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Taxation of Companies in Economic and Financial Distress

Why this book?

The European economy has flourished over the last decade. However, in 2020, the COVID-19 pandemic hit the world, forcing many societies to enter a total lockdown. In February 2022, Russia invaded Ukraine. Many European countries still had COVID-19 restrictions in place when their economies were struck by inflation, an energy crisis and high fuel prices. This is the context in which Taxation of Companies in Economic and Financial Distress was written.

This book focuses on the impairment of loans and other commercial receivables, the corporate tax treatment of losses, capital injections, tax deferrals and the liability to pay taxes. The analysis is based on the assumption that changes to what normally applies in the tax system to support companies in distress must be justified with good reasons in order to be legitimate. An example is the ability-to-pay principle. However, the ability-to-pay principle must be balanced with the goal of an efficient and fair tax system.

Against this background, this book examines how current European tax systems deal with companies in distress. It is divided into the following three parts. Part 1 is the General Report, which provides a broad overview and reviews the findings of the national reports. Part 2 contains three Topical Reports, which relate the overarching theme of the book to transfer pricing, VAT and State aid. Part 3 contains the national reports of 16 EU Member States and four non-EU Member States (Russia, Serbia, Ukraine and the United Kingdom). These contributions were written by distinguished European tax experts.

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Preface

This book contains the proceedings of the Annual Congress of the European Association of Tax Law Professors (EATLP), which took place in Vienna from 16 to 18 June 2022. The general topic of the congress was the “taxation of companies in financial and economic distress”. The book comprises a general report, three topical reports (on the topics of transfer pricing, VAT and State aid) and 20 national reports. The reports are based on a questionnaire that can be found in the Appendix at the end of this book.

The general and national reports follow the structure of the questionnaire. They each begin with an introduction. Thereafter, the following subjects are addressed: (i) impairment of losses and other commercial receivables; (ii) corporate tax treatment of losses; (iii) capital injections; and (iv) tax deferrals and liability of taxes. The congress was held at a time in which the economies of Europe had been heavily influenced by the COVID-19 pandemic. Furthermore, the war in Ukraine had just begun to have an economic effect in terms of inflation, the energy crisis and high fuel prices. Thus, many of the reports mention tax measures in relation to crises.

The project began in 2018 when the topic was brought up at a meeting with the Academic Committee of the EATLP by Daniel Gutmann, the Chairman of the Academic Committee. The topic was originally proposed by Wolfgang Schön. I drafted a proposal for the topic for the Academic Committee meeting in 2019, but the proposal was not perceived as a current topic at that time. However, in 2020, with the onset of the COVID-19 pandemic, it was decided as the congress topic for 2022.

During 2020-2021, I elaborated on the questionnaire. I received great help from a temporary expert group who supported me in the work of creating the questionnaire, consisting of Andres Baes Moreno, Guglielmo Maisto, Sigrid Hemels, Marie Karlsson Tuula, Raymond Lujá, Gerard Meussen, Annina H Persson, Wolfgang Schön and Claus Staringer. Their work was crucial for the design of the reports and the content of the congress.

The national and topical reports were written during the autumn of 2021. Collectively, these reports form the core of each EATLP Congress, and, therefore, they are extremely valuable. During the congress itself, many national reporters and some external speakers, namely, Adam Zalasinski, Guglielmo Maisto and Irma Mosquera Valderrama, contributed with valuable input. The 2022 Congress was the first on-site EATLP Congress since the COVID-19 pandemic began. Michel Lang and his team at Vienna

University of Economics and Business hosted the event, making the reunion an extraordinary one.

Thanks a lot to everyone who contributed to the congress and to this book. My sincere thanks go to Daniel Gutmann, who guided me gently but firmly throughout this fantastic journey as a general reporter of an EATLP Congress. Last but not least, I thank Magnus Kristoffersson, who assisted me in the editing process of this book.

Eleonor Kristoffersson

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