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# Kluwer International Tax Blog

## Current Issue of EC Tax Review

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Friday, August 5th, 2016

Volume 25 (2016) issue 3 contains:

### EDITORIAL:

Bruno **PEETERS**, ‘Tax Shifts in EU-Member States: The Growing Impact of (Shifting) Recommendations by the European Commission on National Tax Policy’

### ARTICLES:

Aitor **NAVARRO**, Leopoldo **PARADA**, Paloma **SCHWARZ**, ‘The Proposal for an EU Anti-avoidance Directive: Some Preliminary Thoughts’

*Abstract:* On 28 January 2016, the European Commission made public a package of measures aimed to tackle tax avoidance and abusive practices in the European internal market. The package includes a detailed proposal for a new European Union (EU) Anti-avoidance Directive addressing six main issues: deductibility of interest; exit taxation; switch-over clause; General Anti-avoidance Rule (GAAR); Controlled Foreign Corporation (CFC) rules; and hybrid mismatches. This article provides a critical analysis of the Proposal for a Directive taking into consideration some of the implications of its implementation at stake. The final aim of this work is to contribute some elements that can improve the future debate on these matters.

Ivo Vande **VELDE**, ‘How Does the CJEU’s Case Law on Cross-Border Loss Relief Apply to Cross-Border Mergers and Divisions?’

*Abstract:* The common system of taxation laid down in the Merger Directive does not require Member States to give cross-border loss relief further to a cross-border merger or division, and allows previously deducted permanent establishment losses to be recaptured upon a cross-border restructuring. This article analyses the CJEU’s case law in *A Oy* and *Commission v. UK*, and attempts to define under which circumstances cross-border loss relief can be claimed on the basis of primary EU law. In addition, the author examines which conclusions can be drawn from the recent CJEU judgments in *Nordea Bank* and *Timac Agro* for cross-border mergers and divisions,

i.e., if the recapture rule of Article 10(1) paragraph 2 of the Merger Directive is compatible with Article 49 TFEU.

Saturnina Moreno **GONZALEZ**, ‘The Automatic Exchange of Tax Information and the Protection of Personal Data in the European Union: Reflections on the Latest Jurisprudential and Normative Advances’

*Abstract:* In this article, we examine from the perspective of the fundamental right to protection of personal data, the main problems derived from the generalization of the automatic exchange of tax information and, more specifically, the treatment of this issue in Directive 2011/16 EU on administrative cooperation in the tax area in its original text and after the changes incurred to date to promote the automatic exchange of information at the community level. The study is based mainly on the opinions of the European Data Protection Supervisor (EDPS) and the latest EU Court of Justice’s case law.

Isabella de **GROOT**, ‘The Switch-Over Provision in the Proposal for an Anti-tax Avoidance Directive and Its Compatibility with the EU Treaty Freedoms’

*Abstract:* In this article, the author discusses the switch-over provision for shareholders of low-taxed entities in third countries in the proposal for an Anti-tax Avoidance Directive. She discusses some policy aspects and subsequently assesses whether the measure is in accordance with the EU Treaty Freedoms.

Ilse De **TROYER**, ‘International Cooperation to Avoid Double Taxation in the Field of VAT: Does the Court of Justice Produce a Revolution?’

*Abstract:* The EU Court of Justice recently confirmed that EU Member States have a duty to cooperate to help ensure that Value Added Tax (VAT) is correctly assessed. In the Court’s view, this implies that they have to exchange information whenever a request for information may prove expedient, or even necessary for determining where the VAT is due. This judgment deviates from former case law. It may considerably affect the rights of taxable persons facing a double VAT taxation of their transactions. This article provides an overview of (possible) implications of this judgment.

FORUM:

Martijn **SCHIPPERS**, ‘BEPS and Transfer Pricing but What about VAT and Customs?’

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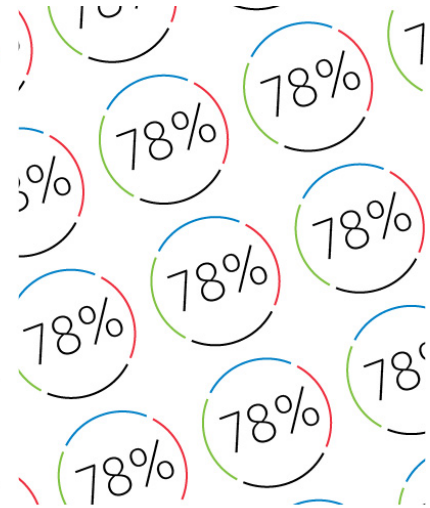
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