INTERNATIONAL TAX LAW

(A)

The Role of Territory in International Tax Law and Practice

International taxation refers to the analysis of tax on a company or person subject to the tax laws of various nations, or the international dimensions of a single country's tax laws, depending on the situation. Generally, governments either narrow the extent of their income taxes territorially or allow for tax offsets on extraterritorial income. Generally, limitations are imposed by a federal, residence-based, or exclusionary scheme. Certain jurisdictions have sought to address the disparate shortcomings of these three broad schemes by enacting a hybrid scheme that combines elements of two or more of them (Anggia, 2020).

Numbers of jurisdictions levy income taxes on individuals and/or businesses. This taxation schemes differ considerably, and there are no broad general laws. These distinctions raise the possibility of double taxation (where the same income is treated differently in various countries) and tax avoidance (where income is not taxed by any country). Income tax systems can levy taxes on either local or global income (Brosens & Bossuyt, 2020). Generally, when worldwide income is taxable, tax exemptions or deductions for taxes charged to other jurisdictions are given. Credits of this kind are almost always subject to limitations. Financial tax consultants, a subspecialty of both attorneys and accountants, are often used by multinational firms to minimise their global tax liabilities.

It is possible to change or recharacterize taxes under every tax scheme in order to minimise taxes. Often, jurisdictions enact laws governing the transfer of income between generally governed individuals, which are referred to as transfer pricing rules. Taxpayers can attempt to delay income recognition through the use of related parties under residency-based systems. Several states have enacted legislation banning such deferral ("anti-deferral" regimes). Deferral is often expressly approved by certain jurisdictions for various social or other reasons (Ftouhi & Ghardallou, 2020). Frequently, agreements between nations (treaties) aim to decide who is eligible to tax what. The majority of tax treaties have at least a rudimentary framework for resolving conflicts between the states.

The Operations of MNEs Across Borders in the Context of their Tax Obligations

Controlling management across boundaries is critical for multinational corporations (MNCs). Numerous management oversight systems are used to ensure that overseas branches are aligned with company objectives. Numerous research on management control at MNCs have been conducted over the last 25 years, demonstrating the topic's importance. To include a detailed summary of the research area, a systematic analysis of the literature was undertaken, which included 79 publications from scientific journals and summarised different control mechanisms, fundamental hypotheses, and evolution over time. Management regulation and management accounting are designed in response to both internal and external considerations such as culture and business requirements (Stark, 2021). Another factor affecting management power is the interaction between headquarters and branches, as well as incorporation into the host country context. This article classifies contributing forces, addresses the relationships and shortcomings of control systems, and makes recommendations for practise and study, as well as prospective research directions.

The Nature and Effect of Competition Referred to Above

"A great wind is blowing," Catherine the Great is supposed to have said. Corporate tax reform is gaining momentum in Washington. However, while there is strong bipartisan acceptance that tax rates can be lowered, there is less agreement on the appropriate tax rate, how to finance a tax cut, and how to handle foreign business profits in general. Both factors are inextricably linked and the United States values its companies based on their global revenue (Rosenzweig, 2020).

Apart from having the highest top marginal tax rate in the developing world, the US tax regime is particularly burdensome when it comes to foreign business profits. It imposes enormous enforcement costs, causes vast distortions in economic growth, discourages corporations from locating their headquarters in the United States, grants tax breaks to politically connected businesses, and offshores massive quantities of Our corporate income. To add insult to injury, the scheme generates a meagre stream of tax revenue amid these draconian features. To resolve these systemic shortcomings, recent years have seen a steady stream of tax policy plans from all parties and from a variety of independent advisory boards and agencies (Kemme, Parikh & Steigner, 2020). Though policy proposals differ significantly in their precise requirements, they

both take one of two broad approaches to multinational business income taxation: “global” or “territorial” taxation.

In the worldwide approach, all income received by firms with their headquarters in the United States is taxed, plus income earned overseas. Worldwide schemes offer refunds for taxes charged to international governments to prevent double taxation on the same income base. The global design's overriding goal is to "build equity among resident taxpayers," in order to avoid distorting domestically headquartered corporations' investment decisions against low-tax countries (Navarro, 2020). It is not coincidental that 27 of the 34 members of the OECD have territorial structures, and that any independent government tax advice body has urged Congress to abandon the new global structure in favour of a more streamlined territorial model. Even two of territoriality's most ardent opponents recently stated that "there is something to appreciate" in the House Republicans' draught legislation for a territorial scheme and that "it is worthwhile to follow."

