

Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 32, Issue 03, 2023

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Wednesday, April 26th, 2023

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

Han Kogels, A Changing World Making the Road to Carbon Neutrality Even More Bumpy

Since the Conference of the Parties (COP) in Glasgow in November 2021 (COP26) the world has changed dramatically. In February 2022, the Russian invasion of Ukraine led to a war that is still going on, and no one knows when and how it will end. This war has also implications for the transition of fossil to non-fossil energy, required to achieve the target of the 2015 Paris Agreement. In this third editorial on the (bumpy) road to carbon neutrality in 2050, I will summarize the recent developments in a bird's eye view.

Ruby Doeleman, In Principle, (Im)possible: Harmonizing an EU Arm's Length Principle

The arm's length principle should maintain a tax-level playing field between multinational groups of taxpayers and standalone enterprises. Despite the fact that all EU Member States implemented an arm's length principle in their domestic transfer pricing rules, differences in the application of the arm's length principle remain. These differences create two challenges for the EU internal market. The first issue is a potentially unjustified restriction of the fundamental freedoms when the arm's length principle is only applied in a cross-border context, thereby impeding the free and competitive allocation of resources within the EU internal market and favouring domestic transactions. The second issue is that EU Member States can use the arm's length principle as a tax competition instrument through transfer pricing rulings that result in reduced tax liability, thereby potentially granting illegal State aid benefits. In light of these threats to the EU internal market, the subsidiarity and proportionality requirements could warrant harmonization of the arm's length principle. However, the fundamental nature of the arm's length principle as an open legal standard would render harmonization efforts less effective than intended.

Katerina Pantazatou, A Never-Ending Battle Between Privacy and Transparency: The Case of Registers of Beneficial Ownership Before the CJEU

This article reviews and critically assesses the recent Grand Chamber judgment of the CJEU on Registers of Beneficial Ownership (RBOs) and the preceding Advocate General's (AG's) Opinion. Throughout this analysis, the author pinpoints at certain misconceptions and ponders on the open questions left. The article focuses on the interaction of the transparency principle with the

fundamental rights of privacy and data protection. It also considers the potential impact of the judgment on ‘tax-related’ data and on fighting money laundering and tax evasion altogether. It finally, discusses the effect the judgment is expected to have on RBOs across the EU, but also on transparency in general.

Jeroen Bijl & en Joël de Vries, VAT and Purchases that Are Also Used by Third Parties

In this article, the authors provide a critical analysis and categorization of the CJEU case law and EU legislation as regards the VAT treatment of the purchase of goods and services by businesses, where third parties (also) benefit from these purchases. EU VAT rules seem to offer two possible outcomes: either full VAT deduction, usually followed by taxing the third party use; or, based on more recent CJEU case law, a restriction of the VAT deduction related to third party use. The authors conclude that, under current EU VAT Directive provisions and CJEU case law, VAT deduction followed by taxation is the main rule. A VAT deduction restriction will only apply in situations where the costs incurred are also used for transactions performed by the third parties, and not for their private use or consumption.

Madeleine Merckx, John Gruson, Naomie Verbaan & Bart van der Doef, VAT in the Digital Age Package: Viva la ViDA or Livin’ la ViDA Loca?

Intro: In this article the authors address the proposals for the VAT in the Digital Age initiative (ViDA) tabled by the European Commission on 8 December 2022. The authors discuss the most important proposed rules on digital real-time reporting based on e-invoicing and on the VAT treatment of the platform economy that will enter into force between 2024 and 2028. This article takes the opportunity to analyse these parts of the proposals before its adoption and subsequent application and proposes possible improvements.

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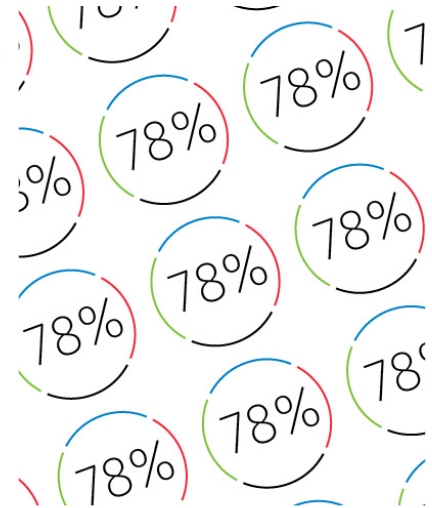
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