

Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 27, Issue 3, 2018

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

Nathalie Wittock, Sales Promotion Techniques and VAT

Sales promotion is often a key component within a company's promotional campaign. Sales promotion consists of the use of a number of sales promotion techniques (SPTs). Although the use of SPTs is common practice, the VAT treatment and consequences of the use of SPTs are uncertain, wherefore this often gives rise to a VAT cost. The article contents how the use of SPTs can be brought (more) in accordance with the principle of neutrality, based on which the VAT should in principle not bear on businesses, but on final consumers only. The article thereby mainly focusses on SPTs whereby a sales promoter himself offers a benefit to a customer as a SPT.

Dennis Weber & Dimitri Koeprijanov, Some Thoughts on 'the Management' of 'Special Investment Funds' Following the Entering into Force of the AIFM Directive

The VAT exemption for management of special investment funds has been a topic of discussion for a long time. In the *Fiscale Eenheid X NV* judgment (9 December 2015, C-595/13), the Court of Justice of the European Union again gave its view on the interpretation of this exemption. The judgment raises many questions and the fact that the dispute relates to a period in which the AIFM Directive had not yet been introduced makes these questions even more complicated. In this contribution, the authors share their thoughts on the consequences of the judgment, the introduction of the AIFM Directive and the current scope of the exemption for management of special investment funds. In particular attention will be paid to the interpretation of the terms 'special investment fund' and 'management'

Erik Ros, EU Citizenship and Direct Taxation 'The European Court of Justice in the Era of Public Decline for a Citizen's Europe'

The Treaty of Maastricht introduced the status of EU citizenship to the nationals of Member States. Central to that status is the right to move and reside freely within the territory of the Member States, in combination with the right to non-discrimination on the ground of nationality. This contribution discusses, amongst others, whether or not the ECJ has been immune for the decline of the enthusiasm for a citizen's Europe as a result of the economic crisis since the late 2000s. The contributions centres on the development of the ECJ's case law on EU citizenship until now and compares it with case law in which the influence of the notion of EU citizenship on the interpretation of the traditional economically based free movement rights on the free movement of persons ('market freedoms') is acknowledged. The contribution also discusses whether the ECJ's changed perspective on the scope of the treaty freedoms for economically active persons is recognized in the ECJ's Schumacker case law.

Blazej Kuzniacki, Implementing the ATAD's CFC Rules by Poland Contrary to EU Primary Law: A Solitary Example or the Beginning of Infamous Trend?

This article demonstrates that after the seemingly incorrect implementation of Articles 7–8 of the ATAD, the Polish CFC rules have become blatantly incompatible with the free movement of capital to the extent of their application to companies from third countries (the Polish black list). This study, moreover, confirms the thesis that the incompatibility of the Polish CFC rules was most likely caused by two elements of the ATAD: (1) minimum level of protection in Article 3; and (2) the option under Article 7(1)(a) which leaves the decision regarding the exemption from taxation of the CFC's income if a CFC is established outside the EU/EEA and carries on a substantive genuine business activity there to Member States themselves. The analysis also reveals that the CJEU appears to consider that the lack of a factual possibility to exchange of tax information can justify the irrefutable presumptions of tax avoidance or tax evasion by reference to the need to ensure effective fiscal supervision only in respect of the relations between the Member States and third countries. Accordingly, not only the ATAD, but also the CJEU's case law trigger a hidden form of protectionism of Member States at the cost of third countries.

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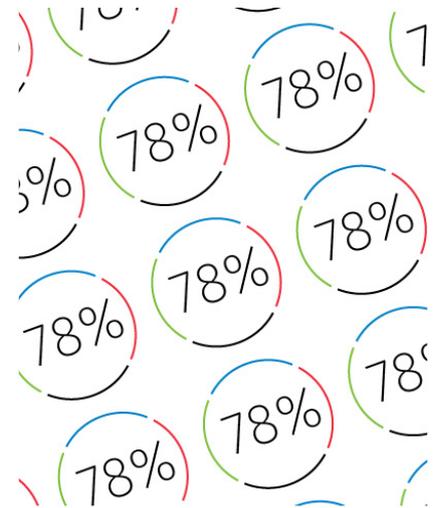
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