

Kluwer International Tax Blog

The Contents of Intertax, Volume 44, Issue 1, 2016

Fred de Hosson (General Editor Intertax and Of Counsel at Baker McKenzie) · Friday, January 22nd, 2016

Volume 44 (2016) Issue 1 contains:

EDITORIAL

Ana Paulo DOURADO, 'May You Live In Interesting Times'

Abstract: In the current global tax good governance context, exchange of information is one condition for the BEPS initiative to be successful. Action 5 (Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance) foresees mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns. Actions 12 (Requiring Taxpayers to Disclose their Aggressive Tax Planning Arrangements) and 13 (Re-examining Transfer Pricing Documentation) are instruments to improved reactions by the tax administrations. The issue is whether, ultimately, it would not have been preferable to continue working on increased international transparency and allow each jurisdiction or group of associated jurisdictions to find the adequate national tax policy for each national concept of tax justice. These are interesting times, times of disorder and trouble. The BEPS initiative, together with the international standards on fiscal transparency, have opened too many doors at once. It will take time to reach a new equilibrium.

ARTICLES

Bastiaan STARINK, 'Source versus Residence State Taxation of Cross-Border Pension Payments: Trouble Shared Is Trouble Halved'

Abstract: The phenomenon of cross-border pension benefits has gained exponential traction in recent decades, the assumed main causes being greater mobility among taxpayers, globalization, the blurring of borders within Europe, and technological advances that have made it relatively easy for people to settle permanently abroad following their retirement. From a tax perspective, one question that is relevant in this context is which country has the right to impose tax on pension benefits following emigration. In this article I will discuss what I believe to be an appropriate allocation of taxing rights for cross-border pension payments.

Renate BUIJZE, 'Approaches towards the Application of Tax Incentives for Cross-Border Philanthropy'

Abstract: Most governments of high income countries stimulate domestic philanthropy. For philanthropy crossing borders, however, governments are less consentient. These varying standpoints are reflected in the tax legislation of countries. In many of the countries concerned, donations to domestic charitable causes are rewarded with a tax incentive. When a donation

crosses borders, however, the tax incentive does not always apply.

This article examines the different approaches governments hold towards the application of tax incentives in cross-border situations and the underlying rationales. Through the analysis of the relevant tax sources, tax jurisdictions are classified into four common models that summarize the spectrum of different approaches governments hold. They vary from jurisdictions that support cross-border donations with a tax incentive to governments that restrict tax incentives to donations within the country and two models that represent the more moderate approaches between these extremes.

Daniel SMIT, 'Timing Issues under Double Tax Treaties: The Dutch Approach'

Abstract: This article explores in more detail some of the timing issues that may arise when a new tax treaty becomes applicable or when there is a relevant change in the factual situation of the taxpayer, both resulting in a shift in the allocation rights of the tax treaty states involved. In both cases, the question is to what extent this change in allocation rights is applicable *ratione temporis*. It is concluded that this question cannot be answered in a general sense. In each situation, it boils down to a case-by-case analysis that must be performed under both international and national law.

Frank P.G. PÖTGENS, Pieter VAN Os, Pierre-Henri DURAND, Anne ROBERT, Aliénor DONY, Matthias SCHEIFELE, Gunther WAGNER, Andrea SILVESTRI, Lucia LANCELLOTTI, Filipe ROMÃO, António CASTRO CALDAS, Paulo PICHEL, Guillermo CANALEJO LASARTE, David LÓPEZ POMBO, Tony BEARE, 'The Compatibility of Exit Tax Legislation Applicable to Corporate Taxpayers in France, Germany, Italy, The Netherlands, Portugal, Spain and The United Kingdom with the EU Freedom of Establishment – Part 1'

Abstract: This three-part article discusses the compatibility of exit tax legislation applicable to corporate taxpayers in France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom with the EU freedom of establishment, especially in the light of the ECJ's landmark National Grid decision. Part 1 scrutinizes whether a company transferring its tax residence or effecting an outbound cross-border conversion has access to Articles 49 and 54 TFEU under the laws of the Member State. It also addresses whether these laws restrict Article 49, and, if so, whether the restriction can be justified and is appropriate to ensure the attainment of its objective. Parts 2 and 3, each to be published in subsequent Intertax issues, review whether the legislation is proportional, address which other transactions the ECJ's exit tax principles apply to, and provide conclusions and recommendations.

Susi Hjorth BAERENTZEN, 'Expansion of the Danish Tonnage Tax Scheme'

Abstract: This article aims to describe the latest developments in the taxation of shipping companies in Denmark. Recent political developments have aimed at expanding the tonnage tax regime, and a bill to do so has been adopted by the Parliament on 21 December 2015. Furthermore, this article encompasses an overview of the current rules for taxation of shipping companies and seafarers in Denmark plus an overall description of other European tonnage tax regimes.

CONGRESS REPORT

Laura ALLEVI, Chiara CELESTI, '10th GREIT Annual Conference on EU BEPS; Fiscal Transparency, Protection of Taxpayer Rights and State Aid and 7th GREIT Summer Course on Tax Evasion, Tax Avoidance & Aggressive Tax Planning'

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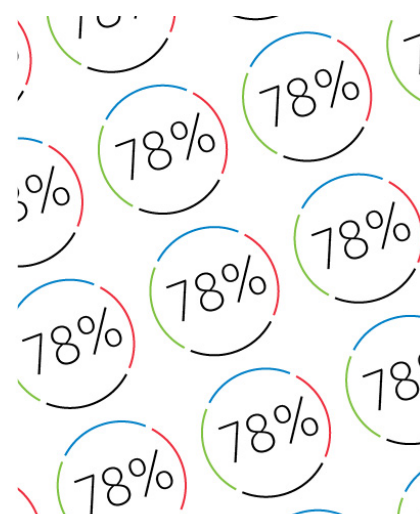
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