

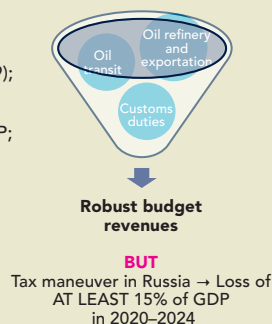
## A TAX LUNCH TALK – A SERIES TO BE CONTINUED

A series of Tax Lunch Talks were held in the previous months bringing together LL.M. students and researchers of the Institute for Austrian and International Tax Law. They covered recent tax developments in Belarus, Romania, Turkey and Italy.

## TAX REFORM IN THE REPUBLIC OF BELARUS

### General information – Oil nightmare?

- › Former soviet country → tax system was established 29 years ago;
- › GDP growth slowdown (1.2% in 2019);
- › Lack of internal financial resources;
- › External state debt – 79% of the GDP;
- › Tax revenues constitute 87.3% of the state budget;
- › Hasn't joined the OECD Inclusive Framework;
- › High dependence on Russia;
- › Advances integration: common Tax Code?



The tax system of Belarus was established quite recently and is subject to constant reforms. The last decade can be characterized by significant changes in tax legislation, including the abolition of several taxes on goods and services and an increase in the standard VAT rate, the introduction of a flat PIT rate (13%) and a CIT rate reduction (to 18%), the implementation of unprecedented tax incentives for the IT sphere and weakening environmental taxation. Following world trends, Belarus introduced VAT on electronic services, tax regulations on ICO and cryptocurrency, a 'main purpose' principle, thin capitalization rules and new transfer pricing rules (as from 2019 onward).

The above-mentioned tax reforms resulted in a reduction in the tax burden (referring to the tax revenue to GDP ratio) from 45.60% in 2005 to 34.75% in 2017 as well as a decrease in tax compliance costs. However, recent research showed that a reduction in the tax burden does not lead to economic growth in Belarus. The current tax system may provide for only a 0.3% increase in budget revenues in 2020, 0.5% in 2021.

The lack of internal financial resources resulted in tax revenues constituting a high proportion, namely 87.3%, of the state budget and a relatively high debt ratio (79% of GDP) in 2019. Dependence on Russian gas and oil, process of advanced integration and finalizing "tax maneuver" in Russia may result in the loss of at least 15% of Belarusian GDP. It requires the tax administration to undertake additional steps in order to provide the state budget with robust revenues and to ensure the achievement of the state's socio-economic goals.

The proposal for a new tax reform in Belarus includes changes to the lists of goods that are taxed at a reduced VAT rate or that are exempt, the introduction of a single property tax based on the cadastral value of property, the implementation of a carbon tax, limitations on benefits for investment and R&D for CIT purposes and the introduction of benefits for expatriates and researchers to prevent "brain drain". However, the measures aligning the Belarusian tax system with the international tax architecture need further development.

**Anastasiya Piakarskaya**  
**Belarus, Full-time 2019/20**

## TRANSFER PRICING IN ROMANIA

### Central tendency of the market:

- › the median of the comparable transactions/companies
- › the average of max 3 – no sufficient comparables

A recent Supreme Court case brought more attention to the transfer pricing legislation in Romania and the way in which some taxpayers are choosing to respond to a presumption of non-compliance assessed by the regulators. Romania, although not an OECD member, follows the OECD Transfer Pricing Guidelines. Domestic transfer pricing rules are contained in a few laws, which are coupled with sanctions in case of non-compliance to the aforementioned laws. Inasmuch as the price or margin of the controlled transaction falls outside the range, the Romanian tax administration will calculate adjustments according to the central tendency of the market, which is considered the median level of the comparable transactions/companies included in the bench- »

# In class

» mark study. If there are no sufficient comparables, a solution is provided for that as well.

Nevertheless, what is the reference point for making an adjustment if the controlled transaction is outside the arm's length range? According to para. 3.62 of the Guidelines, if the comparables are of "relatively equal and high reliability, it could be argued that any point in the range satisfies the arm's length principle". For comparables with defects, as described in para 3.57, measures of central tendency to determine this point (median, the mean, weighted average, etc.), should be used. However, when calculating adjustments to controlled transactions, the Romanian tax authorities rely on a single statistical tool: the median (the second quartile, Q2, of the data set).

Consequently, some taxpayers argued that there was discrimination between them and the ones considered “safe” at the level of the first quartile, Q1. Moreover, one taxpayer

## RECENT DEVELOPMENTS IN TAX IN TURKEY

Turkey introduced some new taxes and many amendments to its tax system at the end of 2019. These new taxes include a digital services tax, an accommodation tax and a valuable (luxury) residence tax.

