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*(Summary of Tax Law
Legal Journals)*

a cura di Mario Grandinetti

(Università degli Studi di Torino)

Indici riviste straniere di Diritto Tributario

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BULLETIN FOR INTERNATIONAL TAXATION N. 4/5-6-7-8-9-10-11

OECD/International - The Interaction of Domestic Anti-Avoidance Rules with Tax Treaties in the Post-BEPS and Digitalized World

Author: Chand, V.; Elliffe, C.

Published online: 17 March 2020 (Volume 74), No. 4/5

In its analysis, this article distinguishes between domestic anti-avoidance rules that counteract treaty abuse and those that thwart abuse of domestic law. The authors conclude that conflicts could arise with tax treaties. States should employ a provision that authorizes the application of these rules to prevent this situation arising.

European Union/OECD/International - Interpreting European Law in the Light of the OECD/G20 Base Erosion and Profit Shifting Action Plan

Author: Schön, W.

Published online: 18 March 2020 (Volume 74), No. 4/5

European law plays a major role in implementing the OECD/G20 BEPS Action Plan. This role influences the interpretation of primary and secondary European law, which the author concludes is not easy to defend as the fiscal purpose of the BEPS actions conflicts with the liberating forces of the European Union's Internal Market.

OECD/International - The 2017 Change to Article 3(2) of the OECD Model: Comments on Professor Alexander Rust's Presentation

Author: Sasseville, J.

Published online: 19 March 2020 (Volume 74), No. 4/5

In this article, the author provides comments on a presentation made by Professor Alexander Rust regarding the change made in 2017 to Article 3(2) of the OECD Model that provides that a domestic law meaning shall not be given to an undefined treaty term whose meaning has been agreed to through the mutual agreement procedure.

OECD/International - Unlimited Adjustments: Some Reflections on Transfer Pricing, General Anti-Avoidance and Controlled Foreign Company Rules, and the "Saving Clause"

Author: Kofler, G.W.; Verlinden, I.

Published online: 20 March 2020 (Volume 74), No. 4/5

In light of Actions 8-10 of the OECD/G20 BEPS Project, this article considers the interaction and increasing pressure points between transfer pricing and general anti-avoidance and controlled foreign company rules, and the effect of article 9 of the OECD Model in light of the saving clause in article 1(3).

OECD/International - The Signalling Function of Article 29(9) of the OECD Model – The “Principal Purpose Test”

Author: Lang, M.

Published online: 21 March 2020 (Volume 74), No. 4/5

Article 29(9) of the OECD Model sets out the principal purpose test (PPT) according to the findings of the OECD/G20 Base Erosion and Profit Shifting Project. The PPT does not represent a legal basis for denying treaty benefits but merely emphasizes the necessity for purposive interpretation.

OECD/International - The PPT in Post-BEPS Tax Treaty Law: It Is a GAAR but Just a GAAR!

Author: Danon, R.J.

Published online: 22 March 2020 (Volume 74), No. 4/5

In this article, the author discusses the principal purpose test (PPT) included in article 29 of the OECD and UN Models (2017), arguing in particular that while the PPT certainly permits a purposive interpretation, it may not be used to build into tax treaty law additional requirements that were never intended. Finally, the author concludes by looking at the other side of the coin and wonders whether a comparable “PPT” should not regulate the performance by States of their treaty obligations.

OECD/International - Interpreting Tax Treaties in the Light of Reservations and Opt-Ins under the Multilateral Instrument

Author: Bravo, N.

Published online: 23 March 2020 (Volume 74), No. 4/5

In this article, the author considers the implications for the interpretation of tax treaties of the reservations and options that are contained in the Multilateral Instrument. In this context, the author addresses and answers a number of specific questions relating to the interpretation of the Multilateral Instrument, Covered Tax Agreements and Non-Covered Tax Agreements.

OECD/International - A Multilateral Interpretation of the Multilateral Instrument (and Covered Tax Agreements)?

Author: Haslehner, W.C.

Published online: 24 March 2020 (Volume 74), No. 4/5

This article considers the impact the advent of the OECD’s Multilateral Instrument will have on the interpretation of international tax rules.

OECD/International - Value Creation: A Dimming Lodestar for International Taxation?

Author: Kysar, R.M.

Published online: 25 March 2020 (Volume 74), No. 4/5

The author, in this article, considers the possibly declining significance of the taxation of value creation in relation to international taxation, primarily as reflected in the OECD/G20 Base Erosion and Profit Shifting Project.

OECD/International - Value Creation: A Guiding Light for the Interpretation of Tax Treaties?

Author: Martín Jiménez, A.J.

Published online: 26 March 2020 (Volume 74), No. 4/5

“Value creation” was introduced into OECD/G20 BEPS Actions and debates with an ambiguous and controversial meaning, which may not be compatible with tax treaties. This article explores the problems this principle creates in formulating a sound international tax policy and in the process of tax treaty interpretation and application.

OECD/International - The Relevance of BEPS Materials for Tax Treaty Interpretation

Author: Hattingh, P.J.

Published online: 27 March 2020 (Volume 74), No. 4/5

In this article, the author argues that the relevance of BEPS materials for tax treaty interpretation depends on which interpretive community is engaged. Some, but not all, frameworks for treaty interpretation by domestic courts, advisors and policymakers have shifted in the post-BEPS era. Selected questions of treaty interpretation are analysed with reference to the historical and current working methods of the OECD, as well as the plural nature of BEPS materials produced by the OECD, UN, IMF, etc.

OECD/International - The Impact of the New Preamble on the Interpretation of Old and New Treaties and on the Policy of Abuse Prevention

Author: Schwarz, J.S.

Published online: 28 March 2020 (Volume 74), No. 4/5

This article examines the effect of the new preamble to tax treaties introduced into existing tax treaties by the OECD Multilateral Instrument and in tax treaties that follow the OECD and UN Models (2017) with regard to preventing abuse, by reference to relevant case law.

OECD/International - Role of the Preamble for the Interpretation of Old and New Tax Treaties and on the Policy of the Prevention of Treaty Abuse

Author: De Broe, L.

Published online: 29 March 2020 (Volume 74), No. 4/5

This article examines the effect of the preamble of tax treaties before and after the amendments made to the OECD Model (2017) on the interpretation of tax treaties with the aim of preventing their abuse.

OECD/International - Foreword: Tax Treaty Interpretation after BEPS

Author: Danon, R.J.; Schön, W.

Published online: 30 March 2020 (Volume 74), No. 4/5 This Special Issue of the Bulletin for International Taxation contains a series of articles prepared further to the two-day interdisciplinary conference organized in Lausanne on 19-20 December 2019 by the Max Planck Institute for Tax Law and Public Finance and the Tax Policy Center of the University of Lausanne. This foreword describes the background, purpose and structure of the conference as well as its main objectives, and presents the articles of this Special Issue.

Germany - Tax and Fiscal Policy Measures in Response to the COVID-19 Crisis – Overview and Economic Analysis for Germany

Author: Weber, S.

Published online: 28 April 2020 (Volume 74), No. 6

COVID-19 is causing a health crisis and a decline in economic activity, forcing governments to take unprecedented measures. According to the IMF, Germany is one of the world leaders in terms of spending to mitigate the related economic consequences. This article provides an overview of the main tax and fiscal policy measures in Germany as well as the related effects on financial decision-making.

China (People's Rep.) - The Implications of China's Fiscal Measures Relating to the COVID-19 Pandemic

Author: Xu, D. (Diheng)

Published online: 6 May 2020 (Volume 74), No. 6

This article surveys the tax measures that China has implemented in response to the crisis caused by the COVID-19 pandemic. In this context, the author pays special attention to the tax incentives that are intended to protect people's livelihoods and to promote economic recovery.

OECD/International - Remarks on the Future Prospects of the OECD/G20 Programme of Work – Profit Allocation (Pillar One) and Minimum Taxation (Pillar Two)

Author: Schreiber, U.

Published online: 13 May 2020 (Volume 74), No. 6

This article examines the OECD/G20 programme of work dealing with the tax challenges arising from the digitalization of the economy, highlights the partial abandonment of the arm's length principle, discusses two ways of minimum taxation, evaluates the obstacles to international tax coordination and considers the possible consequences for national tax policy.

Argentina/Brazil/Chile/Colombia/Mexico - COVID-19 Tax Measures in Five Major Latin American Jurisdictions

Author: Sousa, R. Barbosa de Sousa

Published online: 18 May 2020 (Volume 74), No. 6

This article outlines the significant measures taken by the national governments and tax authorities of five major Latin American jurisdictions due to the COVID-19 pandemic. Emphasis is placed on measures that may affect international or cross-border tax structures, reduce tax liabilities or improve cash flow by deferring payment.

Spain/OECD/International - Look-Through Tax Treatment of Foreign Entities in Spain – Background and New Guidance

Author: Sánchez de Castro Martín-Luengo, E.

Published online: 18 May 2020 (Volume 74), No. 6

A new resolution has been issued on the qualification of foreign entities as look-through entities for Spanish tax purposes. It establishes the tax treatment in the jurisdiction of incorporation as the single element to be considered, instead of assessing its legal nature. The resolution, however, increases the level of uncertainty.

Brazil/OECD - Taxation of Capital Gains on Indirect Sales of Shares of Brazilian Companies by Non-Residents: The Allocation of Taxing Rights or Tax Avoidance Schemes?

Author: Calich da Fonseca, I. Garcia

Published online: 19 May 2020 (Volume 74), No. 6

In this article, the author examines the arguments for taxing capital gains derived in Brazil from the indirect sale of shares in Brazilian resident companies by non-residents and how such a situation could be brought about.

OECD/International - Influencer Income and Tax Treaties

Author: Kostikidis, S.

Published online: 25 May 2020 (Volume 74), No. 6

This article considers the categorization of the income earned by influencers in relation to tax treaties, with specific reference to the allocation of such income to articles 7, 12 and 17 of the OECD Model.

United States - Tax Provisions of the CARES Act: The International (and Institutional) Implications

Author: David Rosenbloom, H.; Barnes, P.A.

Published online: 8 June 2020 (Volume 74), No. 7 (Next Issue)

This article outlines the measures affecting both corporations and individuals that the United States has adopted in response to domestic and international taxation issues to which the COVID-19 pandemic has given rise. Those measures include announcements by US tax authorities extending time limitations and otherwise providing relief as well as enactment of the Coronavirus Aid, Relief, and Economy Security Act by the US Congress.

United States - A Wealth Tax for the United States – Why, How and Observations

Author: Stotzer, T.R.

Published online: 11 June 2020 (Volume 74), No. 7 (Next Issue)

This article examines three interrelated topics: (i) the motives behind a US wealth tax; (ii) the mechanics of the most recent US wealth tax proposals, potential impediments to enactment and certain critiques and observations; and (iii) potential alternatives, including increasing income tax progressivity, implementing VAT and reforming capital gains taxation.

China (People's Rep.)/New Zealand/OECD - The New China-New Zealand Income Tax Treaty (2019) – How Does It Shape Up Following the BEPS Project and the MLI?

Author: Smith, A.M.C.

Published online: 18 June 2020 (Volume 74), No. 7 (Next Issue)

The new China-New Zealand Income Tax Treaty (2019) is the first tax treaty that New Zealand has negotiated since accessing the MLI (or Multilateral Instrument). This article reviews the new tax treaty, noting the influence of the MLI, especially given the Chinese reservations to the Multilateral Instrument.

European Union/OECD/International - Report of the Proceedings of the Tenth Assembly of the International Association of Tax Judges Held in Cambridge, England, on 13 and 14 September 2019

Author: Michel, B.

