Income from Capital and Fiscal Sovereignty: Linking rules as a solution to double non-taxation created by cross-border hybrid financial instruments

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introduction

The increasing mobility of capital flows and cross-border investment evidences the existing asymmetries in the tax treatment of income from capital and major gaps between jurisdictions. This project analyzes specific measures proposed by the OECD and the EU, and already established in some States, against base erosion and profit shifting, and especially those related to avoiding double non-taxation through the use of cross-border hybrid financial instruments.

main structure

Hybrid financing: the problem
Asymmetries and loopholes mainly arise from the different qualification of rights and payments derived from cross-border situations. Analysis from a corporate and tax law comparative perspective.

Fiscal Sovereignty and distribution of taxing rights: the effects
Lower or double non-taxation as consequence. Analysis of the international system of distribution of taxing rights.

Linking rules: a solution?
Concept and purpose. Main consequences regarding business financing and the international distribution of taxing rights. Feasibility and efficiency. Problems derived by the “solution”.

issues & questions

D/NI scheme

EU

No EU

DTC

EU

issues & questions

- Intended deduction?
- Domestic qualification
- Treaty qualification

- Treaty measures
- Parent-Subsidiary Directive
- Single tax principle? Who should win?

- Subordination? Who should lose?
- Unilateral recovery of taxing rights?
- (Un)necessary substance over form criteria?
- (Un)necessary qualification?

- Intended deduction?
- Aggressive tax planning?
- Domestic qualification
- Treaty qualification

- Treaty measures
- Parent-Subsidiary Directive?
- Single tax principle? Who should win?

- Only payments?
- Treaty override?
- Legal meddling?
- Discrimination?
- Double taxation

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