
Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 31, Issue 1 (February 2022)

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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:

Han Kogels, Good Intentions and a Call for Higher Speed on the Bumpy Road to Carbon Neutrality

Last year, around this time, the author went into some policy measures proposed by the United Nations Framework Convention on Climate Change (UNFCCC) and the European Commission aimed at limiting the fast increase of the global temperature. In this editorial, the author will try to give a bird's eye view of the continuing efforts to achieve a substantial reduction of emissions in 2030 and carbon neutral world in 2050.

Luc De Broe & Mélanie Massant, The General Court's Judgment in Engie: The Non-application of a National GAAR Confers State Aid

In this article, the authors discuss the unprecedented alternative line of reasoning of the European Commission and the General Court in the Engie-case, according to which the non-application of the Luxembourg General Anti-Abuse Rule ('GAAR') is considered state-aid. Engie had set up a complex intra-group financing structure between Engie-companies located in Luxembourg, which was endorsed by tax rulings issued by the Luxembourg tax authorities. The European Commission found the structure abusive on the basis of the GAAR and decided that the Luxembourg tax authorities had granted state aid to Engie by not applying the GAAR and endorsing the abusive structure in the tax rulings. The General Court agreed. The article starts with an overview of the facts (section 2) and then discusses the decision of the European Commission (section 3) and the judgement of the General Court (section 4), focusing on the alternative line of reasoning, i.e., the non-application of the GAAR. In the last section some observations are made on the General Court's judgement.

Šime Jozipovi?, Marko Perkuši? & Stjepan Gadžo, *Tax Compliance in the Era of Cryptocurrencies and CBDCs: The End of the Right to Privacy or No Reason for Concern?*

The new European regulatory framework for crypto-assets contains strict reporting requirements for EU-based crypto service providers, which will give tax authorities and law enforcement agencies better insights into a significant segment of the cryptoasset space. The article first outlines how this will inevitably lead to the creation of a parallel crypto-asset market focused on offline wallets and peer-to-peer services outside the supervision of EU and national tax authorities. The article then highlights the important role that the so-called Central Bank Digital Currencies (CBDCs) will play in this environment. The differences between CBDCs and crypto-assets are examined from a tax assessment perspective in order to show that true anonymity is considerably less of an issue with (price stable) CBDCs than with (volatile) crypto-assets. The authors argue that a truly anonymous digital euro wallet for small transactions on the consumer side could not only allow the effective monitoring of businesses, but would actually increase tax compliance. If consumers have access to an anonymous cash-equivalent digital means of payment, they will be less likely to use cash or virtual currency. This in turn will cause a significant increase in available transaction data, while simultaneously granting a much better protection of taxpayers' rights to privacy in the EU.

Cees Peters, *Critical Analysis of the General Court's 'EU Arm's Length Tool': Beware of the Reflexivity of Transfer Pricing Law!*

The 'EU arm's length principle' gradually evolved into an 'EU arm's length tool' in the Starbucks, Fiat, Apple, and Amazon judgments of the General Court of the European Union ('GC'). This contribution analyses in detail why a 'principle' progressed into a 'tool' in these judgments. For this matter, it considers the arm's length standard from the point of view of the regulation strategy of states (i.e., a reflexive regulation strategy) to govern the taxation of multinational companies. The author maintains that the regulatory design of the arm's length standard entails a choice for 'reflexive transfer pricing law' and subsequently relies on that perspective for analysing the judgments of the GC. This angle meticulously illustrates that the abuse of discretionary powers by the tax authorities in the process of monitoring the residual profit allocation of the taxpayer constitutes the relevant state aid problem. The contribution concludes that the GC eventually devised a rather toothless 'tool' that does not properly address this issue. At the same time, it also concludes that it should be relatively straightforward for the Court of Justice EU to finetune the 'EU arm's length tool' in order to establish an effective and foreseeable reconciliation of EU state aid law and transfer pricing law. For this matter, the contribution puts forward a concrete recommendation.

Christiana HJI Panayi, *Brexit and Corporate Taxation: New Perspectives*

This article examines some of the salient legal features of the new post-Brexit relationship between the UK and the EU with the focus on corporate taxation. It reviews the status of EU corporate tax legislation in UK law at the time of writing, as well as the soft law obligations that have been agreed. The author questions whether the overall set up has the potential to generate more tax competition between the EU and the UK, rather than less, and whether the EU's impending

implementation of the OECD/G20's Pillar Two will exacerbate this.

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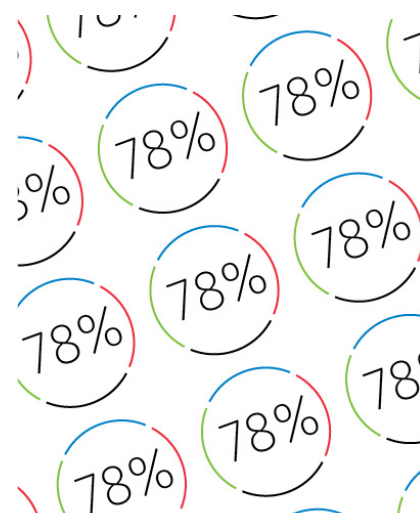
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