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OUTLINE

CARBON CLIMATE CHANGE TAXATION

SEMINAR D | Tuesday, 6 September 2022 | 13.30 – 15.30

Chair
Tatiana Falcão (Brazil)

Panel Members
David Boublil (EU)
David Duff (Canada)
Ian Parry (USA)
Anna Theeuwes (Netherlands)
Kurt Van Dender (OECD)
Marta Villar Ezcurra (Spain)

Secretary
Doris Canen (Brazil)

The environmental cost of doing business, meaning the cost of pollution and waste in the manufacturing process of products, has been largely avoided or undervalued by states and corporates alike. Businesses and MNEs have historically not paid for the pollution they produce, and therefore that price has not been inbuilt into their product's final prices. Companies have ultimately been free-riding on the environment and society has been paying for that price by now being confronted with the adverse effects of climate change.

As these costs now get incorporated into a product's price tag through the imposition of explicit carbon prices – carbon tax or a carbon price through an ETS – corporate entities will be faced with the task of finding the new normal. That is, the price that reflects all the normal costs of development and manufacturing of a product, while also taking into account the environmental costs of production and transport of a good to its final destination. That is going to be the new normal price associated to all products and activities traded globally or locally.

Once society understands that the environmental cost of doing business should be perceived as a necessary cost, just like the cost of labour, raw materials or consumable supplies, there is likely to be less aversion to the imposition of carbon pricing instruments such as an ETS or a carbon tax.

This seminar will deal with some of the most pressing issues in climate change taxation, starting with the question "what is carbon pricing?

There is still no consensus as to what is meant by the term 'carbon pricing'. In a nutshell, there are implicit and explicit carbon prices. Explicit carbon prices are most commonly mandated via a carbon tax or an emissions trading scheme (ETS) while implicit carbon prices require 'calculating the equivalent monetary value per tonne of carbon associated with a given policy instrument'. Implicit carbon taxes will generally relate to the application of fossil fuel taxes and energy taxes.

There is further discussion as to whether a carbon price should consider the tax or price (via an ETS) of carbon and then deduct any fossil fuel subsidies and incentives employed at national level. The fact of the matter is that the use of a wider or narrower scope for the term 'carbon price' will impact the tax rate of the carbon tax adopted at the national level if carbon taxation is the instrument of choice to reflect the carbon price.

Finally, there is considerable debate whether regulatory policies which result in an implicit marginal price on carbon, such as tradeable performance standards, should be included within the definition of carbon pricing.

From a corporate perspective, multinational entities aiming to set environmental, social and governance (ESG) criteria should be aware that an internal carbon price is one of the instruments available to set a clear environmental governance structure.

An internal carbon price is a price that is employed by corporations, organizations, and governments to help guide investment decisions and promote efficiency in business operations. Internal carbon prices can be mandatory (for example, if imposed on local businesses by the government) or voluntary, such as when they are adopted at the company's own initiative as part of its corporate responsibility program. Unlike a carbon tax or an ETS, an internal carbon price may not actually result in a cost if, for example, it is used as a benchmark or screen for financial appraisals. In this context, the panelists will discuss the impact of Dutch District Court (The Hague), No. C/09/571932/HA ZA 19-379 (May 26, 2021) case study and its potential tax and non-tax impacts on third states.

The question that follows is how to bring uniformity in the diverse application of tax and non-tax instruments that ultimately aim to price carbon. The answer to this question touches on some of the most exciting developments in the field of climate change taxation, and include the admission of unilateral Border Carbon Adjustment (BCA) measures (such as the European Union's proposal for a Carbon Border Adjustment Mechanism (CBAM)), the formation of plurilateral climate clubs, and the potential for plurilateral or multilateral adoption of a common carbon price floor.

Each of these instruments of plurilateral or multilateral application have the potential to bring greater cohesion and uniformity in the administration of carbon prices. However, even when administered unilaterally, they may come to have impact on third states, due to the cross-border nature of the transactions in question. Our panel will discuss their interaction with unilateral country measures and explore how each of these measures may develop over time.