

Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 27, Issue 2, 2018

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Monday, May 7th, 2018

We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

Madeleine Merkx, John Gruson, Naomie Verbaan & Bart van der Doef, *Definitive VAT Regime: Stairway to Heaven or Highway to Hell?*

The current VAT system was intended to be a transitional system applying an origin-based taxation system and it is generally found to be complex and susceptible to VAT fraud. The legislative proposals for a definitive VAT system for cross-border trade as announced by the European Commission on 4 October 2017 relies therefore on a radically different method of taxation based on the principle of taxation in the country of destination of the goods. Part of the proposals is four quick fixes intended to simplify various aspects relating to the current VAT system for cross-border trade and the introduction of the Certified Taxable Person status. In this article the authors comment on the individual components of the proposals and address the various questions the proposals raise. It is highly likely that adoption of the proposed measures will lead to a more uniform application of VAT rules and legal certainty for businesses. However, due to various reasons the phenomenon of the Certified Taxable Person will prove to be an important obstacle in achieving the required unanimity in the Economic and Financial Council.

Ilse De Troyer, *Interest on VAT Claims*

It is generally accepted that taxpayers can expect to be entitled to interest in case of late refunds of taxes and that they are expected to pay interest in the case of late payment of their taxes. (European Commission, *Guidelines for a Model for a European Taxpayers' Code* (2016), point 3.3.4.). In practice, the implementation of these principles raises a number of questions, in particular in the field of VAT, where account has to be taken of the particularities of the VAT system.

Cihat Öner, *Is Tax Avoidance the Theory of Everything in Tax Law? A Terminological Analysis of EU Legislation and Case Law*

The primary goal of this article is to analyse the use of the term 'tax avoidance' in the legislative framework and case law of the European Union to point out the absence of a common linguistic approach. The consequences derived from the terminological chaos will also be discussed; thus, the study will try to display how big and deep the problem is by giving special attention to the semantic aspects that cannot, in fact, be ignored anymore. Furthermore, the principles stemming

from the case law will be reviewed, since they are regarded as the outcome of the interpretation of tax avoidance by the judiciary.

Bram Vos, State Aid, Taxation & Transfer Pricing: Illegal Fiscal State Aid Granted to Starbucks?

On 21 October 2015 the European Commission alleged the Netherlands of granting illegal fiscal State aid to Starbucks by misapplying the so-called ‘EU arm’s length principle’ through an Advance Pricing Agreement concluded between the Dutch tax administration and Starbucks. Accordingly, no market based (read: too high) transfer prices would have been adopted by Starbucks, resulting in an assumed reduction of taxable income and thereby also in a reduction of imposed corporate income tax. The Netherlands and Starbucks however disagree with the European Commission’s finding of State aid and applied for annulment of the EU Decision at the General Court.

This article will discuss in what way and to what extent the reasoning of the European Commission in the EU Decision is in conformity with Article 107 TFEU and (the explanation of) the EU arm’s length principle (by the CJEU). The author will elaborate on the factual and fiscal background of the case and provide an assessment of the contested reasoning in the EU Decision. In addition, the issue on the potential existence of an ‘EU arm’s length principle’ will be discussed by the author based on jurisprudence of the CJEU.

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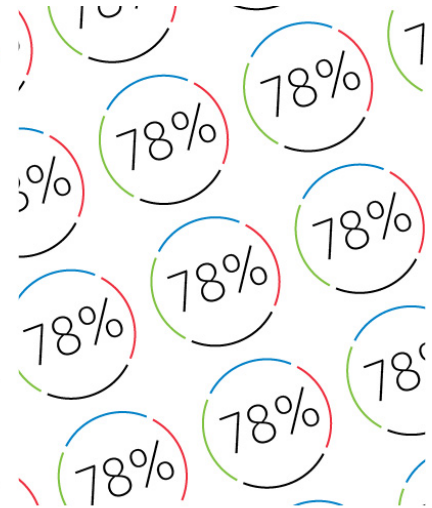
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