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

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

Vladimir Starkov, *The Need for Plan B: Comments*

As of mid-July 2024, the Multilateral Convention (MLC) on Amount A seems to have received a lacklustre response from the majority of stakeholders, despite the extensive efforts invested in its development and negotiation. This letter supports Philip Baker's viewpoint, as previously expressed in this publication, that a new 'Plan B' for Amount A is urgently needed. At the same time, this letter offers a different prospective on the design principles for taxing the effects of the digitalized economy that could serve as an alternative to Amount A.

Reuven Avi-Yonah & Ajitesh Kir, *Building the Gateway: Why the Two Pillars Need Each Other*

There is a reason the OECD proposed two pillars for its gateway to a better tax future. A gateway requires both pillars, and neither can stand without the other. Pillar 2 is a fait accompli, but it needs countries to implement Pillar 1 as well because in the absence of a clear sourcing rule there is no limit to countries implementing the Qualified Domestic Minimum Top-Up Tax (QDMTT), which would turn off the other parts of Pillar 2 and potentially result in double taxation. Pillar 1 is not going forward in the absence of a Multilateral Tax Convention (MLC), but it can be implemented unilaterally, although that would require overriding existing tax treaties.

Lukas Hrdlicka, *The Pillar 2 Directive and the Qualified Domestic (Minimum) Top-up Tax Puzzle*

The article argues for using a teleological interpretation of the Pillar 2 Directive to allow EU Member States to comply with Pillar 2's soft law requirements for the qualified domestic minimum top-up tax (QDMTT) and its safe harbour (SH). This interpretation is necessary because the directive's text is not aligned with certain requirements under Pillar 2 soft law since the directive was adopted before the Inclusive Framework issued any administrative guidance. Without the teleological interpretation, EU Member States cannot comply with the qualified domestic top-up tax (QDTT) requirements and, therefore, cannot attain its SH. This would decrease taxpayers' legal certainty and undermine EU Member States' fiscal interests.

To pursue the argument, the article analyses Pillar 2's soft law, i.e., the model rules, the commentary, and two sets of administrative guidance related to the QDMTT and its SH, and compares their provisions with the relevant provisions of the Pillar 2 Directive. Consequently, the

study offers solutions to discrepancies between these two sets of rules and joins a broader discussion regarding the relationship between EU tax law and soft law.

Chidozie Chukwudumogu, ***Inter-Nation Equity and the Regulation of Tax Competition via the Global Minimum Tax Rule: A Case for Improvement***

The Organization for Economic Co-operation and Development (OECD) is an institution that influences policymaking in international tax law, and it is changing the international tax architecture to deal with tax competition by encouraging countries to adopt a global minimum tax rule. This emerging rule – called Pillar Two in international tax circles – is inadequate for dealing with poverty and inequality in an asymmetrical global context. The rule is premised on the notion and argument that tax competition is a problem for international tax law. Notwithstanding, there is existing research and evidence to show that tax competition can also be a solution to the enormous challenge of poverty and inequality as it can have a redistributive effect. This is a valuable factor amid the inefficiently asymmetrical global society with extreme poverty in many countries and enormous wealth in a few others.

This article submits that the Pillar Two minimum tax rule – the Global Anti-Base Erosion (GloBE) Rules encompassing the income inclusion rule (IIR), undertaxed payment/profit rule (UTPR), and qualified domestic minimum top-up tax (QDMTT) – should incorporate inter-nation equity to prevent exacerbating global inequality and poverty. Pillar Two intensifies these for at least two reasons: (1) it restricts the positive redistributive effects of tax competition on an inefficiently asymmetrical global society, and (2) it encourages tax competition more suited for high-income countries (HICs) and less suited for those that are low-income countries (LICs). There is latitude to incorporate a differentiated principle deriving from inter-nation equity into this new Pillar Two rule designed to regulate tax competition globally. This proposal requires that the emerging rule be disenabled in certain circumstances to enable LICs to choose whether to apply the rule without being worse off. The article's proposal seeks to allow LICs room for effective tax competition needed to attain sustainable development goals.

Mateusz Kaz´mierczak, ***Five Years of Digital Services Taxes in Europe: What Have We Learned?***

This article aims to assess whether digital services taxes (DSTs) have been effective in achieving their policy goals as well as identify key unresolved questions and highlight how the evidence from five years of DSTs' existence in Europe can help in resolving them. The article analyses DSTs' key policy goals with a particular focus on the equalization of the tax gap and creating fair taxation in the context of a tax incidence. It is based on publicly available data related to introducing five selected DSTs based on the similarity of both their design and the economic situation of the countries in which they were introduced. The collected revenue, fiscal efficiency of these taxes, and taxpayers' reactions strongly indicate that DSTs have been passed on to small and medium-sized enterprises (SMEs) and consumers to a great extent while yielding negligible revenues that contradicts their policy goals. Due to limitations in data availability and the occurrence of two significant disruptions in the economy during the analysed period, some questions remain unanswered. Therefore, in the context of theoretical economic literature applicable to the case of DSTs, this author indicates where additional in-depth research and governmental analysis of DSTs is necessary and what the possible approaches are to obtain sufficient grounds for political decisions regarding introducing similar measures.

Jasper Korving, *30 Years of the Economic European Area; a Tax Law Perspective*

In 2024, the European Economic Area (EEA) will have existed for thirty years. During that time, the EEA Agreement has served its cause to enlarge the European internal market to Iceland, Liechtenstein, and Norway. Covering fundamental freedoms that need to be interpreted comparably to the Treaty on the Functioning of the EU's (TFEU's) fundamental freedoms, a significant amount of case law interpreting the EEA Agreement's fundamental freedoms has been established from both the CJEU and the European Free Trade Association (EFTA) Court. The author attempts to elucidate the approach taken by both courts to come to judgments creating a homogenous interpretation and application of EU law to the largest possible extent. Besides that, the extension of EU directives to cover EEA situations is relevant. The EEA Agreement foresees a procedure for that, but it does not thus far cover substantive direct tax directives. The author argues that some arguments still exist following which EU direct tax directives should actually be added to the EEA Agreement.

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