Erasmus School of Law

Pressing Issues in EU Tax Law – Future of Business Taxation

ACTL Conference, Amsterdam Centre for Tax Law (ACTL) of the University of Amsterdam

Friday 4 November 2022 9:00-18:00

Koninklijke Industrieele Groote Club, Amsterdam, the Netherlands

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Erasmus University Rotterdam

Today's topic

Future of Business Income Taxation

Question

‘Digital’: problem or symptom?

Taxing multinationals; some thinking behind

- **What we query…**
  - We seek to subject
    - *corporate groups*
    - *to single taxation on their (economic?) profits*
      - *side note: at a certain minimum?*
    - *in the relevant investment jurisdictions*
      - *side note: in the relevant market jurisdictions?*

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    - *in the relevant investment jurisdictions*
      - *side note: in the relevant market jurisdictions?*
  - Ideas
    - *Sovereignty*
    - *Benefits, ability to pay*
    - *Equity: equality, legitimacy, legal certainty, simplicity*
    - *Neutrality, efficiency: legal form, financing, investment location*
    - *Supply side (production): origin, territoriality*
      - *Side note: demand side (market)?*

The issue…

- **What we do…**
  - We subject
    - *corporate entities ((functional) separate accounting)*
    - *to tax on nominal equity returns*
    - *by reference to third party market comparisons (arm's length pricing)*

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    - *by reference to third party market comparisons (arm's length pricing)*
    - *adoption of correction mechanisms*
      - *group regimes, double tax relief regimes – single taxation*
      - *addressing base erosion and profit shifting ('substance') – sticks*
        - *"SAARs" & "GAARs"*
        - *source taxes (nb. anti abuse or supply side taxation?)*
        - *unilateral digital services taxes cs (nb. anti abuse or supply side taxation?)*
      - *beneficial tax regimes ('substance') – carrots*

The issue… (*cont'd…*)

- **What we have created…**
  - Distortions and incentives (arbitrary taxation)
    - *legal form*
    - *financing*
    - *investment location, investment direction (inbound, outbound)*
  - Inequities and incentives (arbitrary taxation)
    - *domestic operations v. cross-border operations*
    - *business/industry A v. business/industry B*
    - *Country A v Country B (mismatches/disparities)*

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  - Racing to the bottom…
  - And the ensuing societal debate…

The envisaged solution(s)…

- **What we consider doing tomorrow…**
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    - *adoption of correction mechanisms*
      - *group regimes, double tax relief regimes*
      - *addressing remaining base erosion and profit shifting*
        - *more "SAARs" & "GAARs"*
        - *more source taxes (article 12b UN MTC)*
        - *more (less?) unilateral and regional (EU) digital services taxes*
        - *adding Pillar One Amount A*
      - *adding Pillar Two global minimum level of taxation*
      - *EU company tax integration (CCCTB revamp / BEFIT – own resources)*

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Any good?

“Are we on the right way?”

Any good? (*cont'd…*)

"On a proper basis?"

Any good? (*cont'd…*)

"Making things better?"

Suggestions and discussion

- **True system reform?**
  - Building blocks
    - *entities or groups?*
    - *turnover, profit, or economic profit?*
    - *third party comparison or division key?*
      - *supply side or (also?) demand side?*
    - *global minimum rate?*
      - *country sovereignty?*

- **Discussion**

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2019: What stands out?

STATE APPORTIONMENT OF CORPORATE INCOME

(Formulas for tax year 2019 -- as of January 1, 2019)

ALABAMA *	Double wtd Sales	MONTANA *	3 Factor
ALASKA*	3 Factor	NEBRASKA	Sales
ARIZONA *	Sales/Double wtd Sales	NEVADA	No State Income Tax
ARKANSAS *	Double wtd Sales	NEW HAMPSHIRE	Double wtd Sales
CALIFORNIA *	Sales	NEW JERSEY	Sales
COLORADO *	Sales	NEW MEXICO *	Sales
CONNECTICUT	Sales	NEW YORK	Sales
DELAWARE (3)	75% Sales, 12.5% Property & Payroll	NORTH CAROLINA *	Sales
		NORTH DAKOTA *	3 Factor/Sales
FLORIDA	Double wtd Sales	OHIO	N/A (2)
GEORGIA	Sales	OKLAHOMA	3 Factor
HAWAII *	3 Factor	OREGON	Sales
IDAHO *	Double wtd Sales	PENNSYLVANIA	Sales
ILLINOIS *	Sales	RHODE ISLAND	Sales
INDIANA	Sales	SOUTH CAROLINA	Sales
IOWA	Sales	SOUTH DAKOTA	No State Income Tax
KANSAS *	3 Factor	TENNESSEE	Triple wtd Sales
KENTUCKY *	Sales	TEXAS	Sales
LOUISIANA	Sales	UTAH	Sales
MAINE *	Sales	VERMONT	Double wtd Sales
MARYLAND (4)	66.6% Sales, 16.6% Property & Payroll	VIRGINIA	Double wtd Sales/Sales
		WASHINGTON	No State Income Tax
MASSACHUSETTS	Sales/Double wtd Sales	WEST VIRGINIA *	Double wtd Sales
MICHIGAN	Sales	WISCONSIN *	Sales
MINNESOTA	Sales	WYOMING	No State Income Tax
MISSISSIPPI	Sales/Other (1)	DIST. OF COLUMBIA	Sales
MISSOURI *	3 Factor/Sales		

Source: Compiled by FTA from state sources.

Notes:
The formulas listed are for general manufacturing businesses. Some industries have a special formula different from the one shown.
* State has adopted substantial portions of the UDITPA (Uniform Division of Income Tax Purposes Act).
Slash (/) separating two formulas indicates taxpayer option or specified by state rules.
3 Factor = sales, property, and payroll equally weighted.
Double wtd Sales = 3 factors with sales double-weighted
Sales = single sales factor

(1) Mississippi provides different apportionment formulas based on specific type of business. A single sales factor formula is required if no specific business formula is specified.
(2) Ohio Tax Department publishes specific rules for situs of receipts under the CAT tax.
(3) Delaware are phasing in a single sales factor for businesses through 1/1/2020.
(4) Maryland is phasing in a single sales factor for tax years after 2022.
(5) Missouri will use a single sales factor only for tax years 2020.

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2022: What stands out more?

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Statement

“The Endgame:

Destination Based Business Income Taxation”

Wrap-up

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  - Check out my papers at ssrn.com