Special issue II
Inequality within the International Tax Regime. Introduction

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Introduction to: “Special issue: Inequality within the International Tax Regime”

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Copenhagen Business School hosts a conference concerning inequality within the international tax regime on the 14th of September. This conference brings together researchers who are at the forefront of their respective fields in order to identify, discuss, and to underline future challenges associated to inequality in the international tax context. These discussions will subsequently be published in three separate special issues:

1. *“Special issue: International Tax Challenges for Developing Countries”*, forthcoming in the Nordic Journal on Law and Society in the end of 2020
2. *“Special issue: Inequality within the International Tax Regime”*, forthcoming in the Nordic Tax Journal in the spring of 2021
3. *“Special issue: Comparative Perspectives on Inequality within Taxation”*, forthcoming in the Nordic Journal on Law and Society in the fall of 2021

The papers attached to this working paper issue concern inequality within the international tax regime which results in a broader inclusion of topics. Inequality in itself is a both abstract and diverse concept, even more so when placed in the international tax context. Research concerning such inequality could be anything from theoretical, conceptual, or technical in its nature and does not necessarily need to be done from a legal perspective. The papers in this issue concerns tax technicalities and theoretical discussions from both legal and economic scholars and, therefore, provide a highly diverse set of discussions and insights.

Initially, Schmiel explores how to tax multinational corporate groups to reduce inequality. Providing an excellent introduction to the concept of inequality and the abstract nature of it. Interpreting it through ethical concepts and theories. Ethical concepts argue that companies should generally be held responsible for paying their fair share of tax. Further, ethical considerations interpret tax avoidance as irresponsible behaviour that results in inequality. However, these are at odds with the mainstream economic theory that understands firms as legal fictions. From this economic perspective, there is no reason to deem companies able to pay taxes. Insofar, there is only a legal responsibility of legal fictions to comply with these legal obligations. There is no reason to assign a legal responsibility to corporate groups since the group companies, and not the groups themselves, are legal actors. All in all, according to this view, multinational corporate groups’ tax avoidance is not unethical and does not lead to inequality. The author proceeds and discusses the possibilities to deem companies’ legal fictions from the perspective of corporate tax avoidance. Basing the argumentation of the paper on a political-cultural market approach that explicitly uses micro foundations. Concluding that the political-cultural approach provides reasons to ascribe an ethical responsibility for paying a fair share of tax to multinational corporate groups. Stating that, if groups do not pay their fair share of taxes, existing inequality will be intensified.

This is followed by Viitala´s paper that explores to what extent EU State aid rules may promote equity within international corporate taxation. The paper uses the highly topical Apple case when outlining an analytical framework concerning inter taxpayer equity. The paper briefly describe the key takeaways of the Apple case and thereafter analyses how close the decision in the Apple case came to a stylized theoretical optimum of EU-wide inter taxpayer equity and to what extent that may be reached within the EU. The inevitable existence of trade-offs between different tax policy goals are accounted for and the author highlights reasons that may explain why the General Court has not always gone that far.

Further, Ozai provides a comprehensive background and analysis of origin-based theories when allocating taxing rights between individual states. These theories align states' tax entitlements with the geographical location of the economic factors that contribute to the creation of income. Emphasis is placed upon how these theories are currently limited in scope. As regards to why they are limited Ozai highlights two reasons: (1) The economic integration of multinational corporations and the relevance of intangibles that have made it infeasible to precisely pinpoint the factors contributing to the generation of income. (2) The growing disagreement, between individual states, about which economic factors should be considered relevant for sharing the international tax base which has recently led to an increased consideration of distributional consequences. Tax policy discussions are, therefore, considered to move away from clear origin-based rationale toward a distribution-based one. Subsequently, Ozai proposes that the allocation of tax entitlements should be based on distributive justice considerations as an alternative approach to origin-based theories.

Finally, the OECD´s work on the challenges arising from digitalization, in particular the so-called GloBE (Global Base Erosion)/Pillar 2 proposal is addressed by Navarro Ibarrola. The proposal in question consists of a series of measures aimed at establishing a minimum taxation of all cross-border incomes. If implemented, developing countries would be severely deprived from the possibility to grant tax incentives to attract FDI (Foreign Direct Investment) when promoting economic growth. This paper emphasizes the importance of the tax policy review developing countries should undertake amidst the rapid adoption of GloBE that the OECD is pushing for. To illustrate this concern, the author examines implementation issues and illustrates that a deficient enactment of the income inclusion rule proposed in GloBE could paradoxically trigger the applicability of tax sparing clauses, aimed at protecting the effectiveness of tax incentives, even when both sets of rules pursue opposing goals.