

Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 32, Issue 04, 2023

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Monday, July 10th, 2023 · EC Tax Review

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

Axel Cordewener, We Need to Know When Previous Case-Law Has Been ‘Overruled’! – A Plea for More Legal Certainty in EU Tax Law

In its recent judgment in *W AG* the Court of Justice of the European Union (CJEU) fundamentally departed in substance from earlier case-law concerning the treatment of ‘final losses’ incurred by foreign permanent establishments. However, like in other tax cases before, the Court did not clarify that previous decisions (in particular, *Lidl Belgium*) are ‘overruled’ now. This causes unnecessary damage to legal certainty in the area of EU tax law, and the CJEU should reconsider this approach towards ‘overruling’ in future cases. Furthermore, situations of ‘overruling’ also deserve special attention within the framework of the current reform of the preliminary ruling system.

Alessia Tomo, Tax Information, Third Parties and GDPR: Legal Challenges and Hints from the Court of Justice

This paper aims at explaining why the General Data Protection Regulation (GDPR) might play a key role in building a more coherent legal framework intended to face the several legal challenges that are likely to emerge from recent measures adopted at European and national levels regarding the consistent involvement of private third parties in the direct taxation process. These measures, wished-for combat against tax fraud and facing the ‘permanent’ economic crisis, are aimed either to collect and exchange taxpayers’ data from new sources (i.e., at EU level Directive on Administrative Cooperation (DAC6, 7 and 8)) or to facilitate ‘tax just happening’ and pave the way for the implementation of a Tax Administration 3.0 model, as suggested by the OECD’s Forum on Tax Administration (FTA) (e.g., at national level the involvement of digital platforms as withholder or joint liable person). Currently, while the analysis of the involvement of digital platforms in the indirect taxation process is fast growing, less attention is devoted to the potentialities and risks deriving from their involvement as third parties in the direct taxation process. Therefore, starting from a recent judgment of the Court of Justice of the European Union (*SS SIA*, C-175/20) and the stimulating opinion raised by the Advocate General, the present paper contributes to open a debate to fill this literature gap on a topic that is proving crucial from both a scientific and societal perspectives.

Alessio Persiani, DAC7: Some Thoughts on the Different Roles of Platform Operators and the Appropriate Definition of the Scope of Reporting Obligations

As from 2023 the Directive 2021/514/EU adopted on 22 March 2021 (DAC7) require platform operators to comply with due diligence and reporting obligations on the sellers offering goods or services via digital platforms. The article discusses the different roles that the platform operators may play from a business standpoint and reflects on the implications of such different roles for the purpose of appropriately defining the scope of DAC7 reporting obligations. In the author's opinion, such scope should be defined attributing crucial relevance to the income reporting obligation with the platform operators for (accounting and) tax purposes. In this sense, in all cases where the platform operator is already required to disclose the overall consideration paid by the customer in its income tax return the reporting obligations laid under the DAC7 should not apply, as there would not be any risk of tax evasion.

Madeleine Merckx, John Gruson, Naomie Verbaan & Bart van der Doef, VAT in the Digital Age Package: Singling Out the Single VAT Registration

Intro: In this article the authors address the single VAT registration part of the proposals for the VAT in the Digital Age initiative tabled by the European Commission on 8 December 2022. The authors discuss the most important proposed rules that are likely to enter into force in 2024 and 2025. This article takes the opportunity to analyse the proposals before the possible adoption by the Council and the subsequent application and proposes possible improvements.

Pierpaolo Rossi-Maccanico, AG Kokott Tries to Bring Clarity to the Selectivity Test for Individual Tax Rulings

In an opinion of 4 May 2023 in Case C-454/21 P, Engie, Advocate General Kokott proposes a new standard of state aid review of individual tax measures such as the tax rulings, based on a manifestly erroneous application of tax law (favourable to the taxpayer) by the national tax administration. Considering that, in order to assess the selective nature of tax rulings, only national law must constitute the frame of reference and that in any event, only tax rulings that are manifestly erroneous with regard to national law can constitute a selective advantage, Advocate General Kokott has called on the Court to annul the Commission's decision finding that Luxembourg granted the Engie group unlawful state aid in the form of tax advantages, as well as the judgment of the General Court.

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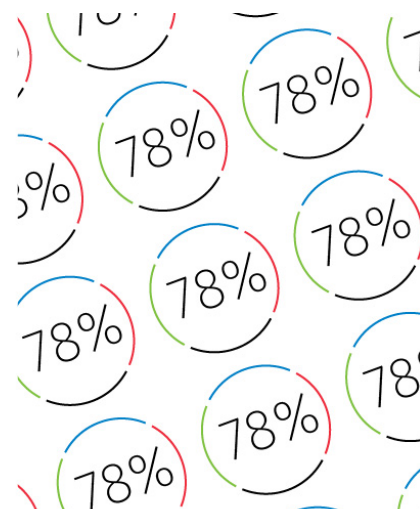
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