EDITORIAL

Editorial Note

In this Intertax issue, the reader will find a diversity of topics on relevant subjects covering different cross-border tax regimes around the world and multidisciplinary research. All articles examine, to a certain extent, the relationship between tax regimes that aim to be attractive for direct investment and the tension between tax competition, on the one hand, and adaptation of cross-border tax regimes to international and European Union (EU) law measures on the other hand. This tension is found in the EU, Mauritius, South Africa, and other African countries. The effects of tax treaties in Vietnam's attractiveness for foreign investment are also examined in one of the articles published in this issue.

Leonie Fischer, Jessica M. Müller, and Christoph Spengel focus on 'The distorting effects of imputation systems on tax competition in the EU'. The authors recall that following the European Court of Justice settled case law, five EU Member States replaced their discriminatory imputation systems for shareholder relief systems (1999–2019). In the article, the authors assess how and to what extent the abolishment mentioned above of discriminatory imputation systems affected the states' attractiveness for capital investments and tax competition. The analysis is based on the cost of capital (CoC) and effective average tax rates (EATR) using the Devereux/Griffith methodology. Under the previous imputation systems, the authors find lower CoC and EATR for investments located in the shareholder's residence country compared to foreign investment alternatives. The authors also find that the lower CoC and EATR are, on average, reversed after the switch to the shareholder relief systems, which places tax competition pressure on the affected Member States.

Carli Botha's, Roshelle Ramfol's, and Odette Swart's article titled 'The impact of multilateral and unilateral measures on profit-shifting from South Africa to Mauritius' reviews the implementation of the base erosion and profit-shifting action plan (BEPS project) by Mauritius (as a low tax jurisdiction) and South Africa (as a high tax jurisdiction).

The authors begin by recalling that the Mauritian favourable tax regime on multinational entities (MNEs) combined with its extensive treaty network have made it an attractive investment location for investments in Africa. It has also fostered aggressive tax planning strategies and diverted funds from South Africa (among other high tax jurisdictions) to Mauritius.

The article examines the success of the BEPS project in curbing profit-shifting practices from South Africa to Mauritius in conjunction with the South African anti-avoidance legislation. The findings highlight that only Action 5 of the BEPS project has been successfully adopted by both South Africa and Mauritius. Due to gaps in the South African anti-avoidance legislation, the analysis indicates that the implementation of the BEPS project will not result in less profit-shifting. The article contributes to scholarship on evaluating the effectiveness of the BEPS action plan minimum standards for African countries.

Loan Pham's article focuses on Vietnam's double tax treaties and examines the patterns of treaty growth and shifting treaty policy. The analysis concerns a thirty-year period following the incorporation of the OECD Model Convention and the UN Model provisions into its bilateral treaties. An interesting finding is the extent to which Vietnam's treaties favoured the use of the UN Model provisions concerning the definition of permanent establishments and capital gains on the disposal of immovable property, particularly in its treaties with OECD members. In contrast, surprisingly, provisions from the OECD Model Convention are more likely to be found in treaties with non-OECD members. Nevertheless, it is clear that the treaties overall favour the allocation of taxing rights to Vietnam as a capital importing jurisdiction. The findings, when considered along with the country's success at attracting foreign direct investment, suggest that developing economies can retain taxing rights and attract foreign investment at the same time.

Begoña Pérez Bernabeu's article is titled 'State aid through arbitration awards: EU Law as a ground for non-enforcement'. It examines the tensions between international investment law and EU law as evidenced by the *Achmea* and the *Micula* cases decided by the Court of Justice of the European Union (CJEU). The author recalls that, although the European Commission used the state aid rules to attack arbitration awards arising from intra-EU bilateral investment treaties (BITs), the CJEU has not yet validated the application of state aid rules to the enforcement of intra-EU awards. The author further claims that the upcoming General Court's judgment on

the *Micula* case will not be sufficient to clarify the compatibility of intra-EU awards in non-EU jurisdictions with EU law because state aid rules are not applicable beyond the EU borders.

This Intertax issue includes two book reviews: A review by Daniel Smit on the book by Ivan Lazarov, *Anti-Tax Avoidance in Corporate Taxation under EU Law*, published by the IBFD Doctoral Series, in 2022; and a review by Aitor Navarro on the book by Karol Dziwiński, *The DEMPE Concept and Intangibles*, published by Kluwer Law International, 2022.

Enjoy your reading!

Ana Paula Dourado
Editor-in-Chief