

Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 33, Issue 02, 2024

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

Bruno Peeters, European Law Restrictions on Tax Authorities' Use of Artificial Intelligence Systems: Reflections on Some Recent Developments

The article discusses the increasing use of artificial intelligence (AI) by tax authorities in the European Union, the resulting benefits and risks, and the necessity for an appropriate legal framework. Tax administrations employ AI systems for various tasks, from risk detection to legal analysis. While automation offers efficiency, there are also risks, such as violations of fundamental rights and discrimination, illustrated by examples like the Dutch childcare benefits scandal. It deals with two relevant EU regulations, namely the General Data Protection Regulation (GDPR) and the proposed European AI regulation (AI Act), emphasizing the need for more clarity and protection for taxpayers. The GDPR imposes a principled ban on fully automated decisions but allows exceptions if appropriate measures are in place. The AI Act introduces a right to human intervention for high-risk AI systems, but the author argues that the regulations are not clear enough, especially in view of the upcoming 'tax administration 3.0' model of the OECD further reducing human intervention. In short, specific guidelines and regulations are needed to ensure the fundamental rights of taxpayers in an increasingly automated tax environment.

Rhys Bane & Wessel Geursen, The UK and the EU Arbitration Convention after Brexit

On 1 February 2020, the United Kingdom (UK) left the European Union (EU). After a transition period that ended on 31 December 2020, EU law instruments that applied to the UK, generally no longer applied. These legal instruments include directives such as the EU Dispute Resolution Directive. The EU and the UK have taken the position that the same applies to the EU Arbitration Convention, which is an instrument of international law entered into between Member States, but not an instrument of EU law. The authors analyse what the consequences of Brexit were for the EU Arbitration Convention and whether the joint position taken by the European Council and the UK can be supported under EU and international law.

Krzysztof Lasiński-Sulecki, Legal Certainty in Tax and Customs Judgments of the Court of Justice

Legal certainty is one of the general principles of European Union law. It is common to the Member States' constitutional orders. It is of utmost importance in the spheres of tax and customs law where the application of legal rules entails financial consequences. The understanding and significance of this principle have been developed since the early case-law of the Court of Justice. Delineating its precise scope of application reveals certain inconsistencies that are worthy of analysis.

Philippe Gamito, Perspective on the Payment VAT Exemption Following the Decision of the UK Supreme Court in Target

It is well established that the Court of Justice of the European Union (CJEU) has taken a strict approach in construing the payment VAT exemption laid down in Article 135(1)(d) of the VAT Directive 2006/112/EC (VAT directive). After more than twenty years of jurisprudence in this space, the CJEU held in DPAS Limited (Case C-5/17) (DPAS) that an instruction to make a payment, albeit essential, was not enough to satisfy the legal requirements for VAT exemption. The impact of this judgment cannot be overlooked. In the UK, the Supreme Court handed down its judgment in Target Group Limited on 11 October 2023 (Target SC) (Target Group Ltd v. HMRC [2023] UKSC 35) in which it fully endorsed the DPAS doctrine, resulting in a disappointing but widely expected outcome. At its core, it was held that, even if a supplier causes a transfer by sending a binding instruction, such activity does not meet the bar for exemption regardless of whether such causal effect inevitably results, without alteration, in a transfer of funds between the parties. This interpretation represents a landmark shift in interpretation under UK VAT law towards a more restrictive approach. In the author's view, although the conclusion seems sensible as applied to the facts in Target SC, the Supreme Court did not take the opportunity to distinguish mere administrative tasks taking place outside a typical payment supply chain from a payment instruction made by a financial intermediary, thereby putting any type of instruction on equal footing. This contribution considers the judgment in Target SC in detail and examines whether the legal interpretation of the UK Supreme Court aligns with previous judgments of the CJEU.

Jürgen Romstorfer, Recent and Pending Cases at the Court of Justice of the European Union on Direct Taxation: Conference in Vienna 2023: Current Developments and Future Expectations

From 3rd to 5th December 2023 the annual Conference on Recent and Pending cases at the Court of Justice of the European Union on Direct Taxation was held in Vienna. The most important pending and decided cases of the CJEU in the area of direct taxes of the past year were discussed there. A book on the conference will be published by Linde Verlag in spring 2024. This report summarizes the key statements from the concluding session, which traditionally addresses current developments and future expectations of the CJEU. (Chaired by Prof. Georg Kofler, LL.M. (NYU), the discussion was held by Prof. Melchior Wathelet, Richard Lyal and Prof. Eric Kemmeren).

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