Territorial taxation has been described as "a realistic solution to the realities of a fast-paced, genuinely global economy." Although the scheme is not a magic bullet for reviving the economy and balancing the budget, the benefits come at little to no expense. The distortions caused by trapped wages and the punitive enforcement costs associated with the scheme vastly overshadow any tax issues. As shown by the fact that the United States currently has 43 fewer Global 500 firms than it did in 2005, the productivity of American businesses is eroding. Instead of discouraging businesses from spending overseas, policy should be structured to encourage the free movement of resources back into the United States (Torslov, Wier & Zucman, 2020). Businesses should spend where they will earn the highest return; this benefits American investors, retailers through cheaper costs, and jobs through increased efficiency and correspondingly higher wages. Imposing obstacles to growth abroad inevitably delays domestic growth.

Although some have suggested that territorial taxes would harm the US workforce, infrastructure, and public sector, the evidence presented here suggests the opposite. Territorial taxation, in practise, outperforms global taxation on key indicators, most notably unemployment and corporate tax revenue. These lessons should add to the sense of urgency that corporate tax

reform is generating. A strong wind is blowing, and a well-designed territorial structure can just ease the proverbial pain (Lind, 2021).

(B)

Fleming and farmer Inc. is a company in Canada that manufactures and also installs the system controls related to stations of nuclear powers. They sell it to the government and other organizations all across the world. Thus the latest device is providing a warning of impending tsunamis and earthquakes earthquake along with the shutdown of automatic nature of the operated power stations. Thus the device as a part of the freshly launched system is incepted and installed by FFI which can buy separately for power stations. But the issue raised in the year 2015 and 2016 when they got a lot of orders and the team of investigation HM revenue and customs start the accounting of England factory, that was reformed by the cooperation tax, thus they haven't paid any tax in the year 2017 till 2019. Thus they require a recommendation in sake for the liability of tax on the profits that were made by their factory located in England. Thus the related legal sources for this issue resolving can be:

FATCA will mostly affect non-financial services firms by classifying them as FATCA withholding agents. While some non-financial payments made in the usual course of business are exempt from FATCA withholding and reporting, certain payments made by non-financial services firms which be liable to FATCA withholding and reporting (Lind, 2021). Non-financial services firms will need to re-evaluate their existing information monitoring and withholding practices to see if they are affected by the proposed FATCA regulations. Non-financial services firms who do not make withhold able fees will also be affected and they will be asked to certify their FATCA status by financial institutions where they have deposits.

Certain Non-Financial Groups Caught Up in FATCA

FATCA's expansive definition of "financial institution" is one of its most important features. An FFI may be any non-US party that engages in financial transactions. As a result, multinational corporations of organisations that are not generally called financial institutions within their global community which come under the scope of an FFI under these laws.

An FFI is commonly defined as a non-U.S. organisation that acts as a holding firm, treasury centre, or captive finance company. It can, however, be omitted if it is a member of an excluded

nonfinancial community. The primary goal of this exemption is to exclude from the concept any holding firms, treasury centres, or captive finance companies that are thought to be an unlikely vehicle for a U.S. citizen to hide money (Brooks, 2020). A nonfinancial organisation, for example, is restricted to keeping 25% or less of its assets for the generation of passive income and producing a limited amount of passive income over a period of time. To decide if the exemption applies, the FATCA regulations should be thoroughly examined.

If the associated group includes any private equity firms, venture capital funds, or related investment instruments with an investment plan to purchase or finance companies and treat the interests in those companies as capital assets owned for investment purposes, the excepted nonfinancial group exemption does not apply. These laws were enacted to ensure that financial groups with nonparticipating FFIs or restricted FFIs cannot use holding companies and treasury centres to shield payments from chapter 4 withholding (Lesage, Lips & Vermeiren, 2020). As a result, a holding company founded by a private investment firm to promote its investment structure might be required to comply with FATCA even though the holding company owns only a single nonfinancial operating subsidiary (directly or indirectly).

