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Ana Paula Dourado (General Editor of Intertax) · Wednesday, February 19th, 2025

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

Tina Ehrke-Rabel & Barbara Gunacker-Slawitsch, *Tax Administration AI: The Holy Grail to Overcome Information Asymmetry in Tax Enforcement?*

Liberal democracies are based on the concept of the free person who is a rational being capable of understanding their behaviour and taking responsibility for it. The state may only interfere with individual freedom when it has a legal basis, if it is necessary to safeguard the functioning of a democratic society. Therefore, in liberal democracies, citizens have duties to fulfil and responsibilities to bear. In return, they are not and must not be surveilled by the state. Tax enforcement is built upon this concept.

Tax administration Artificial Intelligence (AI) has the potential to change this concept. What is technically feasible is not necessarily appropriate for sustaining the fundamental values of a liberal society.

If society wants to uphold these values, any deployment of tax administration AI must be legally framed with clear rules on the origin of the data, the method of data processing, the aim of the data processing, and the possibility of human intervention. Additional legal prerequisites may be necessary depending on the purpose of the use of tax administration AI. If it is deployed in a mindful way, it is likely to increase both the efficiency and the equality of tax enforcement.

Moritz Scherleitner, *Increasing Direct Tax Harmonization and the Role of Tax-Relevant Economic Guarantees in Primary EU Law – a Reflection on a (yet to be Formed) Trend*

The court is showing a tendency towards exposing secondary EU law to a less intensive review under primary EU law than it does for national law. With a potentially large wave of direct tax law

harmonization ahead, this has been met with alertness in literature as it may not be adequate for the field of taxation. Against this background, this article elaborates on the development of a direct tax relevant doctrine on the enforcement of economic rights enshrined in primary EU law. The core argument worked out by the author can be summarized as follows. Given the weak democratic legitimation of EU direct tax directives, and having regard to the fact that they are extraordinary difficult to adapt or abolish, the court has an increased responsibility to protect taxpayers' economic rights – particularly when the underlying legislative decision or value is not worth being upheld at the cost of an infringement of such rights.

Domenico Imparato, *DEBRA: When Unstoppable Aspirations for Debt-Equity Parity Meet Immovable Tax Systems*

Achieving debt-equity parity in corporate taxation has long been a sought-after holy grail in the quest for capital structure neutrality; however, the latter does not always align with the former. The United States devoted significant thought on how to reach both, especially in the 1990s, but eventually did not achieve either with its tax reforms at the dawn of the twenty-first century.

Now, it is Europe's turn to try. This is what the European Commission aims to accomplish with its Directive Proposal for a Debt Equity

Bias Reduction Allowance (DEBRA). It would introduce a notional interest deduction on increases in a firm's equity and a dual-limiting rule that would cap deductible interest at 85% of exceeding borrowing costs (interest paid minus interest received) in addition to interest deductibility already being restricted to 30% of a firm's earnings before interest, taxes, depreciation, and amortization (EBITDA).

This article shows that DEBRA fails to achieve capital structure neutrality and does not ensure debt-equity parity. It skews the tax treatment of debt without promoting greater diversification in the portfolio choice of financing sources for corporate Europe as European companies remain heavily reliant on bank lending compared to their American counterparts.

Last, the article suggests that the risk of debt-financing outsourcing as a potential consequence of DEBRA could inadvertently impact direct investments between Europe and some of its main trading partners, including the United States and the United Kingdom. This process is already underway in America with more anti-abuse provisions emerging in its tax treaties and federal tax regulations for the cross-border payment of interest and dividends.

Madeleine Merkx, *Interest Payments in Case of Amounts Levied in Breach of Union Law: An Analysis Based on Three Recent CJEU Judgments in the Field of VAT*

The Court of Justice of the European Union (CJEU) has ruled that amounts levied in breach of Union law must be repaid, and those affected must be compensated for any losses incurred,

including interest. However, it was not clear whether ‘amounts levied in breach of Union law’ only covers situations where amounts are levied due to a position taken by the tax administration that is later determined to be false, or if it also covers situations where the taxable person misinterprets the law or makes errors. Recent cases such as Gemeente Dinkelland, HUMDA, and Schütte have shown limitations regarding the payment of interest to taxable persons in the field of VAT. This raises questions about the extent to which a taxable person is entitled to interest payments and from which date. This article addresses these issues. This is done by discussing and analysing both the established CJEU case law dealing with amounts levied in breach of Union law and the recent CJEU case law on interest payments in the field of VAT.

Sam Sim & Du Li, *An Asian Perspective on Pillar One Amount A and Digital Service Taxes*

The standard narrative in Pillar One of the G20-OECD BEPS 2.0 is that digital service taxes (DSTs) and similar unilateral measures will proliferate if the Amount A Multilateral Convention (MLC) does not succeed. The only real deterrent in that scenario is the threat of US retaliation using section 301 trade tariffs. This article presents a more nuanced view. A key insight is that, although European jurisdictions use DSTs to tax offshore digital services that lack a physical nexus to impose regular income tax, very few Asian jurisdictions use European-styled DSTs to tax offshore digital services. They extend pre-existing value added tax (VAT) instead that is not subject to the US section 301 retaliation partly due to the non-discriminatory nature. For the foreseeable future, it is unlikely that Asia will follow the European or African approach as advocated by the African Tax Administration Forum (ATAF) of adopting European DSTs. This is partially because Asia, in contrast to Africa, lacks a regional organization such as the EU or ATAF advocating DSTs as the alternative to the OECD endorsed Amount A. Further, Asia also does much more trade with the United States than Africa does, giving Asian jurisdictions more pause before risking US retaliation.

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