

GUEST EDITORIAL NOTE

When Prof. Ana Paula Dourado and myself discussed having an issue of the Intertax journal focused on Pillar One a year ago, most members of the global tax community were sceptical about whether this project could actually become a reality. However, while it may be uncertain whether Pillar One will be implemented, there is no dispute about the fact that the circumstances that initially instigated the work on Pillar One are already having an impact on the tax legislations of many countries, and this process will only accelerate with time. As governments around the world attempt to find solutions for taxing the digital economy, the intellectual investment in the Pillar One project will, at the very least, serve as the necessary and crucial foundation for the work ahead. Thus far within and by virtue of the Pillar One project, we were afforded the opportunity to debate and test numerous policy ideas and concepts relevant for taxing the digital economy. The most recent publication of the proposed Multilateral Convention to Implement Amount A of Pillar One and its supporting Explanatory Statement shows that the process is afoot, and it may yet surprise us.

Profs. Andres Baez Moreno and Yariv Brauner attempt to provide us with intriguing material for thought on two distinct subjects in their article titled *Pillar One and Alchemy: What can we learn from past mistakes?*. First, they address the issue of what were and are the deficiencies of the Pillar One project that caused notable dissatisfaction within the global tax community and led many to believe that it will ultimately be a futile exercise in the sense of not resulting in direct positive legislation deliverables. Any future work, whether on a global or a national level, to attempt to effectively address the challenges posed by the digital economy to taxation will benefit from the meticulous critical analysis provided in this article. Second, eight years after the publication of their white paper, *Withholding Taxes in the Service of BEPS Action 1: Address the Tax Challenges of the Digital Economy*, Andres Baez Moreno and Yariv Brauner revisit their initial withholding tax proposal in light of all of the developments that have occurred since 2015.

The article by Prof. Rita Szudoczky, *Principles justifying the reallocation of taxing rights to market jurisdictions: Do we need them?*, provides us with a much needed warning that, despite the fact that our world is technologically changing at an unprecedented speed, we do not have the luxury of

building our tax house without a foundation just because we are pressed for time. In the absence of sound principles to justify our solutions or, to be more precise, in developing practical solutions without a principle based starting point, some of the new measures introduced and/or proposed in international taxation seem to demand taxation just for the sake of it, or as L. Parada stated, taxing somewhere no matter where. Prof. Szudoczky returns to the building blocks and to the foundational principles of justifying jurisdiction to tax, particularly in cross-border situations. She subsequently attempts to align them by using a fresh perspective on the issues that have led us to the Pillar One project and the solutions that have been proposed under its auspices.

In the article, *Pillar One and Mobility – A Truly Global Solution?*, Profs. Svetislav Kostić and Aitor Navaro first critically examine compliance issues associated with the implementation of Pillar One Amount A rules. They specifically discuss that the digital economy has the mobility of business as one of its primary traits. Unlike factories and mines, the business model that revolves around a platform located in a virtual world can easily access a market but also leave it with identical ease. The authors illustrate how, even with all of the simplification attempts, the compliance costs associated with Amount A may lead digital businesses to choose to simply eliminate certain markets from their services, particularly those in the developing world, as the preferred economical solution. The consequences for these jurisdictions would be similar to the imposition of sanctions due the relevance of being able to access key marketing space for the development of the modern economy. Therefore, the authors argue for an approach that would alleviate such a risk for the less affluent countries in the world. Regarding Amount B, the potential aspects of the mobility of the workforce and the reassignment of the roles among the MNE personnel are noted wherein a corresponding controversiality of the implications of such restructurings for the purposes of applying transfer pricing provisions is also found when determining Pillar I Amount B.

In addition to the three Pillar I focused papers, this edition of the Intertax journal contains an interesting analysis of the implications of the Anti-Tax Avoidance Directive (ATAD) in Finland authored by Prof. Reijo Knuutinen and Hannu Itälä. The authors illustrate a

detailed portrait of the way that the ATAD has been introduced in Finland and raise many important issues, e.g., the relationship between previously existing and the newly introduced anti-avoidance provisions. They are not Finnish specific but may also provide beneficial insight and guidance for addressing similar questions in other EU jurisdictions.

Nir Fishbien and Eran Lempert take us back in time to the historical section of the 1963 OECD Draft Model Tax Convention. While discussing the establishment of the foundations of our existing international tax law framework, the authors illustrate how we currently still rely on

the work that was completed sixty years ago for developing the most recent innovations in this area of law such as the Multilateral Instrument (MLI).

Finally, David Rüll reviews Isabela Zimmerl's book, *Joint Tax Audits*, published in German by C.H. Beck in 2022. This book is based on the author's doctoral thesis that was granted both the European Association of Tax Law Professors (EATLP) Tax Thesis Award and the German Albert Hensel Award.

Prof. Dr Svetislav V. Kostić
University of Belgrade Faculty of Law
Email: skostic@ius.bg.ac.rs.