Published online: 1 July 2020 (Volume 74), No. 7 (Next Issue)

This report summarizes the proceedings of the tenth assembly of the International Association of Tax Judges, which was held in Cambridge, England, on 13 and 14 September 2019.

Italy/European Union/OECD - A Critical Review of Italy's Digital Services Tax

Author: Stevanato, D.

Published online: 3 July 2020 (Volume 74), No. 7 (Next Issue)

Following some unsuccessful attempts, Italy has enacted a new digital services tax broadly in line with the European Commission's DST Proposal. Targeted at selected digital services and large undertakings, the Italian levy shares the flaws of the Commission's design. It also gives rise to further

concerns as it deviates from the DST Proposal.

South Africa - Tax Measures in Response to the COVID-19 Pandemic

Author: Marais, A.

Published online: 6 July 2020 (Volume 74), No. 7 (Next Issue)

This article sets out the various taxation initiatives that South Africa has introduced in response to the crisis caused by the COVID-19 pandemic.

Australia - Tax and Fiscal Policy Measures in Response to the COVID-19 Crisis – Overview of Tax and Fiscal Response by the Australian Government

Author: H. Wardell-Burrus

Published: 17 July 2020 (Volume 74), No 8

This article sets out the main taxation and financial support initiatives that the Australian government has introduced in response to the crisis caused by the COVID-19 pandemic.

Canada - Overview of Canadian Fiscal and Tax Administrative Measures in Response to the COVID-19 Pandemic

Author: B. Beswick; B. Anderson

Published: 24 July 2020 (Volume 74), No 8

This article summarizes at a high level the key Canadian fiscal and tax administrative response to COVID-19 as of 20 July 2020.

China (People's Rep.)/India/Korea (Rep.) - The Digitalization of Tax Administration in China (People's Rep.), India and Korea (Rep.) in the Fourth Industrial Revolution

Author: M. Ołowska; P. Peshori; S. Lan

Published: 29 July 2020 (Volume 74), No 8

In this article, the authors consider the different ways in which China (People's Rep.), India and Korea (Rep.) have digitalized their tax administrations in the Fourth Industrial Revolution, together with an appreciation of the implications of these varying approaches.

Austria/OECD - An Argument for Treating Distributions by Austrian Private Foundations to Foreign Beneficiaries as Dividends under Tax Treaties Based on the OECD Model

Author: S. Bergmann

Published: 31 July 2020 (Volume 74), No 8

This article presents an argument that distributions paid by Austrian private foundations to foreign beneficiaries should be treated as dividends rather than as other income under Austrian tax treaties that are based on the OECD Model.

OECD/International - Article 15(2) of the OECD Model and the International Hiring-Out of Labour: New Criteria Required?

Author: L.T. Pignatari

Published: 3 August 2020 (Volume 74), No 8

Article 15(2) of the OECD Model is important in the taxation of employment income derived from international hiring-out of labour (IHOL) structures, as it may permit exclusive taxation in the residence state. This article argues that the IHOL criteria should be reconsidered as well as the application of that article.

United States - Partial Residence Clauses in US Treaty Practice

Author: M. Brabazon

Published: 4 August 2020 (Volume 74), No 8

Partial residence clauses were a standard feature of pre-1996 US tax treaties. Many remain in force today. This article considers their history, design and judicial interpretation, their relationship with the transparent entity clause in current US and OECD Models and the OECD Partnership Report, and their influence on treaty interpretation.

OECD/International - International Tax Frameworks: Assessing the 2020s Compromise from the Perspective of Taxing the Digital Economy in the Great Lockdown

Author: C. Elliffe

Published: 28 August 2020 (Volume 74), No 9

This article provides an assessment of the new international tax framework for taxing the digital economy as proposed by the OECD/Inclusive Framework. In this critique of the new regime, the author refers to the prospective new international tax architecture as the “2020s compromise”, as opposed to the currently applicable “1920s compromise”.

Bahamas/Barbados/Bermuda/British Virgin Islands/Cayman Islands/European Union/OECD/International - The European Union’s Economic Substance Rules in Commonwealth Caribbean Jurisdictions: What Is the Purpose?

Author: R.R.F. Yearwood; A.D. (Alicia) Nicholls

Published: 1 September 2020 (Volume 74), No 9

This article criticizes the EU concept of economic substance regarding Commonwealth Caribbean international financial jurisdictions, refuting the arguments on which it is based and demonstrating the impracticality of the “test of substance” under Criterion 2.2. It also argues that common law is effective in addressing tax avoidance and determining substance.

OECD/International - Influencer Income and Tax Treaties: A Response

Author: D. Molenaar; H. Grams

Published: 1 September 2020 (Volume 74), No 9

The authors respond to the article written by Savvas Kostikidis on the taxation of influencers’ income that appeared in the June 2020 issue of the Bulletin for International Taxation. The authors advance their solution to the problem, which would include the abolition of article 17 of the OECD Model.

Nigeria - Nigeria’s Significant Economic Presence Income Tax on Digital Economic Activities: Challenges and Opportunities

Author: C. Echendu

Published: 3 September 2020 (Volume 74), No 9

In this article, the author examines the concept of a significant economic presence and how this concept relates to the new rules of the Federal Republic of Nigeria regarding the taxation of digital economic activities carried out by non-resident companies.

OECD/International - Cross-Functional Collaboration and Change Management: The Key Ingredients for Tax Technology Transformation

Author: A-M. Dickler; E. de Roover; H. Moebus; E. Baptista; A. Bakker; S. Kale

Published:

30 September 2020(Volume 74), No 10

Tax technology implementation projects are destined to fail without cross-functional collaboration. This article unpacks the critical factors a multinational enterprise (MNE) needs to consider when embarking on a tax transformation project, including change management, robust project management, training across the organization and implementing the all-important tech-savvy mindset.

OECD/International - AI and Tax Administrations: A Good Match

Author: M. Zackrisson; A. Bakker; J. Hagelin

Published: 1 October 2020 (Volume 74), No 10

This article presents developments related to tax administrations and AI by focusing on three specific areas: (i) audit selection; (ii) guidance to taxpayers; and (iii) improvement of internal efficiency. In addition, it analyses certain challenges and risks, and provides a brief overview of tax administrations' use of AI in different jurisdictions.

Argentina/Brazil/Chile/Colombia/Costa Rica/Ecuador/Mexico/Peru/Uruguay - Technology and Tax Administration Control in Latin America

Author: R. Zambrano; Isaác G. Arias E.

Published: 2 October 2020(Volume 74), No 10

The use of information technology supports the activities of tax administrations in different processes. This article describes successful initiatives in the use of IT for control purposes in some Latin American administrations.

Estonia - Technological Advances in Administering Taxes: Will There Be a Tax Office in the Future?

Author: D. Jegorov

Published: 3 October 2020(Volume 74), No 10

This article provides examples of how modern technologies can contribute to the smooth running of a tax administration, and addresses factors, both internal and external, that enable technology to thrive in such a setting, highlighting the specific journey of the Estonian tax authorities.

OECD/International - Technology-Enabled Tax Compliance

Author: B. Kuijper; T. Cameron; Z. Szatmari

Published: 4 October 2020 (Volume 74), No 10

This article describes many of the technologies that enable both direct and indirect tax compliance, the recent landmark regulatory events that drive them, and the considerations that tax professionals should take into account before they adopt them.

OECD/International - Tax Technology Applied to Supply Chain

Author: E. Baptista; J. Kregting; A. Bakker; M. Brink; C. Henriksen

Published: 5 October 2020 (Volume 74), No 10

The complexity of the external tax/transfer pricing environment is only increasing, as are tax authority demands for increased data transparency – a lot to balance for multinationals managing diverse supply chains. This article explores the risks and opportunities, namely how operational transfer pricing (OTP) technology could increase transparency, compliance and efficiency.

International - The Latest Generation of Tax Functions and the Role of Technology

Author: S. Baumann-Larsen; A. Giannelli

Published: 6 October 2020 (Volume 74), No 10

This article explores how and why tax functions are needed to transform the role of people, processes and technology in driving forward change. At a time when tax administrations are being asked to do more with less, there is no better time to explore tax technology and its benefits.

International - Technology: A Key Enabler for Tax Transformation

Author: M. van den Brink; A.J. Bakker

Published: 7 October 2020 (Volume 74), No 10

This special issue of the Bulletin for International Taxation provides insights on how technology can help both MNEs and tax administrations. Experts in the field share their expertise and provide guidance on available technology and building a business case as well as successful implementation of a tax transformation project.

OECD/International - A Fresh Look at Article 3(2) of the OECD Model

Author: J. Avery Jones

Published: 8 October 2020 (Volume 74), No 11

John Avery Jones, in this article, develops some new thoughts regarding treaty interpretation and the role of article 3(2) of the OECD Model from the common law point of view.

OECD/International - Tax Treaty Interpretation – A Response to John F. Avery Jones

Author: M. Lang

Published: 9 October 2020 (Volume 74), No 11

In this article, Michael Lang comments on, and presents his own arguments in relation to, some of the treaty interpretation issues raised by John Avery Jones.

Qatar/OECD - Taxation in Qatar – An Abadi (Non-Finite) Vehicle for Economic Diversification?

Author: M.A. Al-Asmakh

Published: 12 October 2020 (Volume 74), No 11

In December 2018, Qatar introduced a package of tax reforms that represents a major move towards diversifying government revenue and achieving its vision of becoming an advanced country by 2030. This article argues that taxation is the most effective way to accelerate Qatar's independence from gas revenues.

European Union/OECD/International - Ensuring Effective Taxpayer Remedies for Breaches of Confidentiality in Relation to Tax Treaties

Author: D.A. Hernández Rivera

Published: 26 October 2020 (Volume 74), No 11

In this article, the author considers the problems associated with taxpayers' remedies for breaches of confidentiality in relation to the exchange of information under tax treaties. Within this context, the author proposes a sui generis arbitration clause as a solution to these issues.

OECD/International - Permanent Establishments under the OECD Model (2017) Based on the Principal Role Leading to the Conclusion of Contracts – A Doctrinal and Policy Analysis

Author: K. Prakash

Published: 3 November 2020 (Volume 74), No 11

This article examines the meaning and scope of the expression "playing the principal role leading to the conclusion of contracts" introduced into article 5(5) of the OECD Model (2017). From a policy perspective, the author argues that the 2017 changes realize the overarching principles of appropriate permanent establishment taxation.

EC TAX REVIEW 3/2020

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António Martins

EUROPEAN TAXATION n. 5 – 6 – 7 – 8 – 9 – 10 – 11 – 12 (2020)

Russia - Identifying Conduit Companies: A Russian Perspective on the Beneficial Ownership Concept

Author: Tasalov, K.

Published online: 17 November 2020 (Volume 60), No. 12 (Next Issue)

The Russian tax authorities, in an attempt to crack down on cross-border tax arrangements involving treaty shopping, assess the beneficial ownership status of the recipient of income. This article addresses the components of the analysis that is carried out in establishing a discrepancy between legal form and economic reality.

Collection: European Taxation



European Union - The Current State of DAC-6 Implementation in the European Union

Author: Resenig, K.

Published online: 11 November 2020 (Volume 60), No. 12 (Next Issue)

This article compares and contrasts draft and final versions of Member State legislation implementing the DAC-6 (Council Directive 2018/822). The author examines the effect that inconsistent implementation might have on multinational companies.

Collection: European Taxation



Greece - Implementation of the EU Tax Dispute Resolution Directive (2017/1852) in Greece: Issues Faced and Choices Made

Author: Sofrona, L-E.

