Societas Europaea: Flagship for European Company Law Catalyst for EC Tax Law?

Special Issue
Dedicated to D.A. van Waardenburg

In this special issue of *European Taxation*, guest edited by Dr Martin Wenz of the Ludwig-Maximilians-University, Munich, several eminent tax experts from all over Europe examine the various tax issues regarding the European Company (*Societas Europaea* or SE) set forth in part also in the extensive IBFD "Survey on the Societas Europaea". This subject is of general and topical interest as the SE will enter into force on 8 October 2004 in all 28 Member States of the enlarged European Union as well as the European Economic Area.

THE EUROPEAN COMPANY (*SOCIETAS EUROPAEA*) – LEGAL CONCEPT AND TAX ISSUES
Dr Martin Wenz

TAX RESIDENCE OF THE SE
Prof. Maria Teresa Soler Roch

THE TAX TREATMENT OF THE CREATION OF AN SE
Paolo Conci

EC LAW ASPECTS OF THE TRANSFER OF SEAT OF AN SE
Dr Otmar Thömmes

THE TAX TREATMENT OF THE RUNNING OF AN SE
Prof. Marjaana Helminen

EU TAXATION AND THE *SOCIETAS EUROPAEA* – HARMLESS CREATURE OR TROJAN HORSE?
Malcolm Gammie QC

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EUROPEAN UNION:

EU COMPANY TAX CONFERENCE ON
EU CORPORATE TAX REFORM: PROGRESS AND NEW CHALLENGES
H.M.M. Bierlaagh and A.H.J.M. van Dijk

The authors report on a conference organized by the Commission in cooperation with the Italian Presidency and held in Ostia, Italy on 5 and 6 December 2003.

INTRA-EC INTEREST AND ROYALTIES TAX TREATMENT
Luca Cerioni

Although the implementation of the new Interest and Royalties Directive by Member States is still awaited, its text calls for some first comments.

ITALY:

FOREIGN LIFE INSURANCE COMPANIES AND SUBSTITUTE TAXES
Michele Gusmeroli

This note outlines the tax treatment of income from life insurance contracts and explains why a technically negligible amendment is actually a major change in the market.

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NETHERLANDS:

BOSAL HOLDING CASE AND THE FREEDOM OF ESTABLISHMENT: A DUTCH PERSPECTIVE
Prof. Gerard T K. Meussen
The Bosal Holding decision affects the company tax regimes in all fifteen present Member States and in the ten future ones. The author examines the ramifications of the decision.

EUROPEAN UNION:

THE "D CASE": MOST-FAVORED-NATION TREATMENT AND COMPENSATION OF LEGAL COSTS BEFORE THE EUROPEAN COURT OF JUSTICE
Dr Dennis Weber and drs Etienne Spierts
This article discusses preliminary questions put recently by the Court of Appeal of 's-Hertogenbosch to the European Court of Justice.

INTERNATIONAL:

ARTICLE 15 OF THE OECD MODEL CONVENTION ON "INCOME FROM EMPLOYMENT" AND ITS UNDEFINED TERMS
Bernard Peeters
The author looks at a number of terms used in Art. 15 of the OECD Model that are not defined in the Model itself and makes a comparative study of the interpretation given in various jurisdictions.

EUROPEAN UNION:

LIMITATION ON BENEFITS AND STATE AID
Christiana HJI Panayi
This article attempts to show that in addition (or perhaps alternatively) to the potential incompatibility of LOB clauses with the EC fundamental freedoms, the LOB could fall foul of EC competition rules, since a serious case could be constructed that the LOB infringes the prohibition of State aid.

HUNGARY:

EU ACCESSION AND THE HUNGARIAN TAX SYSTEM
Gabriella Erdős, Akos Burjau and Tamas Loscsei
This article examines the extent to which Hungarian tax legislation is aligned with the *acquis communautaire*.

CYPRUS:

EU ACCESSION AND THE CYPRUS TAX SYSTEM
Yiannis Tsangaris, BSc, MBA, FCCA
Like Hungary (and eight other candidate countries), Cyprus will join the European Union on 1 May 2004. The author looks at what has been accomplished and what remains to be accomplished in bringing Cyprus' tax system in line with the *acquis*.

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DENMARK:

PROPOSED AMENDMENTS ON TAX TREATMENT OF INTEREST PAYMENTS BETWEEN RELATED CORPORATE PARTIES AND DANISH CHECK-THE-BOX ENTITIES
Anders Orebey Hansen
An overview is given of some possibly fundamental changes in Denmark's tax system.
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EUROPEAN UNION:

THE TAX TREATMENT OF FOREIGN LOSSES: RITTER, M & S, AND THE WAY AHEAD (PART ONE)  
Dr Axel Cordewener, Dr Mattias Dahlberg, Dr Pasquale Pistone, Dr Ekkehart Reimer and Dr Carlo Romano  
The authors provide an analysis of the key issues in two pending ECJ cases and the tax treatment of foreign losses in EC tax law in general. Part Two will be published in European Taxation 5.

THE EC INTEREST AND ROYALTIES DIRECTIVE – A COMMENT  
Marcello Distaso and Raffaele Russo  
This article contains a critical analysis of the Interest and Royalties Directive, with particular reference to EC primary law and to ECJ case law.

NETHERLANDS:

CLASSIFICATION CONFLICTS: THE CROSS-BORDER TAX TREATMENT OF THE PROFIT SHARE OF LIMITED PARTNERS  
Auke W.G. Lamers and Ton J.A. Stevens  
Classification conflicts arise if a partnership is treated by one state as fiscally transparent whereas the other state treats it as a taxable unit. The authors examine the issues involved with regard to Netherlands limited partnerships.

On 1 May 2004 ten countries will join the European Union. The following articles are the final ones in a series that has examined the tax systems of each of the candidate countries in relation to the acquis communautaire.

POLAND:

EU ACCESSION AND THE POLISH TAX SYSTEM  
Peter de Ruiter and Filip Switala

SLOVENIA:

EU ACCESSION AND THE SLOVENIAN TAX SYSTEM  
Mateja Babič and Karmen Janežič

LITHUANIA:

EU ACCESSION AND THE LITHUANIAN TAX SYSTEM  
Vaineta Barevičiūtė

MALTA:

EU ACCESSION AND THE MALTESE TAX SYSTEM  
Dr Conrad Cassar Torregiani and Dr Sarah Aquilina

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FINLAND:

SUPREME ADMINISTRATIVE COURT RULES ON TAXATION OF DUAL RESIDENT COMPANIES  
Lari Hintsanen and Kennet Pettersson  
This case note discusses two advance rulings on the taxation of dual resident companies. In addition to raising issues on the interaction of domestic tax law with tax treaty provisions, they also involve questions about the EC freedom of establishment principle and the Parent-Subsidiary Directive.
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THE TAX TREATMENT OF LOSSES: RITTER, M & S, AND THE WAY AHEAD (PART TWO)
Dr. Axel Cordewener, Dr. Mattias Dahlberg, Dr. Pasquale Pistone, Dr. Ekkehart Reimer and Dr. Carlo Romano
This is the second part of a two-part article. Part One was published in European Taxation 4.

INTERNATIONAL:
TAX TREATIES AND STATE AID: SOME THOUGHTS
Dr. Raymond H.C. Luja
What does "State aid" have to do with tax treaties? The author considers this question and comments on an article by Christiana HJ Panayi on LOBs and State aid, published in European Taxation 2/3.

CZECH REPUBLIC:
FOREIGN INVESTMENTS IN CZECH REAL ESTATE: THE IMPACT OF EU ACCESSION
Jolan J. Hoevenaars, LL.M. and Lucie Volficova, LL.M.
The Czech Republic is one of the most successful countries in Eastern Europe in attracting foreign investment generally and investment in real estate specifically. This is all the more so since accession to the European Union. The authors examine the tax and legal aspects of foreign investment in Czech real estate.

EUROPEAN UNION:
EUROPEAN TAX ALLOCATION SYSTEM (ETAS):
A PROPOSAL FOR A CONSOLIDATED EUROPEAN TAX SYSTEM
Dr. Mag. Jorg Hemler
The author puts forward a proposal for a consolidated tax system for companies.

ROYALTY PAYMENTS:
UNRESOLVED ISSUES IN THE INTEREST AND ROYALTIES DIRECTIVE
Cecile Brokelind
The author analyses the problems arising from the new Directive and focuses on royalty payments and the new technologies.

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BELGIUM:
ONE-TIME TAX AMNESTY
Patrick Vanhoute
Belgium is offering a one-off tax amnesty to individual taxpayers. The author describes the measure.

