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TAXATION OF INCOME RESULTING FROM SPACE RELATED ACTIVITIES: THE NEED FOR A
CLEAR AND SUSTAINABLE TAX POLICY FOR THE SPACE INDUSTRY

Abstract

(Purpose) The development of the space industry and space related activities (e.g., space tourism; exploration and exploitation of outer space resources; research and development) is sharpening the appetite of private commercial and industrial companies, as well as investors, and raises both important legal and taxation issues. There is, therefore, an immense need to provide the space industry with clear rules for the allocation of a tax jurisdiction and to resolve legal ambiguities around the ownership and management of space resources. Are the current international taxation rules (cf. OECD Model) prepared to face the challenges of outer space economic activity? In details: - could there be a vertical tax sovereignty to be exercised by a Country? - how should the “tax concepts” of permanent establishment and transfer pricing be declined regarding the operation of an enterprise in the outer space? The main purpose of the present paper, therefore, is to: - verify these assumptions in a practical and simple manner; - pointing out (i) what are the sticking point to date and (ii) what are the (many) points still open. (Methodology) The methodology of investigation will be based on the analysis of current: - international tax standards (i.e. OECD Model Tax Convention, the so called Pillar Two Solution proposed by the OECD, BEPS Project) with focus to (i) tax sovereignty (ii) transfer pricing and (iii) permanent establishment; - the jurisprudence to date on the matter at stake (e.g., India). In this regard, the author will consider also certain typical operations of space economy enterprises (e.g. operation of satellites, communication and transmissions in space, outer space commerce) (Conclusions) Besides technical adaptations that need to be made – from a strict legal perspective – on the current version of the OECD Model Convention (for example, from the distinction between air law and space law), there are obstacles that are crucial to overcome such as, e.g. the delimitation of each state’s “vertical” sovereignty or the lack of legal methods for determining outer space “source” or “origin”¹ rules without which no application of the current OECD Model Convention is possible. In particular, the author believes that either the implementation of a new appropriate tax framework or the adaptation of the current OECD Model Convention would likely, firstly, require adapting the so-called ‘Outer Space Treaty’ and particularly its non- appropriation principle. (Keywords) Space Economy, International Taxation, Pillar Two, BEPS, Space Commerce, Space Taxation