

Kluwer International Tax Blog

The Contents of Intertax, Volume 44, Issue 3, 2016

Fred de Hosson (General Editor Intertax and Of Counsel at Baker McKenzie) · Saturday, March 12th, 2016

Volume 44 (2016) Issue 3 contains:

ARTICLES

[José Manuel Calderón CARRERO, Alberto Quintas SEARA, ‘The Concept of ‘Aggressive Tax Planning’ Launched by the OECD and the EU Commission in the BEPS Era: Redefining the Border between Legitimate and Illegitimate Tax Planning’](#)

Abstract: In recent years, the need to prevent and combat aggressive tax planning has played a key role not only in the agendas of international organizations and supranational institutions (OECD, EU, G-20, UN), but also in the agendas of national tax administrations. In this context, given the constraints and problems that result from the traditional model of enforcing tax obligations, the OECD is working towards the implementation of a complementary model of cooperative compliance, which shall be regarded as an instrument to improve voluntary tax compliance and to prevent tax fraud, tax evasion and aggressive tax planning. This piece of work addresses the fuzzy concept of aggressive tax planning in the framework of cooperative compliance programs and assesses how the ‘tax paradigm’ shift that is taking place at the international level (BEPS global tax reset) affects the delineation of the border between legitimate tax planning and tax avoidance, thus raising a number of issues and problems for taxpayers insofar as the redrawing of this thin red line has not been conducted in a globally uniform, transparent and consistent manner.

[Bruno da SILVA, ‘Reconsidering the Application and Interpretation of Anti-treaty Shopping Rules in the Context of Developing Countries’](#)

Abstract: The application and interpretation of tax treaties within the particular context of developing countries is still a largely unexplored area. The proposed idea in this article is to reconsider the application and interpretation of anti-treaty shopping rules considering their impact on Foreign Direct Investment (FDI) and the fundamental need of developing countries to attract investment inflows. This article demonstrates that the most common measures to address treaty shopping create administrative costs, uncertainty and are likely to dissuade FDI. Therefore, tax treaties concluded by developing countries should be fundamentally more concerned with promoting FDI than with preventing abuse and therefore legal certainty should be a priority rather than addressing treaty shopping practices.

[Frank P.G. PÖTGENS, Pieter van OS, Pierre-Henri DURAND, Anne ROBERT, Aliénor DONY, Matthias SCHEIFELE, Gunther WAGNER, Andrea SILVESTRI, Lucia LANCOLLETTI, 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 3‘

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. In part 1, which was published in Intertax volume 44, issue 1, the authors scrutinized 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 addressed 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. Part 2, which was published in the previous Intertax issue, provided a general overview of the proportionality test in connection with exit tax legislation under Articles 49 and 54 TFEU, and subsequently discussed whether the exit tax legislation in France, Germany, Italy and the Netherlands is proportional. Finally, this part 3 reviews whether the exit tax legislation in Portugal, Spain and the United Kingdom is proportional, addresses which other transactions the ECJ’s exit tax principles apply to, and provides conclusions and recommendations.

Parul JAIN, A.K. JAIN, ‘Responsiveness (Buoyancy) of Union Taxes to GDP in India (1990–91 to 2015–16)’

Abstract: Changes in tax receipts of government take place with changes in Gross Domestic Product (GDP). Such changes in tax receipts may be the result of two factors: (1) there may be automatic changes in the tax yield when tax parameters are held constant. Such automatic changes are referred to as elasticity or built-in flexibility. (2) Increasing tax receipts may also necessitate imposition of new taxes, changes in rate structure of existing taxes, expansion of tax base, changes in scheme of exemptions, etc., or briefly referred to as discretionary changes. The overall responsiveness of tax revenues to discretionary changes in tax scheme (including automatic responses) is called responsiveness or buoyancy of the tax system and it is measured as the percentage change in tax receipts over percentage change in GDP.

The tax structure of the Union Government in India is composed of direct and indirect taxes. In terms of tax receipts, direct taxes are mainly composed of corporation tax and income tax while indirect taxes mainly include customs, excise duties and service tax. An analysis of responsiveness (buoyancy) reveals that the overall buoyancy of union taxes has been 1.04. Direct taxes have had a higher buoyancy coefficient. Within direct taxes, corporation tax has exhibited higher buoyancy as compared to income tax. Buoyancy coefficient of indirect taxes has been less than 1.0 and within indirect taxes, buoyancy of excise duties has been lower than that of customs. Service tax has, however, revealed the highest buoyancy coefficient.

Some of the factors responsible for lower buoyancy (responsiveness) of Indian taxes have been relatively slower expansion in base, increase in threshold limits, and large number of exemptions, rebates and deductions under tax laws, reduction in customs and excise duty rates under the impact of New Economic Policy, increasing tax evasion etc. It is high time that tax/GDP ratio in India be considerably raised through improving buoyancy coefficients. This would necessitate considerable expansion in tax base, bringing agricultural incomes under the Central Income tax net, rationalization of tax-preferences/incentives, bringing non-filers in unorganized sectors under the tax net, concentrating on High Net Worth Individuals, checking avoidance and evasion of taxes and improving tax administration. There is also need for introducing ‘accountability’ and switching

over to ‘family’ as the unit of assessment.

Ants SOONE, ‘Exchange of Tax Information and Privacy in Estonia’

Abstract: There is nothing new in exchanging tax information between countries. True, until now it has been occasional and perhaps old fashioned, considering technical possibilities. At the same time a number of countries, incl. Estonia, has taken the position that the automatic exchange of tax information is justified to fight tax evasion and ensure tax compliance. Naturally, the exchange entails questions that need to be addressed. Some of them concentrate on privacy. The aim of this review is to provide insight on whether the automatic exchange of tax information invades the individual’s right to privacy proportionally. There are those who believe the automatic exchange to be the end of banking secrecy, but the change foremost indicates that the exchange of information affects greater number of individuals and is not based on request. Naturally, the question of the nature of the data arises, i.e., is it personal enough to justify exceptional measures to secure the rights of individuals.

BOOK REVIEW:

Luca CERIONI, ‘Book Review: Advanced Issues in International and European Tax Law’

Abstract: Review of the book ‘Advanced Issues in International and European Tax Law’ by Prof. Christiana HJI.

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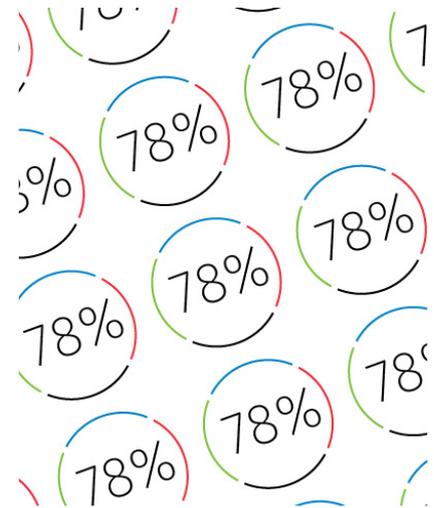
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