Additionally, organisations should do an analysis of the overseas pension or insurance programmes that they maintain for their workers. Non-US pension and retirement plans are usually considered FFIs and will be subject to FATCA unless they qualify for an exception under the final legislation or intergovernmental arrangements. However, the rules provide for a small number of provisions (Burnett, 2020). To safeguard employee compensation programmes, companies that administer or sponsor them should ensure that they are either free from or in compliance with applicable laws.

Withhold able Payments to Non- Payees

An organisation that does not provide financial services should decide whether it makes cross-border transfers to non-US companies that are subject to FATCA withholding. Withholdable payments include interest, dividends, premiums on insurance or annuity plans, financial management fees, custodial fees, and bank or trading fees that originate in the United States, as well as gross proceeds from the disposal of securities that may generate United States-sourced dividends or interest (Ho, 2020). The provisions of the FATCA regulations include a general exception for non-financial payments defined as services (including employee compensation

(including stock options), the property usage, equipment and office leases, software licences, transport, transport, cargo, gambling, prizes, scholarships and interest on non-financial accounts payable as a result of acquisition.

Swaps, futures and other non-U.S. counterparties' hedge trades will lead to FATCA. Non-financial services businesses must examine these partnerships more closely to determine if they have to deduct tax and obtain documents from the counterparties to prove their FATCA compliance. When companies with non-financial services decide that some counterparties are non-compliant, they may have to improve and/or enforce withholding and monitoring capability (Airey, 2020).

Interest Payments to Non- Lenders

Borrowers who receive a loan from a non-FATCA compliant international financial institution may be required to delay interest payments in addition to principal repayment. For such types of payments (that is the grandfathered obligations clause), the exception is available; moreover, analyses may be needed to ascertain the degree to which the exception can be used by non-financial services firms and controls may be required to monitor contractual adjustments that may negate the effectiveness of the exclusion (Sokolovska et al., 2020).

Payments of dividends and redemptions of stocks and bonds — Non-financial services firms who serve as their own transfer agents and redeem stock, bonds, or distribute dividends must receive FATCA documents from their shareholders. Non-financial services firms that rent out dividend and redemption distributions to third parties may be exempt from FATCA liability and duty, but the corporation may consider controls and indemnification in the case that the third-party contractor fails to meet its assigned FATCA obligations (Paientko, 2020). And if the agent may be separately responsible for its inability to comply with the FATCA regulations, the nonfinancial service firm is technically liable for any failure of the agent, such as failure to withhold or make a tax payment. At the end, the same fee, interest, or penalty cannot be earned again.

Non-Financial Foreign Entity

Non-financial foreign organisations (NFFEs) on the receiving end should be aware of their FATCA status so that, if necessary, they can give adequate paperwork to their withholding

agents. NFFEs are not necessary to enter into an FFI agreement; however, a withholdable payment made to an NFFE is liable to FATCA withholding until the NFFE is considered as an active NFFE, certifies to the payor that it has no U.S. controlling entities, or provides the payor with the required details about each U.S. controlling entity (Valderrama, 2020). Active NFFEs, such as publicly listed firms, certain start-up businesses, organisations liquidating or arising from bankruptcy, NFFEs engaged in an active exchange or industry, and certain other payees, are normally excluded from FATCA withholding if sufficient FATCA approval is issued under the Swiss IGA. Under the Swiss IGA, NFFEs that do not count as active NFFEs are known as passive NFFEs (Christensen, 2021). A passive NFFE must reveal the U.S. governing persons to a withholding agent, who can use the details to file Form 8966 reports with the IRS.Non-financial services organisations should do a FATCA review to see how the new regulations apply to their payment forms and processes, and if not, what modifications are needed to adhere. The following is a standard FATCA assessment:

- ***Internal entity classification:*** Determine whether the individuals in the affiliated party are U.S. withholding agents under FATCA, FFIs, or NFFEs by classifying them.
- ***Impact assessment:*** Determine the corporate divisions, operating zones, IT processes, and legal records that are affected by FATCA based on the legal entity classification. Onboarding, payroll collection, tax withholding and depositing, as well as regulatory monitoring, are all operational areas that will be affected.
- ***Payee classification:*** To determine paperwork requirements, classify payees and other affected partnerships (e.g. counterparties for derivatives contracts) according to FATCA laws.
- ***Implementation planning:*** Make strategic decisions that would lower FATCA regulatory execution and ongoing costs. To minimise transition costs and market interruption, leverage and modify current Chapter 3 processes and programmes.
- ***Communication:*** Communicate with external and internal stakeholders.
- ***Governance:*** Update procedures, legal, and policies documents.

