

REVIEW OF RECENT LITERATURE

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A selection of recently published papers is reviewed below. The aim is to bring together tax administration-related papers from the diverse range of outlets in which they are published. The review is necessarily selective, and the Journal welcomes suggestions for inclusion of papers in subsequent reviews.

TRANSPARENCY AND INFORMATION EXCHANGE

Byrnes, W. (2017) 'How May the United States Leverage Its FATCA IGA Bilateral Process to Incentivize Good Tax Administrations among the World of Black Hat and Grey Hat Governments? A Carrot & Stick Policy Proposal'.

This essay challenges the idea that all tax jurisdictions should have complete information on taxpayers. Given that most countries are hardly without corruption, who then is to be trusted with taxpayer information? The author suggests that the United States uses a “carrot” and “stick” approach by utilizing FACTA, coupled with the Tax Administration Certification administered under the President’s Annual Narcotics Certification. Under this framework, the U.S. will provide financial information about other country’s citizens using the CAA (Competent Authority Agreement), while foreign governments will provide information under FACTA. This is the cooperative “carrot”. The “stick” would be administered when financial transparency is not reciprocated or under cases of abuse of power. Sanctions would then be placed on secretive jurisdictions who do not provide information to the U.S. government and those that misuse the tax information that the U.S. provides.

Kim, Y.R. (2017), 'Considering Citizenship Taxation: In Defense of FATCA'.

This article addresses the issue of citizen taxation, by examining whether citizenship taxation (as opposed to residency taxation) fulfils the efficiency and administrative principles of taxation. The author uses citizenship renunciation rates in mainly OECD countries to suggest that citizenship taxation isn't the main motivating factor in citizenship renunciation. Furthermore, the author argues that citizenship taxation has only a marginal effect on inbound migration from high-skilled and wealthy migrants. Finally, the author makes the case for why citizenship taxation is actually more easily administered than residence based taxation. On balance, the author concludes that citizenship taxation is good policy.

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Cockfield, A. J. (2017) How Countries Should Share Tax Information

Exchange of tax and financial information is the main policy response to capital flight, offshore tax evasion and multinational firm tax avoidance. This article discusses optimal exchange of information (EOI) laws and policies in the light of the different interests of taxpayers and tax authorities, implementation challenges and opportunities provided by big data and analytics. The author shows how taxpayers and tax authorities may have contrasting interests with respect to global financial transparency and how this results in an opaque global financial system where high transaction costs prevent the achievement of optimal outcomes. The importance of high quality tax information is deemed crucial to improve enforceability via taxpayer segmentation. A broad multilateral agreement on privacy protections is identified as a prerequisite to address privacy concerns stemming from the risk of misuse of taxpayers' information and varied levels of domestic legal protection of privacy rights. The article argues that data analytics may significantly improve tax law's enforceability and future EOI reforms should be designed so to allow for its full exploitation. To this end, the author notes the potential usefulness of the institution of a global financial registry and the use of private sector firms in the identification of untaxed income from publicly available data.

TAX PROFESSION**Lankhorst, P. and van Dam, H. (2017) 'Post-BEPS Tax Advisory and Tax Structuring from a Tax Practitioner's View'.**

This article discusses the expected impact of BEPS on tax advisory and tax planning. To answer the research question, the authors discuss BEPS Actions 7, 8-10, and 13 and their possible implications. Finally, they discuss three issues that the BEPS Actions do not address. The authors suggest that governments should focus a tax on sales and employees factors rather than on which activity creates profits. They argue that BEPS fails to consider the effects corporate taxes may have on wages. Finally, they suggest that advisors shift from advising MNEs on the lowest possible effective tax rate to broader advice including risks, risk appetite and public expectations.

Field, H. M. (2017). Aggressive Tax Planning & the Ethical Tax Lawyer.

This article contemplates the choices facing a lawyer considering giving advice on aggressive tax planning; i.e. advice on actions that may be contestable. At the core of the discussion is the question as to whether a tax lawyer can be both aggressive and ethical with particular regard to the key activity of giving advice on the likelihood of success if a particular measure is challenged. The article considers a number of known strategies for aggressive tax planning by multinational corporations that are discouraged, such as inversion, earnings stripping and transfer pricing. The author then sets out a number of different philosophies of lawyering and their outcomes when applied to the example of interest. The article argues that a lawyer seeking to pursue a career as an ethical tax planner should identify and implement her philosophy of lawyering to help make difficult discretionary tax advising decisions in a principled way,

Gammie, M. (2017) Shooting the messenger: the proposed enabler penalty.

