



LSE GLOBAL TAX SYMPOSIUM



LSE Global Tax Symposium

Conference Programme

25 October 2019 from 9.00-18.00 pm
London School of Economics — Department of Law
Moot Court Room, New Academic Building, 7th Floor
54 Lincoln's Inn Fields, WC2A 3LJ, London

Mission of the Symposium:

<http://www.lse.ac.uk/law/events/global-tax-symposium/Global-Tax-Symposium>

9.00- 9.30am	Coffee & Registration, Moot Court Room, LSE
9.30-9.40am	Welcome Words : Professor Niamh Moloney, Head of Department LSE Law; Eduardo Baistrocchi, Associate Professor of Law, LSE
9.40-10am	<p data-bbox="395 483 1295 551">Suranjali Tandon, <i>An Analysis of Transfer Pricing Disputes in India</i></p> <p data-bbox="395 584 1295 1122"><u>Abstract:</u> The transfer pricing regime in India, since its inception, has been criticised for pronounced and protracted litigation. In this context, this paper evaluates the transfer pricing regime over the span of a decade (2003-04 to 2013-14) using 6731 case orders. It presents the first evidence of the duration of transfer pricing cases, delineated into pre-ITAT and post-ITAT phases, and compares the performance of the two pre-ITAT forums — the CIT(A) and the DRP. Further, the paper presents evidence on issues such as repeated litigation on identical grounds and remand orders that place companies in cycles of litigation. We find that while the DRP, as an alternative dispute resolution mechanism, may have led to a reduction in case duration in the initial years, this benefit may have now peaked leading to a convergence across forums. Further, we find that often grounds for litigation are similar across years, and therefore joint audits for multiple years may be a superior strategy for transfer pricing cases than the current one.</p>
10-10.30am	<p data-bbox="395 1189 1295 1223">Intercontinental and Interdisciplinary Panel of Discussants</p> <p data-bbox="395 1223 1295 1294">10.00-10.10 am Martin Hearson, Institute of Development Studies, UK 10.10-10.20 am Partho Shome, International Tax Research and Analysis Foundation, India 10.20-10.30 am Pablo Ibañez Colomo, Professor of Competition Law, LSE</p>
10.30-10.50	<p data-bbox="395 1294 1295 1402">Martin Hearson, <i>An Unprecedented Surrender of Fiscal Sovereignty: Arbitration and Sovereignty in the Double Taxation Regime</i></p> <p data-bbox="395 1435 1295 2074"><u>Abstract:</u> The essential character of tax for the state means that sovereignty has historically been seen as a greater constraint to inter-state cooperation over taxation more than other areas of international economic law. Yet in June 2017, 27 states agreed to delegate decision-making power over taxation disputes to panels of third-party arbitrators. The move was a seemingly radical change in states' positions since 1984, when such a proposal was rejected by the OECD as "an unacceptable surrender of sovereignty." Using a historical institutionalist framework, we argue that this shift can be explained by design decisions at a critical juncture decades earlier. States' decision to adopt a sovereignty-preserving model of cooperation in the 1920s ironically made it more difficult to retain sovereignty in a world of capital mobility, thus making arbitration nearly unavoidable by the early 21st century. In tracing this slow-moving incremental process, we offer a refined narrative of the path-dependent evolution of the double taxation treaty system. We also introduce a new typology of sovereignty to illustrate how path-dependent sequences that preserve some types of sovereignty trigger others that erode different dimensions of sovereignty.</p>

10.50-11.10am	<p>Intercontinental and Interdisciplinary Panel Discussion</p> <p>10.50-11.00 am Daisy Ogembo, British Academy Postdoctoral Fellow, Oxford University 11.00-11.10 am Sir John Edward Astley Troup, First Permanent Secretary of the HMRC 11.10-11.20 am Partho Shome, International Tax Research and Analysis Foundation, India</p>
11.10-11.50am	<p>Morning tea & coffee</p>
11.50-12.10	<p>Ian Roxan, <i>Is VAT also a Corporate Tax? Untangling Tax Burdens and Benefits for Companies</i></p> <p><u>Abstract:</u> The economic incidence of corporate income tax has been an open question for many years. Modern attempts to determine it go back to Arnold Harberger's ground-breaking 1962 article. A core principle is that the economic burden of a tax is ultimately borne by individuals, but in the case of the corporate income tax, those individuals will not necessarily be the shareholders of the taxpayer corporations. Much progress has been made in understanding the incidence, but the question is typically framed in terms of an allocation between capital and labour. However, much of the current policy focus is on allocating taxing rights internationally in respect of corporate income in terms of the location of sales, on taxes on sales revenue to fill perceived weaknesses in the corporate income tax, and on cash flow taxes that are said to have a tax base related to consumption. In light of this focus, a discussion of the possible incidence of the corporate income tax on consumption is called for. After all, in principle some of the burden of the tax can be shifted from shareholders to consumers by increasing output prices.</p> <p>One way of approaching this is to look at VAT, which is in principle the consumption tax par excellence. While it is often thought of as a tax purely on consumption, a puzzling line of cases from the European Court of Justice (ECJ) demonstrates that it can be a burden on ordinary corporate VAT taxpayers, notably ones that are part of a multinational group. This article explores this puzzle and goes on to explore more generally how the nature of VAT, and related forms of VAT, throw light on the incidence of corporate income tax in the setting of globalisation.</p>
12.10-12.40pm	<p>Interdisciplinary Panel Discussion</p> <p>12.10-12.20 pm Sam Mitha CBE, former Head of HMRC's Central Tax Policy Group 12.20-12.30 pm Joachim Englisch, Professor of Law, University of Münster, Germany 12.30-12.40 pm Stephen Daly, Lecturer in Corporate Law, Kings College London</p>
12.40-2pm	<p>Lunch – Coopers Restaurant 49 Lincoln's Inn Fields, Holborn, London WC2A 3PF</p>
2-2.20pm	<p>Mitchell Kane, <i>Collecting the Rent: The Global Battle to Capture MNE Profits</i></p> <p><u>Abstract:</u> Multinational enterprises (MNEs) often earn substantial profits, or "economic rents." Often, these MNEs are domiciled in the United States, and the rents derive from ownership of intellectual property. These MNEs have structured their affairs to pay little taxes to countries outside the United States or otherwise to share their</p>