Published online: 11 November 2020 (Volume 60), No. 12 (Next Issue)

Greece recently implemented the EU Tax Dispute Resolution Directive (2017/1852) by way of Law 4714/2020. This article outlines the main aspects of the newly adopted legislation, as well as key implementation issues regarding the Directive in Greece.

Collection: European Taxation



Confédération Fiscale Européenne - Opinion Statement ECJ-TF 2/2020 on the ECJ decision of 3 March 2020 in Vodafone Magyarország Mobil Távközlési Zrt. (Case C-75/18) on Progressive Turnover Taxes

Author: CFE ECJ Task Force

Published online: 11 November 2020 (Volume 60), No. 12 (Next Issue)

This CFE Opinion Statement discusses the decision of the Grand Chamber of the ECJ in Vodafone. The Court held that the imposition of the Hungarian progressive turnover-based tax on the telecommunications sector did not infringe the EU fundamental freedoms or article 401 of the VAT Directive (2006/112), and that the question regarding the prohibition of State aid was inadmissible. Vodafone is especially important in respect of the current debate regarding turnover-based digital services taxes.

Collection: European Taxation



Greece - Alternative Taxation Regimes for New Tax Residents

Author: Perrou, K.

Published online: 5 November 2020 (Volume 60), No. 12 (Next Issue)

In this note, the author outlines two new regimes that provide for alternative taxation in respect of new residents, namely a regime for high net worth individuals who move to Greece, which is linked to investment in Greece, and a regime aimed at pensioners wishing to move their tax residence to Greece. In particular, the author examines the interplay between the regimes and Greece's tax treaty network.

Collection: European Taxation



Turkey - Turkish Constitutional Court Decides in Favour of Taxpayer Property Rights

Author: Yaltı, B.

Published online: 5 November 20202020 (Volume 60), No. 12 (Next Issue)

In this note, the author provides an overview of selected Turkish Constitutional Court (TCC) cases on taxpayer property rights.

Collection: European Taxation



Confédération Fiscale Européenne - Opinion Statement FC 1/2020 on the Harmonization of VAT Penalties in the European Union

Author: CFE Fiscal Committee

Published online: 14 October 20202020 (Volume 60), No. 11

This Opinion Statement, submitted on 6 March 2020, discusses issues surrounding the justification for harmonization of VAT penalties in the European Union.

Collection: European Taxation



European Union/International - Data and Information as Taxable Assets

Author: Schmalenbach-Gesellschaft 'Transfer Pricing' Working Group

Published online: 14 October 20202020 (Volume 60), No. 11

This article focuses on the context of digitization in relation to the tax treatment of data. The authors, after discussing the importance of data to the growth of platform business models, seek to determine the extent to which data can serve as a reference point for taxation, the valuation problems that exist in this context, and the extent to which the arm's length principle, and by association the existing transfer pricing tools, are capable of reflecting: (i) data collection within a group, (ii) intra-group data sharing and (iii) data sales.

Collection: European Taxation



European Union - European Tax Law and the Freedom of Choice Regarding Cross-Border Financing within Multinational Groups

Author: Kollruss, T.

Published online: 8 October 20202020 (Volume 60), No. 11

Member States often try to restrict cross-border debt financing within multinational groups. The pending Swedish case, Lexel AB (Case C-484/19), is a prime example. This article analyses the Swedish rules on interest limitation in affiliated groups in the context of EU law and finance theory. Beyond the Lexel AB case, the higher-level question is how national interest deduction limitation rules should be legally formulated in relation to intra-group financing such that they do not conflict with EU law.

Collection: European Taxation



European Union - Dividend Distributions to and from Gibraltar Companies: The ECJ Decision in GVC Services (Case C-458/18) and Its Consequences

Author: Dafnomilis, V.I.

Published online: 7 October 20202020 (Volume 60), No. 11

In this article, the author discusses and comments on the ECJ decision in GVC Services (Case C-458/18). In addition, the implications of the decision for Gibraltar and EU Member States for the period before and after the expiration of the implementation/transition period of the EU-UK Withdrawal Agreement are examined.

Collection: European Taxation



Italy - Law Implementing the EU Tax Dispute Resolution Directive (2017/1852)

Author: Orlandoni, O.; Moramarco, G.

Published online: 6 October 20202020 (Volume 60), No. 11

This article examines Legislative Decree 49/2020, transposing the dispute resolution mechanisms of the EU Tax Dispute Resolution Directive (2017/1852) into Italian national law. The Decree introduces a new mechanism that is of particular relevance in respect of the resolution of tax disputes between Italy and other EU Member States. It provides for a binding and mandatory procedure for the competent authorities and for compatibility with domestic litigation and pre-litigation administrative settlement. Some interpretative issues concerning the scope of application of the Directive and the possibility of the procedure being available in respect of criminal conduct remain open.

Collection: European Taxation



European Union - AFMB Ltd and Others (Case C-610/18): Definitive Acceptance of the Economic Employer Principle in Multi-State Situations

Author: Bierlaagh, R.

Published online: 5 October 20202020 (Volume 60), No. 11

In this note, the author discusses the ECJ decision in AFMB Ltd and Others (Case C-610/18) wherein the Court determined that the entity that is considered the employer for social security contribution purposes is the undertaking that: (i) has actual authority over the worker, (ii) bears the actual wage costs of the worker and (iii) has the actual power to dismiss the worker.

Collection: European Taxation



European Union - Court of Justice

Author: Morales, T.

Published online: 1 October 20202020 (Volume 60), No. 11

This overview highlights the ECJ's decision on the possibility of resident subsidiaries of a non-resident parent company to integrate a horizontal tax group without dissolving a pre-existing vertical tax group.

Collection: European Taxation



European Union - Council

Author: Morales, T.

Published online: 1 October 20202020 (Volume 60), No. 11

This overview highlights the Council's extensions of the (i) authorizations given to Latvia and Romania to apply a higher VAT registration threshold for small businesses, (ii) authorization given to Romania to limit the VAT deduction right for motorized vehicles to 50% and (iii) application period for the simplified VAT recovery mechanism for tolls on the Öresund fixed link between Denmark and Sweden.

Collection: European Taxation



European Union - Commission

Author: Morales, T.

Published online: 1 October 20202020 (Volume 60), No. 11

This overview highlights the Commission's (i) proposals to authorize Sweden and France to continue to apply a reduced rate to electricity provided to vessels berthed in ports and (ii) report on the latest figures on the VAT Gap for 2018.

Collection: European Taxation



Italy - Flat Tax for "New Residents": A Comparison between the Italian and Portuguese Regimes

Author: De Vita, M.

Published online: 23 September 20202020 (Volume 60), No. 10

Italy recently introduced a lump-sum substitute tax in lieu of progressive tax rates on foreign-sourced income received by "high net worth individuals" and pensioners transferring their tax

residence to Italy. These favourable regimes share common elements with the Portuguese regime for “non-habitual residents”. The aim of this article is to ascertain whether the Portuguese regime for “non-habitual residents” could be implemented in Italy in respect of the taxation of “new residents”.

Collection: European Taxation



European Union - Criteria for the Application of Anti-Abuse Provisions to Holding Companies under ECJ Case Law: Their Significance in Interpreting and Applying ATAD Provisions

Author: Geringer, S.

Published online: 21 September 20202020 (Volume 60), No. 10

In this article, the author evaluates the significance of the existing ECJ case law in respect of the interpretation and application of the EU Anti-Tax Avoidance Directive (2016/1164) provisions to holding companies.

Collection: European Taxation



European Union - A Comparative Analysis of Certain Aspects of the Application of Hallmark C1

Author: Polonska, T.

Published online: 21 September 20202020 (Volume 60), No. 10

In this article, the author analyses the guidance, clarifications and any other communications that have, to date, been issued by Belgium, France, the Netherlands and the United Kingdom regarding their approach to the application of hallmark C1.

Collection: European Taxation



Romania - Implementation of the EU Anti-Tax Avoidance Directive Regarding Hybrid Mismatches in Romania

Author: Radocea, I.

Published online: 21 September 20202020 (Volume 60), No. 10

This article provides an overview of the main provisions of the EU Anti-Tax Avoidance Directive (2017/952) (ATAD 2) as transposed into Romanian tax law. It highlights key areas of attention and the potential impact of such transposition on existing structures.

Collection: European Taxation



European Union - Council

Author: Morales, T.

Published online: 16 September 20202020 (Volume 60), No. 10

This overview highlights the Council’s (i) adoption of recommendations in the context of the European Semester Spring Package; (ii) support stemming from the EU recovery plan and agreement on the new EU resources system; and (iii) approval of new excise duty rules on alcohol.

Collection: European Taxation

European Union - Court of Justice

Author: Morales, T.

Published online: 16 September 20202020 (Volume 60), No. 10

This overview highlights the ECJ’s decisions on (i) the imposition of penalties on suppliers of advertising services established in another Member State for non-compliance with the obligation to submit a tax form and (ii) the denial of tax benefits related to the EU Parent-Subsidiary Directive (2011/96) to companies incorporated in Gibraltar and subject to the corporate tax in Gibraltar.

Collection: European Taxation



European Union - Parliament

Author: Morales, T.

Published online: 16 September 20202020 (Volume 60), No. 10

This overview highlights the Parliament's demand to reach an agreement on the own resources system in order to approve the EU Budget.

Collection: European Taxation



European Union - Commission

Author: Morales, T.

Published online: 16 September 20202020 (Volume 60), No. 10

This overview highlights the Commission's (i) launch of public consultations on energy taxation and a carbon border adjustment mechanism; (ii) proposal for a special VAT identification number for businesses in Northern Ireland; (iii) extension of VAT and customs duties reliefs for imports of medical equipment; and (iv) first implementation report on the EU Anti-Tax Avoidance Directive (2016/1164).

Collection: European Taxation



Netherlands - Withholding Tax Act 2021: A Split from Historical Trends!

Author: Pötgens, F.P.G.; Geerse, P.I.M.

Published online: 14 September 20202020 (Volume 60), No. 10

The Netherlands is introducing a conditional withholding tax from 1 January 2021 to prevent the country from being used as a "conduit state" for intra-group interest and royalty flows to low-tax jurisdictions and in situations of abuse. The introduction of this tax marks a break from former trends, as one of the features that traditionally characterized the Netherlands tax system was the absence of withholding tax on interest and royalties.

Collection: European Taxation



Greece - Tax Rates, Tax Evasion and Why Increased Tax Audits Fail: An Analysis of Greek Microdata

Author: Vlachos, P.; Thomakos, D.D.

Published online: 27 August 20202020 (Volume 60), No. 9 Using a proprietary micro-dataset on tax audits from Greece, the authors examine the link between tax evasion and corruption in the years following the economic recession. The analysis suggests that existing high tax rates and spending on tax audits have failed and will continue to fail to produce any viable economic results: Increasing the level of taxes or spending on tax enforcement does not yield the anticipated increase in tax revenue collection.

Collection: European Taxation



Belgium - Corporate Mobility: Belgium as a Gate to the European Union

Author: Wouters, P-J.

Published online: 27 August 20202020 (Volume 60), No. 9

As a result of the recent corporate law reform, Belgium switched from the real seat theory to the statutory seat theory for determining a company's nationality. This creates opportunities for corporate mobility. In particular, the new Belgian Code of Companies and Associations offers the possibility for companies migrating from a non-EU country to use Belgium as an "entry point" to the European Union while maintaining continuity of legal personality and therefore without necessitating a deemed liquidation for tax purposes. The Belgian ruling authorities recently approved such transactions.

Collection: European Taxation



Germany - The German Trade Tax in Inbound Cases

Author: Weiss, M.

