

TAX LAW AND POLICY WORKSHOP SPEAKER SERIES

The Global Battle to Capture MNE Profits

This paper explores the various tools available to jurisdictions in their quest to capture MNE rents, including various forms of income and consumption taxation, government purchasing programs, price regulation, antitrust, and common trade instruments such as tariffs or quotas. Although the jurisdictional goal of rent capture might well be constant across the use of this vast array of instruments, the legal regulation of such actions is anything but that. Instead, there would appear to be important fissures in the tapestry of legal regulation. Actions clearly ruled out in certain fields are easily justified in others. This surely reflects in part the autonomous and rather ad hoc development of the various bodies of substantive law that govern the range of potential actions here. Although a range of substantive law (e.g., tax, trade, and antitrust) will frequently apply to the same international transaction, these substantive fiefdoms are often fairly walled off from one another – in practice, in the academy, and in international legal instruments and organizations.



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Mitchell Kane clerked for the Hon. Karen LeCraft Henderson of the U.S. Court of Appeals for the D.C. Circuit and practiced law with the firm of Covington & Burling before joining the faculty at the University of Virginia School of Law. He has held visiting professorships at the University of Pennsylvania, Columbia University, and Harvard

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