DENMARK:
NEW RULES ON THIN CAP, JOINT TAXATION AND TRANSPARENT ENTITIES: UPDATE
Anders Oreby Hansen
This note covers changes as enacted in a tax law of 30 March 2004.

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AUSTRIA:
SUBJECT-TO-TAX CLAUSES IN TAX TREATIES
Eva Burgstaller and Michael Schilcher
The authors examine Austrian subject-to-tax clauses based on the context of the treaty and the interaction of the domestic legislation of the treaty partners. The wording, as well as structural and historical issues of the specific treaty, serve as the basis for the discussion.

SWITZERLAND:
TAX ISSUES WITH REGARD TO REORGANIZATIONS UNDER THE MERGER LAW
Dr Toni Amann
On 3 October 2003 the Swiss Federal Parliament enacted a new Law on Mergers, Divisions, Transformations and Asset Transfers. This article provides an overview of the new tax consequences of reorganizations in Switzerland, including cross-border aspects.

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EUROPEAN UNION/NETHERLANDS:
THE BARBIER CASE
Prof. Dr Frans Sonneveldt
A recent ECJ decision has drawn attention to some of the EC ramifications of gift and inheritance taxes. The author discusses the case in the context of EU-wide developments in estate planning.

FRANCE:
SUPREME COURT RULES ON THIN CAPITALIZATION PROVISIONS
Séverine Baranger
The author analyses two decisions addressing the French thin capitalization rules in cases where the interest is paid to a non-resident parent company and their compatibility with the non-discrimination rule in tax treaties and the freedom of establishment principle in Art. 43 of the EC Treaty.

ITALY:
LEVERAGED BUY-OUTS IN THE LIGHT OF THE TAX REFORM
Lucio Ricci and Giuseppe Campolo
One of the most important aspects of the recent Italian tax reform was the introduction of an anti-avoidance rule aimed at combating thin capitalization. This note looks at the impact it will have on tax planning schemes implemented by foreign investors through leveraged buy-outs in Italy.

LITHUANIA:
TAXATION OF COMPANIES
Robertas Degesys
This note provides an overview of corporate taxation in one of the new EU Member States. Individual taxation will be covered in European Taxation 7.

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RUSSIA:
TAX REGIME IN THE UPSTREAM OIL AND GAS INDUSTRY
Dr Mikhail Klubnichkin and Olga Sivolobtchik
The authors provide a description of the taxation of upstream operations and cover the specific features of upstream activities as well as important trends in the taxation of the oil and gas sector.

SPAIN:
SPECIAL TAX REGIME APPLICABLE TO THE PARTICIPANTS IN THE XXXII AMERICA'S CUP 2007: AN OVERVIEW
Angel J. Juárez
After the choice of Valencia as the organizing venue for the America's Cup 2007, the Spanish parliament adopted a special regime for tax, immigration and social security law purposes in connection with activities related to this event, effective as of 1 January 2004. The main rules of the special regime are discussed in this article.

EUROPEAN UNION:
FISCAL COHESION IN THE TAXATION OF CROSS-BORDER DIVIDENDS (PART ONE)
Joachim Englisch
In the first of a two-part article, the author analyses some of the issues arising from the Manninen and Lenz cases, both pending before the European Court of Justice.

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EATLP:
EUROPEAN ASSOCIATION OF TAX LAW PROFESSORS MEETS IN PARIS
Prof. Huub Bierlaagh, Prof. Jan de Goede, Prof. Kevin Holmes and Joanna Wheeler
The authors report on the 2004 Congress of the EATLP, held at the Sorbonne, Paris, from 3 to 5 June 2004.

LITHUANIA:
TAXATION OF INDIVIDUALS
Robertas Degesys
This article provides an overview of the taxation of individuals. Corporate taxation was covered in European Taxation 6.

LUXEMBOURG:
NEW SECURITIZATION VEHICLES
Jean Schaffner
A new law has introduced securitization vehicles into Luxembourg law. The author looks at the implications from a legal and tax perspective.

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EUROPEAN UNION:
COMPANY TAXATION IN THE NEW MEMBER STATES: IMPACT ON LOCATION DECISIONS
BY MULTINATIONALS
Martin Finkenzeller and Christoph Spengel
This article aims at quantifying the effective levels of company taxation in the new Member States and
focuses on the taxation of internationally mobile capital. The authors examine the impact of company
taxation on the relative attractiveness of the acceding countries in isolation from other economic factors.

FISCAL COHESION IN THE TAXATION OF CROSS-BORDER DIVIDENDS (PART II)
Joachim Englisch
This is the second part of a two-part article. Part I was published in European Taxation 7.

DENMARK:
RECONSTRUCTION OF COMPANIES: CROSS-BORDER TAX ISSUES
Kim Wind Andersen and Jan Hansen
An overview is given of the Danish tax consequences of methods to reconstruct the capital in Danish
resident companies controlled by a non-resident company.

NETHERLANDS:
TAX INCENTIVES FOR CULTURAL INVESTMENTS: SOME POLICY CONSIDERATIONS
Sigrid J.C. Hemels
The author questions whether a recently introduced tax incentive is likely to be successful.

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WHAT’S GOING ON IN ...

EUROPEAN UNION:
FRENCH EXIT TAX INCOMPATIBLE WITH THE FREEDOM OF ESTABLISHMENT
Silvia Kotanidis
This case note analyses an ECJ decision in which exit taxes were at stake.

POLAND:
SUPREME ADMINISTRATIVE COURT RULES ON TAX EVASION
Bogumil Brzezinski and Wlodzimierz Nykiel
The authors look at a Supreme Administrative Court decision in which the Court elaborated the con-
cept of the circumvention of tax law for the first time.

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NETHERLANDS/UNITED STATES:
THE NEW US–NETHERLANDS TAX TREATY PROTOCOL
Stef van Weeghel and Jean-Paul van den Berg
In analysing the new US–Netherlands tax treaty protocol, the authors focus on the new arrangement for hybrid entities, the new limitation on benefits article and the new dividends article.

FINLAND:
CROSS-BORDER BUSINESS AND THE TAX REFORM OF 2005
Prof. Marjaana Helminen
From 1 January 2005 Finland will move to a modified classical system of taxing companies and their shareholders. This article examines the new system.

INTERNATIONAL:
TO WHAT EXTENT DOES THE OECD HARMFUL TAX COMPETITION PROJECT VIOLATE THE MOST-FAVOURURED-NATION OBLIGATIONS UNDER WTO LAW?
Ines Hofbauer
The author looks at the implications of possible defensive measures taken by OECD Member countries against uncooperative tax havens.

SWITZERLAND:
LIECHTENSTEIN FOUNDATIONS AND COMMON LAW TRUSTS IN SWISS TAX LAW
Dr iur. Natalie Peter
Liechtenstein foundations and common law trust concepts are discussed in this article as an instrument for estate planning among high net worth individuals.

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EUROPEAN UNION/AUSTRIA:
ECJ RULES ON AUSTRIAN DISCRIMINATION OF FOREIGN-SOURCE INVESTMENT INCOME
Tatjana Polivanova-Rosenauer
This case note discusses the Lenz decision.

LUXEMBOURG:
NEW LAW ON VENTURE CAPITAL AND PRIVATE EQUITY
Jean Schaffner
Together with the law on securitization of 22 March 2004, the new venture capital regime adopted on 15 June 2004 significantly increases the attractiveness of Luxembourg as a financial centre. This note describes the new law.

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EUROPEAN UNION:
INTERNATIONAL ACCOUNTING STANDARDS – A "STARTING POINT" FOR A COMMON EUROPEAN TAX BASE?
Prof. Dr Wolfgang Schön

In the author's view, there are no major institutional obstacles to a tax regulation which recognizes the IAS/IFRS as binding European law in the company law and capital market sector. He tries to evaluate which standard will best serve the interests of the tax administration and the business community.

UNITED KINGDOM:
THE CADBURY SCHWEPPES CASE: ARE THE DAYS OF THE UNITED KINGDOM'S CFC LEGISLATION NUMBERED?
Jens Schönfeld

On 6 June 2004 the Finance and Tax Tribunal in London submitted a case dealing with the United Kingdom's CFC legislation to the European Court of Justice. The author looks at whether the basic principles of CFC legislation are in conflict with EC law and if so, whether the United Kingdom will be able to offer an acceptable justification for its legislation.