This article is a plea against the UK "enabler" penalty, i.e. the idea that tax advisors should be held responsible if their client is found guilty of tax avoidance (as stated in the General Anti Abuse Rule guidance). The author underlines the difficulty in judging if avoidance has occurred

and if it was abusive, the threat to the whole tax community and the conflict of interest that may arise between advisors and clients. He concludes with the hope that professionals will continue advising clients without being influenced by, or fearing, a possible penalty.

West, A. (2017) Multinational Tax Avoidance: Virtue Ethics and the Role of Accountants

The author draws on MacIntyre's virtue ethics in this paper which is concerned with the role of accountants in the tax avoidance activities of large multinational companies. He provides a concise overview of modern philosophical approaches to ethics and links MacIntyre's virtue ethics to Cressey's fraud triangle in his analysis, concluding that more work is needed regarding the accounting practices in a global tax setting.

TAX EXPENDITURES

Zu, Y. (2017) 'Reforming VAT Concessions: A Tax Expenditure Analysis'

In this article, the author examines the implications of VAT concessions. The author argues that although there is wide consensus that these concessions are market distorting and inefficient, VAT concessions are a widely used administrative tool. To analyze the effectiveness of these concessions the author uses relies on three-staged inquiry: Does the concession serve a valid government objective? Is a tax expenditure or a direct spending program better at achieving this objective? How should the tax expenditure be designed as to achieve its primary objective? The author relies on the latter two for her analysis. She concludes that VAT expenditures are often unfair and inefficient subsidy programs that can lead to high costs and administrative burdens. She suggests that the VTER – and approach to measure the direct cost of each concession – should be employed to examine the implications for VAT expenditures.

CONFIDENTIALITY

Yin, G. K. (2017) 'Congressional Authority to Obtain and Release Tax Returns'

This article describes the authority of US Congress under 6103(f)(1) to obtain the tax information of any taxpayer, including the President, without consent. The author suggests that President Trump's current situation justifies a committee effort to obtain the President's tax information. Whether that information is disclosed to the public is a separate issue, but that is up to the committee to investigate.

Debelva, F & Mosquera, I. (2017). Privacy and Confidentiality in Exchange of Information Procedures: Some Uncertainties, Many Issues, but Few Solutions.

In this paper the authors argue that the protection of taxpayer's rights with regard to privacy and confidentiality have received insufficient attention in discussions of the exchange of information between national tax authorities. The article notes that there has been a significant increase in the amount and the types of information being exchanged in respect of several concurrent international initiatives of instruments to exchange information in order to prevent tax evasion and tackle aggressive tax planning. The paper identifies a number of instances where the level of protection offered by current measures is insufficient. The authors conclude that existing safeguards in with regards to taxpayer's right to privacy and confidentiality are

not sufficient to tackle the existing issues and recommend a specific multilateral instrument to address them.

Hambre, A-M. (2017). Tax Confidentiality: A Legislative Proposal at National Level.

In this article the author examines the competing desires for transparency and confidentiality in relation to the information held about taxpayers by national tax authorities. The paper proposes legislation for “a requirement of damage,” constructed such that confidentially only applies in the case where there is a likelihood of damage occurring to a taxpayer upon disclosure, thereby adhering to a principle of maximum disclosure on behalf of government, while affording taxpayer privacy when necessary. The paper presents an evaluation of the proposed measure against three key benchmark factors of interest to the related agents, tax compliance, administrative costs and taxpayer privacy and concludes that the proposed measure will facilitate public access to information and thus should provide benefits in terms of the level of taxpayer compliance, while recognising that full disclosure in every situation may not be appropriate.

TAX COMPLIANCE: INDIVIDUALS

Malik, S., Mihm, B. and Timme, F. ‘An Experimental Analysis of Tax Avoidance Policies’.

