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

Koen Lenaerts, The Role of the Court of Justice in Enhancing Tax Fairness in the EU

This Guest Editorial takes stock of ongoing efforts to enhance tax fairness within the European Union (EU), a challenge exacerbated by legal fragmentation across Member States and the limitations of EU primary law in the area of tax harmonization, and delves into the specific role played by the Court of Justice in this context. In particular, four key areas are examined: (1) the fight against abusive tax avoidance practices, particularly in VAT and corporate taxation; (2) the prevention of selective tax advantages granted to undertakings; (3) the promotion of cross-border cooperation between tax authorities; and (4) how to reconcile the promotion of tax fairness with the EU's constitutional framework. The Editorial highlights how disparities in national tax regimes, while permitting economic operators to seek advantageous tax outcomes, may constitute fertile ground for tax evasion and competitive distortions. The Court of Justice however has an important role to play in addressing that risk, in particular by ensuring the effet utile of EU legislative measures aimed to fight unfair tax practices by economic operators even beyond the conceptual framework of fraud and abuse. While progress has already been made in this respect, the Editorial concludes that achieving tax fairness requires sustained coordination between EU and Member State actors. Such coordination is key to reconcile the operation of the internal market with the EU's broader social and economic objectives, and thus to preserve the trust placed by citizens in the ability of the Union to bring about social progress.

Joachim Englisch, EU Excess Profits Tax Ultra Vires?: On the Limits of Article 122 TFEU in EU Tax Policy

Articles 14 et seq. of Regulation (EU) 2022/1854 required all EU Member States to impose a temporary excess profits tax – labelled as a 'solidarity contribution' – for certain companies operating in the fossil fuel sector. This development has sparked widespread debate as to whether tax measures can be adopted under the emergency powers of Article 122 (1) TFEU, and if so whether the excess profits tax meets the relevant criteria to qualify as an economic policy emergency measure. The article challenges the predominant view in tax scholarship, pursuant to which Article 122 (1) TFEU is subordinate to other legal bases in the Treaties that specifically address legislative measures of tax harmonization. This notwithstanding, it comes to the conclusion that the excess profits tax has not been conceived as targeted economic policy measure, as required

by Article 122 (1) TFEU. It predominantly pursues social policy objectives, and its impact on energy markets and costs is too indirect, too uncertain, and moreover often not effective in the short term. It is moreover argued that EU action was not needed to provide Member States with extra revenues to bolster national budgets in the face of increased spending needs. Finally, an eventual intention of a majority of Member States to 'Europeanize' negative economic reverberations of an excess profits taxes, without any apparent attempt to balance this questionable objective with the interests of more investment-friendly Member States, would be contrary to the solidarity requirement of Article 122 (1) TFEU.

Ilse De Troyer Administrative Tax Cooperation Between EU Member States: Using the Appropriate Legal Basis

The international cooperation between tax authorities is growing and the legal instruments for such cooperation are expanding. The use of the appropriate legal basis should get sufficient attention, particularly in the administrative tax cooperation between EU Member States. The primacy of EU law and its direct application must be respected. This is also important for the legal protection of the taxpayers.

This article focuses on the impact of EU law on the competence of EU Member States to include provisions in double taxation treaties among themselves that concern some aspects for which EU legislation has already been adopted: provisions on a mutual agreement procedure, on exchange of information and on recovery assistance.

It is concluded that in the current EU context, provisions on these forms of administrative tax cooperation should no longer feature in double taxation treaties between EU Member States. Only where the applicable EU legal instruments leave room for a wider administrative cooperation, Member States can still include such provisions in their double taxation treaties. The latter condition calls for a strict interpretation, given the primacy of EU law.

Willem Boei & Louisa Voogt Conference Report: EFS Congress, Do Pillars I and II Have a Future?

The EFS, Erasmus University Rotterdam Autumn Congress, held on 3 October 2024, explored the future of Pillars I and II in international taxation. Moderated by Ciska Wisman, the event featured presentations from tax experts, including Maarten de Wilde, Jaap Bellingwout, and Hans van den Hurk, followed by responses from Marlies de Ruiter. Discussions centred on the effectiveness of Pillar II in curbing tax competition and avoidance, with critiques highlighting legal uncertainties, inconsistencies with EU law, and the shift from income-based to subsidy-driven tax competition.

De Wilde examined whether digitalization has truly disrupted corporate taxation or merely exposed existing flaws. Bellingwout discussed the Business in Europe: Framework for Income Taxation (BEFIT) proposal for EU tax harmonization, emphasizing its potential but also its administrative challenges. Van den Hurk questioned Pillar II's necessity, suggesting that existing anti-avoidance measures might suffice and advocating for simpler solutions, including UN-led initiatives.

A key concern was whether the current reforms ensure fairness and sustainability, particularly given geopolitical tensions and the risk of unilateral tax measures. The congress concluded with skepticism about the viability of Pillars I and II, amid shifting global tax policies and emerging alternatives. The ongoing debate underscores the complexity of achieving international tax cooperation.

Fabian Barth Facilitation Service and Deemed Supply at the Same Time? Ultra Vires

The proposed changes pursuant to the package for value-added tax (VAT) in the Digital Age ('ViDA') inter alia make provision for platforms and other electronic interfaces to become the deemed recipient and supplier of certain accommodation and transportation services. However, after revision by the Council, the redrafted Article 30 of the Implementing Regulation also contains a revolutionary new feature: in addition to being the deemed supplier already, platforms would still be regarded as providing a taxable facilitation service through their activity. The present contribution argues that this new additional service is ultra vires the VAT Directive, hence the underlying Implementing Regulation, once enacted, will be invalid.

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