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FINLAND:
SUPREME ADMINISTRATIVE COURT RULING ON THE FINLAND-US TAX TREATY NON-DISCRIMINATION CLAUSE
Lari Hintsanen and Päivi Vittanen

In this case note the authors analyse an advance ruling application regarding the non-discrimination article of the Finland-US tax treaty.

NORWAY:
OFFSHORE SEISMIC SURVEYS UNDER SHORT-TERM CONTRACTS NOT A PERMANENT ESTABLISHMENT IN THE IVORY COAST
Stig Sollund

The author examines a PE case that was decided by the Norwegian Supreme Court on 8 June 2004.

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Sylvain Plasschaert

The author takes a critical look at the way the EU budget is financed. He discusses various arguments
being advanced in favour of an EU tax proper, three possibilities for a genuine EU tax and he critically
assesses the proposals emanating from the Commission.

PORTUGAL:
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CONUNDRUMS IN THE INTERPRETATION OF DOMESTIC AND TREATY LAW 480
Rui Camacho Palma

This article discusses situations in which Portugal’s domestic law on royalties is applied to inter-
national situations and situations in which domestic tax law and tax treaties interact.

EUROPEAN UNION:
TAXATION OF INTER-COMPANY DIVIDENDS IN THE PRESENCE OF A PE: THE IMPACT OF THE
EC FUNDAMENTAL FREEDOMS (PART ONE) 493
Emiliano Zanotti, LL.M.

In the first part of a two-part article, the author examines the application of the freedom of establish-
ment to cases in which PEs and companies are considered to be in equivalent circumstances for tax
purposes.

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HUNGARY:
NEW LEGISLATION ON VAT WAREHOUSES 514
Bálint Szűcs

Hungary recently enacted regulations under which it will be possible to operate VAT warehouses in
Hungary. The author discusses the new regulations.

UKRAINE
THE TAXATION OF COMPANIES 515
Roustam Vakhitov

The author outlines the tax regime for companies. The taxation of individuals will be covered in a forth-
coming issue.

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GERMANY/EUROPEAN UNION:
THE CLT-UFA CASE AND THE "PRINCIPLE OF NEUTRALITY OF LEGAL FORM"
Anne Schnitter
The pending CLT-UFA case offers the European Court of Justice the chance to define more precisely
the "principle of neutrality of legal form". An analysis of the Court's possible conclusions is made.

UNITED KINGDOM:
CROSS-BORDER ENFORCEMENT OF TAX LIABILITIES:
RECENT EUROPEAN LEGISLATION FROM A UK PERSPECTIVE
Robert Newey
This article examines the extent to which recent treaties and European legislation have changed
the viewpoint, at least in the United Kingdom, that enforcement of tax claims is an extension of the
sovereign power that imposed the taxes.

EUROPEAN UNION:
TAXATION OF INTER-COMPANY DIVIDENDS IN THE PRESENCE OF A PE: THE IMPACT OF THE
EC FUNDAMENTAL FREEDOMS (PART TWO)
Emiliano Zanotti, LL.M.
The author argues that, with regard to the taxation of inter-company dividends, the European Court of
Justice should provide a clearer interpretation of Art. 56 for non-EU scenarios and that action by the
Commission and the Council would be desirable in order to extend the scope of the Parent-
Subsidiary Directive so that it is in compliance with the fundamental freedoms.

THE EUROPEAN PRIVATE COMPANY: BASIC LEGAL ASPECTS AND SOME OPEN ISSUES ON ITS
TAX TREATMENT
Luca Cerioni
The possible introduction of the European Private Company leads to the question of the tax treatment
of such a company law vehicle. The author looks at whether current Commission ideas on the tax
treatment of Community businesses can provide effective solutions or whether they lead to other
problems.

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GERMANY:
DRAFT LAWS ON GAAP AND ON THE INTRODUCTION OF AN ENFORCEMENT PROCEDURE FOR
ENTERPRISE CONTROL
Claudia Daiber and Uwe Huchler
Two draft laws, in principle applicable as of 1 January 2005, are discussed in this note.

UKRAINE:
THE TAXATION OF INDIVIDUALS
Roustam Yakheitov
This note finalizes a two-part update on the tax system of Ukraine. The taxation of companies was
covered in European Taxation 11.

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EUROPEAN UNION:

TRIANGULAR CASES AND THE INTEREST AND ROYALTIES DIRECTIVE: UNTYING THE GORDIAN KNOT? - PART 1
Michele Gusmeroli, LL.M.
This is the first article in a three-part series, which considers the Interest and Royalties Directive in relation to the problems posed by triangular cases. Part 2 will be published in European Taxation 2 and Part 3 in European Taxation 3.

THE EC ARBITRATION CONVENTION – AN OVERVIEW OF THE CURRENT POSITION
Olivier Rousselle
In this article, the author considers the legislative background to the EC Arbitration Convention, which has effect from 1 January 2005, and analyses aspects of the Convention in detail and the accompanying Code of Conduct. The author concludes by considering potential improvements to the Convention.

ITALY:

EQUITY AND DEBT INSTRUMENTS: THE NEW DEFINITION IN THE TAX REFORM AND THE TAX CONSEQUENCES
Stefano Serbini and Paola Flora
The new Italian rules regarding equity and debt instruments are discussed in this article, with particular emphasis on the implications for financing in Italy.

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REPORT ON THE JOINT CFE/CEPS SEMINAR “TAX COMPETITION VERSUS TAX HARMONIZATION”
Paul Morton

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FRANCE:

ABUSE OF LAW IN FRANCE: DEVELOPMENTS REGARDING FINANCIAL TRANSACTIONS
Thierry Pons and Clément Coirault-Quinquet
The authors consider the significance of two recent tax cases dealing with the French abuse of law procedure.

SLOVENIA:

NEW GROUP TAXATION REGIME
Lucie Vorlčičková, LL.M. and Gregor Zorman, LL.M.
This note reports on the important changes to the new Slovenian group tax regime for companies.

UNITED STATES:

SOCIETAS EUROPAEA AND OTHER ENTITIES ADDED TO US CHECK-THE-BOX REGULATIONS
J.G. Rienstra
The author looks at recent developments regarding the EU Societas Europaea and the US check-the-box rules.
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EUROPEAN UNION:
Michele Gusmeroli, LL.M.
This is the second article in a three-part series, which considers the Interest and Royalties Directive in relation to the problems posed by triangular cases. Part 1 was published in European Taxation 1 and Part 3 will be published in European Taxation 3.

THE ADVOCATE GENERAL'S OPINION IN THE 'D' CASE: MOST-FAVoured-NATION TREATMENT AND THE FREE MOVEMENT OF CAPITAL
Prof. Gerard T.K. Meussen
The author considers the significance of the Advocate General's opinion in the important European Court of Justice "D" case, with special reference to the comments made regarding violation of the principle of the free movement of capital and the application of the most-favoured-nation doctrine.

FRANCE:
CONSOLIDATING AND DEVELOPING THE FRENCH ADVANCE PRICING AGREEMENT PROCEDURE
Bruno Gibert
Based on the advance pricing agreement (APA) section of the Report written for the Ministry of Economy, Finance and Industry by the author and others, this article reviews the French APA procedures and sets out proposals for improvement.

NETHERLANDS:
INTERACTION BETWEEN THE PARTICIPATION EXEMPTION AND THE PRINCIPLE OF COMPARTMENTALIZATION: PORTFOLIO INVESTMENTS IN THE NEW EU ACCESSION MEMBER STATES
Sarig Shalhav
This article deals with the principle of compartmentalization in the Netherlands participation exemption rules and its possible application to participations held in companies resident in the ten new accession Member States of the European Union.

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CFE OPINION STATEMENT ON THE SIXTH VAT DIRECTIVE: IS THERE A NEED FOR A GENERAL ANTI-AVOIDANCE PROVISION AND, IF SO, WHAT FORM SHOULD IT TAKE?

WHAT'S GOING ON IN...

NORWAY:
NORWEGIAN WITHHOLDING TAX CONTRARY TO RULES ON FREE MOVEMENT OF CAPITAL IN EEA AGREEMENT
Andreas Bullen
The author discusses the significant aspects of the EFTA Court decision in the Fokus case with regard to the rules on the free movement of capital contained in Art. 40 of the EEA Agreement.

SWEDEN:
NEW SWEDISH RULES ON THE TAXATION OF NON-RESIDENT INDIVIDUALS
Prof. Dr Bjorn Westberg
The proposed new rules regarding the taxation of non-resident individuals in Sweden in response to the ECJ decision in the Wallentin case are described.
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EUROPEAN UNION:
Michele Gusmeroli, LL.M.
The third and concluding article in a three-part series, which considers the Interest and Royalties Directive in relation to the problems posed by triangular cases. Parts 1 and 2 were published in European Taxation 1 and 2, respectively.

