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# Kluwer International Tax Blog

## The Contents of EC Tax Review, Volume 31, Issue 6, 2022

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Tuesday, November 1st, 2022

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

### *Isabella Zimmerl, Reaching Cross-Border Tax Certainty With Joint Audits*

The last few years have seen an increasing cooperation between tax authorities of Member States of the European Union by way of joint audits. This article shows how joint audits can provide an efficient solution to double taxation issues faced by internationally active companies. It centres on ways to amend and effectuate existing procedures of international tax law in light of experiences made with joint audits, focusing in particular on potential ways for more cross-border tax certainty. Furthermore, the article illustrates that an effective and legally certain reduction of international double taxation can best be reached by a stronger cooperation of tax authorities and the taxpayer/s. Finally, the author takes a look at recent developments in the field as well as the potential future of joint audits, emphasizing the need for more legally binding solutions.

### *Mart van Hulst & Ton Stevens, Is the Symmetrical Classification Method EU Proof?*

One way to solve classification conflicts involving hybrid entities is for states to apply a so-called symmetrical classification method, whereby a state adopts for its domestic tax purposes the tax classification applied to an entity by another state. The outcome of applying such a method can be that a state classifies foreign entities differently from domestic entities, raising potential issues from an EU law perspective when EU Member States are involved. For instance, in case a cross-border situation leads to more burdensome taxation compared to the domestic situation, a violation of the EU fundamental freedoms can be present, whereas if the classification leads to a lower tax burden for certain enterprises, a violation of EU State aid rules can be the result.

In this article, we assess the conformity with primary EU law of tax classification methods, and especially of the symmetrical classification method. It is concluded that the risk of incompatibility with the EU fundamental freedoms and EU State aid rules should typically be limited when EU Member States align their tax classification rules with those of other states to alleviate risks of double (non-)taxation. Risks can increase, however, for instance if nationality is used as a

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distinguishing criterion, or where under- or overkill occurs.

***María Carro Pitarch, Analysis of the (In)compatibility of Digital Services Taxes With State Aid Rules***

After the recent agreements at a global level, some Member States of the European Union have paused their plans for Digital Services Taxes. However, others have decided to move forward with them as the global political agreement reached, while encouraging, has not been implemented yet. Therefore, it is still relevant to understand the nature of such taxes and, more importantly in the context of the EU, their possible (in)compatibility with state aid rules.

The purpose of this article is to shed light into these measures in a manner that encompasses all possible taxes. To establish the possible incompatibility of the taxes, an analysis is made passing through all the conditions for a measure to be considered as state aid and giving particular importance to the notion of selective advantage, which will be the determining factor if the Court of Justice of the European Union (CJEU) ever must pronounce itself on this matter.

***Florian Haase, Repayment of Capital: A Real Evergreen Under German and EU Tax Law***

The discussion about the tax consequences of a repayment of capital contributions made by corporations has been going on for years in Germany. Today, the issue has been defused, but uncertainties remain for non-EU corporations that make payments to their German shareholders.

***Fabian Barth, CJEU Case Law on Exercising Rights Under EU VAT: Is There a Golden Thread in the Distinction Between Substantive and Formal Conditions?***

Exercising rights under EU Value Added Tax ('VAT') law (for example recovering input tax) is often subject to certain conditions. A distinction however exists between substantive and formal requirements: Non-fulfilment of the latter does not need to be fatal for a taxpayer's claim. That being the case, the question arises how a condition can be classified as either 'substantive' or 'formal'. The author summarizes the case law of the Court of Justice of the European Union ('CJEU') in the area and notes that the Court has so far refrained from providing an all-encompassing test. The article therefore explores whether a golden thread can be identified and analyses if the Court may have had a general principle in mind when labelling conditions as 'formal' in judicial precedent.

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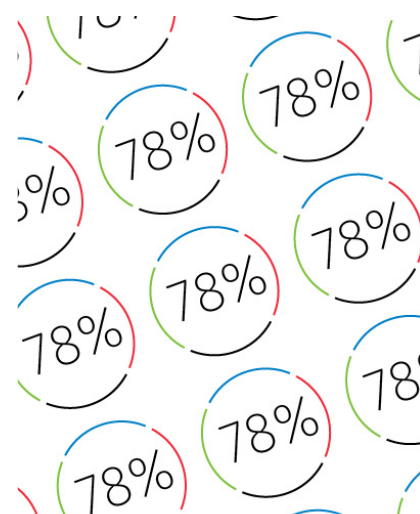
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