Kluwer International Tax Blog

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Ana Paula Dourado (General Editor of Intertax) · Monday, March 25th, 2019

I am happy to inform you that the third issue of 2019 is available and includes, among others, the following contributions:

An editorial by Edoardo Traversa, entitled "Ongoing Tax Reforms at the EU Level: Why Trust Matters", where the author discusses the lack of trust between EU tax administrations, the very slow progress in the negotiations concerning the common consolidated corporate tax base and the move towards a definite of VAT regime, and the sharp contrast with the progress made recently in the very sensitive area of exchange of information.

In his article "Proposal for the Coordinated System of Taxation Applicable to Cross-Border Inheritances and Gifts in the Internal Market", Jan Karol Szczepa?ski focuses on the obstacle of double or multiple taxation of cross-border inheritances and gifts, to the well-functioning internal market. The article sets out to explore the design of a feasible and implementable legislative solution at the EU level that would eliminate international juridical double (multiple) taxation of cross-border inheritances and cross-border gifts in the internal market.

Christina Dimitropoulou, "The Proposed EU Digital Services Tax: An Anti-Protectionist Appraisal Under EU Primary Law" examines the European proposal for a common system of a DST on revenues resulting from the provision of certain digital activities in light of Article 110 of the Treaty on the Functioning of the European Union (TFEU), and evaluates its potential impact on the digital single market. It is argued that as far as the taxation of digital intermediation services are concerned, the DST risks may be regarded as discriminatory internal taxation under Article 110 of the TFEU. Such taxation will have an immediate effect on imported products sold via a digital interface in the market of the Member States and therefore, it risks being considered as having a 'protectionist effect' on domestic traditional products.

Daniel Deák, in "Immigration Surtax as an Emerging Fiscal Hungaricum", discusses the immigration tax that has been introduced in the summer of 2018 in Hungary. The author discusses why and how this tax was introduced and what problems might arise with its application. He claims that the tax will not be operative, that it is not really designed to function. According to Deák, the immigration surtax has been introduced as a means of intimidating citizens that are willing to give humanitarian support for fellow-creatures being in a serious trouble.

Luc Leboef and Alice Pirlot, in "Taxation as a Means of Migration Control: The Case of Hungary", debate and complement Deak's analysis. They show that different types of interactions can arise between taxation and migration policies. Migration leads to tax consequences and, at the

same time, taxation can influence migration. An analysis of the special immigration tax seems to suggest that it is the latest example of a broader policy shift to control migration. Taxation is being used as a means to deal with the aftermath of the so-called 'European migration crisis' of 2015, during which EU Member States struggled to provide a coordinated and efficient response to a sharp increase in the arrival of asylum seekers. Although taxation can be a policy instrument to achieve regulatory objectives, the use of taxation to regulate migration is questionable and may lead to violations of human rights.

Agnès Charpenet, Michael Jaffe, Elliott Murray, Geoffrey Poras, in their "Country note: Implementation of Current Withholding Tax in France: The French Exception is Gone!" discuss the recent French reform on implementation of current withholding tax: France has been virtually the last country to change from its system where payment is made the year after income is earned and the employer is completely eliminated from the tax process. They explain what changes are in store, what happens during the 2018 transition tax year, and some unintended consequences on US taxpayers residing in France.

Ana B. Prósper-Almagro, in her "Country note: Joint and Several Liability as a Measure to Tackle VAT Fraud: The Spanish Perspective" explores the effectiveness of the anti-fraud measure based upon a chain liability from a Spanish perspective.

The "Case law note: The ECJ as a Protector of Tax Optimization via Holding Companies", by B?a?ej Ku?niacki, analyses the saga of the ECJ case law in the Eqiom (C-6/16), Deister Holding/Juhler Holding (C-504/16 & C-613/16) and Hornbach-Baumarkt (C-382/16) cases.

The author demonstrates that the Court is the protector of tax optimization via holding companies that are established within the EU/EEA. Although the analysed conclusions of the ECJ arise from the examination of the compatibility of domestic tax law of Member States in question (France and Germany) with EU primary and secondary law in force before 2016, their relevance goes a way beyond it, in particular to Article 6 of the ATAD and Article 7(1) of the MLI. Once again, the ECJ case law analysed here shows that the fight against tax avoidance must not go beyond its objective. Ultimately, a tax system of the EU should be designed so that the prevention of tax avoidance (proportional anti-tax avoidance measures) should go hand-in-hand with maintaining an attractive business and investment climate (tax exemptions and intelligent incentives). This would significantly stimulate fair competition by creating a level playing field between different stakeholders (taxpayers and Member States).

Marton Varju, in her "Case law note: The Right to VAT Deduction and the ECJ: Towards Neutral and Efficient Taxation in the Single Market?" discusses the right of deduction and the fact that it may undermine the efficient operation of national and, with that, the EU system of turnover taxation. The Member States may be prevented from collecting the revenues due in their national territory or addressing fraud and other abusive conduct that threaten the interests of national and EU public finances. In response to these challenges, the ECJ case law has made considerable efforts to give effect to both the market integration and the tax efficiency objectives of the common system of VAT and reconcile the relevant legal rules. Developments in recent judgments seem to ensure that the concerns of Member States which face severe problems with the efficiency of VAT as a result of widespread practices of fraud may also be taken on board.

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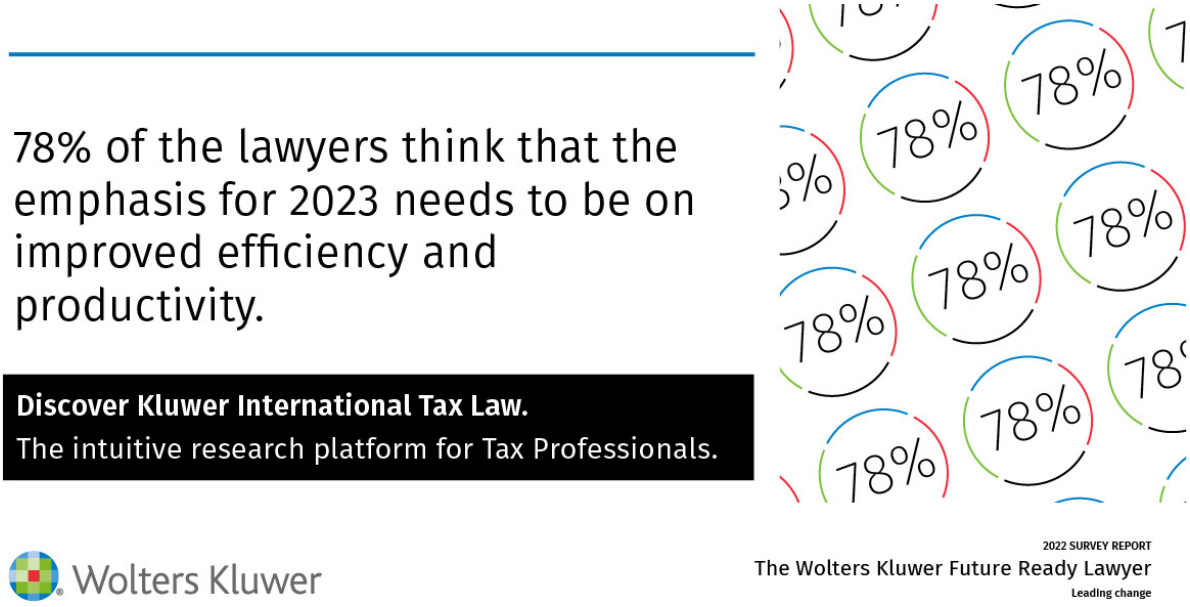

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