

Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 31, Issue 4, 2022

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Tuesday, August 9th, 2022

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

Lily Zechner, Understanding VAT in Three-Party, Platform-Based Business Models: Which Party Is Supplying Which Service?

Three-party business models in which a platform operator intermediates between a supplier providing a service and a customer buying a service have become an important part of our daily lives. For purposes of European Value Added Tax (VAT), each transaction occurring as part of a three-party business model must be attributed to a ‘taxable’ person responsible for the VAT. Generally, suppliers may provide their services for VAT purposes as proprietary traders, undisclosed agents or disclosed agents, with varying VAT consequences. While there is little explicit case law specifying how to identify the two forms of agency, this article provides a framework for a distinction by building upon the case law of the European Court of Justice (ECJ), taking into consideration the economic and commercial reality of each case and placing particular emphasis on the view of the average consumer. To contribute to a more uniform approach in attributing supplies in three-party, platform-based business models, specifically, this article develops indicators for assessing the relevant facts and ascertaining the economic reality of a case. Lastly, this article provides a method for differentiating agents from providers of electronically supplied services under current EU VAT law.

David Hadwick, ‘Behind the One-Way Mirror: Reviewing the Legality of EU Tax Algorithmic Governance’

Tax algorithmic governance has surged from a handful of Member States a decade ago, to a majority of tax administrations in the European Union (EU) integrating artificial intelligence (AI) systems. In light of the ever-increasing volume of tax returns and tax documentation to be processed, the digital transformation of the administration has become an imperative. Yet, cases such as system risico indicatie (SyRI), the toeslagenaffaire and eKasa show that automation poses risks to taxpayers. These cases cast doubts on the secretive nature of the tax administration’s prerogatives and the information and communications technology (ICT) tools used to perform its missions, begging the question of what lies behind the administrations’ one-way mirror. Section 2 presents the current state of use of AI tax systems on the basis of a synthesized literature review of publicly available data, mapping how many and what EU States have integrated AI systems. Section 3 examines compliance of the AI systems identified with the principle of legality. This

research finds that while EU Member States have heavily invested into the integration of AI tax systems, very few have adopted specific norms to mitigate the risks to taxpayers' fundamental rights. As a result, tax algorithmic governance is creating a noticeable gap in the protection of taxpayers' rights.

Madeleine Merckx, Anne Janssen & Maxime Leenders, Platforms, a Convenient Source of Information Under DAC7 and the VAT Directive: A Proposal for More Alignment and Efficiency

From 1 July 2021, platforms must deal with VAT (Value Added Tax) reporting and record-keeping obligations under the VAT Directive. As of 1 January 2023, these platforms will also have to deal with a set of information obligations under the new DAC7 Directive. This article seeks to address the impact of this combined legislation for platforms by analysing the differences and similarities of the legislation and proposing possible improvements for the application of this combined legislation to avoid overlap and create more efficiency and effectiveness of those rules.

Rafa? Lipniewicz, Split Payment Mechanism as a VAT Collection Method: Evidence from Poland

In recent years, there has been a significant increase in the activity of states and international organizations (Organization for Economic Co-operation and Development (OECD), EU) when it comes to solutions that prevent tax frauds and limit tax evasion. The split payment is one of the mechanisms in the field of value added tax. In the European Union, this solution is still used to an extremely limited extent, in only a few Member States. This article analyses the effects of a big-scale implementation of the Split Payment Mechanism in Poland from the perspective of application of tax principles (primarily in the form of reducing the Value Added Tax (VAT) gap) as well as the compliance costs to this model of settling the value added tax. The aim of this article is to ascertain whether the split payment (SP) Mechanism is an effective tool to counteract VAT fraud and whether it can be recommended as a systemic tax solution in the European Union.

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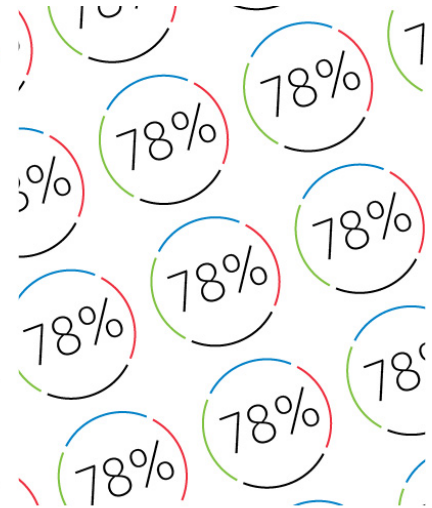
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