Published online: 26 August 2020 (Volume 60), No. 9

This article describes the German Trade Tax Act and its impact on investment into Germany. Recent developments have highlighted the importance of this issue. The German corporate tax burden, at 15%, is quite low but trade tax can easily add a 15%-18% tax burden on investment returns. In inbound cases, a German domestic permanent establishment is typically avoided. In particular, in situations in which foreign taxpayers rent out or lease real estate in Germany, trade tax has become a significant burden. In some instances, a trade-off with the ability to rollover capital gains may have to be made.

Collection: European Taxation



European Union - Commission

Author: Morales, T.

Published online: 26 August 2020 (Volume 60), No. 9

This overview highlights the Commission's (i) call for proposals for setting up the EU Tax Observatory; (ii) report on competition policy; (iii) recommendation to not grant financial support to companies linked to tax havens and financial crimes; (iv) proposal for a Tax Action Plan, DAC7 and review of EU anti-avoidance instruments; (v) adoption of a readiness communication for the end of the transition period with the United Kingdom; (vi) extension of formal investigation of the Netherlands' favourable tax treatment of Inter IKEA; (vii) letter of formal notice sent to Belgium on the transposition of ATAD I; and (viii) decisions to close infringement procedures against certain Member States regarding amending their legislation in line with EU law.

Collection: European Taxation



European Union - Council

Author: Morales, T.

Published online: 26 August 2020 (Volume 60), No. 9

This overview highlights the Council's (i) adoption of the directive postponing certain time limits laid down in DAC and (ii) conclusions on the state of negotiations and calls to accelerate works for all possible scenarios.

Collection: European Taxation



Italy - Recent Italian Case Law Developments on the Withholding Tax Exemption under the EU Parent-Subsidiary Directive (2011/96)

Author: Orlandoni, O.; Moramarco, G.

Published online: 21 August 2020 (Volume 60), No. 9

This note provides an analysis of Italian case law since 2018 on the withholding tax exemption under the EU Parent-Subsidiary Directive (2011/96), and in particular on the two different positions that exist in relation to the subject-to-tax requirement and the elimination of economic double taxation for the purposes of the Directive.

Collection: European Taxation



Turkey - A Comparison of R&D Tax Incentives in Turkey

Author: Dilmen, A.; Erdoğan, E.

Published online: 20 August 2020 (Volume 60), No. 9

Tax incentives play a crucial role in the decision-making process of companies and individuals engaged in R&D. To stimulate R&D investment in Turkey, the government has introduced several pieces of incentive legislation, mostly tax allowance and exemption schemes, each taking a different approach. This article focusses on three major incentives, namely Law No. 4691 on the Technology Development Zones Incentive, Law No. 5746 on Promoting Research, Development and Design Activities and article 5(B) of the Corporate Income Tax Law.

Collection: European Taxation



European Union - Tax Crimes as Predicate Offences under the EU Sixth Anti-Money Laundering Directive (2018/1673)

Author: Cardoso, G. Capristano

Published online: 29 July 20202020 (Volume 60), No. 9

This article provides an analysis of tax crimes as predicate offences in respect of money laundering. While the Fourth Anti-Money Laundering Directive (2015/849) included tax crimes as predicate offences for money laundering in the European Union, it did not go far enough, with certain tax crimes being left out. This article analyses the effect of this development in the context of the Sixth Anti-Money Laundering Directive (2018/1673), which focuses on combating money laundering by imposing minimum rules under the Member States' criminal laws. The Directive's transposition date is 3 December 2020.

Collection: European Taxation



European Union - Court of Justice

Author: Morales, T.

Published online: 15 July 20202020 (Volume 60), No. 8

This overview highlights the ECJ's decisions on (i) a higher tax burden imposed on dividends received by certain entities that are resident in third countries in comparison to resident entities and (ii) an allocation of taxing rights on retirement pensions resulting from a tax treaty that distinguishes between employment in the private and public sectors.

Collection: European Taxation



European Union - Council

Author: Morales, T.

Published online: 15 July 20202020 (Volume 60), No. 8

This overview highlights the Council's (i) conclusions on the future evolution of administrative cooperation in taxation, (ii) update on its overview of preferential tax regimes examined by the Code of Conduct Group (Business taxation), and (iii) approval of conclusions on progress made during the Croatian Presidency.

Collection: European Taxation



Confédération Fiscale Européenne - Opinion Statement CFE 1/2020 on the Potential Commission Initiative to Strengthen the Administrative Assistance Directive on Administrative Cooperation in Direct Taxation

Author: CFE Fiscal Committee

Published online: 15 July 20202020 (Volume 60), No. 8

In this Opinion Statement, submitted on 3 April 2020, the CFE discusses the EU Commission consultation undertaken in Q1 2020 about a potential initiative to strengthen the Mutual Assistance Directive (2011/16) concerning the ability of tax administrations across the European Union to obtain tax-related information on taxpayers who generate income via the digital platform economy.

Collection: European Taxation



Denmark - Juridical Double Taxation and Economic Triple Taxation of Shareholder Loans in Denmark: "Cum In" under Danish Tax Law

Author: Smith Nielsen, R.

Published online: 15 July 20202020 (Volume 60), No. 8

This article, which examines domestic juridical double and economic triple taxation of shareholder loans, concludes that such taxation (i) can result in an effective top marginal tax rate exceeding 100%; (ii) raises issues under, for example, the European Convention on

Human Rights (right to property); and (iii) represents, for the individual, a form of “cum in”, i.e. the equivalent of the “cum ex” that was the basis of a major tax fraud scandal in Europe.

Collection: European Taxation



Estonia - Estonia Introduces Tonnage Tax and Seafarer Scheme

Author: Soom, A.

Published online: 15 July 20202020 (Volume 60), No. 8

In this note, the author outlines the details of Estonia’s new tonnage tax and seafarer schemes, which were introduced effective 1 July 2020.

Collection: European Taxation



European Union - Commission

Author: Morales, T.

Published online: 15 July 20202020 (Volume 60), No. 8

This overview highlights the Commission’s (i) recommendations for a coordinated response to the COVID-19 pandemic in the European Semester Spring Package, (ii) proposal regarding a recovery plan for the long-term EU Budget, and (iii) consultation to further extend the scope of the State Aid Temporary Framework.

Collection: European Taxation



European Union - Special Tax Regimes for High Net Worth Individuals

Author: Offermanns, R.H.M.J.; Moniz, R. Botelho

Published online: 13 July 20202020 (Volume 60), No. 8

In this article, the authors provide an overview of various European regimes designed to attract high net worth individuals (HNWIs). They examine the common features of jurisdictions attracting HNWIs, followed by an analysis of the special compliance programmes for HNWIs that some jurisdictions offer.

Collection: European Taxation



European Union - The Elimination of Economic Double Taxation in the European Union: Non-Discrimination and Beyond

Author: Caziero, M.

Published online: 9 July 20202020 (Volume 60), No. 8

This article examines the notion of the elimination of economic double taxation, an obstacle to the functioning of the internal market, in the context of the Directive and the EU fundamental freedoms. In the context of the fundamental freedoms, its elimination is a necessary step toward achieving national treatment. In contrast, within the framework of the EU Parent-Subsidiary Directive (2011/96) (the Directive), it is an objective in and of itself, regardless of any discriminatory treatment of cross-border dividends.

Collection: European Taxation

International/Italy - A Conundrum within the Conundrum: The Requalification of Loans as Equity under the OECD Guidance on Financial Transactions

Author: Piran, G.; Piva, M.

Published online: 9 July 20202020 (Volume 60), No. 8

In this article, the authors raise questions regarding the applicability of the recent OECD Guidance on Financial Transactions to the requalification of debt instruments as equity. The authors demonstrate that the current guidance is potentially inapplicable in many EU Member States and, perhaps, even in most OECD jurisdictions. Moreover, even where applied, such requalification might result in mismatches. Although Italy is taken as the example, the question addressed potentially involves a number of jurisdictions.

Collection: European Taxation



Italy/European Union - The Digital Service Tax in Italy: Main Characteristics and Practical Issues

Author: Bellavite, L.; Morabito, D.; Tognettini, R.

Published online: 8 July 2020 (Volume 60), No. 8

In this article, the authors analyse the Italian digital services tax, which took effect on 1 January 2020, comparing it with the European Commission proposal.

Collection: European Taxation



European Union - Negative Harmonization in Tax Matters: EU Case Law on Cross-Border Transfers of Losses

Author: Favalaro, G.A.C.

Published online: 6 July 2020 (Volume 60), No. 8

The decisions of the Court of Justice of the European Union do not always result in the best outcome for either taxpayers or policymakers. Notably, with reference to the cases on cross-border transfer of losses, the absence of common direct tax measures have resulted in “negative harmonization” and in a breach of cross-border neutrality. As a result, the decisions of the Court have threatened the equal distribution of taxing powers amongst the Member States.

Collection: European Taxation



Austria/Slovak Republic - A Comparison of the Slovak Republic's New Participation Exemption Regime with Austria's Regime

Author: Götz, R.; Blažejová, Z.

Published online: 24 June 2020 (Volume 60), No. 7

In this note, the authors describe the new Slovak participation exemption regime, comparing and contrasting it with the longstanding equivalent Austrian regime.

Collection: European Taxation



Russia - Tax Measures Announced in the Presidential Address to the Nation

Author: Tasalov, K.

Published online: 23 June 2020 (Volume 60), No. 7

In an effort to tackle the spread of COVID-19 and mitigate its negative impact on the economy, the President of the Russian Federation held an Address to the Nation on 25 March 2020, which contained a number of tax measures. This note addresses the measures and their subsequent implementation.

Collection: European Taxation



European Union - Commission

Author: Alvarado, M.

Published online: 22 June 2020 (Volume 60), No. 7

This overview highlights the Commission's (i) notice on prohibitions and restrictions on imports and exports following Brexit, (ii) working documents on several VAT matters, (iii) decision to extend the State aid temporary framework to other measures, (iv) action to take Austria to the ECJ over indexation of family benefits, (v) letters of formal notice to other Member States to amend their legislation in line with EU law and (vi) decision to extend the scope of the State aid investigation into Inter IKEA's tax treatment in the Netherlands.

Collection: European Taxation



European Union/International - Emergency Tax Measures in Response to the COVID-19 Pandemic: The Full Picture in Europe

Author: Morales, T.; Rogers-Glabush, J.

Published online: 22 June 20202020 (Volume 60), No. 7

This article provides an overview of the tax response of 47 European countries to the challenges imposed by the COVID-19 pandemic. It provides a summary of national measures, grouped into categories according to the purpose of each measure, as well as an analysis of further steps that need to be taken to address the pandemic, focusing on the tax policy goals that come into play at each phase.

Collection: European Taxation



European Union - The Interaction between VAT and the Digital Services Tax Regime in Market Jurisdictions: Is the DST Filling the Gap Regarding the Taxation of the Digital Economy?

Author: Zegarra, B.R.

Published online: 17 June 20202020 (Volume 60), No. 7

The Digital Service Tax (DST) aims to tax certain digital businesses within market jurisdictions, which, traditionally, collect revenue through consumption taxes. This article provides a pragmatic analysis of the levies applicable to digitalized businesses in the European Union arising from the interaction between the DST and value added tax (VAT). In doing so, it explores the legal elements of these levies and determines, from a practical perspective, which digitalized business models fall within their scope.

Collection: European Taxation



European Union/Austria - State Aid Issues Regarding National Digital Taxes

Author: Kirchmayr, S.; Geringer, S.

