Kluwer International Tax Blog

Global Tax Policy Trends – From Coordination to Conflict?

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Introduction

Throughout my professional life, I have worked with international tax law. Consequently, I have witnessed various trends and tendencies for more than a quarter of a century. The period during which I've been involved in tax law in my view represents a golden age for the discipline. Significant developments have occurred. During my student years, major international legislative packages were introduced, leading to substantial changes that permanently influenced our field. This evolution has only accelerated since then, and now constant change seems to be the norm.

The post-Berlin Wall era has been characterized by increasing globalization and international trade. Naturally, this development has not gone undetected by tax law, resulting in a growing importance of international taxation. On one hand, tax rules should not hinder free trade; on the other hand, businesses and citizens must contribute to maintaining civilized states and should not avoid their responsibilities through aggressive tax planning models.

Both components have played a central role in the development of international tax law.

My home country of Denmark has been no exception to this trend. For a brief period in the late 1990s, Denmark was at the center of attention for multinational corporations. The Danish Parliament (Folketinget) adopted highly attractive tax rules (both inbound and outbound cross-border dividend payments were exempt from taxation), which stood out even on an international scale. This occurred in 1998, but the system was abolished just a few years later after being placed on the EU's list of harmful tax competition. Since then, I've often thought that this brief period laid the groundwork for the subsequent 15 years of cryptic anti-avoidance legislation and legal disputes (including the ongoing debate about beneficial ownership, which has occupied many legal professionals). The same period is also characterized by private equity funds increasing their international footprint and challenging tax systems in several countries. EU law has increasingly played a role over the years, evolving from a curiosity in the 1990s to a framework where numerous national rules have been adjusted to align with fundamental freedoms, and where tax harmonization has gained momentum.

Internationalization has also impacted the tax advisory industry, leading to significant growth and much-needed professionalization.

Shift in Focus

For many years, the focus was on what was legally and practically feasible. Advisors constantly sought asymmetries and loopholes, while legislators engaged in a sophisticated cat-and-mouse game to identify and close them. In recent years, there has been a shift away from this approach (think of the entire BEPS project), and responsibility has emerged through new standards governing companies' and investors' tax behavior. Taxation has clearly risen in societal prominence, attracting more attention than ever before. We find ourselves in a time when media, politicians, NGOs, and activists are far more concerned with tax matters than in the past. Simultaneously, international bodies such as the OECD, G20, EU, UN, and virtually all developed countries are rapidly introducing stricter requirements and regulations for businesses. The trend is toward heightened expectations regarding responsible tax conduct by companies and increased transparency.

International Coordination

The development has left its mark in the sense that tax rules have gradually become more standardized and coordinated over time. States' maneuvering room in corporate taxation has been subject to increasing pressure caused by several factors. On the international stage certain principles have become globally recognized. The question of whether there already exists a coherent international tax regime – and if so, whether states should feel bound by it – has been a topic of discussion in international literature. On one hand, it can be argued that states are sovereign and therefore free to shape their tax systems as they wish. On the other hand, it can be countered that states are not entirely free to design their tax rules in practice, given the existence of a coherent international tax system that sets certain boundaries for rule formulation. In my view, there is a reasonably strong case for the existence of a coherent international tax system. However, this system still has a long way to go before it can be considered a fully established legal framework.

Current Battle Zones in Tax Policy

The current tax policy agenda remains largely unaffected by contemporary geopolitical currents. However, an overview of current tax policy issues reveals that we are also beginning to see deviations from the coordinated efforts which have occurred over many years, including the use of taxes in what resembles a trade war.

The BEPS Project and Global Minimum Tax (Pillar 2): The OECD's BEPS project (Base Erosion and Profit Shifting) has been described as perhaps the most ambitious reform plan ever within international tax law. It has significantly influenced regulation within the EU. The relentless fight against BEPS continues through the OECD's Inclusive Framework. Even the global minimum tax (Pillar 2) is now part of this battle, although there are still debates about its connection to digitalization.

Challenges of Digitalization: A truly globally satisfactory solution to the challenges posed by the digitalization of the economy has not yet been found. The current approach involves a two-pillar solution, where Pillar 1 is contingent on the removal of local digital taxes (Digital Services Taxes). Until this happens, individual states continue to introduce special taxes on specific industries. It will be particularly interesting to observe the US countermeasures if the Pillar 1 solution does not yield concrete results, and digital special taxes continue their momentum. Additionally, when the Pillar 2 UTRP (Under-Taxed Profits Rule) rule finally come into effect, this could potentially result in significant additional taxation for American companies.

Increased Allocation of Tax Revenues to Market States: Several countries express a desire for a greater allocation of tax revenue to the states where the market exists. This consideration underpins the Pillar 1 solution and is seemingly also driving the recent UN proposal for a general withholding tax on services. Perhaps a similar motivation lies behind the UN's recent attempts to challenge the OECD's dominance in tax policy—a simmering dissatisfaction from the global south.

Tax Policy and economic growth: It is well-known that taxes can stimulate growth and investment decisions. Americans extensively use this instrument. For instance, the Inflation Reduction Act (IRA) has further promoted the use of tax credits to encourage green initiatives. In contrast, the EU's response remains clearly less ambitious. Undoubtedly, tax policy and industrial policies are closely interlinked.

Reemergence of Windfall Profit Taxes: In uncertain times, enormous profits can be reaped. We have witnessed the reintroduction of windfall profit taxes in sectors such as energy, finance, and pharmaceuticals. Will this trend continue?

Tax Systems and Geopolitics: Unfortunately, we have also experienced war closer to home than in many years. The tax system plays a role here as well. Russia has suspended several provisions in double taxation treaties with "hostile" countries. Some countries, as we know, have completely terminated tax treaties with Russia, and Russia has ended up on the list of uncooperative (blacklisted) countries.

The Significance of a Change in Temperature?

In recent years, the global tax agenda no longer seems entirely aligned with other geopolitical currents. The world appears to be moving backward, embracing anti-globalization and protectionism, which diverges from the cooperative path. The question is how these trends will impact tax rule development. So far, the OECD and the EU Commission continue with an uncorrected and ambitious agenda. However, it's also clear that individual countries' tax policies show signs of moving toward more protectionism, departing from the coordinated approach. The future in the tax domain is now even more unpredictable than before.

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