SHIPS AND TAXES: DOES THE CASE OF COMMISSION V. NETHERLANDS HAVE TAX IMPLICATIONS?
Christiana HJI Panayi
The author examines the recent case of Commission v. Netherlands and considers whether or not it can be argued that the case has tax implications.

SPAIN:
WHO KNOWS THE RIDDLE OF KNOW-HOW? SPAIN BECOMES ENTANGLED IN THE WEB OF INTANGIBLES
Alejandro García Heredia
The article focuses on the problems raised by know-how regarding Spain’s tax treaties, with special emphasis on the problems arising in respect of tax treaty practice and the treatment of know-how and the provision of services.

SOFTWARE AND TAX TREATIES: CONSIDERATIONS ON TAXATION AT SOURCE
Juan Francisco Rodríguez
The author considers the definition of “royalties” in the Spanish tax legislation, with particular reference to royalties in respect of computer software.

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BELGIUM:
THE BELGIAN ADVANCE RULING PROCEDURE: RECENT EXPERIENCE AND GREATER EFFICIENCY AND FLEXIBILITY FROM 2005
Henk Vanhulle
This note provides an overview of the situations and taxes covered by a Belgian advance ruling, the conditions for filing a ruling and its legal nature, together with some of the organizational changes involving the Advance Ruling Commission.

NORWAY:
REFORM OF COMPANY AND SHAREHOLDER TAXATION IN NORWAY
Thor Leegaard, LL.M.
The tax implications of the tax reforms contained in the Norwegian Budget for 2005 with regard to company and shareholder taxation are examined.

PORTUGAL:
THE PORTUGUESE BUDGET LAW FOR 2005 – FOCUS ON TAX AVOIDANCE
Adelaide Passos and Rui Camacho Palma
The authors consider the significance of the corporate income tax changes introduced by the Portuguese Budget Law for 2005.

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EUROPEAN UNION:
THE IMPLICATIONS OF THE ECJ HOLDING THE DENIAL OF FINNISH IMPUTATION CREDITS IN CROSS-BORDER SITUATIONS TO BE INCOMPATIBLE WITH THE EC TREATY IN THE MANNINEN CASE
Lari Hintsanen, LL.M. and Kennet Pettersson, LL.M.
The authors provide an in-depth analysis of the background to the Manninen case, the Advocate General's opinion and the decisions of the ECJ and the Finnish Supreme Administrative Court. The article then examines the direct and the indirect effects of the decision.

ITALY:
THE ONLY WAY OUT IS THE WAY THROUGH: TAXATION OF PARTNERSHIPS IN ITALY
Raffaele Russo and Edoardo Pedrazzini
The purpose of this article is to take a fresh look at the Italian tax treatment of resident and non-resident partnerships and how the OECD approach affects cases involving Italy.

IRELAND:
IRELAND BECOMES AN EVEN MORE ATTRACTIVE PROSPECT FOR CORPORATE ENTITIES
Liam Grimes and Tom Maguire
The authors argue that the Finance Act 2004 has been a key aspect in attempting to develop a competitive advantage for Ireland in the area of taxation policy. The article reviews this trend, which has been continued by the Finance Bill 2005, and examines the accruing tax benefits.

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CFE OPINION STATEMENT ON THE JOINT CASE C-361/02 AND C-362/02: THE GREEK STATE V. NIKOLAOS TSAPALOS AND KONSTANTINOS DIAMANTAKIS

WHAT'S GOING ON IN ...

BELGIUM:
ECJ TO RULE ON TAXATION OF INBOUND DIVIDENDS IN BELGIUM
Patrick Smet and Hannes Laloo
Details are provided of a preliminary question referred to the ECJ regarding whether or not Belgium must grant a tax credit in respect of the foreign withholding tax on dividends paid by an EU company to Belgian resident individual shareholders.

EUROPEAN UNION:
THE MARKS & SPENCER CASE: THE FINAL COUNTDOWN HAS BEGUN
Prof. Gerard T.K. Meussen
A report on the oral proceedings in the ECJ Marks & Spencer case is provided. The author views this case as one of the most important, if not the most important, case concerning EU corporate income tax.

RUSSIA:
RECENT DEVELOPMENTS REGARDING JUDICIAL ANTI-TAX AVOIDANCE IN RUSSIA
Roustan Vaikhitov
Comment is provided on major developments in Russia regarding anti-tax avoidance, and on the concept of “good faith” and its practical application.

SWITZERLAND:
SWISS SUPREME COURT JUDGMENT FACILITATES OUTBOUND TRANSFER OF PARTICIPATIONS
Dr Frantisek J. Safarik
The author considers a recent judgment of the Swiss Federal Supreme Court, which makes inter-group reorganizations and restructurings easier.

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NEW DECREES ON THE CLASSIFICATION AND TAX TREATMENT OF FOREIGN (HYBRID) ENTITIES IN THE NETHERLANDS
Roderik W.J.K. Rademakers and Michiel J. Swets, LL.M.
In this article, the authors focus on the new Netherlands classification and subject-to-tax rules, with specific reference to the New Classification Decree and the Subject-to-tax Decree and their practical implications.

THE NETHERLANDS INTERPRETATION OF THE TERM "EMPLOYER" IN ART. 15 OF THE OECD MODEL CONVENTION
Hans de Vries
The author considers the Netherlands interpretation of the term "employer" by looking at its definition, summarizing recent Netherlands judicial interpretations of the term and providing an overview of the OECD's comments on Art. 15 of the OECD Model Convention, and, finally, reviews the current approach of the Netherlands Ministry of Finance regarding this issue.

ITALY:

ITALIAN DOMESTIC TAX CONSOLIDATION: NEW OPPORTUNITIES FOR TAX PLANNING
Francesco Leone and Emiliano Zanotti, LL.M.
The article provides a general overview of the recently introduced Italian domestic tax consolidation regime and considers the main technical issues relating to the practical application of the regime.

BELGIUM:

INTERNATIONAL ACCOUNTING STANDARDS AND INTERNATIONAL FINANCIAL REPORTING STANDARDS IN BELGIUM: THE REVALUATION OF THE RELATIONSHIP BETWEEN ACCOUNTING AND TAXATION
Jacqueline Haverals
The author undertakes a comparative overview of the relationships between accounting and taxation in the European Union, reviews the origins of the Belgian corporate income tax and accounting legislation, analyses the nature and implications of the "connection" between these two branches of the law, and concludes by addressing the opportunities for the introduction of the "disconnection" or "independence" system in Belgium.

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DISTRIBUTIONS BY FRENCH SOCIÉTÉ CIVILE IMMOBILIÈRE TAX EXEMPT IN BELGIUM
Anne Van de Vijver and Mieke Van Zandweghe
Details are given of the recent Belgian Supreme Court case in which it was held that distributions made by a French Société Civile Immobilière are tax exempt in the hands of the Belgian partners.

BULGARIA:

AMENDMENTS TO THE BULGARIAN CORPORATE INCOME TAX ACT
Dr. jur. Lubka Tzenova
A summary is provided of the most important aspects of the Law amending the Bulgarian Corporate Income Tax Act, which apply from 1 January 2005.
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EUROPEAN UNION:
Dr Elena González Sánchez and Juan Franch Fluxà
The authors consider the freedom of establishment of companies in relation to companies resident within the European Union transferring their seat from one Member State to another, with particular focus on the freedom of establishment of primary establishments. These issues are examined in the light of ECJ case law and the Regulation on the Statute for a European Company.

AUSTRIA:
AUSTRIA'S DIFFERENTIAL TREATMENT OF DOMESTIC AND FOREIGN INTER-COMPANY DIVIDENDS INFRINGES THE EU'S FREE MOVEMENT OF CAPITAL
DDr Georg Kofler, LL.M. and Dr Gerald Toifl
The authors start from the premise that there has always been dispute as to how the fundamental freedoms in the EC Treaty and secondary Community law relate to each other with regard to taxation. This is then considered with reference to Austria's participation exemption regime and a recent Austrian court judgment on this subject.

BELGIUM:
SUPPLEMENTARY PENSIONS IN BELGIUM: THE NEW SYSTEM
Renaat Van den Eeckhaut
Falling birth rates and ageing populations make the financing of pensions one of the most critical economic and political challenges for the future. This article provides a general overview of the most important changes regarding the Belgian response to this issue by setting out the social and tax law aspects of supplementary pensions introduced by the Law of 28 April 2003.

