LETTER FROM THE EDITOR

Leopoldo Parada

Dear readers,

It is undeniable that we live in exciting times. On mid-August the United Nations (UN) Ad Hoc Committee approved the final draft of the Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, which purpose is to establish the institutional structure to achieve a more transparent, simple, and inclusive international tax cooperation, representing the consensus of the international community, particularly among developing countries and emerging economies.[1] Not much longer — indeed only a few days before these editorial was finished— the Court of Justice of the European Union surprised both tax commentators and practitioners announcing that Ireland provided illegal State Aid to the Irish subsidiaries of Apple in that country, a decision that overturned the previous position held by the European General Court.[2] Moreover, and if this was not enough, countries around the world —especially developing countries and emerging economies— keep struggling to decide on whether endorsing the idea of a global minimum effective corporate income tax rate is the right path to be followed, particularly considering the tax policy trade-offs associated to such a decision.

In this scenario of changes, some would argue that a new architecture of the international tax system is on the way. Others, perhaps less optimistic, would just say that this is simply a temporary trend that is about to pass. Whatever side one decides to take (if any), there are no doubts that many reasonable questions deserve some analysis at this point of time. Some of them attend to the legitimacy in the international tax rule-making process and the apparent shift in the global tax governance from the OECD to the UN. Others, perhaps more immediate, refer to the direct reactions that developing countries and emerging economies can strategically adopt in a world than tends to limit the use of tax incentives, forcing them to compete with grants and subsidies, as well as to find alternative paths to address still pressing issues related to the digitalisation of the economy. Our authors address some of these questions, aiming to shed some lights in times where clarity is more than desirable.

In this number, Sam van der Vlugt explores the relationship between legitimacy and international tax rulemaking and what this means for assessing the legitimacy of the norms produced. Ultimately, he aims to offer some clarity for a term that, although crucial, it has been poorly understood in the latest developments of international taxation. Natalia Quiñones addresses the role of colonisation as an element that has largely determined the tax relationship between the Global North and the Global South. She argues that countries in the Global South are generally driven by more beneficial tax systems due to inherited economic models from their colonial powers that now seems to shame them in categories like "tax havens". As such, she argues that the new rise of a Global South cooperation in international tax policy at the UN should not be taken as a coincide but rather a reaction that provides also a valid opportunity not only to decolonise the international tax system, but also to address the challenges brought by mobility and new technologies in this part of the world. Valentin Bendlinger turns back the attention to a common suspect, i.e., the OECD Pillar 2, highlighting some technical shortcomings and ambiguities of the OECD proposal and its effectiveness. However, he does not focus on a simple technical critique and raises a more fundamental question: does the OECD Pillar 2 end tax competition or it promotes it? Through a series or arguments, the author demonstrates that perhaps the OECD Pillar 2 is more than the end of the so-called "race to the bottom" in corporate income taxation, but the beginning of a "race towards the minimum". Jie Wang provides a fresh approach to the issue of nexus and taxation of business profits in a digitalised economy. He explores Taiwan's unilateral approach to taxing the digital economy through a puzzle-solving process based on real-world cross-strait business practices in the online gaming industry, offering insights that are perfectly applicable to other online industries around the world, including those in Caribbean countries. Finally, Germaine Rekwest offers us an early analysis of the recently signed Double Tax Convention between the Kingdom of the Netherlands, in respect of Curaçao, and the Republic of Suriname. She highlights some technical element of the treaty, reinforcing also the consistent tax treaty policy adopted by Curaçao in the latest years, and which includes future negotiations with countries like Cyprus and Mauritius.

This number of the Caribbean Tax Law Journal provides us with a wide spectrum of topics, refreshing points of views, and convincing arguments. This is only possible due to our authors, peer reviewers, and editorial team. Thank you very much to all of them.

To our readers, simply enjoy this number!

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[1] UN, Chair's Proposal for Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation on 16 August 2024, A/AC.295/2024/L.
[2] Judgement of the Court (Grand Chamber) of 10 September 2024, Case C 465/20 P, European Commission v Ireland and Apple Sales International, ECLI:EU:C:2024:724.