Published online: 17 June 20202020 (Volume 60), No. 7

In the aftermath of the struggle to carve out a proposal for fair taxation of the digital economy, several EU Member States pushed forward and decided unilaterally to introduce national interim measures to grab a fair share of the tax revenue pie. The aim of this article is to shed light on State aid issues arising from the introduction of national digital services and advertising taxes.

Collection: European Taxation



Hungary - Emergency Tax Measures in Hungary: Tax Relief and Crisis Taxes

Author: Erdős, G.; Czoboly, G.

Published online: 8 June 20202020 (Volume 60), No. 7

In this note, the authors provide an overview and commentary on emergency measures that have been enacted in Hungary to address the economic effects of the pandemic.

Collection: European Taxation



European Union - The European Fiscal Support Plan in Response to COVID-19 (the Black Swan of European GDP): State Aid and Indirect Tax Measures

Author: Lanotte, A.

Published online: 8 June 20202020 (Volume 60), No. 7

In this article, the author examines two areas of fiscal policy in response to the COVID-19 crisis: State aid measures and indirect taxation. The author comments on the sufficiency of these measures and next steps that can and should be taken. Finally, the author looks at how developments in respect of digital technology can impact our response to the crisis.

Collection: European Taxation



European Union - Commission

Author: Alvarado, M.

Published online: 25 May 20202020 (Volume 60), No. 6

This overview highlights the Commission's proposal to authorize Italy to continue applying a VAT exemption for small businesses, its updated notice on the VAT consequences of the United Kingdom's withdrawal from the European Union, its explanatory notes on the new VAT measures ("quick fixes") applicable in the European Union, its amended State aid temporary framework to cover additional measures due to the COVID-19 pandemic, its approval of certain aid schemes adopted by Member States under the new framework and its decision to waive customs duties and import VAT on medical equipment.

Collection: European Taxation



Bulgaria - Corporate Tax Changes

Author: Tzenova, L.

Published online: 25 May 2020 (Volume 60), No. 6

This note discusses changes to the Corporate Income Tax Act that introduce new tax rules for transfers between a division of an enterprise in the country and another division of the same enterprise located outside the country relating to implementation of the EU Anti-Tax Avoidance Directive (2016/1164) and amendments relating to implementation of EU Directive (2017/952) as regards hybrid mismatches with third countries.

Collection: European Taxation



European Union - Court of Justice

Author: Alvarado, M.

Published online: 25 May 2020 (Volume 60), No. 6

This overview highlights the ECJ's decision denying a tax loss deduction in respect of a loss incurred by a non-resident company prior to the transfer of its place of effective management to another Member State.

Collection: European Taxation



United Kingdom - International Tax Recovery Assistance between EU Member States and the United Kingdom Following Brexit

Author: De Troyer, I.

Published online: 20 May 2020 (Volume 60), No. 6 At the beginning of 2020, the United Kingdom left the European Union. In this note, the author analyses the consequences of Brexit for mutual tax recovery assistance between EU Member States and the United Kingdom.

Collection: European Taxation



European Union - Ne Bis In Idem: The Court of Justice of the European Union Weighs in on the Tax Debate

Author: Vermeire, L.; Cassimon, L.

Published online: 20 May 2020 (Volume 60), No. 6

In this article, the authors outline the ne bis in idem principle based on the Charter and recent ECJ decisions. Further, they compare and contrast such ECJ case law with case law of the European Court of Human Rights.

Collection: European Taxation



Germany - Reform of the German Controlled Foreign Company Rules

Author: Eckl, P.; Schill, F.

Published online: 14 May 2020 (Volume 60), No. 6

This article provides an overview of the reform of the German controlled foreign company rules, which, inter alia, is aimed at implementing the CFC regime of the EU Anti-Tax Avoidance Directive (2016/1164).

Collection: European Taxation



European Union/International - Emergency Tax Measures in Response to the COVID-19 Pandemic

Author: Rogers-Glabush, J.; Morales, T.

Published online: 12 May 20202020 (Volume 60), No. 7 (Next Issue)

In response to the threat and impact of the COVID-19 virus, various European countries have enacted, or are in the process of enacting, tax measures to mitigate the economic fallout and provide a certain measure of security to their citizens. The following note, which will be updated as events unfold, summarizes the measures that have been introduced to date.

Collection: European Taxation



International - Fighting Tax Fraud through Artificial Intelligence Tools: Will the Fundamental Rights of Taxpayers Survive the Digital Transformation of Tax Administrations?

Author: Calderón Carrero, J.M.; Ribeiro, J.S.

Published online: 11 May 20202020 (Volume 60), No. 6

The authors, in this article, discuss how the growing use of artificial intelligence tools to fight tax fraud can erode basic taxpayer's rights. The use of AI mechanisms for reinforcing tax compliance forms part of a broader digital transformation of the tax administrations that is taking place globally. One of the new next frontiers for taxpayer protection can consist in establishing algorithmic accountability rules and adapting the tax procedures framework to this new reality.

Collection: European Taxation



European Union - Report on the Symposium, "Tax Digitization, Help or Obstacle to Legal Protection?"

Author: Offermanns, R.H.M.J.

Published online: 11 May 20202020 (Volume 60), No. 6

In this note, the author reports on a symposium held on 13 February 2020 at the Hotel Arena in Amsterdam the topic of which was "Tax Digitization, Help or Obstacle to Legal Protection?"

Collection: European Taxation

Confédération Fiscale Européenne - Opinion Statement ECJ-TF 1/2020 on the General Court Decisions of 24 September 2019 in The Netherlands v. Commission (Starbucks) (Joined Cases C-760/15 and T-636/16) and Luxembourg v. Commission (Fiat Finance and Trade) (Joined Cases T-755/15 and T-759/15), on State Aid Granted by Transfer Pricing Rulings

Author: CFE ECJ Task Force

Published online: 28 April 20202020 (Volume 60), No. 5

This CFE Opinion Statement, submitted to the EU Institutions on 28 January 2020, discusses the General Court decisions of 24 September 2019 in The Netherlands v. Commission (Starbucks) (Joined Cases C-760/15 and T-636/16) and Luxembourg v. Commission (Fiat Finance and Trade) (Joined Cases T-755/15 and T-759/15), on State aid granted by transfer pricing rulings.

Collection: European Taxation



European Union - Court of Justice

Author: Alvarado, M.

Published online: 21 April 20202020 (Volume 60), No. 5

This overview highlights the ECJ's decision denying a refund of dividend withholding tax by a Member State to a non-resident investment fund.

Collection: European Taxation



European Union - Council

Author: Alvarado, M.

Published online: 21 April 20202020 (Volume 60), No. 5

This overview highlights the Council's authorization to open negotiations with the United Kingdom for a future partnership and the emergency tax measures adopted by the Eurogroup in response to the COVID-19 pandemic.

Collection: European Taxation



European Union - Commission

Author: Alvarado, M.

Published online: 21 April 20202020 (Volume 60), No. 5

This overview highlights the Commission's draft legal agreement for the future EU-UK partnership, the adopted State aid temporary framework, the paper on the cash accounting scheme, the report on excise duty on tobacco products and surveys on the VAT data reporting obligation by payment service providers, as well as on tax policies within the European Union.

Collection: European Taxation



European Union/Luxembourg - Luxembourg Following the Recent Fiat/Chrysler (T-755/15 and T-759/15) Decision

Author: Vasić, S.

Published online: 20 April 20202020 (Volume 60), No. 5

In this article, the author examines the illegal State aid case against Luxembourg and Fiat Chrysler Finance Europe.

Collection: European Taxation



European Union/Netherlands - The Netherlands Following the Recent Starbucks NL Decision

Author: Dulmen, M. van

Published online: 16 April 20202020 (Volume 60), No. 5

In this article, the author explains the position of the Netherlands and of Starbucks NL in respect of the Commission's 2015 State aid decision, outlines the General Court's decision in the case, discusses the case's impact and clarifies where the Netherlands now stands with respect to State aid.

Collection: European Taxation



European Union/Belgium - Belgium Following the Recent Excess Profit Rulings Decision

Author: Heyvaert, W.E.C.; Sheikh Mohammad, V.

Published online: 15 April 20202020 (Volume 60), No. 5

In this article, the authors comment on the Belgian excess profit rulings saga. After a short overview of the legal and factual background to the case, they examine the Commission's negative decision and recovery order. Subsequently, they analyse the General Court's decision and discuss its potential impact on the current proceedings pending before the EU judiciary. Finally, they reflect on the impact of the ongoing process on Belgium's reputation on the international tax scene as an investor-friendly jurisdiction.

Collection: European Taxation



European Union/International - Recent Developments in the Field of EU Fiscal State Aid: Three Cases Concerning Benelux Tax Schemes and the Position of the United States – Foreword

Author: Heyvaert, W.E.C.

Published online: 7 April 20202020 (Volume 60), No. 5

This article introduces this special issue of European Taxation on recent State aid developments in the Benelux countries and the implications for multinational groups of companies headquartered in the United States.

Collection: European Taxation



European Union/United States - State Aid Recoveries and the US Foreign Tax Credit

Author: Ruchelman, S.C.; Apostolides, A.

Published online: 7 April 20202020 (Volume 60), No. 5

The authors examine whether State aid recovery payments may qualify for indirect foreign tax credits in the United States. The tax year linked to the recovery payment may affect the value of the credit. If earnings, tax payments and dividends are not well matched, the credit may be lost or diminished in value. The authors suggest that State aid recoveries are trade disputes to be resolved before the International Court of Justice, not an EU tribunal.

Collection: European Taxation



European Union - The EU Concept of State Aid

Author: Binder, T.

Published online: 6 April 20202020 (Volume 60), No. 5

The author, in this article, discusses the EU State aid rules and their enforcement, including an historical analysis of the upheaval in EU tax policy during the late 1990s that led to their enactment.

Collection: European Taxation



INTERNATIONAL VAT MONITOR N. 3 – 4 – 5 – 6 (2020)

European Union - The EU VAT and the Expansion of Turnover Taxation: Interfering Tax Systems?

Author: Károlyi, B.

Published online: 10 November 2020 (Volume 31), No. 6 (Next Issue)

In this article, the author provides a critical analysis of the ECJ's approach and attempts to explore how the scope of the concept "turnover taxes", for the purposes of article 401 of the VAT Directive, could be defined in a way that ensures that the provision is applied in accordance with its objective, which is to safeguard the goals of the common VAT system from interference by other domestic taxes. The author argues that in light of the narrow interpretation of turnover taxes in the ECJ's case law, it is unlikely that the introduction of recent turnover-based business taxes would be prohibited by the VAT Directive.

Collection: International VAT Monitor



Bhutan - Implementation of Goods and Services Tax in Bhutan

Author: Hassan, B.

Published online: 10 November 2020 (Volume 31), No. 6 (Next Issue)

On 1 July 2020, Bhutan fully implemented the Goods and Services Tax Act 2020 (GST Act) to eliminate other indirect taxes resulting in double and triple taxation. The GST Act will enter into application on 1 January 2021. In this article, the author summarizes the main features of the GST Act, including the regulatory framework and administrative requirements. The author also highlights anti-avoidance GST provisions included in the GST Act in addition to offering some proposals for effective implementation of the GST legislation in Bhutan.

Collection: International VAT Monitor



Saudi Arabia/Gulf Cooperation Council - The New E-Invoicing Rules in Saudi Arabia: A New Paradigm of Tax Administration in the GCC?

Author: Ricart Verdera, J.

Published online: 9 November 2020 (Volume 31), No. 6 (Next Issue)

In this Column, the author analyses a proposal for introducing e-invoicing rules in Saudi Arabia and explains that it is going to generate a new paradigm in terms of electronic tax administration and digitalization of the tax function, not only in Saudi Arabia but also in the rest of the GCC member states.