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CFE OPINION STATEMENT ON PLACE OF SUPPLY OF B2C SERVICES
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EUROPEAN UNION:
TAX TREATIES AND MOST-FAVoured-NATION TREATMENT IN THE EUROPEAN COMMUNITY
Sebastiaan Wolters
The author reports on the Third Amsterdam Center for International Law Seminar on International and European Taxation held in March 2005, at which various prominent commentators on European taxation considered the implications of the ECJ "D" case.

NETHERLANDS:
NETHERLANDS ICE SKATER NOT ELIGIBLE FOR RELIEF FOR FOREIGN TRAINING DAYS
Dr Rijkele Betten
This article examines a recent court decision which considered the issue of whether or not an athlete was, in respect of the basic salary attributable to the time spent in various other countries, entitled to the double taxation relief granted by the tax treaties concluded by the Netherlands with these countries.
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HARMFUL TAX COMPETITION REVISITED: WHY NOT A PURELY LEGAL PERSPECTIVE UNDER EC LAW?
Luca Cerioni
This article provides a detailed examination of the question of whether or not the European Union should rely on tax competition rather than on tax harmonization with regard to corporate taxation. The author considers the competition between the Member States in designing their general corporate tax regimes and concludes that national tax policymakers may decide that the significant predictability in the effects of competition based on general corporate tax regimes could be in their long-term interests.

CROSS-BORDER LOSS RELIEF IN THE EUROPEAN UNION FOLLOWING THE ADVOCATE GENERAL’S OPINION IN THE MARKS & SPENCER CASE
Prof. Gerard T.K. Meussen
In this article, the author comments on Advocate General Piaires Maduro’s Opinion in the Marks & Spencer case. Prof. Meussen places the issue of cross-border loss relief in a wider EU perspective and suggests solutions to the problems that arise regarding this.

UNITED KINGDOM:
PENALTIES AND SANCTIONS FOR TAXATION OFFENCES IN THE UNITED KINGDOM: IMPLICATIONS FOR TAXPAYER NON-COMPLIANCE
Ken Devos
The author examines the issue of whether or not the level of non-compliance with tax laws by UK taxpayers may be affected by either the introduction of new tax offences or the imposition of heavier sanctions for those offences and whether or not introducing or increasing sanctions is a deterrent against taxation crimes. The author specifically tests the effect of the UK policy of prosecuting in those serious cases most likely to serve as a deterrent by the use of statistics and the sanctioning results of the courts.

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FRANCE:
PRELIMINARY RULING REQUESTED FROM THE ECJ ON THE COMPATIBILITY OF FRENCH TAXATION ON OUTBOUND DIVIDENDS WITH THE FREEDOM OF ESTABLISHMENT
Séverine Baranger, LL.M.
This note reports on the French Supreme Administrative Court request for a preliminary ruling from the ECJ regarding the question of whether or not the French withholding tax on outbound dividends (which provides for the taxation of dividends in the hands of a non-resident parent company, but which grants an exemption to a French-resident parent company) is compatible with the freedom of establishment as set out in the EC Treaty. The case is significant as it refers issues to the ECJ that have not previously been considered.
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case involving the EC Parent-Subsidiary Directive. Specifically, the Swedish Supreme Administrative
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The author describes an interesting recent decision of the French Supreme Administrative Court in
which it was held that the 50% withholding tax applied to the profits realized by a Swiss corporation on
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ITALY:
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Details and comments are provided on Ruling No. 69 of 1 June 2005 regarding the attribution of profits
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LUXEMBOURG:
LUXEMBOURG ADAPTS 1929 HOLDING COMPANIES REGIME TO COMPLY WITH EU CODE OF
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This report summarizes the most important aspect of the recently enacted Bill 5231, which amended
the Luxembourg 1929 holding companies regime in order to make it compliant with the EU Code of
Conduct.
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VOL. 45 NO. 9/10 - Amsterdam - SEPTEMBER/OCTOBER 2005

A Comparative Study of the Thin Capitalization Rules in the Member States of the European Union and Certain Other States
Special Issue

Thin capitalization rules have recently been introduced (in Italy and the Netherlands) and subject to reform (in Germany and the United Kingdom) or may well be amended in the near future (in France). Such rules have also been the topic of significant judicial procedures (the ECJ Lankhorst-Hohorst case). This Special Issue of European Taxation, the guest Editor of which is Bruno Gouthière, examines these issues and places them in context by way of a comparative survey of the thin capitalization rules in 29 countries (the 25 Member States of the European Union, plus Norway, Russia, Switzerland and the United States).

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BELGIUM:

COMMENT ON THE BELGIAN ADMINISTRATIVE CIRCULAR LETTER REGARDING THE BELGIUM–HONG KONG TAX TREATY

Werner Gysemans

The author considers the implications of a recent Belgian Administrative Circular Letter that clarifies aspects of the new Belgium-Hong Kong tax treaty.

DENMARK:

DANISH TRANSFER PRICING REGIME TIGHTENED

Nikolaj Bjørnholm and Kurt Siggaard

Details are provided of the recent amendments introduced into the Danish transfer pricing regime, with particular emphasis on the new documentation requirements.

ISRAEL:

REFORM OF INVESTMENT INCENTIVES IN ISRAEL

Mrs Tali Yaron-Elder, Adv, and Mrs Henriette Fuchs-Grootscholten, LL.M.

This report describes the significant aspects of the new Law for the Encouragement of Capital Investment, which contains important incentives to encourage investment in Israel.

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EUROPEAN UNION:

THE FREE MOVEMENT OF CAPITAL AND THIRD COUNTRIES: SOME OBSERVATIONS
Cees Peters and Jan Gooijer

The authors commence by briefly considering Art. 56, Art. 57 and Art. 58 of the EC Treaty and the history of the free movement of capital. They then discuss the direct effect of Art. 56 of the EC Treaty, the scope of Art. 57(1) of the EC Treaty and the possible justifications for its breach. The article concludes with a consideration of possible future developments.

THE SCHEMPPP CASE: EU CITIZENSHIP, RIGHTS AND TAXES – A NEW LEAF IN ECJ JURISPRUDENCE OR JUST A FIG LEAF?
Christiana HJI Panayi

This ECJ case is of very considerable interest. The reasoning of both the Advocate General and the ECJ is resonant with the currently more reticent approach adopted by the Court in respect of direct tax matters. The case also illustrates another trend developing in the European Community, i.e. that of the use of citizenship rights to attack disparities in the tax treatment of individuals by the Member States.

GERMANY:

THE IMPLEMENTATION OF THE EC PARENT-SUBSIDIARY DIRECTIVE IN GERMANY – RECENT DEVELOPMENTS AND UNRESOLVED ISSUES
Dr Joachim Englisch and Alexandra Schütze

The authors consider the adoption of Amending Council Directive 2003/123/EC regarding the EC Parent-Subsidiary Directive and the subsequent enactment of the Implementation Act 2004, transposing the Amending Directive into German law and introducing changes arising from the accession of the ten new Member States to the European Union. The authors conclude that the Implementation Act 2004 has done more harm than good in its attempt to bring the special regime for intercorporate profit distributions into line with the obligations stemming from the Directive and its amendment.

AN OVERVIEW OF RECENT TAX REFORM PLANS IN GERMANY
Prof. Dr Roman Seer and Dr Susanne Ahrens, LL.M.

The article argues that there is a need for income tax reform in Germany to prohibit provisions that are designed to encourage particular non-tax-related behaviour or to grant subsidies and to reduce the law to its pure and basic principles. Accordingly, the authors consider the tax reform plans that are currently being discussed in both the political and the scientific communities in Germany.

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OPINION STATEMENT OF THE CFE TASK FORCE ON ECJ CASES ON THE OPINION OF ADVOCATE GENERAL MADURO IN THE CASE OF MARKS & SPENCER PLC V. HALSEY (CASE C-446/03)

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AUSTRIA:

INTERNATIONAL GROUP TAXATION: AN OVERVIEW OF AUSTRIA'S NEW TAX INCENTIVE
Gerald Gahleitner and Stefan Ratzinger

This note describes the new Austrian group taxation rules that have been introduced to increase the competitiveness of Austria as a holding company location, especially in respect of investments in Central, Eastern and Southern Europe.

FINLAND:

FINLAND AMENDS TAX TREATMENT OF FOREIGN LIMITED PARTNERS IN PRIVATE EQUITY FUNDS
Torni Viitala, Dr.Sc. (Econ.)

