

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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Abstract

The ever-increasing value of the space economy underscores the necessity for a rigorous inquiry into the domain of space taxation. The inherent uncertainties and challenges in space activities - arising from the elevated level of technical and engineering expertise involved - underscore the necessity for legal and policy examinations to be reliable and able to provide a high degree of certainty to space companies.

Significant progress has been achieved in developing space law and policy, both at national and international levels. However, a noticeable gap persists in the area of taxation, as evidenced by the limited attention paid in scholarly discussions to the tax implications associated with the commercial space sector. What needs to be added is a comprehensive analysis of the tax challenges associated with business activities in space that starts from general principles and the foundations of international public and tax law. This study aims to address this gap and to establish a framework that encompasses fundamental principles and critical issues related to the international taxation of the commercial space sector.

To achieve the intended objective, the article first provides a concise review of the legal status of outer space and explains its implications for tax purposes. It defines the scope of the notion of “space activities” considered within the study, drawing distinctions from those falling under the purview of the digital economy. The distinction is of utmost relevance from a fiscal perspective. Income arising from digital activities is considered “stateless income”, meaning income that can be originated in any country due to the high mobility of the business models. Conversely, income arising from space activities has to be considered as “extra-territorial income”, intended as income that can potentially arise ‘nowhere’ due to lack of sovereignty in outer space.

Furthermore, the paper delves into the review of the income tax aspects of space commerce, shifting between *lex lata* and *lege ferenda*, and emphasizing the importance of a principled-based analysis. In this context, the paper introduces a potential classification of space income within the traditional categories outlined in domestic legislations and tax treaties. The paper integrates relevant examples from case law related to Article 12 OECD MC, providing practical insights into the application of these provisions. Concluding remarks summarize the key findings and contribute to the evolving discourse on the international tax challenges associated with the developing commercial space industry.