

Kluwer International Tax Blog

The Contents of Intertax, Volume 52, Issue 02, 2024

Ana Paula Dourado (General Editor of Intertax) · Tuesday, February 27th, 2024 · Intertax

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

Alice Pirlot, Climate Clubs: An International Tax Law Perspective

Global carbon pricing has often been portrayed as an interesting idea that will never be implemented due to political hurdles. Yet, this description is being challenged: growing political support for climate clubs suggests that a global carbon price might become reality in the future. This article investigates the conditions for the adoption and implementation of a climate club based on a global carbon price by comparing it to the international corporate tax club created by Pillar Two, which was also described as politically impossible a few years ago. This comparison highlights that establishing a climate club will require addressing design issues and institutional obstacles that might be even more complex than those that characterized the negotiations of the global anti-base erosion (GloBE) rules.

Claudio Cipollini, Crypto Staking Taxation Across Selected Countries: A Critical Evaluation

The objective of this article is to evaluate countries' approaches to the taxation of crypto staking by testing the consistency of current domestic rules and guidance against the technological substance of the same phenomenon. After the outline of the economics of crypto staking, the author provides evidence of the debate in tax literature and the regulatory landscape across selected countries. Subsequently, the research explores the technology features of staking and its fundamental variables of legal characterization, income qualification, and timing and value of income recognition. This way, the interdisciplinary methodology aims to outline a model of taxation reflecting the technological substance of crypto staking and test it against the current tax framework at the domestic level. The results of the analysis process show that the approach to the taxation of staking rewards does not ensure consistency with the technological substance in all of the selected countries. National tax authorities rely more on policy considerations aimed at maximizing revenue collection when developing guidance in the field than on the idea of coherent tax treatment in accordance with the technological substance and the legal characterization of the different types of staking activities.

Ángel Sánchez-Sánchez, The Double Layer Test versus the VAT Neutrality Principle

With the Morgan Stanley judgment, the Court of Justice of the European Union (CJEU) established what is known as the double requirement (or double layer test) in order to exercise the

right to deduct VAT in cases of cross-border transactions carried out by taxable persons. In this work, the author examines this test and its possible incompatibilities with a number of fundamental VAT principles through different cross-border transaction scenarios. The analysis elucidates problems that may arise, and proposals are advanced to address them. These solutions involve eliminating the double requirement or, alternatively, implementing an intra-Community transfer for services regime that is equivalent to that which already exists for goods.

Maria R. U. D. Tambunan & Gabriel Muara Thobias Silalahi, *Resolving Conflicts Between Production Sharing Contracts and Tax Treaties in Indonesia*

This article discusses the uncertain dispute settlement for a conflict resulting from applying a reduced rate stipulated in a tax treaty or a domestic withholding tax rate agreed to in a production sharing contract (PSC) on branch profit tax (BPT) in Indonesia. The contractor, the permanent establishment of a non-resident entity in Indonesia, interpreted that a reduced rate shall apply whereas the Indonesian tax authority adhered to applying the prevailing domestic withholding tax rate at the time that the PSC was signed. The ambiguousness between the tax treaty and the PSC led the disputed entity to choose litigation as the primary alternative of dispute settlement even though the tax treaty facilitates resolving the problem through a mutual agreement procedure (MAP) or another possible dispute resolution. Further, Indonesian civil law does not implement the jurisprudence. The dispute will continue if renegotiation is not reached. To reduce the chance of a potential dispute in the future, a stabilization clause to accommodate the change of the regulation during the period of the contract has been included, however, it only applies to the latest version of the PSC.

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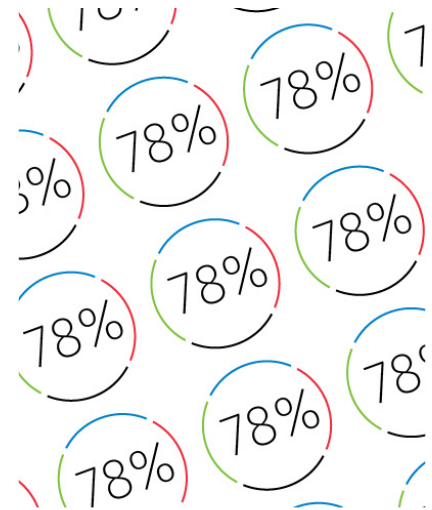
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