

Kluwer International Tax Blog

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Ana Paula Dourado (General Editor of Intertax) · Tuesday, May 28th, 2024

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

Adrianto Dwi Nugroho, Muhammad Atthuur Brotoatmodjo, Arvie Johan, Nabila Asysyifa Nur & Muhammad Hawin, *Lead Tax Administration: A Deal Breaker?*

This article examines the introduction of the lead tax administration (LTA) in the administrative and certainty framework of Pillar One. The LTA is designed to be assumed by the tax authority of the jurisdiction in which ultimate parent entity (UPE) of a multinational enterprise (MNE) resides. In calculating Amount A of Pillar One, it is required to apply a certain methodology and distribute tax bases to all jurisdictions in which the enterprise generates business profits. Market jurisdictions may perform consultative functions once the LTA is calculated. The main finding of this article is that the appointment of the LTA has violated market jurisdictions' tax sovereignty to the extent that tax assessments taxable income of their residents, if they qualify as 'highly profitable MNEs', will be performed by the LTA. The authors argue that the new taxing right established through the implementation of the Pillar One objective is only meant to grant market jurisdictions with additional tax receipts instead of granting them with full taxing rights. Unfortunately, sound legal and tax principles have not yet been formulated to justify the existence of the LTA.

Muhammad Ashfaq Ahmed, Hira Nazir & Mustafa Haider, *UN MTC Article 15: Reconciling the Global North's 'Digital Nomad' with the Global South's 'Digital Freelancer' – Will the Rising Tide Lift All Boats?*

The United Nations Model Tax Convention (UN MTC) much like the Organization for Economic Cooperation and Development Model Tax Convention (OECD MTC) deals with taxation of cross-border employment incomes. While the OECD MTC professedly promotes economic interests of advanced Global North states, the UN MTC intends to protect fiscal interests of developing countries lying in the Global South. Article 15, unlike most other provisions of the two MTCs, had a rather smooth sail until the turn of the century when digitalization began to very rapidly grip the world economy. In an effort to grasp the digitalization-induced disruption in the application of UN MTC Article 15, a romantic prototype of 'digital nomad' was contrived by Global North scholars to denote remote working of various shades with an ostensible intent to attempt the decadesold

allocation of taxing rights between the source and residence states. This article posits that the concept of ‘digital nomad’ only pertains to the Global North, and it is completely alien to the developing countries. It further argues that the Global South’s competing challenge is the ‘digital freelancer’ that has not yet been allowed to realize its full potential due to countermeasures introduced in Global North states. Unlike the digital nomad who moves freely across borders without any visa restrictions exercising services remotely for an employer(s) based in distant lands, a digital freelancer is permanently ‘caged’ inside his own (developing) country and renders services for his employer(s) located elsewhere in the world – majorly due to visa restrictions. It is premised that the digital nomad and digital freelancer being intrinsically distinct phenomena from each other pose varying challenges to the different tax administrations of the Global North and Global South. This contribution aspires to seminally conceptualize and sharpen that distinction and focus on the latter. The objective is to emphatically project the Global South’s perspective on Article 15s operability in a digitalized world and reset its international tax agenda for engaging with the Global North on more equitable terms.

Gabriel Aliu, Modern International Tax Dispute Resolution – An African Perspective on the Mutual Agreement Procedure, Arbitration, and the Future

This article contributes to the literature by questioning the efficacy of the MAP for the resolution of international tax disputes from a developing country perspective. It contends that the MAP in its very basic form is insufficient for resolving treaty disputes and that the Organization for Economic Cooperation Development’s (OECD’s) portrayal of the MAP’s success is misleading. This article also proposes a consideration of the MAP’s efficacy to resolve tax treaty disputes as it relates to treaties between developed countries such as the United States and those underdeveloped like Nigeria. It concludes that the MAP alone cannot effectively resolve treaty disputes without it being accompanied by arbitration. It further argues that, even when the latter occurs, it will not create a workable dispute resolution mechanism in any absolute terms.

Stephen Daly, The Advocate General’s Opinion in Commission v. Ireland and Apple

In a surprising opinion handed down in November 2023, Advocate General Pitruzzella agreed with the European Commission that Apple was given unlawful state aid by Ireland. The Advocate General recommended that the European Court of Justice uphold the Commission’s two central grounds of appeal. This note will look at each in turn, highlighting how the Advocate General fails to properly apply previous case law, to sense the general mood around the application of the state aid rules to tax administration, and to account for the (overinclusive) consequences of his approach. As a result, it is highly unlikely that the European Court of Justice will agree with the Advocate General.

Afton Titus, Tax Justice for Women: Navigating the Path to Economic Empowerment in Post-Apartheid South Africa

Upon the thirtieth anniversary of the advent of democracy in South Africa, it is vital to consider whether the country’s constitutional changes to its personal income tax system have empowered women. This is important and necessary, considering the eight decades of over-taxation women

endured in the country before 1994. This paper considers the current economic position of women and whether the personal income tax system perpetuates the disadvantages women face economically or whether it, ideally, enhances their economic power. The South African income tax system adopts a genderneutral approach to the taxation of individuals. This paper argues that South Africa should adopt gender-sensitive income tax reforms that actively empower women. This may be done through the adoption of a dependent tax credit, adjusted income tax brackets for women, and tax incentives for women-owned businesses. While these reforms do not align with immediate revenue-raising objectives, they are a rectification of historical imbalances and reflect South Africa's commitment to empowering women truly. As countries redesign their tax systems in the wake of the pandemic, reforms such as this represent an opportunity for South Africa to rectify historical wrongs and reform its personal income tax system equitably in its bid to meet the government's constitutional obligation to advance women as a group that had been disadvantaged by unfair discrimination in South Africa's apartheid past.

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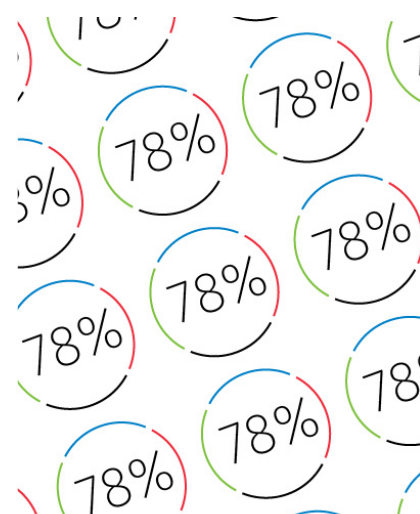
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