

Preface

This volume in the “Series on International Tax Law” includes the master’s theses of the part-time students attending the 2019-2021 class of the postgraduate LL.M. programme in International Tax Law at WU (Vienna University of Economics and Business). The general topic for this year was “Concept and Implementation of CFC legislation”. In the last couple of years, aggressive tax planning leading to tax base erosion has been in the focus of many academic and tax policy related debates. One focal point has been the taxable treatment of controlled foreign companies (CFC) established by resident taxpayers to shift income outside the country of residence and to achieve long-term deferral of taxation. In 1962, the first CFC rules were enacted in the United States in an attempt to effectively address the potential risks of profit shifting through CFCs. Since then, a number of jurisdictions have implemented similar rules. However, the rules have proven to be ineffective. As a result of the OECD/G-20 Base Erosion and Profit Shifting (BEPS) Project as part of Action Plan 3, recommendations were made regarding a more efficient design of domestic CFC rules. At the EU level, agreement with respect to the adoption of CFC rules was reached with Articles 7 and 8 of the anti-tax avoidance directive (ATAD) leading to a more uniform application of these types of rules among the EU Member States. Additionally, the United States has reformed its CFC rules and supplemented them with new and complex rules – the so-called Global Intangible Low Tax Income (GILTI) and the Base Erosion and Anti-Abuse Tax (BEAT). Considering the necessity of a comprehensive analysis of the treatment of CFCs in domestic law, EU law, and tax treaty law as well as general considerations regarding the interplay of the CFC rules with various other sets of rules and concepts, this volume intends to provide academic insights and an in-depth assessment of the specific aspects related to this topic. In particular, it analyses different approaches to successfully address base erosion and profit shifting through the use of CFC legislation and provides practical guidance for the effective implementation and application of CFC rules.

In the beginning, the reader is provided a general overview on CFC rules comprising the historical background and the policy considerations for implementing CFC legislation as well as different CFC approaches adopted in domestic legislations. Hence, this part focuses on the evolution and the development of CFC legislation and the various mechanisms that may be adopted in the application of the rules.

Subsequently, the second part is devoted to the criteria that is relevant for the effective designing of CFC rules with several chapters geared towards discussing the recommendations of the report on BEPS Action 3 and country specific CFC legislations. Thus, the reader is taken through the developments that have come about as a result of the BEPS Project, particularly concentrating on the definitions of foreign base company, control, CFC income, and the various exemptions and

threshold requirements that may be adopted, among others, to reduce the administrative burden and compliance costs in the application of the rules. Furthermore, several chapters are dedicated to specific issues such as the computation of CFC income and the avoidance of double taxation of CFC income.

Moving ahead, the reader is presented with several chapters that discuss how CFCs are treated under EU law in the area of direct taxation. In particular, the reader is taken through chapters that deal with how CFCs are considered under Articles 7 and 8 of the ATAD. The chapters address the definition of CFCs, the two suggested approaches to the definition of taxable CFC income, the computation and attribution of CFC income as well as exceptions to the CFC rules under the ATAD. Furthermore, the reader is presented with an overview of how primary law could have an impact on the application of the ATAD provisions that form part of secondary law, especially in light of the jurisprudence of the Court of Justice of the European Union (CJEU) on this topic.

Last, the volume focuses on selected issues related to CFC rules. Inter alia, it discusses the interplay of CFC legislation and tax treaties, it addresses the relationship between CFC rules and general anti-abuse rules, it investigates possible implications of the proposed directive on the Common Consolidated Corporate Tax Base (CCCTB Directive) on CFC rules and it analyses alternative approaches to CFC legislation (such as the Global Anti-Base Erosion proposal of the OECD/G20 or GLOBE). Moreover, the volume comprises an analysis of the interrelationship between CFC rules and transfer pricing legislation as well as the balance between effective CFC rules and compliance burdens.

Without any doubt, the complexity of these topics provided the students with a challenge. Nevertheless, they have succeeded in creating an impressive academic compilation on this topic. It was our pleasure to support them in completing their research endeavours. We thank all of the students for their commitment and congratulate them on their successful graduation. In addition, we would like to express our sincere gratitude to the Linde Publishing House for the opportunity to publish this volume. Having Linde as a partner provides the professional cooperation needed to make a project such as this a success.

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