1. From 1961 to the present

In 1961, when the first issue of European Taxation was published, the Berlin Wall was being erected. Ireland, Denmark and the United Kingdom formally applied for membership to the European Economic Community. US Cuban exiles and the CIA mounted an unsuccessful attempt to overthrow Castro, known as the Bay of Pigs. Soviet cosmonaut Yuri Gagarin became the first human in space during a single-orbit flight.

In preparing for this 60th anniversary issue, I had an opportunity to read through 60 years of issues of European Taxation. Anniversaries provide the perfect opportunity to reflect on our journey and assess how far we have come. I was curious what was important to the tax world 60 years ago. What did those early editors deem important enough to highlight to their readership? Was the tax world really any different? Have we simply been recycling the same old issues or has there been a slow and steady progression toward the European taxation system we are all familiar with today? Immersing myself in issue after issue I could easily imagine myself as an editor in 1960, soliciting articles, editing text, formatting tables. Rather than operating digitally, my predecessors, of course, had to send typed articles back and forth to authors by mail with redlining and notes in the margins. They used a lot of stamps and their hands cramped from all the handwriting. I imagine that the final editing stage must have involved long telephone calls to authors. Typesetting and printing was all done manually. I wonder whether or not those early editors, at any point, imagined what their counterparts might be doing 60 years in the future? Could they have imagined the Internet, email and cryptocurrency? Did they foresee how important EU law would become?

What was also interesting was what was absent. No EU directives, exchange of information, mandatory disclosure rules, or measures to target base erosion and profit shifting. Of course, the European Economic Community was in existence, but it was not the tax coordination and harmonization powerhouse that it is today. And we were also two years away from the Draft OECD Model (1963).[1] Although there was much discussion of cross-border taxation and treaties, regional and global coordination were lacking. Hot topics in 1961 were holding companies, dividend taxation, royalties, tax treaties and capital gains tax.

As for the European Taxation journal, in 1961, the format was somewhat different. The journal was published every fortnight and was only 8 pages (now 50). Each issue began with a one-page summary of tax news in Europe (which later became the ever-popular EU Update). The authors of articles were anonymous. There was a section, in the early issues, that invited readers to submit their tax questions.

Flashing forward to the present, European Taxation is now a leading periodical in the EU tax law field, offering detailed analyses of key legal and policy developments affecting taxation and investment in Europe. In addition to full-length articles, it also contains brief notes outlining important changes in European taxation, including new laws, amendments to laws, tax treaty interpretations, rulings and court decisions, as well as comprehensive updates on EU developments relating to the Commission, Council, Parliament and Court of Justice.

2. The 60th Anniversary Edition

To celebrate our 60 years, we asked a number of renowned tax experts to join us in reflecting back on the developments in the last six decades in their areas of expertise. We were overjoyed by their enthusiastic responses, which not only provide

an illuminating overview of how far we have come, but also give us a glimpse of where we are headed. Their contributions cover a selection of the most significant issues in the EU direct taxation, such as the process of the harmonization of the direct tax systems of the EU Member states, the impact of the ECJ on European cross-border taxation and on the legislation of the Member States, as well as State aid case law. In addition, the achievements and missed opportunities resulting from the work of the European Court of Human Rights in the area of taxation are highlighted. Finally, the issue presents the perspective of tax advisors, their cooperation and their impact on EU and international tax developments.

Christiana HJI Panayi[2] outlines the trajectory of harmonization initiatives in respect of corporate taxation over the past 60 years, from the 1962 report of the Neumark committee,[3] to the May 2021 announcement by the Commission of the BEFIT proposal.[4] She notes that, when it comes to indirect taxation, there has been a high level of harmonization; however, when it comes to direct taxation, whether personal taxation or corporate taxation, there has been limited progress. More specifically, corporate taxation is an area where most harmonization initiatives of the Commission have been met with strong Member State resistance. She concludes that the key to further harmonization seems to be the Commission’s ability to (in a timely manner) seize on political momentum resulting from international (non-EU specific) events, rather than the production of comprehensive EU reports in the area of direct taxation or the watering down of the unanimity requirement.