The author considers amendments to the tax treatment of foreign limited partners in Finnish private equity funds that are anticipated will improve the competitiveness of these funds.
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'DANCING WITH MR D': THE ECJ'S DENIAL OF MOST-FAVOURLED-NATION TREATMENT IN THE "D" CASE
DDr Georg W. Kofler, LL.M. and MMag Dr Clemens Philipp Schindler, LL.M.
This article provides an initial analysis of the ECJ's decision in the "D" case, together with a consideration of the likely effects of the decision on pending cases and the possible future developments.

THE INTRODUCTION OF COMPREHENSIVE APPROACHES TO BUSINESS TAXATION: AT THE ROOT OF COMPETITION AND DISCRIMINATION DILEMMAS OR ... THE LONG AND WINDING ROAD TO A SOLUTION? – PART 1
Luca Cerioni
In this two-part article, the author contributes to the debate on whether or not the introduction of "Home State Taxation" (HST) and "Common Consolidated Base Taxation" (CCBT) in the European Union, to the extent that HST and CCBT would have to be limited in their application, would give rise to discrimination and/or competition problems in respect of the businesses that were ineligible for the schemes.

INTERNATIONAL:
THE 2005 OECD MODEL CONVENTION AND COMMENTARY: AN OVERVIEW
Raffaele Russo
This article contains a review of the changes introduced in 2005 to the OECD Model Convention and Commentary, together with comments by the author.

EUROPEAN UNION:
STATE AID REFORM 2005/09: REGIONAL FISCAL AUTONOMY AND EFFECTIVE RECOVERY
Dr Raymond H.C. Luja
The author considers two issues that deserve proper attention as part of the Commission's review of the State aid regulations. These are the Commission's approach to regional autonomy as reflected in its recent Gibraltar decision and issues with regard to the recovery of (fiscal) State aid.

BELGIUM:
BELGIAN TAX INCENTIVES FOR SHIPPING COMPANIES
Bart Verhelst and Glenn Verstraelen
This article reviews the "tonnage tax regime" and the other provisions that were recently introduced into the Belgian tax legislation with the intention of supporting companies undertaking maritime operations.

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GERMANY:
GERMAN EXIT TAX PROVISIONS, SUBSTANTIAL SHAREHOLDINGS AND INCOMPATIBILITY WITH EC LAW
Claudia Daiber and René Offermanns
The authors consider the incompatibility of certain German tax provisions with EC law and the implications of this incompatibility.

UNITED KINGDOM:
UK INTERNATIONAL TAX LEGISLATION ENACTED IN 2005
Robert Newey
This article provides a review of the main international tax measures introduced by the United Kingdom during 2005.

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IBFD Journals Become Bolder

This time we’re talking about the cover, not the contents!

In our dynamic world, fashions and trends come and go, so keeping just the contents of our journals up to the minute can’t be our only focus. The new bold covers of the IBFD journals reflect the commitment of the IBFD to keeping one step in front, whilst at the same time improving the clarity of our contents.

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EUROPEAN UNION:

PROPOSAL FOR A UNIFORM EU REIT REGIME - PART 1
Rob Cornelisse, Dennis Weber, Ronald Wijs and Gerard Blokland

The debate on Real Estate Investment Trust (REIT) regimes in the European Union has been stimulated as more and more Member States have introduced or are considering introducing such regimes. In Part 1 of this article, the authors consider the major (potential) discriminatory aspects for REIT regimes. They then focus on the tax treatment of foreign shareholders in REITs and discuss potential "Community Law proof" solutions to this problem. Part 2 will outline how a uniform EU REIT regime could be structured.

THE INTRODUCTION OF COMPREHENSIVE APPROACHES TO BUSINESS TAXATION: AT THE ROOT OF COMPETITION AND DISCRIMINATION DILEMMAS OR ... THE LONG AND WINDING ROAD TO A SOLUTION? - PART 2
Luca Cerioni

In the second and concluding part of this article, the author analyses a further hypothesis concerning "Home State Taxation" (HST) and a different hypothesis regarding the introduction of "Common Consolidated Base Taxation" (CCBT). The author concludes by considering the theoretical and practical issues regarding the introduction of comprehensive approaches to business taxation in the European Union.

INTERNATIONAL:

THE ZERO-SUM GAME, THE EMPEROR'S BEARD AND THE AUTHORIZED OECD APPROACH
Hans Pijl

This article considers the OECD “Discussion Draft on the Attribution of Profits to Permanent Establishments”, with particular reference to Part I and the important question of the attribution of profits to agency (and other) permanent establishments.

SPAIN:

COPYRIGHT AND SOFTWARE AND SPANISH TAX TREATIES: AN ISSUE OF BALANCE BETWEEN TECHNOLOGY-IMPORTING AND TECHNOLOGY-EXPORTING COUNTRIES
Alejandro García Heredia

The author focuses on the link between copyright and software for tax treaty purposes with reference to Spanish tax treaty practice in respect of which income derived from transactions involving software has given rise to numerous disputes.

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CFE OPINION STATEMENT ON GENERAL ANTI-AVOIDANCE RULES

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DENMARK:

THE NEW DANISH TAX CONSOLIDATION REGIME
Nikolaj Bjørnholm and Anne Becker-Christensen

This note describes the new Danish tax consolidation regime, with special emphasis on the mandatory tax consolidation of local entities.
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EUROPEAN UNION:

THE MARKS & SPENCER CASE – THE OPEN ISSUES FOLLOWING THE ECJ’S FINAL WORD
Prof. Dr Michael Lang

The author analyses the long-awaited and somewhat surprising decision of the European Court of Justice (ECJ) in the Marks & Spencer case. Specifically, he considers the issues of “comparable situation” “justification” and “proportionality” regarding the case. The author concludes by regretting that the ECJ did not make explicit its intention to change its case law and did not take the opportunity to state that the real argument for the Court was, apparently, the budgetary restraints of the Member States.

PROPOSAL FOR A UNIFORM EU REIT REGIME – PART 2
Rob Cornelisse, Dennis Weber, Ronald Wijjs and Gerard Blokland

In the second Part of this article, the authors outline their proposals for a uniform EU Real Estate Investment Trust (REIT) regime. Such a regime, would in the authors' opinion, eliminate problems that would otherwise arise from the necessity for common action on the part of the Member States to resolve difficulties with regard to REITs. A uniform EU REIT regime would also prevent characterization conflicts and would create a level playing field within the Internal Market for real estate investment.

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OPINION STATEMENT OF THE CFE TASK FORCE ON ECJ CASES ON THE CASE BANCA POPOLARE DI CREMONA REGIONAL TAX ON PRODUCTIVE ACTIVITIES (IRAP) (CASE C-475/03)

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LUXEMBOURG:

NEW CASE LAW DEVELOPMENTS: TAX TREATMENT OF LOSSES OF A FOREIGN PERMANENT ESTABLISHMENT
Dr Jean-Pierre Winandy

The author summarizes an important case in which the Luxembourg Administrative Court of First Instance (confirmed by Administrative Court) overruled a long-standing administrative practice regarding the tax treatment of foreign losses and permanent establishments in Luxembourg. The potential implications of the decisions for both Luxembourg and EC law are then examined.

SPAIN:

RECENT DEVELOPMENTS IN THE USE OF SWISS FINANCE BRANCHES
José Palacios and Alvaro de la Cueva

This note considers the effect of recent Spanish developments on Swiss Finance branch structures, taking into account the position of the Spanish tax authorities and the EU-Switzerland agreement on the application of various EU Directives.

UNITED KINGDOM:

THE UK GROUP ACTIONS – AN UPDATE
Liesl Fichardt

In this note, the author provides a summary of the issues that have been raised in each of the UK Group Litigation Orders (GLOs) before the European Court of Justice (ECJ) and their status at the time of writing.

THE PRE-BUDGET REPORT 2005
Robert Newey

The author describes some of the more important aspects of the Pre-Budget Report 2005, in particular those relating to the introduction of UK Real Estate Investment Trusts (UK REITS).

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FRANCE:

DEVELOPMENTS REGARDING THE FRENCH RULING PROCEDURES
Bruno Gibert
The author surveys recent developments regarding the French ruling practice with particular reference to changes in respect of the main features of the French ruling procedures, i.e. the general procedure and tacit agreements. The article also considers other recent developments, notably the legal recognition given to advance pricing agreements, the implications of abuse of law and audit rulings.