	<p>rents in these countries. Apple and Microsoft, for example, may earn roughly half their profits outside the United States but do not pay significant amounts of taxes to any foreign country. The European Union and other countries have responded to this state of affairs with new tax legislation, antitrust actions, and other policies that have the effect of, and perhaps the intention of, capturing a greater share of MNE rents for their treasuries or citizens. To date, these policies are discussed in separate literatures focused on a particular policy domain (tax, antitrust, and so on). This paper offers the first unified or comparative analysis of the issue. We examine the various policy levers which a nation may employ to claw rents away from a non-resident MNE. We consider tax, anti-trust policy, state-owned enterprises, price regulation, tariffs and other types of trade policies. We discuss the relative merits of each policy, including their economic welfare consequences (nationally and globally) and their effects on the distribution of rents. We also consider the circumstances in which one policy is likely to be superior to others from a national or global perspective.</p>
2.20-2.50	<p>Interdisciplinary Panel Discussion</p> <p>2.20-2.30 pm Yan Xu, Scientia Associate Professor, University of New South Wales, Australia 2.30-2.40 pm Edoardo Traversa, Professor of Law, University of Lovain. 2.40-2.50 pm Emmanuel Voyiakis, Associate Professor of Law, LSE</p>
3.00-3.20pm	<p>Eduardo Baistrocchi, The International Tax Regime and Global Power Shifts</p> <p><u>Abstract:</u> The global economy's center of gravity is shifting. For the first time since the 19th century, Asian economies will be larger than the rest of the world combined by 2020. This paper offers the first historical analysis of the impact of global power shifts and innovation at the technological and financial regulatory levels on the evolution of the international tax regime (ITR) since its emergence in the early 20th century. It shows that the ITR has been evolving along a spiral trajectory correlated to two global power shifts: first, a power shift from the UK to the US in the 1930s and then, an emerging power shift from the West to the East (mainly to China and India) beginning in the early 21st century. The ITR evolutionary pattern has similarities with other global legal systems, including the gold standard (1880-1914), Bretton Woods (1945-1971) and the World Trade Organization (1948-2017). This paper identifies implications of the ITR spiral evolution in new problem areas triggered by technological innovation, such as the taxation of global digital commerce. The theoretical framework rests on the rule-standard spectrum.</p>
3.20-3.50pm	<p>Intercontinental and Interdisciplinary Panel Discussion</p> <p>3.20-3.30 pm Mitchell Kane, Professor of Taxation, New York University 3.30-3.40 pm Andrew Summers, Assistant Professor of Law, LSE 3.40-3.50 pm Suranjali Tandon, Assistant Professor of Economics, National Institute of Public Finance and Policy, India</p>
3.50-4.20pm	<p>coffee & tea break</p>

4.20-4.40pm	<p>Edoardo Traversa, <i>Territoriality, Abuse and Coherence in European Tax Law</i></p> <p><u>Abstract:</u> In EU tax law, territoriality and abuse are closely related concepts. This holds especially true when looking at the case law of the Court of justice dealing with the application of the fundamental freedoms on Member States' tax systems. They both reflect the need to consider the financial interests of the Member States in an internal market where taxation remains largely unharmonized. Therefore, the circulation of taxpayers across tax systems may entail significant financial consequences for them, as for the Member States concerned. Recently, issues of territoriality and abuse have been addressed at the legislative level, in particular in the EU Anti-tax avoidance directive of 2016. This directive, which entered into force in 2019, obliges Member States to adopt a general anti-abuse provision. This means a <i>de facto</i> harmonization of the concept of abuse for corporate taxation but which at the same time creates significant implementation difficulties for EU institutions, Member States and taxpayers. The directive also harmonizes specific anti-avoidance mechanisms in order to prevent base erosion and profit shifting between Member States and towards third countries and to ensure that "profits are taxed [on the territory] where value is created". Its likely result is to strengthen Member States' tax territoriality. The objective of the paper is to present the relationship between territoriality and abuse in European Tax law and to explore whether recent developments could strengthen this relationship, but at the expenses of a certain idea of fully-fledged European tax integration.</p>
4.40pm – 5.10pm	<p>Panel Discussion</p> <p>4.40-4.50 pm Alice Pirlot, Research Fellow, University of Oxford 4.50-5.00 pm Aiden Hepworth, Norton Rose Fulbright LLP 5.00-5.10 pm Werner Haslehner, Professor of Law, University of Luxembourg</p>
5.10-5.30pm 5.30-5.50pm 5.50-6.10 pm	<p>The Future of the International Tax System</p> <p>Michael Lennard, Chief of International Tax Cooperation and Trade, Financing for the Development Office, United Nations</p> <p>Michael Keen, Deputy Director of the IMF's Fiscal Affairs Department, IMF</p> <p>Benjamin Dickinson on behalf of Pascal Saint-Amans, Director, Centre for Tax Policy and Administration, OECD</p>
6.10-6.40pm	Audience Q and A
6.40-6.45pm	Concluding Thoughts – Eduardo Baistrocchi, LSE, and Edoardo Traversa, University of Louvain
8.00pm	Dinner - Bills Restaurant, Holbourn – by invitation only