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EU Law and the Building of Global Supranational Tax Law: EU BEPS and State Aid

D. Weber (ed.)

Publication Review

British Tax Review

B.T.R. 2020, 2, 254-255

Subject
Tax

Other related subjects
European Union

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*B.T.R. 254* This book is based on papers presented and discussed at the two day annual conference of the Group for Research on European and International Taxation (GREIT) in September 2015, 1 shortly before the release of the final recommendations of the BEPS Project. The topic of the tax conference was the influence of European law on international tax law and the reverse. One of the objectives of the conference and subsequently the book was to show how the two areas of law are now offering building blocks towards a global supranational tax law.

The book contains 12 interconnected chapters. The first chapter deals with the influence of foreign law on national law. It examines how EU tax law (primary and secondary law) leads to interactive law-building as a result of the duty of national courts to take foreign (EU) law into consideration. The second chapter focuses on the existence of customary law in the field of international taxation and reviews the difficulties for the formation of such customary law. The *B.T.R. 255* author considers the possible contribution of the BEPS Project to the creation of customary rules and concludes that, in general, administrative co-operation rules are most promising for the creation of such rules. The third chapter considers the impact of multilateralism on tax sovereignty. The author examines the two approaches used to improve the current regime, namely: the centralised approach, which would depend on multilateralism and the curtailment of tax competition; versus the decentralised approach, which endorses tax competition. The author favours the decentralised approach and explains how this is more beneficial for the development of law.

The next two interconnected chapters discuss the interaction of tax incentives in developed countries and developing countries (Chapter 4), and IP box regimes (Chapter 5). Two more interconnected chapters follow, dealing with the new (at the time) transparency rules and their impact on relations between tax authorities and taxpayers (Chapter 6), and the work of the EU Code of Conduct Group (Chapter 7).

Chapters 8 and 9 deal with issues relating to state aid. Interestingly, Chapter 8 analyses how the EU’s state aid rules may be incompatible with investor protection commitments of Member States. Chapter 9 reviews the state aid investigations at the time, criticising the Commission’s approach in assessing selectivity when it comes to the advance pricing agreements (APAs).

The last two chapters of the book deal with anti-abuse rules and more specifically, the general anti-abuse clause in the Parent-Subsidiary Directive and the Commission’s Anti-Tax Avoidance Package.

As a result of the fast-paced developments since the book was written, the discussion in some of the chapters is now out of date. This is inevitable. However, some of the contributions contain thought-provoking analyses that transcend time and may prove...
to be very valuable in engaging with what seems to be the next part of the adventure relating to the BEPS Project. Overall, this book is likely to be a very helpful resource for academics, students and legislators in EU and international tax law.

Christiana HJI Panayi

Footnotes