

Kluwer International Tax Blog

The Contents of Intertax, Volume 51, Issue 12, 2023

Ana Paula Dourado (General Editor of Intertax) · Monday, December 11th, 2023 · Intertax

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

Andrés Báez Moreno & Yariv Brauner, *Pillar One and Alchemy: What Can We Learn from past Mistakes*

Pillar One's Amount A has failed miserably. However, the paper attempts to enumerate the many political and technical mistakes made in its formation process in order to underpin an alternative proposal that the authors had already advocated some time ago.

Rita Szudoczky, *Principles Justifying the Reallocation of Taxing Rights to Market Jurisdictions: Do We Need Them?*

This article argues that the taxing right of market jurisdictions under Pillar One is justified by commonly invoked and widely accepted principles in international taxation. This is not just a desirable outcome of the international coordination on the allocation of taxing rights but a moral demand that the inter-state allocation of taxing rights must comply with. A principle-based allocation of taxing rights is a precondition for the legitimacy and thus the equity of the international tax regime. Principles, such as ability to pay, the benefits principle and economic allegiance, provide a normative justification for asserting tax jurisdiction. Despite the criticism regarding their vagueness, indeterminateness, and overlaps between their meaning, the benefits principle and economic allegiance have a definite function in the international tax regime insofar as they designate the countries that have a legitimate claim to tax international income.

Svetislav Kostić & Aitor Navarro, *Pillar One and Mobility – A Truly Global Solution?*

Mobility should be at the core of the reallocation of taxing rights debate. With such a premise in mind, this contribution addresses this issue within Pillar One in its two components: the apportionment of taxing rights to market jurisdictions on residual profits of the most significant MNEs worldwide (Amount A) and the standardization of the remuneration of related party distributors that perform baseline marketing and distribution activities in market jurisdictions (Amount B). The aim is to show that not only the mobility of individuals but also that of MNE structures when deciding on their presence in market jurisdictions are relevant in building new paradigms on the allocation of taxing rights at a cross-border level through the specific impact of the said OECD proposal. Even if Pillar One seems doomed to fail, lessons learned from its design and its specific impact on mobility matters should inform further developments in reshaping international taxation.

Hannu Itälä & Reijo Knuutinen, *The Implementation of the ATAD in Finland*

In this article, the authors provide an assessment of the Finnish implementation of the European Union (EU) Anti-Tax Avoidance Directives (ATAD I and II) in consideration of the EU primary law and secondary law requirements. It is focused on examining the conformity between the Finnish implementation rules and the fundamental freedoms arising out of the Treaty on the Functioning of the European Union (TFEU).

Although Finland already had an extensive anti-avoidance framework in place before implementing the ATAD I and ATAD II, Finland had to make some adjustments in almost all areas covered by the Directives. What is perhaps most interesting is that the Finnish general anti-abuse rule (GAAR) in section 28 of the Act on Assessment Procedure has retained the exact same textual form that it had decades previously. The essential question is as follows: Has the actual content of the general clause changed based on ATAD Article 6 and, if affirmative, in what way?

Nir Fishbien & Eran Lempert, *The 1963 OECD Model Tax Convention: Now and Then*

This article reviews the importance of the 1963 Organization for Economic Co-operation and Development (OECD) Model Tax Convention in the development of the current international bilateral treaties network and compares its principles to those found in the US model tax convention. It then shows how the 1963 OECD model has laid the foundations for the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) agreed on by more than over 100 jurisdictions.

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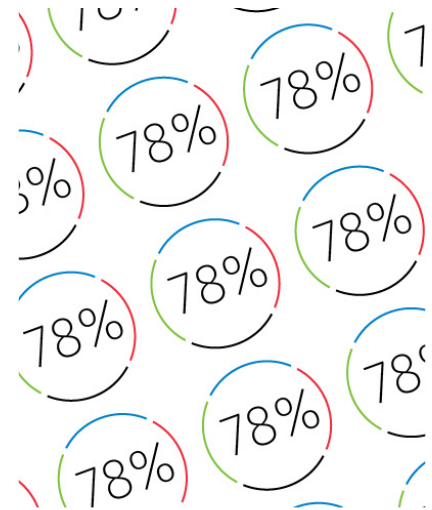
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