This appraisal would also enable the organisations to correctly fill out their FATCA status on the forms that their affiliate financial institutions need.

(C)

Comparison between Issue A and Issue B

The issue raised in case A is entirely different in perspective from case B, as in case A it's surrounded by the obligation and practice of international taxation. Comparatively the b case surrounds the recommendations of actions for the action of non-tax pay company FFI. While comparatively case A is wider in nature than case B, as case b covers only a single company case and its dealing which is easy due to the rules and regulations. While case b overs the international forum and multiple issues related to foreign taxes. Thus case a includes many minor and major hence less complicated and extreme complication varied cases. The similarities between both cases are the tax collection and international forums, while the difference is of single and multiple caterings.

Case A has no specific problem, thus it has multiple issues which are all diverse in nature under the heading of international taxation. Whereas in the case of B the whole issue is of 1 single case and its detailing, which makes it very specific to deal. In case A requires the accumulation of data about the concept, rules, and regulations. While, in case b, it requires the recommendation to put into practice, which results in the practical approaches to deal with the issue for having a solution accordingly of rules and regulation. Thus case a require multiple judiciaries as it can tackle many cases under the one heading, while case b requires comparatively minimum judiciary.

The main thing which both have common is the topic of tax on basis of international medium. Thus case a involves the data and case b involves the recommendation for resolving the issue that is a part of international taxation. Thus FFI is a company with huge projects and orders got fail in paying ax by the new factory of England which makes them fall in the category of nontax paying issue. Thus the requirement for resolving the issue requires the details which can be availed through case A that allows the information to which can be put on working for finding a solid solution to the issue.

References

Airey, S. (2020). Taxation Untapped: The Potential of the UN Sustainable Development Goals to Promote Progressive International Tax Reform.

Anggia, P. (2020). The Influence of International Tax Policy on the Indonesian Tax Law. Yuridika, 35(2), 343-362.

Brooks, K. (2020). International Tax: Tax Treaties.

Brosens, L., & Bossuyt, J. (2020). Legitimacy in international tax law-making: Can the OECD remain the guardian of open tax norms?. World Tax Journal: WTJ, 12(2), 3.

Burnett, C. (2020). International tax:" Pillars" of strength or ruins in the making?. Taxation in Australia, 54(7), 365-371.

Christensen, R. C. (2021). Elite professionals in transnational tax governance. Global Networks, 21(2), 265-293.

Ftouhi, K., & Ghardallou, W. (2020). International tax planning techniques: a review of the literature. Journal of Applied Accounting Research.

Ho, D. (2020). Major Overhaul of the International Taxation. INTERNATIONAL TAX JOURNAL.

Kemme, D. M., Parikh, B., & Steigner, T. (2020). Tax morale and international tax evasion. Journal of World Business, 55(3), 101052.

Lesage, D., Lips, W., & Vermeiren, M. (2020). The BRICs and International Tax Governance: The case of automatic exchange of information. New political economy, 25(5), 715-733.

Lind, Y. (2021). The Entitlement to Tax: A critical commentary to the development of the international tax regime. Nordic Journal on Law and Society, 4(01).

Navarro, A. (2020). International Tax Soft Law Instruments: The Futility of the Static v. Dynamic Interpretation Debate. Intertax, 48(10).

Paientko, T. (2020). International Tax Competition and Income Inequality. CENTRAL AND EASTERN EUROPE IN THE CHANGING BUSINESS ENVIRONMENT, 207.

Rosenzweig, A. (2020). Big Data and Small Politics: What Is the Future of International Tax Law?. Jotwell: J. Things We Like, 1.

Sokolovska, A., Zatonatska, T., Stavytskyy, A., Lyulyov, O., & Giedraitis, V. R. (2020). The impact of globalization and international tax competition on tax policies. Research in world economy, 11(4), 1-15.

Stark, J. (2021). Distributive Justice in International Tax Law.

Tørsløv, T. R., Wier, L. S., & Zucman, G. (2020). Externalities in international tax enforcement: Theory and evidence (No. w26899). National Bureau of Economic Research.

Valderrama, I. M. (2020). A New Wind Change in Direct Taxation. German Law Journal, 21(1), 90-95.