Collection: International VAT Monitor



European Union/GCC - Difficulties in Determination of VAT Treatment of Various Categories of Financing Solved by "Economic Reality"?

Author: Neijtzell de Wilde, L.

Published online: 6 November 2021 (Volume 32), No. 1 (Next Issue)

In this article, the author discusses the difficulties in the determination of the VAT treatment of various financial products, including Islamic finance products, based on both EU and GCC legislation. Main findings are that under both systems, establishing whether or not financing products that achieve the same economic goal are indeed treated in a similar way is burdensome. Alternative solutions to achieve more justified results, such as applying a more economic approach or limited implementation of VAT exemptions, should – in the author's view – be further investigated.

Collection: International VAT Monitor



European Union/Bulgaria - The Extended Scope of the Reduced VAT Rate in Bulgaria

Author: Krastanov, S.

Published online: 4 November 2020 (Volume 31), No. 6 (Next Issue)

Bulgaria used to apply a VAT reduced 9% rate only for accommodation services in hotels and similar establishments. However, as a COVID-19 emergency measure, recently the country extended the scope of application of the reduced VAT rate. It is now applied temporarily also to other goods and services. In this article, the author discusses recent developments on this topic in Bulgaria with the relevant ECJ case law as a background.

Collection: International VAT Monitor



International - VAT Registration Thresholds in Europe

Author: Annacondia, F.

Published online: 3 November 2020 (Volume 31), No. 6 (Next Issue)

As is traditional in the sixth issue of each year, in this issue of the International VAT Monitor an overview is presented of the VAT registration thresholds in most European (both EU and non-EU) countries, applicable in October 2020 and supplemented with announced amendments entering into force on 1 January 2021.

Collection: International VAT Monitor



European Union - Three New Requirements for Zero Rating Intra-Community Supplies: Barking Up the Wrong Tree

Author: Gómez Aragón, D.; Echevarría Zubeldia, G.

Published online: 3 November 2020 (Volume 31), No. 6 (Next Issue)

In this article, the authors challenge the substantive characterization of the three new requirements relating to the zero rate of intra-Community supplies of goods introduced by the “quick fixes” package and address the consequences arising from failure to comply with them.

Collection: International VAT Monitor



United Kingdom/European Union - VAT in the Post-Brexit Era – What to Expect?

Author: Hughes, P.

Published online: 8 September 2020 (Volume 31), No. 5

There has been a great deal of uncertainty around the post-Brexit VAT treatment of EU-UK trade. In this Column, the author explains, in the absence of a comprehensive deal, what the situation will look like for UK imports as of 1 January 2021.

Collection: International VAT Monitor



Hungary/European Union - The Glencore Case from a Constitutional Perspective: What Happens when the ECJ and the Constitutional Court Arrive at Different Conclusions?

Author: Szatmári, Z.

Published online: 4 September 2020 (Volume 31), No. 5

The procedural rights of taxpayers often have a significant impact on how certain rights provided by substantial tax rules can be exercised. Constitutional courts have the jurisdiction to review whether such procedural rules infringe any constitutional rights, whereas the ECJ has jurisdiction to review whether the application of procedural rules unlawfully limit the application of rights granted by EU law. In this article, the author discusses a Hungarian case in which the decisions of the two courts seemingly clashed and analyses what the potential implications of this could be.

Collection: International VAT Monitor



European Union - The Court of Justice of the European Union – Recently Decided and Pending Cases

Author: Annacondia, F.

Published online: 1 September 2020 (Volume 31), No. 5

In this overview, the editor provides a list of judgments of the Court of Justice of the European Union (ECJ) and Opinions of the ECJ’s Advocates General delivered in VAT cases in the past

12 months. The overview also contains a list of the remaining cases pending before the ECJ on 31 August 2020, and a list of cases that have been removed from the ECJ's register in the past year.

Collection: International VAT Monitor



Portugal - The Legality of the Punitive Deferral of the Exercise of the Right of Deduction

Author: Gryziak, B.

Published online: 25 August 2020 (Volume 31), No. 5

In an attempt to address irregularities in VAT returns related to transactions in which, as a rule, the tax due is equal to the input tax (i.e. transactions subject to reverse charges and similar), the Polish VAT legislator has introduced a three-month mandatory period for submitting (adjusting) relative VAT returns. Failure to observe the term results in a deferral of the right to deduct input tax, which in turn leads to the accrual of default interests. A question is pending before the ECJ concerning the legality of this measure. In this article, the author argues that EU law does not preclude such a measure.

Collection: International VAT Monitor



International/Argentina/Chile/Colombia/Mexico/Peru/Uruguay - Indirect Taxation of Digital Services in Latin America: A Comparative Overview of Recent Developments in Argentina, Chile, Colombia, Mexico, Peru and Uruguay

Author: Suffiotti, G.

Published online: 20 August 2020 (Volume 31), No. 6 (Next Issue)

In this article, the author provides a general overview of the indirect tax treatment of digital services in Argentina, Chile, Colombia, Mexico, Peru and Uruguay. Particularly, the author in the article focuses on the structure of the taxable events, place of taxation and territoriality rules as well as compliance and collection mechanisms.

Collection: International VAT Monitor



European Union/Portugal - Letting of Immovable Property: An Overview of the Portuguese Further Exclusion to the VAT exemption

Author: Silva, V. Loureiro e

Published online: 11 August 2020 (Volume 31), No. 6 (Next Issue)

Portugal has made use of the option laid down in article 135(2)(2) of the VAT Directive, this Directive providing for a further exclusion to the scope of the VAT exemption applicable to the leasing or letting of immovable property. In this article, the author describes the key aspects of the Portuguese further exclusion and discusses whether it is in accordance with EU law.

Collection: International VAT Monitor



Portugal - Tax Arbitration and VAT: The Portuguese Experience

Author: Vasques, S.

Published online: 10 August 2020 (Volume 31), No. 5

Since its introduction in 2011, tax arbitration has become an important element of the Portuguese justice system. In this article, the author examines its main features, its impact on VAT litigation and the growing use of tax arbitration as a fast track to the Court of Justice of the European Union.

Collection: International VAT Monitor



European Union/Italy - Taxable Person's Fundamental Rights in Tax Proceedings: The ECJ and the Italian Jurisprudence

Author: Contrino, A.; Cavallo, A.

Published online: 31 July 2020 (Volume 31), No. 5

The right to defence under the EU Charter of Fundamental Rights applies to the harmonized VAT system. In this article, the authors analyse the Glencore Agriculture Hungary case (C-189/19) with the aim of understanding to what extent and when the right to access to the evidence should be guaranteed in order to ensure the taxable person's right to defence. In this regard, the authors noticed that the Italian legislation, jurisprudence and practice of the tax authority are not complying with a recent ECJ decision.

Collection: International VAT Monitor



European Union - A Look Back at EU VAT Developments in 2019 Regarding Insurance and Financial Services: Part 2

Author: Gamito, P.

Published online: 27 July 2020 (Volume 31), No. 5

In the first part of this two-part article (published in the previous issue of the journal), the author provided some background and a detailed review of the 2019 case law of the ECJ in the area of insurance and financial services. He highlighted the main elements of clarifications provided by the ECJ in this field in the past year. In this second part of the article, the author focuses on the pending cases and on recent policy developments that might have an impact on the most expected reform of the EU VAT framework for insurance and financial services.

Collection: International VAT Monitor



European Union/Italy - The Participation of Italy in the EU VAT Cross-Border Rulings Project: Legal and Procedural Issues

Author: Cannas, F.

Published online: 23 July 2020 (Volume 31), No. 5

The EU VAT Cross-Border Rulings Project is a product of the EU VAT Forum, and its declared purpose is to allow taxable persons to obtain advanced rulings on the VAT treatment of complex cross-border issues. In this article, the author aims at identifying the main reasons why taxable persons have shown disinterest in this project. The findings of the short analysis herein are expected to be relevant at both European and domestic levels in the event that a decision is made to relaunch or expand this instrument.

Collection: International VAT Monitor



European Union - Back to the Question: Can the VAT Exemption for Cost-Sharing Groups Operate in Cross-Border Scenarios?

Author: Sol Rosa, J.

Published online: 8 July 2020 (Volume 31), No. 5

In this article, the author analyses the AG Opinion in the ECJ case of Kaplan International Colleges UK (C-77/19) and focuses on the discussion whether cost-sharing groups operating across borders can benefit from the VAT exemption established in article 132(1)(f) of the VAT Directive.

Collection: International VAT Monitor



European Union - Intra-EU Trade and VAT: Will the Distinction between Goods and Services Still Be Relevant after 2020?

Author: Amand, C.

Published online: 2 July 2020 (Volume 31), No. 4

As from 2021, the rules governing cross-border business-to-consumer (B2C) distance sales of goods within the European Union will be aligned with those governing cross-border B2C supplies of telecommunications, broadcasting and electronic (TBE) services. In this article the author raises the question of whether the next step should be the alignment of the rules governing the place of business-to-business (B2B) supplies of goods and services in intra-EU trade.

Collection: International VAT Monitor



Chile/International - Chile Taking Baby Steps: VAT on Digital Services

Author: Gepp, I.

Published online: 2 July 2020 (Volume 31), No. 4

In this article, the author addresses the changes made to the Chilean VAT Law to effectively tax digital services from 1 June 2020 onwards, while enhancing the means by virtue of which VAT on e-commerce of goods can be collected.

Collection: International VAT Monitor



European Union - A Look Back at EU VAT Developments in 2019 Regarding Insurance and Financial Services: Part 1

Author: Gamito, P.

Published online: 2 July 2020 (Volume 31), No. 4

In this article, which is divided into two parts, the author addresses the jurisprudential and policy developments that took place in 2019 in the area of VAT on insurance and financial services. Part 1 of this article provides some background and offers a detailed review of the 2019 case law of the Court of Justice of the European Union. Part 2 of this article (published in the next issue of this journal) reviews the pending cases and discusses recent policy developments that might play a role in the (expected) reform of the EU VAT framework for insurance and financial services.

Collection: International VAT Monitor



European Union - Unprecedented Times Call for Unprecedented Measures: VAT to the Rescue of the European Economy

Author: Echevarría Zubeldia, G.

Published online: 1 July 2020 (Volume 31), No. 4

In this column, the author considers some specific measures that EU Member States can implement to help companies to carry on conducting their business during the actual crisis.

Collection: International VAT Monitor



European Union - VAT Considerations on ECJ's Ruling that Airbnb Is Not a Real Estate Agent

Author: Loquet, E.; Karoutis, D.

Published online: 26 June 2020 (Volume 31), No. 4

In December 2019, the ECJ ruled on the qualification of the services supplied by Airbnb under Directive 2000/31 on e-commerce. In this article, the authors compare this decision with previous ECJ decisions concerning Uber and discuss the possible consequences that the Airbnb decision might have in the field of VAT for sharing economy platforms operating in the short-term rental accommodation market.

Collection: International VAT Monitor



European Union - The New VAT Record Keeping and Reporting Obligations for Payment Service Providers

Author: Hilten, M.E. van; Beretta, G

.Published online: 25 June 2020 (Volume 31), No. 4

On 18 February 2020, the European Council adopted a new set of rules that, as of 1 January 2024, will require payment service providers (PSPs) to record certain information on payment transactions and report this information to the tax authorities of EU Member States. In this article, the authors discuss the scope and implications of the new VAT obligations as laid down in Directive 2020/284/EU and Regulation 2020/283/EU. Although concurring with the need to introduce adequate VAT enforcement mechanisms, the authors identify several

problem areas in which the new VAT record keeping and reporting obligations for PSPs might see an improvement.

