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Taxation of Companies in Economic and Financial Distress

Why this book?

The European economy has flourished over the last decade. However, in 2020, the COVID-19 pandemic hit the world, forcing many societies to enter a total lockdown. In February 2022, Russia invaded Ukraine. Many European countries still had COVID-19 restrictions in place when their economies were struck by inflation, an energy crisis and high fuel prices. This is the context in which Taxation of Companies in Economic and Financial Distress was written.

This book focuses on the impairment of loans and other commercial receivables, the corporate tax treatment of losses, capital injections, tax deferrals and the liability to pay taxes. The analysis is based on the assumption that changes to what normally applies in the tax system to support companies in distress must be justified with good reasons in order to be legitimate. An example is the ability-to-pay principle. However, the ability-to-pay principle must be balanced with the goal of an efficient and fair tax system.

Against this background, this book examines how current European tax systems deal with companies in distress. It is divided into the following three parts. Part 1 is the General Report, which provides a broad overview and reviews the findings of the national reports. Part 2 contains three Topical Reports, which relate the overarching theme of the book to transfer pricing, VAT and State aid. Part 3 contains the national reports of 16 EU Member States and four non-EU Member States (Russia, Serbia, Ukraine and the United Kingdom). These contributions were written by distinguished European tax experts.

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Visitors' address:

Rietlandpark 301
1019 DW Amsterdam
The Netherlands

Postal address:

P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Telephone: 31-20-554 0100

Email: info@ibfd.org
www.ibfd.org

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Preface

This book contains the proceedings of the Annual Congress of the European Association of Tax Law Professors (EATLP), which took place in Vienna from 16 to 18 June 2022. The general topic of the congress was the “taxation of companies in financial and economic distress”. The book comprises a general report, three topical reports (on the topics of transfer pricing, VAT and State aid) and 20 national reports. The reports are based on a questionnaire that can be found in the Appendix at the end of this book.

The general and national reports follow the structure of the questionnaire. They each begin with an introduction. Thereafter, the following subjects are addressed: (i) impairment of losses and other commercial receivables; (ii) corporate tax treatment of losses; (iii) capital injections; and (iv) tax deferrals and liability of taxes. The congress was held at a time in which the economies of Europe had been heavily influenced by the COVID-19 pandemic. Furthermore, the war in Ukraine had just begun to have an economic effect in terms of inflation, the energy crisis and high fuel prices. Thus, many of the reports mention tax measures in relation to crises.

The project began in 2018 when the topic was brought up at a meeting with the Academic Committee of the EATLP by Daniel Gutmann, the Chairman of the Academic Committee. The topic was originally proposed by Wolfgang Schön. I drafted a proposal for the topic for the Academic Committee meeting in 2019, but the proposal was not perceived as a current topic at that time. However, in 2020, with the onset of the COVID-19 pandemic, it was decided as the congress topic for 2022.

During 2020-2021, I elaborated on the questionnaire. I received great help from a temporary expert group who supported me in the work of creating the questionnaire, consisting of Andres Baes Moreno, Guglielmo Maisto, Sigrid Hemels, Marie Karlsson Tuula, Raymond Luja, Gerard Meussen, Annina H Persson, Wolfgang Schön and Claus Staringer. Their work was crucial for the design of the reports and the content of the congress.

The national and topical reports were written during the autumn of 2021. Collectively, these reports form the core of each EATLP Congress, and, therefore, they are extremely valuable. During the congress itself, many national reporters and some external speakers, namely, Adam Zalasinski, Guglielmo Maisto and Irma Mosquera Valderrama, contributed with valuable input. The 2022 Congress was the first on-site EATLP Congress since the COVID-19 pandemic began. Michel Lang and his team at Vienna

University of Economics and Business hosted the event, making the reunion an extraordinary one.

Thanks a lot to everyone who contributed to the congress and to this book. My sincere thanks go to Daniel Gutmann, who guided me gently but firmly throughout this fantastic journey as a general reporter of an EATLP Congress. Last but not least, I thank Magnus Kristoffersson, who assisted me in the editing process of this book.

Eleonor Kristoffersson

About the Authors

Lukas Aebi – Attorney at Law and Tax Adviser in Zurich (Switzerland).

Violeta Ruiz Almendral – Professor of Tax and Finance Law at the Universidad Carlos III de Madrid (Spain).

