

Kluwer International Tax Blog

The Contents of EC Tax Review, Volume 33, Issue 06, 2024

Ben Kiekebeld (General Editor EC Tax Review and tax adviser at Ernst & Young Belastingadviseurs LLP) · Tuesday, February 11th, 2025

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

Axel Cordewener, ‘Windfall Taxes’ under Regulation (EU) 2022/1854: Soon Gone With the Wind?

Regulation (EU) 2022/1854 obliged Member States to introduce, on a temporary basis, a cap on market revenue of certain electricity producers, and either a ‘mandatory temporary solidarity contribution’ or ‘equivalent national measures’ for enterprises in the oil, coal, gas and refinery sectors. Meanwhile, both the Regulation as such and the different types of domestic measures have come under fire before the European and the domestic courts. There is a good chance that neither the Regulation nor the measures taken by the Member States will survive closer legal scrutiny, and that this first-ever attempt of the EU to let Member States introduce ‘windfall taxes’ may turn out to be a failure.

Stan Stevens, Small Is Beautiful: An Analysis of the HOT Proposal

The European Commission has published in 2023 a proposal to introduce a concept of Head Office Taxation (HOT) for small and medium sized entities by means of a directive. In April 2024 the European Parliament has adopted a legislative resolution. The purpose of the proposal is to reduce the current tax obstacles for SMEs to engage in cross border activities. In the article the author evaluates the HOT Proposal. The most relevant obstacles for SMEs are the compliance costs and the absence of the possibility to deduct cross border losses. The HOT Proposal addresses in particular the issue of compliance costs but does not improve the possibility to deduct losses. The scope of the HOT Proposal is limited to autonomous companies which operate exclusively abroad via permanent establishments. This limits the scope and effectiveness of the HOT Proposal. Further the current proposal does not treat all companies equally. Maybe the functioning of the common market is improved but this is not the case for all (SME) companies.

Raymond Luja , The Apple Case and Beyond: Fiscal State Aid Review is Here to Stay

On 10 September 2024, the CJEU upheld a European Commission decision to recover state aid from two Irish subsidiaries of Apple. The CJEU set aside substantial parts of the General Court's judgment, raising the question whether it engaged in an appraisal of facts normally reserved to the latter. In the absence of a cross-appeal with respect to facts established at first instance, the CJEU had to assume that Ireland applied a regime similar to the Authorized OECD Approach (AOA) at the time. This turned out to be a gamechanger that sets the Apple case apart from previous cases like FIAT.

Fabian Barth, Why (Most) Sales of Digital Assets are Not Electronically Supplied Services

From virtual sofas to cryptoassets, the sale of things which exist in the virtual world only forms part of our modern life. In the VAT Committee's 123rd Meeting, a delegation challenged the view that such sales can be classified as electronically supplied services (ESS) per se. This article argues that that objection was well-founded. This is because, on closer examination, human intervention is (often) at the core of what the seller supplies to the buyer when a digital asset is sold, not merely a minimal feature.

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The graphic features a central image of a gavel resting on a glowing digital circuit board with a padlock icon, symbolizing legal innovation and digital assets.

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