Collection: International VAT Monitor



European Union - The EU Special Scheme for Travel Agents: Complex Present but Desired Future – Options for Reform

Author: Tarhova, E.; Yoncheva, E.

Published online: 18 June 20202020 (Volume 31), No. 4

In this article, the authors endeavour to present a critical review of the special EU VAT rules for travel services, the so-called Tour Operators Margin Scheme, in its legal business and economic context, from its origins to its present application throughout the European Union. The authors seek to identify the main problematic issues, to underline the need for urgent reform and to reflect on possible ways forward.

Collection: International VAT Monitor



European Union - Fixed Establishment: From Berkholz and DFDS to Welmory and Dong Yang

Author: Lasiński-Sulecki, K.

Published online: 16 June 20202020 (Volume 31), No. 4

The concept of “fixed establishment”, initially undefined in EU VAT legislation, has always led to disputes over the boundaries of its meaning. The Court of Justice of the European Union has created its definition in its case law and this definition was eventually “copy-pasted” in the Implementing Regulation. In this article, the author discusses recent cases that have revealed how this definition still creates interpretation issues in the world of new technologies and economic reality.

Collection: International VAT Monitor



Germany/European Union - Germany Extends Tour Operator Margin Scheme for Travel Services to B2B Sector

Author: Grambeck, H-M.

Published online: 10 June 20202020 (Volume 31), No. 4 Germany has amended its VAT rules for travel services from 18 December 2019 as a consequence of an infringement procedure. In this article, the author explains the consequences of these new rules for travel service providers, as well as business customers, and points out some grey areas which imply uncertainties for the businesses affected.

Collection: International VAT Monitor



European Union - 2020 Quick Fixes: Simplification or More Complexity for Businesses? – The Explanatory Notes

Author: Sol Rosa, J.

Published online: 29 May 20202020 (Volume 31), No. 3

On 4 December 2018, the Council of the European Union adopted a legislative package known as “2020 Quick Fixes” in relation to certain modifications in the field of VAT and intra-Community trade. In this article, the author makes a detailed analysis of the quick fixes based on the Explanatory Notes providing the reader with an easy-to-read document covering all the scenarios dealt with in the Explanatory Notes as well as describing the impact for businesses of the mentioned changes.

Collection: International VAT Monitor



European Union - Combining Modern Technology and Real-Time Invoice Reporting to Combat VAT Fraud: No Revolution, but a Technological Evolution

Author: Jafari, S.

Published online: 18 May 20202020 (Volume 31), No. 3

An invoice reporting system based on blockchain technology can offer confidentiality, 100% VAT fraud detection and advantages for businesses. In order to fully understand the benefits that a blockchain-based invoice reporting system can bring to VAT, in this article the author gives an example of how blockchain technology can actually be used to fight VAT fraud, without making things overly complicated. The author also explains that implementation would not be a revolution of the VAT system, but only a technological evolution.

Collection: International VAT Monitor



European Union - Proposal for an Automated Real-Time VAT Collection Mechanism in B2C E-Commerce Using Blockchain Technology

Author: Müller, R. (Robert)

Published online: 18 May 2020 (Volume 31), No. 3 The correct collection of VAT on goods and services in cross-border e-commerce remains a problem in the European Union, especially in B2C situations. In the author's view, this results from EU tax administrations' lack of technical and legal capacity when it comes to collecting and analysing relevant VAT data, but also from the VAT collection model that is used, which is based on self-declaration. In this article, the author proposes that blockchain could be used in e-commerce transactions to develop an automated, real-time VAT collection mechanism at the level of payment processing.

Collection: International VAT Monitor



European Union - New Developments in the "Fixed Establishment" Concept for VAT Purposes

Author: Leur, M. van de

Published online: 18 May 2020 (Volume 31), No. 3 In this column, the author considers the new developments in the "Fixed Establishment" concept for European VAT purposes.

Collection: International VAT Monitor



European Union - Never Waste a Good Crisis: Turning the EU VAT System into a Win-Win-Win

Author: Lejeune, I.

Published online: 13 May 2020 (Volume 31), No. 3

After the current COVID-19, crisis the contribution of VAT to the EU Member States' budget will be crucial. Maximizing the collection of VAT at the lowest cost of compliance for businesses will be key, although it might not be enough to finance the recovery. So why just focus on burden reduction and the definitive VAT system? Let us instead take a strategic long-term approach and redesign the EU VAT system into a best practice, taking a holistic approach: a win-win-win for all stakeholders.

Collection: International VAT Monitor



European Union - EU VAT Measures Taken due to COVID-19

Author: Sol Rosa, J.

Published online: 11 May 2020 (Volume 31), No. 3

The World is struggling with the effects of the COVID-19 virus and many countries are taking actions to fight it. Governments are implementing different measures in order to help businesses to overcome the negative impact of the pandemic in the economy. In this article, the author collects the main measures taken in the area of VAT by the Member States of the European Union until 1 May 2020.

Collection: International VAT Monitor



Finland - The Reduced VAT Rates Applicable to Electronic Publications in Finland

Author: Ruohola, T.; Jääskeläinen, T.

Published online: 6 May 2020 (Volume 31), No. 3

In this article, the authors discuss both the legislative process that led to Finland's adoption of Council Directive 2018/1713 and its implementing process. The authors also examine the positive effect that the amendments will have on neutrality among physical and electronic forms of publications, but highlight the interpretation issues that will remain open until administrative practice develops.

Collection: International VAT Monitor



GCC Countries - Can VAT Discourage Investment Banks in the GCC from Investing in Domestic Markets?

Author: oğlu Majidli, M.K.

Published online: 4 May 20202020 (Volume 31), No. 3 In this article, the author criticizes the exemption from VAT of financial services in the GCC VAT system by explaining its impact on domestic investment banks and, as a consequence, on the volume of domestic investment.

Collection: International VAT Monitor



Switzerland/European Union - VAT Treatment of Cryptocurrencies – Some Thoughts on the Libra Project

Author: Danz, M.

Published online: 1 May 20202020 (Volume 31), No. 3

On 18 June 2019, Mark Zuckerberg officially announced the Libra project with a popular post on Facebook. The idea of launching a global stablecoin that would benefit from an easily accessible and globally available financial infrastructure was born. Based on the blockchain system, Libra would distinguish itself from other popular cryptocurrencies (like bitcoins) for being collateralized (and therefore “stable”) and for its creation process. In this article, the author will first briefly describe the Libra project and make some observations about Libra by analysing its functioning and determining whether it is a fully stablecoin or not. She will then examine the issue from the point of view of VAT, which could possibly be taken into account on transactions made using Libra.

Collection: International VAT Monitor



Brazil/International - Digital Economy and Indirect Taxation: Developments in Brazilian Legislation

Author: Castro, D. Rodrigues Prado de

Published online: 30 April 20202020 (Volume 31), No. 3

In this article, the author discusses the indirect tax challenges of the digital economy through an assessment of the legislative initiatives related to the indirect taxation in Brazil, against the background of recent developments at the international and EU level. She offers her conclusions regarding the need for a tax reform in Brazil to tackle the digital sector.

Collection: International VAT Monitor

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INTERTAX N.5

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INTERTAX N.6/7

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[Literature Review: Vokhid Urinov, Taxation of Foreign-Source Income of Resident Individuals: A Structural Enforcement Through Automatic Exchange of Tax Information, Vol. 49, IBFD Doctoral Series, 2019](#) (p. 1171)

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European Union/International - Limitation of Holding Structures for Intra-EU Dividends: An End to Tax Avoidance?

Author: S.H. Baerentzen; A. Lejour; M. van 't Riet

Published: 2 April 2020 (Volume 12), No 2

This article analyses the recent rulings of the Court of Justice of the European Union in two Danish cases and examines their possible impact on international tax avoidance. These rulings regard limitations of tax benefits related to cross-border dividend payments resulting from the interposition of holding companies in the European Union. From a legal perspective, the authors conclude that the rulings demonstrate the alignment of international tax policies to combat tax avoidance between the European Union and the OECD. The concerted action between the two is implemented by the economic test to counter abusive legal holding structures. From a quantitative perspective, the rulings limit the potential for multinational enterprises to lower their tax burden considerably. The worldwide average potential gain from treaty shopping is reduced from 5.6% to 4.5% when the EU Member States cannot be used on treaty shopping routes. With more countries, the combat against tax avoidance is more effective. However, the fact that some countries have a standard withholding tax rate of zero per cent hampers the combat.

International - Legitimacy in International Tax Law-Making: Can the OECD Remain the Guardian of Open Tax Norms?

Author: L. Brosens; J. Bossuyt

Published: 1 May 2020 (Volume 12), No 2

The fight against tax avoidance and tax evasion has become a policy priority of many states. Unilateral action is, however, not an appropriate solution. Global problems of tax avoidance and evasion can only be successfully addressed through international cooperation. In this context, the efforts of the OECD for enhancing cooperation in international taxation have been impressive over the last decade. Reference can, for example, be made to the various initiatives relating to information sharing and the Base Erosion and Profit Shifting (BEPS) Project. Although these initiatives seem legitimate, the role of the OECD in international tax law-making has been criticized. The more influential the OECD's initiatives are and the more the decision-making authority in relation to taxation shifts from the national to the international level, the more its legitimacy is questioned. The purpose of this article is to examine whether the OECD indeed lacks legitimacy and, if so, what could be done to overcome such a legitimacy deficit. The article starts by analysing in more detail the role that the OECD has played (and is still playing) in international tax law-making and what legal value should be attached to the instruments that have been developed by the OECD. The authors then proceed to assess the legitimacy of the OECD during the BEPS Project. A conceptual framework is needed to assess an international institution's legitimacy. In this respect, the political science-oriented angle of input, output and throughput legitimacy was taken as a basis. The research shows that the OECD lacked input and output during the BEPS Project, but the authors also identified many flaws in the decision-making process itself. The authors argue that whatever international (rule-making) body is developed to take on a role in international tax law-making, legitimacy issues will remain in the absence of appropriate decision-

making procedures. Whilst turning the OECD into a sounding board under the auspices of another organization may therefore not be very helpful, the organization should acknowledge that it needs to monitor its decision-making procedures if it wants to remain the guardian of open tax norms in international taxation. More transparent and equal participation by states, other stakeholders and the public at large, as well as more robust accountability mechanisms, may restore the OECD's legitimacy.

OECD/International - Taxpayers' Right of Defence in the International Context: The Case of Exchange of Tax Information and a Proposal for the "English" Wednesbury Doctrine as the New OECD (BEPS) Standard

Author: F. Cannas

Published: 4 May 2020 (Volume 12), No 2

This contribution considers the case of the exchange of tax information as a demonstration of the lack of adequate taxpayer protection within the BEPS Project and, more generally, under the current legal framework of international taxation. After having determined the primary causes of the weakness of taxpayer protection under the current legal framework and providing examples, this article adopts a comparative perspective and performs an analysis of what is known in the English legal system as the Wednesbury doctrine: specifically, the basis of the judicial reviewability of decisions taken by public authorities. That doctrine is then proposed as the basic conceptualization of a generally applicable concept of judicial review, to be endorsed at an international level with the purpose of providing the taxpayer with effective protection of its rights in situations in which more than one legal system is involved.

International/OECD/G20 - GloBE Proposal and Possible Carve-Outs: Is There a Future for Preferential Tax Regimes?