Filipe Cerqueira Alves – Tax Law Professor at the Porto Faculty of Law of the Universidade Católica Portuguesa (Portugal).

Arthur Bianco – PhD researcher in Tax Law at the University of Luxembourg (Luxembourg).

Martin Boer – Assistant Professor in Tax Law at the University of Groningen (the Netherlands).

Radim Boháč – Professor of Financial Law and Financial Science at Charles University in Prague (Czechia).

Jane Bolander – Professor of Tax Law at Copenhagen Business School (Denmark).

Jan Bouwman – Professor of Tax Law at Rijksuniversiteit Groningen (the Netherlands).

Linda Brosens – Professor of Tax Law at the University of Antwerp (Belgium).

Karel Brychta – Professor of Tax Law at Brno University of Technology (Czechia).

Giuseppe Corasaniti – Professor of Tax Law at the University of Brescia (Italy).

Eva Cordero González – Professor of Tax and Finance Law at the Universidad de Oviedo (Spain).

Gilles Dedeurwaerder – Associate Professor of Tax Law at the University of Toulouse Capitole (France).

Edgar Drozdowski – Assistant Professor at Adam Mickiewicz University (Poland).

Tina Ehrke-Rabel – Professor Dr, Head of the Department of Tax and Fiscal Law, University of Graz (Austria).

Sabine Garroy – Professor of Tax Law at the University of Liege (Belgium).

Danylo Getmantsev – Professor at the Financial Law Department of Taras Shevchenko National University of Kyiv (Ukraine).

Mats Höglund – Associate Professor of Financial Law at Karlstad University (Sweden).

Daniela Hohenwarter-Mayr – Professor of Tax Law at Vienna University (Austria).

Claas-Constantin Hoppe – Research Associate at Max Planck Institute for Tax Law and Public Finance (Germany).

Sabine Kanduth-Kristen – Professor of Business Administration, with a focus on taxation, at the University of Klagenfurt (Austria).

Elena Kilinkarova – Associate Professor at Saint Petersburg University (Russia).

Dániel Máté Kovács – Adjunct Professor of Law in the Fiscal and Financial Law Department, Faculty of Law of Eötvös Loránd University (Hungary).

Eleonor Kristoffersson – Professor of Law, with a focus on tax law, at Örebro University (Sweden).

Marcin Lachowicz – Assistant Professor at University of Warsaw (Poland).

Inge Langhave – Professor of Tax Law at Aarhus University (Denmark).

Fabienne Limacher – Tax Partner, Attorney at Law and Tax Adviser in Zurich (Switzerland).

Raymond Luja – Professor of Comparative Tax Law and Head of the Department of Tax Law at Maastricht University (the Netherlands).

Marianne Malmgrén – Professor of Tax Law at the University of Eastern Finland (Finland).

René Matteotti – Professor of Law at the University of Zurich (Switzerland).

Abhishek Padwalkar – Teaching and Research Associate at the Institute for Austrian and International Tax Law at the Vienna University of Economics and Business (Austria).

Katerina Pantazatou – Associate Professor in Tax Law at the University of Luxembourg (Luxembourg).

Raffaele Petruzzi – Managing Director of the WU Transfer Pricing Center at the Institute for Austrian and International Tax Law, Vienna University of Economics and Business, and Of Counsel at Baker McKenzie (Austria).

Michal Radvan – Associate Professor of Financial Law and Tax Law at the Faculty of Law of Masaryk University (Czechia).

Erik Röder – Professor of Tax Law at the University of Mannheim (Germany).

Andrey Savitsky – Associate Professor at Ural State Law University (Russia).

István Simon – Associate Professor of Law and Head of the Fiscal and Financial Law Department at the Faculty of Law of Eötvös Loránd University (Hungary).

Zsolt Szatmári – Appointed Lecturer at Eötvös Loránd University (Hungary).

Heydon Wardell-Burrus – Researcher at the Centre for Business Taxation at Oxford University (United Kingdom).

Lidija Živković – Teaching Assistant at the Faculty of Law of the University of Belgrade (Serbia).

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The Home of International Taxation

Contact

IBFD Head Office

Tel.: +31-20-554 0100 (GMT+2)

Email: info@ibfd.org

Visitors' Address:

Rietlandpark 301
1019 DW, Amsterdam
The Netherlands

Postal Address:

P.O. Box 20237
1000 HE Amsterdam
The Netherlands

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