## New taxes

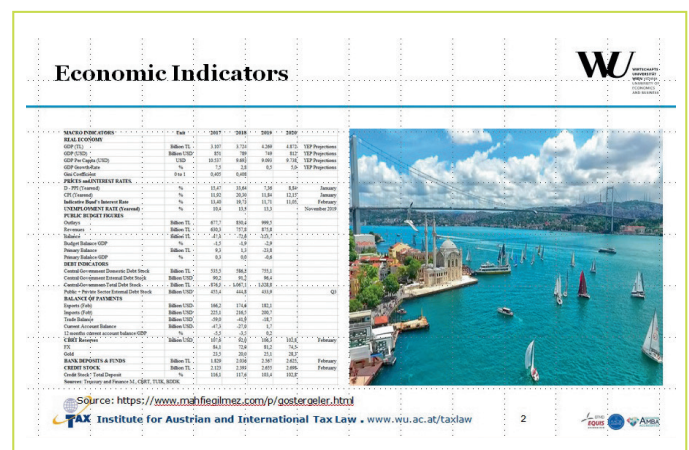
- 1) Digital Services Tax (DST): The first one and one of the most important new taxes is the digital services tax (DST). Turkey followed the same unilateral actions for digital taxation as many other countries. All digital services, such as selling applications, software, music, games, advertising, and digital content, are subject to DST at a rate of 7.5%. This enters into force in April 2020. But only suppliers of services with revenue that exceeds TRY 20 million (approximately EUR 3.1 million) in Turkey or EUR 750 million worldwide will be subject to DST.

2) Accommodation (Hotel etc.) Tax: Accommodation service providers (hotel or housing services) will be subject to a 2% tax, entering into force in April 2020. Other services do not fall within the scope of the accommodation tax, such as pools and restaurants. However, it has been postponed to November 2020 due to Covid-19.

3) Valuable Residence Tax: People who have a house worth more than 5 million Turkish Lira will be subject to a 3% valuable residence tax for the value exceeding this amount. But the rate will change based on progressive tax brackets: TRY 5,000,000-7,500,000, 3 per thousand; TRY 7,500,000-10,000,000, 6 per thousand; TRY 10,000,000 and above, 10 per thousand. On the other hand, the tax-payers who have only one house will be exempted. This tax has been postponed, to take effect in January 2021.

sued the Romanian Government, requesting it to repeal the aforementioned sanctions applicable for non-compliance, as they are supposedly an incomplete transposition of the Guidelines into domestic legislation. The taxpayer, together with the tax advisor, suggested that the discussion should be split into two directions: adjustments made on a sample of reliable comparables, to Q1, as it could be argued that any point in the range could satisfy the ALP (3.62) and adjustments calculated for comparables with defects, using statistical tools as mentioned in 3.57 (mean, weighted average, median, etc). The case is still pending at the Supreme Court and, regardless whether the verdict will be favourable to the taxpayer or not, it started a polemic which should bring a wind of change in the attitude and mentality of the actors playing on the Romanian economic scene.

**Anca Pianoschi, Romania, Part-time 2019/21**



## Amendments to tax laws

The marginal tax rate of individual income tax brackets has been replaced with 40% (35% before) starting for taxable income earned in 2020.

Income taxes of football players: It was 15% for top league players before. After the amendment, now progressive tax rates up to 40% apply.

The e-invoice (archive) threshold has been lowered. B2B transactions exceeding TRY 5,000 and B2C transactions exceeding TRY 30,000 shall be documented via e-invoice. Country-by-Country Reporting (CbCR) requirements in line with BEPS Action 13 have been introduced, to be applied by large companies.

The Automatic Exchange of Information (AEOI) Agreement has been ratified, to enter into effect at the start of 2020.

**Emre Akin, Onur Demirci, both Turkey, Full-time 2019/20**

# In class / Alumni

## THE LATEST GUIDANCE ON THE APPLICATION OF THE ARM'S LENGTH PRINCIPLE IN ITALY

On May 14<sup>th</sup>, 2018, the Italian Ministry of Economy and Finance ("MEF") released the final version of the decree ("Decree") which, following the amended article 110 par. 7 of the Italian Tax Code as modified by the Law Decree n. 50 of April 2017, introduces new transfer pricing ("TP") guidelines in Italy for the correct application of the arm's length principle.

The official text of the Decree is the result of an innovative procedure that started in February 2018 and was promoted by the MEF through a public consultation on the draft version of the above-mentioned Decree. Such public consultation ended on May 8<sup>th</sup>, 2018, with a round table meeting between the Italian Tax Authorities and the major tax players who had submitted many observations and proposals for amendments.

The Decree consists of nine articles that set out certain general and fundamental principles and that provide clarifications on key TP issues, such as the scope of application of the arm's length principle, the criteria for establishing whether transactions are comparable, the TP methods to be used for the evaluation of a controlled transaction, the possibility to apply a combined-transactions approach under cer-

tain circumstances, a definition of "arm's length range", the implementation of the simplified approach for "low-value-adding services", and specific indications with reference to the TP documentation for the purpose of accessing the so-called "penalty protection regime".