For this study, the authors conduct a laboratory experiment to examine the effects of Anti-avoidance rules (AARs) on tax compliance. They reveal that AARs can actually lead to the unintended consequence of increasing evasion as subjects substitute avoidance for evasion when feasible or evasion for avoidance (a substitution effect). In the end, the substitution effect mitigates the effect of the AARs on the tax gap.

Hallsworth, M., List, J. A., Metcalfe, R. D. & Vlaev, I. (2017). The behavioralist as tax collector: Using natural field experiments to enhance tax compliance.

This article presents results from two large scale natural field experiments in which the UK tax authority sent reminder letters to taxpayers who were late in paying their taxes. The authors report that the inclusion of a social norm message in standard reminder letters led to accelerated payment rates of overdue tax relative to a control condition. The results further reveal that the use of a message detailing a descriptive norm (detailing the behaviour of others) were significantly more effective than those using injunctive norm (detailing the behaviour expected by others). Messages referring to public services or financial information also significantly increased payment rates. The authors note that the interventions significantly accelerated the collection of tax revenue due at little cost.

Bruner D. M., D’Attoma, J. & Steinmo, S. (2017). The role of gender in the provision of public goods through tax compliance.

This paper details the results of an experimental investigation conducted in multiple countries, in which subjects faced a series of decisions on reporting their income from a real effort task. The tax paid was used to form a group fund, which was potentially enhanced by a multiplier, and distributed equally among the subjects, thereby forming a public good. The authors investigate the effect of the level of the multiplier and of the gender of the subject in the compliance decision. The results show that women are more compliant than men, and

interestingly that the gender difference does not correlate to differences in risk aversion. Furthermore, the results also show that increasing the value of the multiplier increases compliance and gives some evidence that men are more sensitive to the price of provision.

D'Attoma, J. (2018) What explains the North–South divide in Italian tax compliance? An experimental analysis

Northern Italy is known to be tax compliant whereas southern Italy is not. This paper studies the cultural differences across populations from northern and southern Italy, using an experimental method. Using a Tax Evasion Game, compliance behaviour is recorded in Capua, Rome, Bologna, and Milan. There were no differences of compliance behaviour between northern and southern Italians, showing that there is no intrinsic cultural motivation to evade taxes in southern Italy. The author concludes that institutions probably drive this real life difference.

Mendoza, J.P., Wielhouwer, J.L., & Kirchler, E (2017) The backfiring effect of auditing on tax compliance.

Authors expect a curvilinear (U-shaped) relationship between the number of audits and tax evasion. This means that increasing audit level has a positive impact on tax compliance until a certain level is reached, after which it has a negative impact on tax compliance. An increasing level of audits could lead to a perception of distrust from taxpayers, a feeling of unfairness or of widespread noncompliance. The authors compare the number of verification actions taken by tax authorities to the perception of tax evasion from business executives in different countries and indeed show that audit level can backfire when it is set too high.

Alm, J. Bloomquist, K & Mckee, M (2017) When You Know Your Neighbour Pays Taxes: Information, Peer Effects and Tax Compliance.

In this paper, the authors use a Tax Evasion Game where the participants have to file and report their taxes to study the impact of peer information. They compare treatments where different information is provided: no information (baseline), one with information about the percentage of group members who filed their taxes, one with the results of the audits for the current round and one with both types of information. The results show that providing information always has an impact compared to the baseline. However, this impact is not always positive on compliance. Managing peer effects information is thus complicated and subtle.

Goerke, L. (2016) Tax evasion in a Cournot oligopoly with endogenous entry.

This contribution investigates how excessive entry is affected by tax evasion when a tax on operating profits is imposed on a homogenous-good Cournot oligopoly. The scientific literature shows that in a Cournot oligopoly, if the number of competitors and output per firm are negatively related, there will be excessive entry compared to the welfare maximizing one. While it has been proven that this issue may be ameliorated - or even solved - by taxing firms, an analysis of the impact of tax evasion on this result was still lacking. The author identifies two simultaneous effects for tax evasion on excessive entry: the first one increases the incentives to entrance by raising profits and the second one affects the welfare maximizing number of firms. While the former effect exacerbates excessive entry, the second may have a positive impact on the issue. In particular, when the welfare cost of evasion declines with the number of competitors, evasion activity also decreases in a number of firms. In this case, tax

evasion is found to be positively related to the welfare maximizing number of firms and this effect may outweighs the higher incentives to entry. A numerical illustration of the inherent ambiguity of the effect of evasion on excessive entry is provided to support the result.