Philip Baker,[5] among his many accomplishments in the international tax arena, has been contributing articles on human rights law to European Taxation over the last couple of decades. In his contribution to the 60th anniversary issue, he provides a very insightful critique of the work of the European Court of Human Rights in the area of taxation, beginning with the missed opportunity in Ferrazzini v. Italy (44759/98)[6] to extend the right to a fair trial protected by article 6 of the ECHR to the area of taxation, with the result that taxpayers have no right to a determination within a reasonable time. He discusses cases regarding the disclosure of information, retroactive tax legislation, discriminatory tax measures and the prohibition of double jeopardy. He outlines areas in which the application of the ECHR has resulted in changes in the law, as well as areas in which the ECHR/ECHR has failed the tax world, including a treatise on the sources of those failings. He concludes by indicating what the path ahead looks like.

Michael Lang[7] reflects, in this special issue, on 60 years of State aid case law, beginning with the decision in De Gezamenlijke Steenkolenmijnen (Case 30/59).[8] the first case to make it clear that the rules on State aid also have an impact on tax law. In particular, he highlights the two ECJ decisions of 16 March 2021 in Commission v. Poland (Case C-56/19 P) and Commission v. Hungary (C-596/19 P),[9] wherein the ECJ determined that the Polish and Hungarian taxes at issue, which apply a progressive tax rate on turnover, do not contradict the EU State aid rules. He uses these two cases to provide commentary on the components of the State aid test and parallels between the case law on the fundamental freedoms and those on the State aid rules. He goes on to critically examine the Court’s attempt to reconcile its decision in these two cases with Gibraltar (Joined Cases C-106/09 P and C-107/09 P),[10] wherein the Court upheld the Commission’s decision on the selective nature of measures to reform the corporate tax system in Gibraltar. Finally, he notes that “if the ECJ is to breathe life into this line of case law in the future, its decisions will also need to depend on what type of procedure is at issue, since the burden of proof can be distributed differently depending on how a State aid case is referred to the ECJ”.

Adam Zalasinski,[11] provides an overview of 35 years of ECJ direct tax case law, beginning with the ECJ’s 28 January 1986 decision in Commission v. France (Case 270/83),[12] known as the Avoir Fiscal case. He begins with a presentation of the legislative context of direct tax disputes within the framework of the Treaty on the Functioning of the European Union (TFEU) (2007).[13] He then considers the milestone discrimination and restriction cases, including the judicial reasoning and applicable methodology applied, with particular attention being given to those cases that touch upon the direct tax boundaries of the Treaty freedoms. He notes that there is not a distinct direct tax case law category of cases. Instead, all direct tax cases involve

a determination of whether or not there has been discrimination or a restriction that impinges on free movement rights. The test always consists in: (i) a determination of the applicable freedom; (ii) finding a difference in (tax) treatment that, in cases of discrimination, concerns nationality or residence and, in restriction cases, addresses the difference between tax rules for domestic and cross-border situations; and (iii) determining whether the discrimination or restriction can be objectively justified. Indeed, most of the cases that have been decided are relatively straightforward. He concludes that while the boundaries have been easy for the Court to determine in respect of juridical taxation cases and most-favoured-nation problems arising due to tax treaties, other cases, such as those involving restrictions stemming from a limitation on Member States’ taxing rights, still need clarification. He concludes that the ECJ’s case law has had a profound effect on European cross-border taxation and that the Member States generally take into account ECJ case law in designing new laws. As to the future of direct tax case law, the focus seems to be on the interpretation and application of more recently adopted secondary tax legislation, such as the Mutual Assistance Directive (2011/16)).

He expects that cases on the EU Anti-Tax Avoidance Directive (2016/1164) will be a focus now that its national transposition measures have entered into force and are starting to give rise to disputes between taxpayers and tax authorities.

CFE and European Taxation have been collaborating since 1 January 1989, when European Taxation became CFE’s official journal for its publications. CFE’s contribution to this special issue comments on 60 years of tax advisory work in the area of EU tax policy. CFE emphasizes that effective cooperation between tax advisers implies a stronger impact on EU and international tax developments, and hence a more robust protection of taxpayer rights. This is particularly important in the face of the current challenges facing the tax advisory community, such as the digitalization of the economy. CFE happily notes, however, that a multitude of global players are tackling these issues and there is unprecedented synergy of cooperation policies. CFE is currently particularly concerned with targeted tax policies that address both immediate and long-term public health and socio-economic consequences of the COVID-19 crisis. It agrees with the European Commission that the focus should be placed on a green recovery.

3. Concluding Remarks

In conclusion, as we celebrate our 60th anniversary, the team at European Taxation looks forward to reporting on the next phase in the historical development of European tax law, which will undoubtedly continue to be shaped by global cooperation.