Kluwer International Tax Blog

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Ana Paula Dourado (General Editor of Intertax) · Monday, April 4th, 2022

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

Stefanie Geringer, The EU's Uncoordinated Approach to Tax Avoidance and Tax Abuse in Relation to 'Uncooperative' Tax Jurisdictions

The European Union (EU)'s external tax policies in relation to 'uncooperative' tax jurisdictions are predominantly shaped by the case law of the Court of Justice of the European Union (CJEU), the Member States' domestic tax laws and, most recently, the EU list of non-cooperative jurisdictions for tax purposes (EU blacklist). Research in academia scholarship has assessed the EU blacklist from various angles. The objective of this article is to contribute to this discussion by contextualizing the EU blacklist with the relevant CJEU case law on anti-avoidance and antiabuse provisions applied in third country situations. Beyond an assessment from a doctrinal perspective, particular emphasis is placed on related tax policy issues. This combined evaluation yields three primary conclusions: the EU blacklist's soft law character allows the Member States to continue to take advantage of type-casted and irrebuttable anti-avoidance and anti-abuse provisions in light of the CJEU case law; the EU blacklist's inability to meet its initial objectives can be explained by political dynamics at the EU level; and the EU blacklist might relieve some of the currently manifesting symptoms without addressing the fundamental flaws in the international tax system.

María Amparo Grau Ruiz, Smooth Implementation of Carbon Taxation: An Overview of the Main Proposals in the UN Handbook

The design and the administration of carbon taxes must be carefully considered when introducing (or reinforcing) them into fiscal systems. How should the administrative tasks be allocated? Who should be involved? How should regional context situations be approached? How can the stakeholders' voice be heard for addressing the good administration challenge? How can clear guidance be provided and facilitation improved? All of these questions should be answered. Additionally, specific attention must be paid to the interaction with other economic instruments, the possible uses of the obtained revenue, and the critical issue of public acceptability. This article succinctly analyses all of these topics.

Phelippe Toledo Pires de Oliveira, Improving the Relationship Between Tax Authorities and Taxpayers in Brazil

Brazilian tax authorities have traditionally had an adversarial relationship with taxpayers. Recent

initiatives, however, show a paradigm shift that may bring taxpayers and tax authorities together. The country has made increasing efforts to reduce tax-related compliance costs over the past years. Additionally, the Brazilian tax administration has gradually improved the services available to taxpayers and treated them as clients rather than just 'taxpayers'. Moreover, taxpayers have participated in the rulemaking process, notably in respect of tax guidance. The recent implementation of tax settlement agreements may be considered as significantly altering traditional concepts as it broke long-established misconceptions. Other initiatives to further enhance their relationship may be underway, including improving tax rulings and the mutual agreement procedure (MAP), cooperative compliance programs, and arbitration in tax matters.

Ana Dinis & António Martins, Assessing the Corporate Use of Tax Relief Measures in Portugal in the Wake of the Pandemic: A Survey

The covid 19 pandemic has been affecting the social and economic system of every country. In the economic domain, policymakers have used an array of measures to alleviate the financial stress of individuals and firms. A broad strand of literature has discussed the wide range of tax relief measures and their possible effectiveness.

In the corporate sector, one year after the outbreak of the pandemic, it is time to assess how firms took advantage of tax relief measures enacted by governments and to analyse which of those are more appropriate. The purpose of this article is therefore to connect the literature about fiscal policymaking with the effective use of covid 19 relief measures in the corporate sector.

Based on a survey of 200 chartered accountants with comprehensive knowledge of Portuguese firms´ utilization of fiscal measures, the authors present an analysis related to the utilization of tax relief measures in three important areas: the VAT, corporate income tax, and individual income tax. The VAT payment deferral emerges as the most important area for tax relief considering its more immediate impact on cash flows and liquidity. Additionally, respondents were requested to offer their opinions about the economic sectors in which relief measures had a more intensive use.

Roberto Codorniz Leite Pereir, The Brazilian Case Law on the Single Tax Principle: A Case of Tax Treaty Override

This article analyses the recent decision handed down by the Brazilian High Court of Appeals whereby the single tax principle and the abuse of law principle were applied in order to ultimately deny treaty benefits in the context of double tax conventions that provided for neither the entitlement to benefits clause nor the updated terminology of the title and preamble. Accordingly, since both principles could be deemed as general principles of law (therefore, part of the international law) comparable to double taxation conventions (DTC) provisions, lower level courts were allowed to condition treaty benefits to the demonstration that the taxpayer had complied with those principles. Therefore, in the case of potential hybrid mismatches, the absence of double non taxation for treaty benefits entitlement should be demonstrated. This article contends that this precedent must be reviewed. Firstly, the precedent disregards how international rules are created and how DTCs are interpreted. Secondly, it creates legal uncertainty in the context of DTCs. Ultimately, the precedent shall cause hermeneutic override whereby a state overrides a treaty with the pretext of interpreting treaty provisions.

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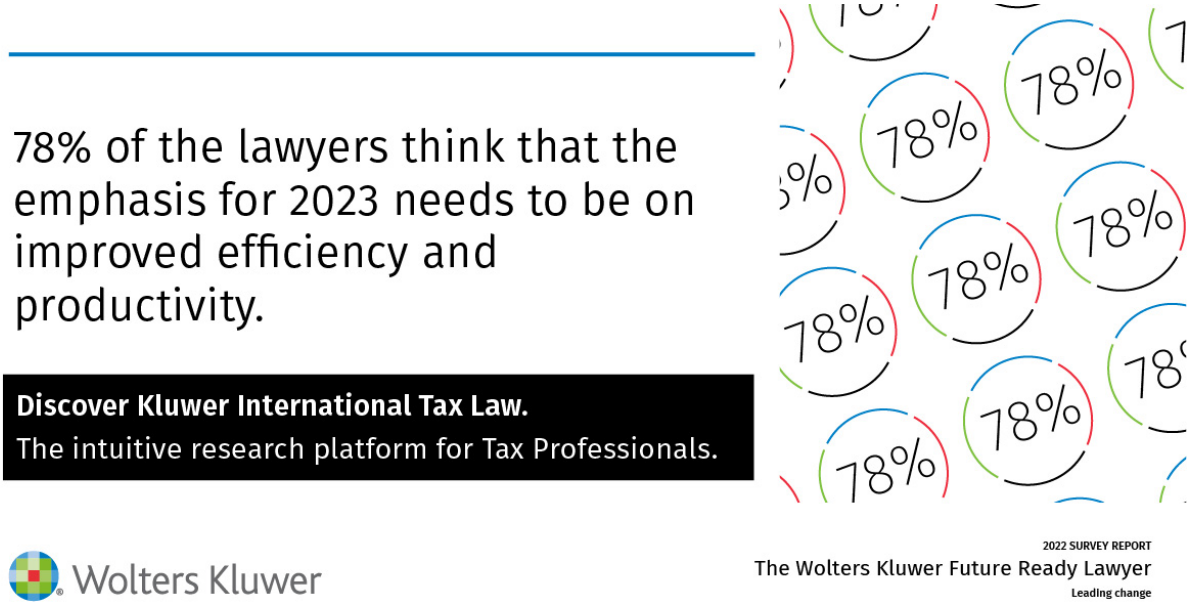

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