

EDITORIAL NOTE

In this Intertax issue, the reader will again find very interesting and competent research on groundbreaking topics as well as discussions and highlights on major and current tax themes.

In his guest editorial, Pascal Saint-Amans informs us about the state of affairs on the reform of the international tax system, including the position of the United States (US). Since Secretary of the Treasury Janet Yellen announced that the US is no longer advocating its “safe harbour” proposal for Pillar One, the G20 will endeavour to achieve a global and consensus-based solution by mid-2021.

Piergiorgio Valente has written an editorial on the European Commission’s renewed efforts on global tax good governance. Valente focuses on: the Communication on Tax Good Governance as part of the July 2020 Tax Package; the reform of the Code of Conduct for Business Taxation; the improvements on the EU Process of listing of non-cooperative jurisdictions for tax purposes; the synchronizing efforts with the policy needs of developing countries; and the consistency of the proposals with Pillar 2. Valente also praises dialogue and multilateralism fostered by the EU and the OECD by invoking the role of the EU Platform for Tax Good Governance and the EU and Global Forum on Tax Transparency.

Claudio Cipollini’s groundbreaking article on ‘Blockchain and Smart Contracts: A Look at the Future of Transfer Pricing Control’ contends that the new technologies could improve the outcome in transfer pricing (TP). The author suggests the adoption of a uniform methodology for coding advanced pricing agreements (APAs) into smart contracts and the establishment of an international consortium blockchain. His analysis illustrates the challenges that interaction between tax lawyers and software engineers may bring in designing APAs smart contracts.

Gaetan Zayen handles an original subject, that is, space tourism or exploration and exploitation of outer space resources: ‘Taxation of Outer Space Income Resulting from Air Transport of Employment Activities’. The author questions whether the OECD Model Convention is the appropriate legal tool to handle the issue since it relies on physical concepts of residence and state sovereignty. He concludes that the OECD Model Convention does not apply to specific or connected activities or services performed in outer space.

Bruno Cesar Fettermann Nogueira dos Santos (‘Base Erosion and Profit Shifting Project (BEPS) Action 2 and the Non-Discrimination Rule under the General Agreement on Trade in Service (GATS)’ examines the Recommendations on Anti-Hybrid rules under Action 2 of the Base Erosion and Profit Shifting Project in light of the GATS. The author explores the hypothetical case of a hybrid financial instrument creating a deduction/non-inclusion (D/Ni) situation, possible discriminatory effects of the application of Recommendations 1.1. (primary rule) and 1.2 (defense rule) proposed by Action 2, as well as possible restrictions for liberalized competition. After examining hypothetical situations, Nogueira dos Santos concludes that both measures do not comply with the GATS and calls for coordination between international tax and trade laws.

Sarah Khaled Asultan brings an interesting innovative analysis of tax competition in the Gulf Cooperation Council (GCC) States. In ‘The Gulf Cooperation Council (GCC) States: New Players in the International tax Competition Game’, she first questions whether tax competition emerged in the GCC States beginning in 2000; who are these states trying to compete with; as well as what is and should be the GCC organization’s role in competition. She contends for an active role of the GCC organization – thus far absent – in checking and curbing tax competition in accordance with the international efforts.

Pawel Mikula, in ‘Bad Debts Relief (almost) Always Available? A Glance at Case Law of the CJEU’, critically examines the Court of Justice of the European Union’s trend concerning bad debt adjustments in the field of VAT. The author discusses the cases, concludes that there is a relatively coherent approach in the case law, and highlights the importance of the jurisprudence in Coronavirus Disease 2019 (COVID-19) times and businesses difficulties in paying their debts.

We have also published two literature reviews: The Research Handbook on European Union Taxation Law, edited by C.H.J.I. Panayi, W. Haslehnner and Edoardo Traversa, Edward Elgar, 2020, is reviewed by Andrés Báez Moreno; and Ricard Collier’s “Banking on Failure: Cum-Ex and Why and How Banks Game the System, Oxford University Press, 2020”, reviewed by Edoardo Traversa.

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