EUROPEAN UNION:

TREATY SHOPPING AND OTHER TAX ARBITRAGE OPPORTUNITIES IN THE EUROPEAN UNION: A REASSESSMENT – PART 1
Christiana HJ Panayi
The first part of this article sets out a general overview of how direct tax matters are dealt with in the Community. In the overview, the author explains and contrasts the development of positive and negative methods of integration. Specific provisions in the EC Treaty affecting direct tax matters are then examined in greater detail, i.e. the freedom of establishment and the free movement of capital.

SWITZERLAND/EUROPEAN UNION:

ART. 15 OF THE SWITZERLAND-EC SAVINGS TAX AGREEMENT: MEASURES EQUIVALENT TO THOSE IN THE EC PARENT-SUBSIDIARY AND THE INTEREST AND ROYALTIES DIRECTIVES – A SWISS PERSPECTIVE
Marcel R. Jung
The article first considers the Swiss international tax law in question with regard to the Switzerland-EC Savings Tax Agreement (Zinsbesteuerungsabkommen), in particular Federal withholding tax (Verrechnungssteuer) and the tax treaties with the Member States. It then analyses the interpretation and application of Art. 15 of the Agreement and its effect on Swiss international tax law.

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ESTONIA:

ESTONIAN CORPORATE INCOME TAX AND THE EUROPEAN UNION: THE IMPLICATIONS
Robert Zukowski
The author considers the recent reforms to the Estonian tax system, with special reference to the zero rate of corporate income tax on undistributed profits, and their EU implications.

ITALY:

RULING ON THE APPLICATION OF THE ITALIAN CFC RULES TO A MALTESE INTERNATIONAL TRADING COMPANY
Raffaele Russo
Details and comments are provided regarding a recent Italian ruling on the application of the Italian controlled foreign company (CFC) rules to a Maltese International Trading Company and the tax treatment of the imputation credit and the refund of the corporate income tax granted by Malta to an Italian resident shareholder receiving dividends from a Maltese company.

LUXEMBOURG:

NEW WITHHOLDING TAX ON DEFINED SAVINGS INTEREST INCOME OF LUXEMBOURG RESIDENT INDIVIDUALS
Jean Schaffner
The author describes the features of the Law of 23 December 2005, which introduced a withholding tax on certain interest payments made for the benefit of Luxembourg resident individuals and also abolished wealth tax for individuals.

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EUROPEAN UNION:
TREATY SHOPPING AND OTHER TAX ARBITRAGE OPPORTUNITIES IN THE EUROPEAN UNION: A REASSESSMENT—PART 2
Christiana HJI Panayi
In Part 1 of this article, the author provided a general overview of direct taxation and Community law. She then dealt with specific provisions in the EC Treaty affecting direct taxation. On the basis of the arguments developed in Part 1, in Part 2, the author considers the implications of these arguments by way of four case studies regarding the freedom of establishment of companies and the free movement of capital.

BELGIUM:
BELGIUM MOVES TO DUAL ALLOWANCE FOR CORPORATE EQUITY
Marcel Gerard
The author analyses the significance of the recent decision of Belgium to move to a form of allowance for corporate equity (ACE). This development is of particular interest as Belgium, by its size and exposure to inter-jurisdictional competition, is a true tax laboratory in terms of both savings and as an investment location.

POLAND:
GENERAL AND SPECIFIC ANTI-AVOIDANCE PROVISIONS IN POLISH TAX LAW
Gregory Kujawski
This article demonstrates how the concept of the prevention of tax avoidance has developed in Polish tax law and considers the application of the law in general by the Polish tax authorities and administrative courts in relation to this topic.

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BELARUS:
INCENTIVES FOR HIGH-TECH ENTERPRISES INTRODUCED
Viktar Strachuk
Details are provided of a recent Decree that introduced significant tax and non-tax incentives for high-tech enterprises operating in Belarus, with the aim of promoting the development, introduction and installation of information and communication technologies, and the export of information and communication services and software.

CZECH REPUBLIC:
TREATMENT OF TRANSPARENT ENTITIES FOR TAX TREATY PURPOSES
Tomas Balco
The author considers a new Decree, which applies from 1 January 2006, that, inter alia, contains important rules in respect of the taxation of income derived from sources in the Czech Republic through foreign transparent entities.

HUNGARY:
RECENT AMENDMENTS TO HUNGARIAN TAX LAW
Dr Roland Felkai
Details are provided of the latest amendments to the Hungarian tax laws, which are primarily intended to achieve full compliance with EC tax law, but also offer an interesting insight into how the legislators propose to encourage economic growth in Hungary in the long term.

ITALY:
AMENDMENTS TO THE TAX REGIME FOR FOREIGN DEEMED DIVIDENDS: REMARKS AND OPEN ISSUES
Tancredi Marino
The Italian government has finally issued a Decree amending critical areas of the 2004 corporate tax reform. The Decree is important as it amends the tax treatment of foreign deemed dividends with effect from 1 January 2006, i.e. the proceeds accruing on participating financial instruments that do not entitle the holder to part of the share capital or the net worth of a company.
LUXEMBOURG: GETTING THE (FOREIGN TAX) CREDIT ONE DESERVES?
Christophe Joosen and Anja Taferner
Details and comment are provided on the recent decision of the Luxembourg Administrative Court of Appeals, which confirmed the long-standing practice of the Luxembourg tax authorities in denying a Luxembourg bank the right to credit Spanish withholding tax on interest against Luxembourg municipal business tax.

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EUROPEAN UNION:

THE POSSIBLE INTRODUCTION OF COMMON CONSOLIDATED BASE TAXATION VIA ENHANCED COOPERATION: SOME OPEN ISSUES
Luca Cerioni
In the author’s opinion, it is unlikely that the introduction of a Common Consolidated Base Taxation (CCBT) will be deferred by the opposition of some Member States. Specifically, CCBT could be introduced by way of enhanced cooperation between some of the Member States. This would give rise to important issues regarding the Member States inside and those outside CCBT. This article is intended to contribute to the debate on some of these issues.

PROBLEMS AND OPTIONS IN CALCULATING THE TAX BASE OF COMPANIES IN THE EUROPEAN UNION UNDER HOME STATE TAXATION
Dr Elena González Sánchez and Juan Franch Fluxà
The authors consider various difficulties and options in respect of the introduction of Home State Taxation (HST) for companies. Specifically, the authors deal with the various proposals for the coordination of corporate tax bases in the European Union, with special reference to HST, the structure of HST and the potential problems regarding HST.

ENERGY TAXATION – AN ANALYSIS OF THE EU ENERGY TAXATION DIRECTIVE WITH SPECIAL REFERENCE TO HUNGARY AND THE BENELUX MEMBER STATES
Katalin Csikós
Energy taxation in the European Union is regulated by the Energy Taxation Directive, which is intended to improve environmental protection. The author first considers the legal background to and the history of the Directive. The article then addresses the Directive’s most important provisions, with specific focus on the derogations available. Finally, special reference is made to the Hungarian and the Benelux Member States’ energy tax legislation.

INTERNATIONAL:

Hans Pijl
In this article, the author considers three questions relating to whether or not the Commentary on the OECD Model Tax Convention on Income and on Capital is internationally legally binding, i.e. is the Commentary binding on the tax administration or binding on the State, binding on the judiciary and to which Commentary statement is reference being made?

POLAND:

POLISH DIRECT TAX PROVISIONS POTENTIALLY INCOMPATIBLE WITH EC FUNDAMENTAL FREEDOMS
Dr Adam Zalasifski
The article identifies the provisions in the Polish income tax acts that are potentially incompatible with the Internal Market freedoms. Specifically, the author discusses the methods of interpreting the fundamental freedoms, identifies the methodology for distinguishing provisions that are potentially incompatible with the EC Treaty, compiles a list of the Polish direct tax provisions that are potentially incompatible with the EC Treaty and considers the procedural remedies in the Polish legal system that can be relied on by taxpayers subject to tax in breach of EC law.

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Dr Rijkele Betten
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Axel Cordewener and Ekkehart Reimer

In Part 1 of this article, the authors consider the traditional role that the most-favoured-nation (MFN) concept played in respect of trade relations under public international law, analyse the potential basis and relevance of MFN treatment in EC law in a more general perspective, and examine the effect of the MFN concept on direct taxation and, in particular, on tax treaties.

THE 2005 AMENDMENTS TO THE EC MERGER DIRECTIVE
Raffaele Russo and René Offermanns

The authors provide a brief description of the 1990 EC Merger Directive and then focus on the 2005 amendments to the Directive. The article concludes by summarizing the implications of the amendments to the EC Merger Directive.

