

FLORIDA TAX REVIEW

Volume 22

2019

Number 3

INTRODUCTION: A TRIBUTE TO MICHAEL K. FRIEL

by

Yariv Brauner

It is a great honor for me to edit this issue of the *Florida Tax Review* in honor of not only one of the greatest educators I have known but also the best human being I have known. I could never reciprocate all that Mike Friel has done for me and my career, and I am sure that his many students and friends share this sentiment. I apologize in advance for my shortage in words, yet I know that Mike will always appreciate academic contributions such as those included in this issue by his students and friends, all of which are original and discuss cutting-edge issues related to tax policy that the world faces at present. I am quite sure Mike will prefer this over lengthy praises, which he greatly deserves.

This issue includes three parts. All three include works exposing different perspectives on the universal struggle of Nation States with the economic and market realities of the twenty-first century when they come to form their tax policies. The first part focuses on the United States, whose international tax regime was dramatically reformed in 2017 with an unprecedented lack of guidance. The 2017 Tax Cut and Jobs Act (TCJA) introduced a potpourri of reforms that struggle to reflect a single coherent set of policy goals. Some of the changes represented dramatic policy volte-face, while others implemented long acknowledged contingency plans that had been discussed and analyzed before. Some seem to reflect international developments, conforming to what may be the new international consensus, while others clearly go against such trends.

The first article, by Christine Ann Davis, is a good example of the conflict between the desire to collect revenue and address other economic policy considerations with the desire to ensure the global competitiveness of U.S. Multinational Enterprises. Davis demonstrates the

gap between the declared purpose of the GILTI rules introduced by the reform and their actual impact, proposing an alternative rule that would better balance the conflicting interests of the United States. The second work, an essay by Melanie McCoskey & Doron Narotzki, demonstrates the undesirable impact of the tax reform on higher education in the United States, contrary to the reform's declared purpose. The third work, an essay by Shay Menuchin, addresses a more general challenge that our tax system faces in the twenty-first century: the abundance of data and our need and ability to utilize such data in the practice of tax law.

The second part includes four works that address some of the hottest topics that the international tax regime (beyond the United States) faces today. The fourth work, an essay by Debora de Souza Correa Talutto, examines the ascent of profit splits in the world of transfer pricing, arguing that modern interpretation of the current norms of international taxation could provide a workable framework for the application of these rules even in the changing circumstances of the twenty-first century. The fifth work, an article by Aitor Navarro, similarly discusses a contemporary challenge to the transfer pricing rules and responds to it with a constructive proposal for reform that permits the continuity of the regime based on its core arm's length standard. The proposal is to introduce simplification of the transfer pricing rules through the enactment of rebuttable presumptions based on predetermined margins or methods in a manner that would be arm's length compliant.

The sixth work, an article by Monica Victor, more critically challenges the current OECD-led international tax regime and contrasts its architecture with that of the trade regime embedded in the WTO agreements, pointing to the fragility of the informal international tax regime. Such fragility is demonstrated by the recent *Argentina-Panama WTO* case, which exposed the weakness of the OECD's harmful tax competition initiative and its inability to ensure efficient tax competition on the one hand and general fairness on the other. The seventh work, an essay by Bertil Wiman, provides a very contemporary example for a new challenge that the international tax regime faces, and that in its most homogeneous "corner"—the European Union. Professor Wiman examines the impact of the so-called Brexit on the direct tax rules in Europe generally and Sweden particularly, providing a concrete example of one narrative of the fragile state of the international tax regime in the beginning of the twenty-first century.

The third part of this issue is dedicated to Latin America and its struggle to operate in an international regime that increasingly distances itself from the traditional values held by policymakers in the

region. The eighth work, and essay by myself, exposes the long held opposition of Latin American states to international tax arbitration, tracing it to the more general “Calvo Doctrine” that opposed any form of foreign intervention, and demonstrates that such a position may not be in the best interests of Latin America at the present. The ninth work, an essay by Luís Eduardo Schoueri and Gustavo Lian Haddad, discusses the potential for a tax treaty between the United States and Brazil, perhaps the most important trade relationship in the world not covered by a tax treaty and certainly the most important for these two states. Their analysis and the history of the conflict among these two states demonstrates the policy distance between them (as a representative of the so-called first and third worlds) that still leaves the international tax regime incomprehensive and fragile. The tenth work, an article by Axel A. Verstraeten, examines international tax policy making in Argentina, another large Latin American economy, and its struggle to adapt its laws to the international standards promoted by the OECD and the dominant western states. The eleventh work, an essay by Hugo Hurtado and Jaime Del Valle, tells the story of Chile, a smaller state but perhaps the most “Western” among Latin American states, establishing tax policies in support of its quest to become the region’s investment hub. The twelfth work, an essay by Alvaro Villegas Aldazosa, provides an historical perspective of a less developed country, telling the story of the taxation of natural resources in Bolivia.

The thirteenth essay, by Andrés Báez Moreno, discusses the growing provision of cross-border services, the taxation of which has proven tricky for the international tax regime, a regime based on the old economy. Professor Báez Moreno analyzes the experience of two major Latin American states attempting to tax such services, demonstrating the incongruity of the current rules with the economic reality they should be able to regulate. And, finally, the fourteenth work, an essay by Andres Bazó, tackles the conflict between the trend to intensify the exchange of taxpayer information in the modern tax world and the realization that such a trend may be harmful to taxpayers’ rights. This conflict enjoys much recent attention in tax scholarship, and this essay is the first to provide a comparative study of the issue from an American (North and South) perspective.

The commitment of the University of Florida’s Graduate Tax Program, led by Professor Friel for over twenty years, to the study of tax law and policy in the Americas, and to the education of students from Latin America has been long-standing and well-known. It is also unique. The compilation of this issue, supported by the Ibero-American

Observatory for International Taxation (OITI), which includes the University of Florida as its northernmost member, is an important demonstration of this commitment. Our goal is to give voice to views beyond those of the traditional economic powers and to support tax policymaking with serious scholarship that is independent from such powers or any other interest groups. This is the legacy of Professor Friel, which, I hope, is well represented by this issue.