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# Kluwer International Tax Blog

## The Contents of EC Tax Review, Volume 30, Issue 4, 2021

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Tuesday, July 20th, 2021

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

### **Gabriela Lagos Rodríguez, *Financial Transaction Tax in Europe***

Over the last two decades, the European Union (EU) and various European States have proposed or created several taxes aimed at increasing the overall tax burden to which the financial sector is currently subject. The interest in new taxable events and the need to regulate financial markets' functioning are two powerful reasons that support the application of this type of tax.

This article details both the European Commission's Proposals for Directives on Financial Transaction Tax, and the related taxes currently in force in Europe. Evidence shows that the goal of harmonized taxation in this area is far from being achieved and that national decisions are based on two different models: a tax on the registration of certain transactions and a tax on financial transactions levied on the financial intermediaries involved in such transactions.

This article focuses on the comparative experience of European States in the adoption of this type of tax. This review will highlight the differences and similarities between different national taxes, and ultimately the possibilities of the EU's Financial Transaction Tax Proposal becoming effective.

### **Markus Mittendorfer & Mario Riedl, *The Comparability Analysis of the Court of Justice of the European Union in the Light of the Aures Case***

The comparability analysis plays an important role in the Court of Justice of the European Union (CJEU)'s case law on the fundamental freedoms: if the situations examined are not objectively comparable, a violation of the fundamental freedoms is not possible. However, the CJEU does not follow a clear line in its decisions with regard to the comparability analysis, which makes it difficult to understand the decision-making process. Legal uncertainty is the result. In its last decision, Aures, in which the Court had to deal with a loss utilization rule, it exceptionally denied the comparability of the situations. Due to the increasing significance of losses in international tax law, the authors analyse the different methods of comparability analysis in cross-border loss

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utilization used by the CJEU and highlight the associated problematic areas.

### **Luisa Scarcella, *The Implications of Adopting a European Central Bank Digital Currency: A Tax Policy Perspective***

In the wake of growing interest around cryptocurrencies, the possible issuance by central banks of their own digital currency has been a topic of debate worldwide. However, little attention has been given to the relevancy of electronic and digital payments (including a possible digital euro) in the area of taxation, where policies limiting the use of cash are being intensively adopted all around the world. On one hand, tax policies fostering the use of electronic and digital payments as a Central Bank Digital Currency (CBDC) can help tax authorities to better monitor taxpayers' transactions in the fight against tax evasion and fraud. On the other hand, important concerns arise in the areas of data protection and the digital divide. These two kinds of concern should be taken into account and addressed by policymakers before the adoption of both a CBDC and tax policies favouring its use at the detriment of cash.

### **J.L. van Verseveld, *With the Wisdom of Hindsight***

Assessment of the time at which newly introduced or amended legislation takes effect is difficult. This is due to the possibility that some legal rules apply to situations existing before their entry into force. These rules are in principle retroactively applicable. The CJEU evaluates retroactivity of (tax) legislation based on a distinction between procedural and substantive rules. Procedural rules are held to apply to proceedings pending at the time when they enter into force. Substantive rules are usually interpreted as not applying to situations existing before their entry into force. However, retroactive effect must be given to these rules in so far as it follows clearly from their terms, objectives or general scheme. This is to ensure observance of the principle of legal certainty and the protection of legitimate expectations. Violation of these principles is only allowed on legitimate grounds. This article compiles a framework constituting the general principles of Union law and Article 1 First Protocol European Court of Human Rights. This framework can be used to assess whether legal provisions are applicable before their entry into force. The framework is tested with a case study to the retroactive effect of Title III UCC provisions.

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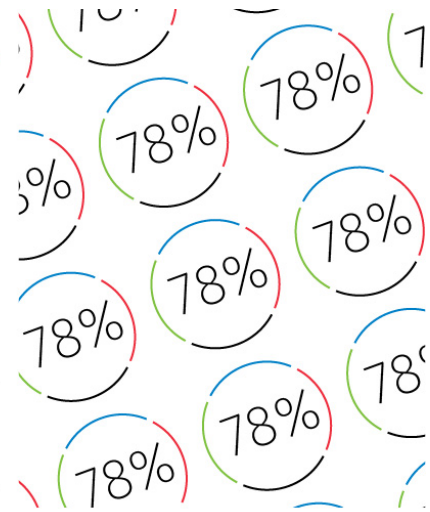
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