisms that would curtail the monopolistic power of the former, other countries risk paying excessive prices to belong in this regime.

Muhammad Ashfaq Ahmed, *UN MTC Article 14: The Mistaken Retention*

The OECD deleted Article 14 from its Model Tax Convention (MTC) in 2000, however, the UN decided to retain it in 2009. The OECD has since been chastized for eliminating it and the UN eulogized for retaining it. This article, contrary to the prevailing perspective, supports the ‘delete decision’, though for reasons diametrically different from those on which Organization for Economic Cooperation and Development (OECD) based its decision in 2000. It berates the UN for the ‘retain decision’ by debunking the grounds thereof and by mounting new arguments. In fact, it turns the mainstream scholarships’ professed position upside down that Article 14s continued presence on UN MTC accrued developing countries substantial economic benefits and broadened their tax base. It is argued that the deletion of UN MTC Article 14(1)(c) in 1999 through an angularly established setup – the Focus Group – was dramatic, mysterious, and undefendable warranting fresh and deeper scrutiny. This article postulates that without a robust built-in anti-base erosion principle, which was deleted in 1999, Article 14s presence in the UN MTC is counterproductive, base eroding, and inimical to fiscal interests of developing countries. Therefore, it strongly proposes to either restore the deleted Subparagraph 1(c) or also delete the retained rump Article 14 itself – sooner than later.

Mário H. Martini & Suranjali Tandon, ***A Review of India Approaches to Cooperative Compliance in Light of the International Tax Practice and the OECD Framework***

The OECD provides a framework for co-operative compliance. To the OECD-Forum on Tax Administration questionnaires covering the years 2018 and 2019, India responded that its international tax practice is in line with the OECD's framework. This paper reviews select features of the Indian tax system that are in line with the response. The paper looks at contemporary tax compliance measures such as faceless assessments and dispute resolution that promote cooperative compliance. While it is seen that there have been recent policy innovations to promote cooperative compliance in India, the responses are not based on any structured cooperative compliance approach as that described by the OECD. It is observed that there are in fact some missing elements as many of the initiatives such as the large taxpayers' unit that ticked many boxes but are no longer in operation. Finally, the paper identifies that single point of contact in the administration, opportunity to clear the past before joining a cooperative compliance framework and internal control framework are initiatives that can boost cooperative compliance in India.

Jérôme Monsenego, ***Targeted Measures Against Intra-Group Debt Financing: What Needs and Design Options in Light of the ATAD, Transfer Pricing Rules, and Pillar 2?***

This article explores the need for interest limitation rules targeting intra-group debt financing, together with certain design options. It is concluded that most issues related to intra-group debt financing are already covered by the anti-tax avoidance directive (ATAD), transfer pricing rules and the Pillar 2 reform. Only the debt/equity balance is not addressed by these rules. Therefore, thin capitalization rules appear to be the most motivated type of targeted rule, if such rules are to be adopted. Other types of targeted rules, such as those taking into account the level of taxation of the recipient or the intention to avoid tax are hardly justified in cases covered by the Pillar 2 reform. In addition, thin capitalization rules can be designed in a manner that does not distinguish between domestic and cross-border situations, hence raising fewer issues of compatibility with the EU fundamental freedoms than other types of targeted rules that rely on the difference in taxation between domestic and cross-border loan transactions.

Marina Bisogno, ***Twenty Years After the Adoption of the Energy Taxation Directive, Is Its Reform in a Greener Sense Just an Illusion?***

The energy taxation directive 2003/96/EC (ETD) is currently under discussion, twenty years after its adoption and after several failed reform attempts. This directive does not reflect the current European climate and energy policy framework and is not adequate to address the challenges of climate change and the green transition. Moreover, it not only fails to protect the environment but also endangers the proper functioning of the internal market.

Through a legal analysis, this contribution aims to examine the origin and evolution of the ETD until the latest Commission proposal, which is currently under negotiation, in order to investigate the weaknesses of this directive, the novelties of the recent proposal, and what risks European environmental and fiscal objectives would run if the negotiations are not successful.

Mariya Senyk, *Adjustment of Deductions in case of the Abandonment of an Investment Project: Some Remarks in Light of the Judgments of the CJEU in ITH Comercial Timisoara (C-734/19), Skellefteå Industrihus (Case C-248/20) and Vittamed Technologijos (C-293/21)*

Articles 184 and 185 of the VAT Directive provide for the general obligation to adjust an initial deduction if it is higher or lower than that to which the taxable person was entitled. Does the abandonment of an investment project always imply the obligation to adjust deductions in respect of the acquired goods and/or services that cannot be used in the taxed activity of the taxable person? What if the termination of an investment project is followed by the liquidation of the taxable person? These questions are addressed by the CJEU in the judgments presented in this case note.

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This entry was posted on Wednesday, September 20th, 2023 at 10:00 am and is filed under Environmental tax policy, GloBE, Intertax, OECD, Pillar II, Transfer Pricing
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