TAX COMPLIANCE: LARGE BUSINESS

De Widt, D. & Oats, L. (2017) Risk Assessment in a Co-operative Compliance Context: A Dutch-UK Comparison, *British Tax Review*, 230 –

Both the UK and the Netherlands deploy risk assessment techniques in the context of co-operative compliance arrangements with large business taxpayers. Both countries have mature models of co-operative compliance with important operational differences and this paper probes these differences drawing on interview based research conducted in both countries. The authors highlight the difficulties faced by tax authorities in defining and quantifying the ongoing benefits of risk based compliance programmes.

Szudoczky, R & Majdanska, A. (2017) Designing Co-operative Compliance Programmes: Lessons from the EU State Aid Rules for Tax Administrations

In this paper the authors explain the rationale for co-operative compliance initiatives by reference to the OECD recommendations in this area, and focus on the EU context, in particular the state aid rules. Co-operative compliance arrangements are then evaluated against the state aid rules and the authors conclude that if the programmes are limited to procedural benefits and eligibility defined in a non-arbitrary way, then the scope for challenge under the state aid rules is low.

DISPUTE RESOLUTION

De Carolis, D. (2017) A New Approach to International Dispute Resolution Processes.

The substantial growth in tax disputes between tax authorities and multinational enterprises has exposed the substantial inadequacy of International Taxation Dispute Resolution Process (ITDRP). This manuscript proposes to analyse the ITDRP using an institutional approach i.e., under the assumption that the states behave as rational actors guided by cost/benefit considerations. The author argues that re-framing ITDRP as a compromise between the sovereignty costs imposed on states and the benefits generated for tax authorities and taxpayers is both more insightful and reliable than legal analysis alone. The paper identifies the main interests underlying the ITRDP and illustrates how such an interdisciplinary comparative paradigm may be fruitful to the current debate about the use of Non-Binding Dispute Resolution Mechanisms and to increase the taxpayers' involvement and rights during the Mutual Agreement and Arbitration Procedures.

BEPS

Ginevra, G. (2017) The EU Anti-Tax Avoidance Directive and the Base Erosion and Profit Shifting (BEPS) Action Plan: Necessity and Adequacy of the Measures at EU level.

This article analyses the Anti-Tax Avoidance Directive from the Council of European Union and compares it to the original OECD BEPS Action Plan. The author concludes that this

agreement is impressive, as the matter is particularly sensitive. It will indeed provide for common implementation and reduce compatibility issues between countries. However, the author points out that the anti-avoidance measures will probably not be enough to meet the objectives of the Directive.

Christians, A. (2017) BEPS and the New International Tax Order.

In this paper, the author takes a helicopter view of recent co-ordination efforts in the battle against multinational tax avoidance. She reflects on the Inclusive Framework which provides a potential avenue for the participation of non-OECD countries in the norm building process and concludes by speculating about the potential for expansion of inclusivity to encompass NGOs as well as country representation in the evolution of the new global tax order.

Büttner T. and Thiemann, M. (2017)., ‘Breaking Regime Stability? The Politicization of Expertise in the OECD/G20 Process on BEPS and the Potential Transformation of International Taxation’

In this article, the authors examine how and why the OECD has utilised the Transfer Pricing Guidelines in order to reign in Base Erosion and Profit Shifting (BEPS). They argue that this incremental approach, rather than a more radical shift in policy, allows the OECD to retain authority while limiting political risk. Utilizing an historical institutionalist/constructivist framework, the authors rely on expert interviews and qualitative content analysis of OECD reports, suggesting that that this approach has had the unintended consequence of rendering BEPS policies increasingly incoherent. Thus, the end goal of institutionalising a Transfer Pricing regime as to set certain boundaries, could actually undermined the entire regime.

Avi Yonah, R. & Xu, H. (2017) Evaluating BEPS.

The authors provide an evaluation of the BEPS project’s achievements and critically appraise its limits, observing the new direction of international tax law reform towards economic value and calling for a re-evaluation of the benefits principle. They advocate source taxation of passive income and residence taxation of active income to enable more effective combat against both tax evasion and tax avoidance.

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