The Decree represents a turning point in the action of the Italian legislator aimed at creating a modern domestic TP framework composed by a primary law (article 110(7)) and by a secondary regulation (the Decree), both in line with the latest version of the OECD Transfer Pricing Guidelines, published in July 2017 (and directly mentioned in both the Introduction and Article 9 of the Decree)

Further implementing provisions (e.g. implementing publications or circulars) are expected to be issued by the Italian tax authorities in the coming years, with a focus on a number of areas of uncertainty that still remain (e.g. intercompany financing, cost contribution agreements, the implications of year-end transfer pricing adjustments for indirect tax and customs purposes).

**Beatrice Erbetta, Serena Picariello,**  
**both Italy, Full-time 2019/20**

## THE REUNION OF OUR 2018 AND 2019 GRADUATES – AN AMAZING VIRTUAL PARTY!



Online and fun!

## THE 2020 WU BALL – OUR CURRENT STUDENTS DANCE THE VIENNESE WALTZ AT THE HOFBURG PALACE.



It was January 2020.

## IMPRINT

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# Miscellaneous

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## KAROLINE SPIES – TO BUILD A CENTER OF EXCELLENCE FOR VAT



Starting on 1 July 2020, Karoline Spies will join the Institute for Austrian and International Tax Law at WU as full professor with a special focus on VAT law. Karoline has a long-standing relationship with the WU: After finishing her diploma studies at WU, she joined the Institute as a researcher and successfully

finished her doctoral studies focusing on the free movement of capital in 2014. Subsequently she engaged in a post-doctoral research project on “Permanent establishments in VAT” (habilitation), which was partly third-party funded by the Austrian National Bank (OeNB). During this time, she also was a research fellow at various international universities for a couple of months (e.g. Singapore Management University). In summer 2019, she received a *venia docendi* for tax law by WU. Her main research areas are VAT and EU tax law. In addition, Karoline has also gained practical experience

at Deloitte Austria and is part of the VAT Expert Group of the European Commission. Karoline has also been part of the faculty of the LL.M. Program for a couple of years. She supervised the master theses of the full-time students in 2014 and lectured in classes on EU indirect taxation and on Global VAT/GST trends.

In the years to come, Karoline will strengthen the Institute’s expertise in the field of VAT/GST law: both in research and teaching. In today’s globalized and digitalized world, the field of VAT/GST is subject to fundamental changes, which will significantly increase the need for academic research. Driven by the OECD, international coordination in the area of VAT will gain momentum in the upcoming years. With the support of the other Institute members, Karoline aims at building up a center of excellence for VAT, which contributes to the EU and international debate and adequately prepares students to deal with current and future challenges in VAT.

## GEORG KOFLER – PASSIONATE ABOUT INTERNATIONAL TAXATION, TAX TREATIES AND EU TAX LAW



Professor DDr. Georg Kofler, LL.M. will join the Institute for Austrian and International Tax Law at WU as Professor for International Tax Law on 1 October 2020. Currently a tax professor at the University of Linz, Georg has earned a doctorate in law as well as a

doctorate in business administration in 2002 and 2003, respectively, and an LL.M. in international taxation from New York University in 2004. In 2006, he received his postdoctoral lecturing qualification (“habilitation”) with a thesis on “Double Taxation Conventions and European Community Law”, which was awarded a number of prizes, including IFA’s Mitchell B. Carroll Prize.

He has gained practical experience in the International Department of the Austrian Federal Ministry of Finance (2002-2003, 2009) and as a member of a firm specializing in providing expert opinions and scientific studies in all fields

of taxation. Academically, Georg has worked as an assistant professor at the University of Linz (2001-2006) and as an Acting Assistant Professor of Tax Law at New York University School of Law (2006-2008). More recently, he was a visiting professor at the University of Florida (2013 and 2018), the University of Sydney (2016) and New York University (2019). Passionate about international taxation, tax treaties and EU tax law, Georg enthusiastically looks forward to contributing to the Institute’s excellence in international tax research, teaching, and service. As the Institute is clearly one of the few worldwide “hubs” of international taxation, he will to work at the cutting edge of the field in research, teaching and international collaboration. As international taxation is rapidly evolving in light of new business models, international cooperation, digitalization, and shifts in geopolitical weights, Georg hopes to contribute to these developments and prepare students for the challenges ahead.

## DOCTORAL PROGRAM IN INTERNATIONAL BUSINESS TAXATION (DIBT) RECEIVES DOC.FUNDS OF THE AUSTRIAN SCIENCE FUND

The Institute is proud to announce that the WU’s Doctoral Program in International Business Taxation (DIBT) is one of only four programs chosen this year to receive the coveted doc. funds of the Austrian Science Fund (FWF), which will provide additional funding for the program for another four years. The DIBT is a highly successful doctoral program, focusing on one of the core research areas of WU, international

taxation. It was launched in 2011 and has since been established as a regular doctoral program at WU, providing high-quality interdisciplinary training for graduates in the field of international taxation, combining the disciplines of public finance, international tax law and cross-border tax management. For more information please see [www.wu.ac.at/dibt](http://www.wu.ac.at/dibt).