

# Kluwer International Tax Blog

## The Contents of EC Tax Review, Volume 29, Issue 6, 2020

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Thursday, December 17th, 2020

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

### **Mart van Hulten, *The Green Deal Consultations: Well-Being Aims and Tax Related Reforms***

On 23 July 2020, the European Commission launched public consultations on two tax related proposals, namely a revision of the Energy Taxation Directive and the creation of a Carbon Border Adjustment Mechanism. These proposals are part of the European Green Deal, a strategy that aims, amongst other things, to put the well-being of citizens at the centre of economic policy. In this article, the well-being aims put forward in the Green Deal are considered in connection with the Commission's tax related proposals in that regard as included in the public consultations of July 2020. It is concluded that, while taking on board well-being aims may be valuable in that it obliges to consider in a broad way what is good for people, the current references to well-being by the Commission in the Green Deal lack clarity and raise a number of important questions. Recommendations are provided, also with respect to the envisaged role of taxation in tackling environmental issues.

### **Balázs Károlyi, *Progressive Turnover-Based Taxes and Their Legal Repercussions Under EU Law***

In recent tax policy trends, the introduction of turnover-based progressive taxes can be observed. However, the structure of these taxes raise various legal concerns under EU law. These taxes can be challenged under both EU State aid rules and the fundamental freedoms. Both the State aid and fundamental freedom questions are swirling around a similar issue: whether the different treatment of undertakings, caused by the progressive rate structure of those taxes, on the grounds of the level of their turnover can be justified by the ability to pay principle. This article will point out the problems of the application of this principle in the field of turnover-based taxation.

In addition, under the fundamental freedoms, it must also be ascertained that the differentiation based on the level of turnover indirectly disadvantages foreign-owned undertakings. In this contribution, the author argues in favour of a stricter indirect discrimination test than the one that

can be currently inferred from the CJEU's case law.

The compatibility of turnover-based business taxes with Article 401 of the VAT Directive has been confirmed by the CJEU, however, such a stance should also be questioned in light of the objective of this provision of the VAT Directive, namely to safeguard the goals of the common VAT system from interference by other domestic taxes.

### **Simon Cornielje & Peter Slegtenhorst, *The Unsettled Business of the Fixed Establishment in EU VAT***

Ever since the change in the place of supply rules in the EU VAT Directive in 2010, the outline of the concept of the fixed establishment in EU Value Added Tax ('EU VAT') has been unclear and cause for confusion. The recent Dong Yang-case, in which the Court of Justice of the European Union ('CJEU') ruled that a subsidiary may well qualify as a fixed establishment for VAT purposes, can be seen to propel this conceptual obscurity to new heights. Based on an analysis of the CJEU's judgment in the Dong Yang-case in light of the Council Implementing Regulation and previous judgments, the authors substantiate in what way the fixed establishment lacks conceptual clarity and thus gives rise to consequences that are directly contrary to its purpose: to prevent jurisdictional disputes between Member States.

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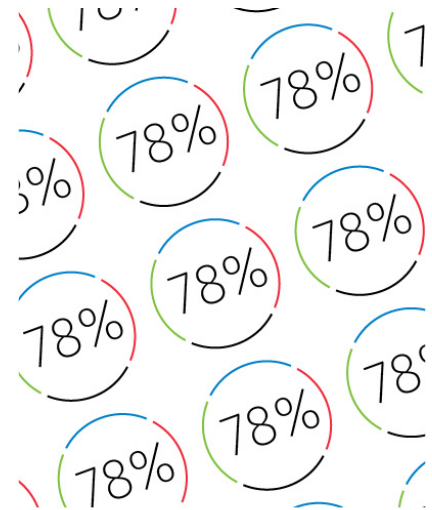
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This entry was posted on Thursday, December 17th, 2020 at 5:42 pm and is filed under [EC Tax Review](#)

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