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# Kluwer International Tax Blog

## The Contents of EC Tax Review, Volume 33, Issue 03, 2024

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Tuesday, May 28th, 2024

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

*Eric C.C.M. Kemmeren, Contributions to EC Tax Review: ESG and More*

Whereas, a regular editorial deals with a substantive EU tax law topic, this editorial aims at creating more awareness by (potential) authors of EC Tax Review of opportunities for them and what is expected from them.

*Rita de la Feria, Non-(Fully) Harmonized Excise Taxes and Irrebuttable Presumptions*

The global growth of excise taxes as regulatory taxes is arguably one of the most significant taxation developments of the last two decades. Not only their importance in terms of revenue collection may be increasing, reverting a long decline trend of excise taxation, but more importantly, the number of products subject to excise taxes in many EU Member States has also expanded well-beyond the traditional excisable goods. Yet EU tax law has not kept pace with these changes, with potential significant consequences for the functioning of the Internal Market. The aim of this article is to consider the compatibility of excise taxes rules not fully harmonized under the Excise Duties Directive, such as motor vehicle taxes, with EU law. It first argues that, whilst these taxes are not subject to full harmonization, they must nevertheless be compatible with EU primary law, namely Treaty provisions and general principles of EU law. Second, it argues that the Court of Justice case law as regards free movement and the use of irrebuttable presumptions in other non-fully-harmonized taxes, such as income taxes, should apply mutatis mutandis to excise taxes. It concludes that, the use of irrebuttable presumptions in excise taxes not fully harmonized under the Excise Duties Directive, such as motor vehicle registration rules, is contrary to general principles of EU law, and may constitute a restriction to free movement rules.

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***Max Velthoven, The ATAD GAAR: A Little Older, but are We Wiser?***

Article 6 of the EU Anti-Tax Avoidance Directive (ATAD) introduced an EU law obligation for Member States to include a general anti-abuse rule (GAAR) in their corporate tax systems (ATAD GAAR). This article summarizes the findings of a PhD research of the ATAD GAAR. The main conclusion is that the ATAD GAAR codifies the existing general anti-abuse concept of EU law whilst it at the same time expands the reach of this concept to also cover non-harmonized areas of corporate tax. This means that Member States must prevent the abuse of their entire corporate tax systems as if it concerned abuse of EU law. The significant consequences of these changes are analysed, including the timing aspects, taxes in scope, and whether the provision is a minimum standard or full harmonization. This article also analyses the procedural tax aspects of the ATAD GAAR and its impact to the state aid framework. The ATAD GAAR is subsequently criticized with reference to ideas of Karl Popper's *The Open Society*. Finally, the article provides an outlook to the future of the provision.

***Frank Nellen, The Economic Network Doctrine of the CJEU in EU VAT and Customs Law***

In several cases involving irregular importations of goods, the Court of Justice of the EU (CJEU) has addressed the interplay of customs duties and import VAT. According to the Court, the incurrance of a VAT liability on importation depends on whether non- Union goods have entered the economic network of the EU. Moreover, the place of importation is deemed to be the Member State where that entry took place. This study contains a critical assessment of the 'economic network doctrine' of the CJEU. The author concludes that the application of the doctrine is characterized by several inconsistencies. Moreover, the precise meaning of the notion of 'entry of goods into the economic network of the EU' remains opaque. This is also true for the location where such an entry is deemed to take place. Finally, the author argues that the doctrine is superfluous, as statutory EU VAT law contains sufficiently explicit and unequivocal rules on the levy of VAT on importation.

***Kilian Posch, 'Court of Justice of the European Union: Recent VAT Case Law 2024': Conference in Vienna: In Which Direction Does the CJEU Go?***

From 24 to 26 January 2024 the annual Conference on 'Recent VAT Case Law of the Court of Justice of the European Union', organized by the Institute for Austrian and International Tax Law of the Vienna University of Economics and Business, was held in Vienna. There, the most important pending and decided cases of the CJEU in the area of VAT of the past year as well as more general developments like the planned reform to delegate jurisdiction on VAT cases from the CJEU to the General Court (Council of the European Union, Amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, File 15936/ 22, 12 December 2022, [data.consilium.europa.eu/doc/document/ST-15936-2022-INIT/en/pdf](https://data.consilium.europa.eu/doc/document/ST-15936-2022-INIT/en/pdf); European Parliament, Amending the Statute of the Court of Justice of the EU: Reform of the preliminary reference procedure, Briefing 7 February 2024) were discussed by an international group of experts in the field. This report reviews the key statements from its concluding session, which addressed focal trends and developments in European jurisprudence with respect to VAT law (chaired by Prof. Karoline Spies, the discussion was held by Ine Lejeune, Prof. David Hummel, Dr Thomas Ecker

and Prof. Ad van Doesum).

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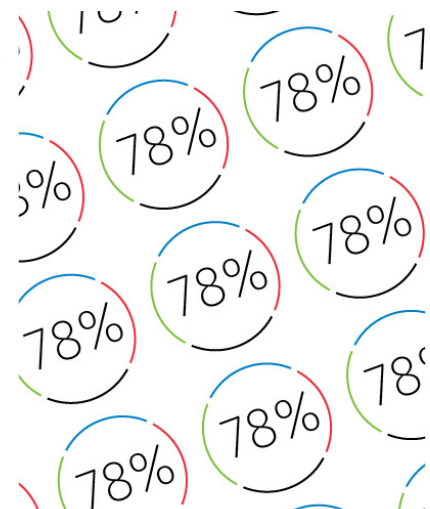
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