Multinational Enterprises’ Profit Allocation Mechanisms in the Era of Digitalization

Research questions

- Are the current transfer pricing rules and the arm’s length principle outdated?
- How does the digitalization of the economy influence the debate on profit allocation?
- How do the alternate profit allocation mechanisms perform under the selected concepts?
- Is tax policy mostly political after all?

Each mechanism is assessed in view of the following principles

- Ease of administration
- Economic efficiency
- Robustness in preventing abuse
- Certainty
- Simplicity
- Fairness
- Ability to Pay
- Benefit principle

Current rules and challenges in applying the arm’s length principle

The ALP is a legal fiction
- Separate entity approach
- Group synergies

Art. 9 OECD Model Convention
- Background
- Commentary

Practical application
- Accurate delineation
- TP Methods
- Comparability Analysis

Art. 7 OECD MC
- Profit attribution to PEs

Intra Group Transactions
- Intangibles
- Services
- Financing
- Goods
- Commodities

Digitalization and Taxation

Should the digital economy be ring-fenced tax wise?

Evolution of the way of doing business: physical to digital

Outdated concepts: value creation; PE; source principle

Alternative profit allocation mechanisms

Mechanism in line with the ALP
- Modifications to the current ALP

Mechanism not in line with the ALP
- Global Formulary Apportionment

Hybrid mechanisms
- OECD Pillar 1
- UN Art. 12B
- Destination-Based Cash Flow Tax
- EU Directives
- DSTs

Politics and Tax Policy

Cooperation and multilateralism v. unilateralism

Optional (soft law) v. mandatory (hard law) measures

Penalties and tax compliance