Author: C. Cipollini

Published:

9 June 2020 (Volume 12), No 2

The GloBE proposal intends to comprehensively address the remaining BEPS challenges and tax competition issues ensuring that the profits of multinational enterprises are subject to a minimum effective tax rate. Nonetheless, the public consultation held in November 2019 gave evidence of different views among the stakeholders around the scope of the new rules. The aim of this article is to explore the idea of carve-outs to exclude the preferential tax regimes in compliance with BEPS Action 5 from the new measures. The analysis of the GloBE proposal involves not only the interplay with BEPS Action 5 and tax competition, but also other variables of the international tax framework, including tax neutrality, tax equity, and tax sovereignty. The results provide serious arguments to support the possibility of carve-outs to limit the scope of the new rules for some preferential tax regimes that comply with the standards developed by the Forum on Harmful Tax Practices. Based on the fact that the future of such regimes should be preserved for fundamental policy reasons, it is suggested to redefine the path towards the minimum effective tax on the ground of new balancing elements: the parameter of the fiscal residue and the principle of proportionality.

International - Scaling Back Tax Preferences on Artificial Intelligence-Driven Automation: Back to Neutral?

Author: C. Dimitropoulou

Published: 23 June 2020 (Volume 12), No 2

This article discusses the possibility of the rehabilitation of tax incentives to address the negative effects of artificial intelligence (AI) automation, especially since investments in new technologies resulting in automation are largely subsidized. This idea is premised on the need to restore the neutrality of the tax system, understood in both its equity and efficiency dimensions. The article uses the concept of tax expenditures as the theoretical background for evaluating automation tax incentives and their potential limitation as to whether it might advance the tax system's normative goals. By examining several automation tax preferences in light of tax neutrality, some risks were identified for both equity and efficiency based on the workers-machines substitution effect. The article concludes that a tax policy reducing tax incentives on AI-driven automation would be proportional to the aim pursued if the scope of the measure is designed by referring to the substitution effect between robots and workers and would not be such as to impede investment in AI that is socially desirable.

International - Profit Allocation within MNEs in Light of the Ongoing Digital Debate on Pillar I – A “2020 Compromise”?

Author: V. Chand; A. Turina; L. Ballivet

Published: 30 July 2020 (Volume 12), No 3

The current profit allocation framework, i.e. the arm's length standard, is mainly based on a facts and circumstances analysis. In particular, depending on the situation, facts and circumstances-related allocation keys are used to allocate profits among various entities within a multinational enterprise (MNE). Nevertheless, there are situations wherein predetermined formulas and/or allocation keys are also used within the standard. The purpose of this article is to show that predetermined approaches will quickly infiltrate the profit allocation framework, although a facts and circumstances analysis and/or allocation keys will continue to be used. The authors support this proposition by analysing the current debate on profit allocation with respect to the digitalization of the economy. They conclude that the use of predetermined approaches is inevitable if the objective is to develop a simplified solution with respect to the profit allocation debate made in the context of Pillar 1 of the digital debate. A simplified solution would be to apply a formulary approach at the MNE group level and an arm's length principle (ALP) approach at a separate-entity level. More specifically, a predetermined formulary approach in the form of a simplified but modified residual profit split method could be applied at the MNE group level to reallocate residual profits (the so-called Amount A). Simultaneously, a predetermined formula based on the arm's length approach could be applied at a separate-entity level, that is, to routine distribution and/or marketing activities (the so-called Amount B). This latter approach will be complemented and backed up by a facts and circumstances arm's length analysis (the so-called Amount C, which, in some respects, would seem to be more of a process, rather than a separate amount). In this context, the authors address their view on a few key questions that arise in the “new” profit allocation context for Amounts A, B and C. For Amount A, the authors express their

view on determination of the MNE tax base, determination of losses, revenue sourcing rules, information reporting, collection of taxes as well as stabilization of the MNE group approach. For Amount B, they provide their view on issues such as the determination of the scope of application, the determination of the fixed return, its legal qualification and its possible stabilization. The need to introduce a more robust dispute resolution institutional framework is also addressed with specific regard to Amount C. Finally, they analyse the impact of the new profit allocation mechanisms on selected business models used by MNEs. It should be noted that the present contribution does not address, as far as necessary to provide adequate context, the normative debate on a new scope, new nexus or new relief rules but rather focuses on the challenges arising from profit allocation.

European Union/International - GloBE and EU Law: Assessing the Compatibility of the OECD's Pillar II Initiative on a Minimum Effective Tax Rate with EU Law and Implementing It within the Internal Market

Author: J.F.P. Nogueira

Published: 30 July 2020 (Volume 12), No 3

This article examines the compatibility of the OECD's proposed rules on GloBE (pillar II) with EU law, covering both primary law and secondary law. In addition, it discusses the amendments required by the implementation of this initiative within the internal market. In what concerns compatibility with primary law, this article suggests extending some of the measures to domestic scenarios (avoiding potential issues of discrimination or restriction). In what concerns secondary law, it suggests altering some of the provision of the directives. Furthermore, in the author's view, the European Union would benefit from aligning some of its tax directives to the outcomes of OECD's GloBE.

International - Tax Incentives for Charitable Giving as a Policy Instrument: Theoretical Discussion and Latest Economic Research

Author: G. Lideikyte Huber

Published: 4 August 2020 (Volume 12), No 3

This article explores a long-standing research and policy question on whether tax incentives for charitable giving are desirable from legal and economic perspectives. The author discusses legal and empirical aspects that are important in designing tax incentives for charitable giving. Firstly, this article introduces the general theoretical criticism related to the use of tax expenditures as policy measures. Secondly, the author reviews the most recent economic literature that studies various aspects related to the efficiency of tax incentives for charitable giving. In conclusion, both theoretical and empirical research argues that incentivizing charitable giving via tax incentives (especially tax deductions) is not the most equitable and/or the most efficient policy option, at least concerning the current forms of tax incentives. Financial incentives structured as direct expenditures, such as matching grants for charitable donations, may be a more suitable policy option. Economic literature proposes ways to make tax incentives more efficient, for instance taking into account heterogeneous taxpayers' responses to tax incentives. Such policy options should however be carefully evaluated from a legal perspective, especially in light of the ability-to-pay principle.

European Union/International - DAC 6: An Additional Common EU Reporting Standard?

Author: B. (Bart) Peeters; L. Vanneste

Published: 3 September 2020 (Volume 12), No 3

In June 2018, Directive 2018/822/EU introduced the mandatory disclosure of tax arrangements as the 6th amendment to the Directive on administrative cooperation in the field of taxation (DAC 6). Although presented as a uniform European framework, its broad and vague terminology will lead to differing domestic implementations, immediately challenging the Commission's argument for a uniform application: secure the proper functioning of the internal market. This article illustrates this tension throughout a profound analysis of DAC 6: although invoking the internal market, it primarily broadly fights against tax avoidance and aggressive tax planning, improving the internal market being only its indirect underlying goal. Given this primary aim, the contribution also assesses the Directive's relation to other existing tools and confronts it with the freedoms of establishment and services. Developed to enhance the internal market, the question arises whether its additional restrictions can be justified when analysed under EU primary law.

European Union/OECD/International - Joint Audits – Ten Years of Experience: A Literature Review

Author: D. Criclivaia

Published: 16 September 2020 (Volume 12), No 3

Aiming to identify new opportunities for future research on joint audits (JAs), a literature review is conducted to reveal the major insights arising from the last ten years (e.g. the countries implementing JA, the number of ordinary and pilot project cases, costs and failures of JAs). In terms of the methodology applied, a total of 116 published works, spanning authors from 17 countries, were found. The analysis included: the year of publication; most-cited articles and authors; most-active journals and publishers; authorship and affiliation; type of study; and related topics addressing the JA. The findings provide evidence that there are an increasing number of JA studies, approximately 11 publications per year, but that this overall trend is mainly the result of an increase in studies published in Germany. The data suggests that the number of publications addressing JA is decreasing in other countries. The data demonstrates a strong correlation between the number of JA cases and the number of publications. Ninety-five per cent of German studies are published in German, which makes it difficult to capture the experience and knowledge worldwide. None of the research papers found address the topic of JAs on an empirical basis. Most publications have focused on an examination of the legal framework, JA pilot projects analysis, real cases discussion and research on the obstacles to an efficient JA procedure. Various authors have presented their own approach to defining, providing a final result and the legal bases of the JA, which are sometimes similar to the OECD proposal to audit cross-border activities jointly, and sometimes different. Representatives of the tax administration are responsible for publishing half of all publications. The Bavarian Ministry of Finance seems to be the world's leading testing ground on JAs to date.

International - Profit Allocation Based on Scarcity Value: A New Factor for Taxing Intra-Group Services Where They Create Value

Author: N. Berndsen

Published: 18 September 2020 (Volume 12), No 4

In this article, it is argued that the principle of taxing where value is created is currently not applied in a way that actually results in taxation where value is created. In order to better adhere to this principle, the scarcity value of intra-group services provided cross-border should be taken into account. The scarcity value entails that the provision of a service in a jurisdiction where it is not possible to obtain that service due to scarcity in the market of that jurisdiction for that specific service gives rise to a relatively higher profit in that jurisdiction. This means that relatively more value is created in that jurisdiction. This additional value should be allocated there in order for that jurisdiction to tax the part of the profit that is created there. The proposal in this article goes beyond the traditional transfer pricing rules and the arm's length principle, but it does not necessarily go against it, as it functions within the framework of the OECD's Marketing Intangibles proposal and the Unified Approach under Pillar One. This means that only part of the residual profit is to be reallocated to scarcity value; the routine functions of the multinational enterprise will still be awarded the same routine return as under the transfer pricing rules that are currently in place. As this is (to the author's knowledge) the first article on allocating profit based on scarcity value, there are a number of outstanding issues for further discussion. The main issues are the problems regarding establishing whether a certain service is scarce in a certain jurisdiction, reaching an agreement on which state should renounce part of its tax claim and the overlap of scarce services, marketing intangibles and value created due to factors that are unique to a specific multinational enterprise.

International - A Critique from a Developing Country Perspective of the Proposals to Tax the Digital Economy

Author: A. Oguttu

Published: 13 October 2020 (Volume 12), No 4

The digital economy has revolutionized the way of doing business, but it poses challenges to the effectiveness of current international tax system. The OECD has called on the international community to consider new international tax rules for taxing the digital economy, with a plan to reach consensus by 2020. This article highlights that the feasibility of the new rules should be based on a principled approach. However, before international consensus could be reached, some countries started adopting unilateral measures that threaten the integrity of the international tax system, and they impact on foreign direct investment in developing countries. The article highlights the pros and cons of the proposals from a principled and developing country perspective. With country interests to protect, there is no guarantee that consensus will be reached soon. While uncertainty prevails, the article recommends measures that have historically been used to protect source tax bases and are in line with international tax principles that will be useful for developing countries.

International - Prospects for Taxation of the Digital Economy between "Tax Law and New Economy" and "Tax Law of the New Economy"

Author: I. Cugusi

Published: 15 October 2020(Volume 12), No 4

The digital revolution raises the question as to whether the international tax rules remain fit for purpose in an increasingly changing environment. The relationship between the digital economy and the existing categories of international taxation is usually approached assuming the existence of a conflict. Is that the right approach to address the question? Although the term “digital economy” is widely used, it relates only to the digital space while it suggests the exclusion of the physical one. The author of this article has a different standpoint and proposes to develop a model of taxation of the internet that goes beyond the narrowest scope of the digital economy and better reflects the modern economy where the virtual and physical worlds are closely interdependent and interconnected. The study contributes to develop a concept of internet community by establishing why it is likely to be a new qualitative key indicator in the coming decades both for purpose of defining the “sufficient economic presence” and allocating profits.