UCLouvain

Faculté de droit et de criminologie

Corporate taxation at the international level
Is the model out of date ? Or to be restored ?
A legal perspective

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Main findings

- Tax competition and profit shifting remain a important issue, even after BEPS
  - Profit shifting : fundamental flaws have not been sufficiently addressed; transfer pricing and valuation, allocation criteria between source and residence, role of pysical presence, …
  - Tax competition was not a concern
- Multilateralism under threat (US tax reform, DPT, digital taxes, …)
- Challenge of digitalization
- Position of developing countries

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Key issues

- Structure of (international) corporate taxation
- Role and status of tax treaties
- Impact of digital economy

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Structure of (international) corporate taxation

- Corporation are legal fictions, created by States
- Great diversity in corporate structures
  - Place of residence- types of shareholdings- minimum capital
  - Group rules (consolidation)
  - Disclosure requirements (EU : 4th AML directive and UBO register)
- Even greater diversity in corporate tax systems
  - Definition of taxpayers
  - Taxable base, tax rates and incentives
  - Tax treatment of cross-border income (partially coordinated through DTC)
  - Administrative obligations
  - Enforcement and collection
- Some general features
  - Inspired by personal income tax systems
    - Taxpayers assessed on an individual basis – with exceptions
    - Income defined on a net basis (revenue – expenses) – with exceptions
  - At the international level : concepts used in tax treaties but no harmonization (even in the EU)

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Role and status of tax treaties and other international instruments

- Over 3,000 treaties
- Unifying effect
  - Allocation of business income and permanent establishment
  - Reduced withholding tax on oubound payments (passive income)
  - Administrative cooperation
  - Anti-avoidance rules (BEPS and ATAD)
- BUT's
  - Mostly Bilateral instruments (vs. multilateral approach) : deviations are frequent
  - Limitation of source countries' rights (developing countries)
  - Instruments of tax avoidance scheme and tax competition (TP and intra-group payments of dividendes, interets, royalties,…)
  - Treaty override phenomenons : in particular the US tax reform (although connections with BEPS)

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Impact of digital economy

- Value creation is not a legal term (and unlikely to become one)
- Sectoral or global phenomenon?
  - Who is targeted?
    - MNE vs. digital companies
  - What should be taxed?
    - Income vs. sales/turnover
  - Why?
    - Level playing-field vs. « ability to pay » and avoidance concerns
- Unilateral measures and proposals
  - turnover taxes/withholding taxes
  - Real-life experiments are not bad
- Physical presence requirement
  - Reform within or outside the current framework?

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Conclusion

- Good (tax) laws are
  - Clear and predictable in their scope and in their wording
    - What is the goal of a fundamental reform?
  - Stable
    - old tax, good tax => new tax, bad tax?
  - General in their application
    - Personal scope
      - MNE vs. companies
    - Territorial scope
      - Global vs. regional (« like-minded countries »)
  - Easy to implement
    - Legislative and administrative obstacles

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