THE UNCERTAIN FUTURE OF CFC REGIMES IN THE MEMBER STATES OF THE EUROPEAN UNION – PART 1
Renata Fontana, LL.M.

This article deals with the new issues arising in the EU context regarding controlled foreign company (CFC) regimes in respect of tax arbitrage within the Internal Market and distinguishing this from the concept of tax avoidance, based on the redefinition of the EC law concept of abuse of rights. The article, therefore, analyses the debate at three different levels, i.e. with regard to domestic law, tax treaties (both in Part 1) and EC law, (In Part 2).

THE ECJ BOUANICH CASE: THE CAPITAL GAINS AND DIVIDEND CLASSIFICATION OF SHARE BUY-BACKS IN SWEDISH TAX LAW
Cécile Brokelind

The author provides a brief overview of the Bouanich case. She then focuses on the issues of whether or not the different tax treatment of the proceeds between dividend income and capital gains can properly be included in a “neutral tax system” and the implications of the OECD Model Convention in respect of the case, which raises the question of the interplay between EC law, bilateral tax treaties and national tax rules.

UNITED STATES/EUROPEAN UNION:

INTERNATIONAL MERGERS AND US TAX LAW
MMag Dr Clemens Philipp Schindler, LL.M.

In this article, the author considers recent developments regarding international mergers in US law. In doing so, he provides the historical background to the changes, considers why other reorganizations were not suitable, gives details of the new treatment for reorganizations and examines the remaining restrictions on international mergers in US law. The author also considers the EU implications of the changes.

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HUMAN RIGHTS ISSUES AND DEVELOPMENTS

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS FOR LEGAL ENTITIES
Hans Piij

In the first contribution to this new biannual section on human rights issues and developments, the author examines the issue of whether or not the International Covenant on Civil and Political Rights applies to legal entities.
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EUROPEAN UNION:
Axel Cordewener and Ekkehart Reimer

In Part 2 of this article, having considered the traditional role that the most-favoured-nation (MFN) concept used to play regarding trade relations under public international law, analysed the potential basis and relevance of MFN treatment in EC law and examined the effect of the MFN concept on direct taxation and tax treaties, the authors place the ECJ's decision in the "D" case into a broader framework with regard to MFN treatment. They then attempt to develop an alternative approach to the MFN concept. Finally, the authors summarize their main conclusions regarding the MFN issue.

CANADA/UNITED STATES/EUROPEAN UNION:
TAXATION OF CORPORATIONS IN CANADA: A COMPARISON OF TAX BURDENS WITH THE UNITED STATES AND SELECTED MEMBER STATES OF THE EUROPEAN UNION USING THE EUROPEAN TAX ANALYZER – PART 1
Thorsten Stetter and Christoph Spengel

In this two-part article, the authors compare the effective company tax burdens in North America, i.e. in Canada and the United States, and in 12 selected Member States of the European Union. In Part 1, the authors provide a comprehensive overview of the taxation of corporations in Canada, taking into account, at the corporate and shareholder levels, the distinction between federal and provincial taxes.

EUROPEAN UNION:
THE UNCERTAIN FUTURE OF CFC REGIMES IN THE MEMBER STATES OF THE EUROPEAN UNION – PART 2
Renata Fontana, LL.M.

Part 1 of this article dealt with general aspects of controlled foreign company (CFC) regimes with particular reference to domestic law and tax treaties. In Part 2, the author considers the compatibility of CFC regimes and the fundamental freedoms protected under the EC Treaty and finds guidance in the evolution of ECJ case law. The author concludes by summarizing the arguments and observations presented in Parts 1 and 2.

THE RITTER-COULAS CASE – A WRONG DECISION IN PRINCIPLE BY THE ECJ
Prof. Dr Gerard T.K. Meussen

The author first provides a brief description of the ECJ Ritter-Coulais case. He then considers the taxation of a personal dwelling in the Member States' income tax systems, the deduction of foreign losses and the application of negative tax progression clauses with regard to the case. The author concludes by expressing his personal opinion that the ECJ's decision in this case is wrong in principle.

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Iurie Lungu

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MONACO:
NEW DEVELOPMENTS REGARDING INTERNATIONAL TAX COOPERATION AFFECTING MONACO'S TAX SYSTEM
Séverine Baranger, LL.M., Carmine Rotondaro and Driss Tof, LL.M.
This note briefly analyses the recent developments in Monaco, in particular the protocol of 26 May 2003 to the 1963 France–Monaco tax treaty, that have affected Monaco's tax system in respect of its relationships with France, the European Union and other countries and organizations.

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Bruno Gibert
The author analyses the extensive and detailed Statement of Practice, issued by the French tax authorities on 23 February 2006, which integrates the mutual agreement procedures provided for by Art. 25 of the OECD Model Convention and the EC Arbitration Convention of 23 July 1990. The Statement of Practice is of great significance for taxpayers, in particular, with regard to transfer pricing reassessments.

CANADA/UNITED STATES/EUROPEAN UNION:
TAXATION OF CORPORATIONS IN CANADA: A COMPARISON OF TAX BURDENS WITH THE UNITED STATES AND SELECTED MEMBER STATES OF THE EUROPEAN UNION USING THE EUROPEAN TAX ANALYZER – PART 2
Thorsten Stetter and Christoph Spengel
Part 1 of this article provided a comprehensive overview of the taxation of corporations in Canada. In Part 2, the authors introduce the concept of the European Tax Analyzer, calculate and compare the effective tax burdens of Canadian corporations, and then extend this comparison to corporations in the United States and 12 selected Member States.

EUROPEAN UNION:
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Luca Cerioni
The author considers the 2005 Commission Communication on Home State Taxation (HST) and the accompanying Working Document. Some of the solutions suggested in the Communication give rise to important issues of consistency with the case law of the European Court of Justice and the overall objectives of HST. This article contributes towards highlighting some of these issues.

TAX MOTIVES ARE LEGAL MOTIVES – THE BORDERLINE BETWEEN THE USE AND ABUSE OF THE FREEDOM OF ESTABLISHMENT WITH REFERENCE TO THE CADBURY SCHWEPPES CASE
Nikolaj Vinther and Prof. Erik Werlauft
Following the Advocate General's Opinion of 2 May 2006 in the European Court of Justice Cadbury Schweppes case, the authors consider the borderline between the use and abuse of the freedom of establishment. The authors demonstrate that tax motives are legal motives, that various well-intentioned OECD models for legislative safeguards are being compromised and that tax motives cannot prevent the exercise of the freedom of establishment.

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Liam Grimes and Tom Maguire
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TURKEY: NEW TURKISH CORPORATE INCOME TAX ACT APPROVED
Prof. Dr Billur Yalti
The author comments on the new Corporate Income Tax Act of 21 June 2006, which comprehensively revises, and introduces substantial amendments compared to, the previous 1949 Act. Notably, the new Act reduces the corporate income tax rate from 30% to 20% and introduces anti-avoidance provisions with regard to transfer pricing and controlled foreign companies. The changes generally apply retroactively from 1 January 2006, but the new transfer pricing rules will only apply from 1 July 2007.
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Prof. Dr Roman Seer
In this article, the author considers the concept of restricting the legal consequences of the decisions of the European Court of Justice. This issue is of particular relevance as it has been raised in recent Opinions of the Advocates General.

PARTNERSHIPS AND OTHER HYBRID ENTITIES AND THE EC CORPORATE DIRECT TAX DIRECTIVES
Raffaele Russo
The purpose of this article is to demonstrate how the EC Directives on direct corporate taxation deal with the issues arising from the use of partnerships and other hybrid entities in an EC context and to highlight some of the unresolved problems. The article, therefore, considers and comments on the provisions in the EC Parent-Subsidiary, the Interest and Royalties and the EC Merger Directives in relation to this topic.

GERMANY:
The (IN)COMPATIBILITY OF THE GERMAN LLC DECREE ON THE CLASSIFICATION OF FOREIGN ENTITIES WITH THE GERMAN DOMESTIC LEGAL FRAMEWORK AND EC LAW
G.K. Fibbe
In this article, the author first comments on the LLC Decree regarding the classification of foreign entities. He then describes the classification of domestic entities under German law and of entities established under foreign private law, and considers the compatibility of the method adopted in the LLC Decree with the German national framework and EC law.

UNITED KINGDOM:
DOMICILE AND THE REMITTANCE BASIS IN UK TAXATION
Douglas Roxburgh
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Nikolaj Bjernholm and Anne Becker-Christensen
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EUROPEAN UNION/NETHERLANDS:
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Han J. Oortwijn
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**FRENCH ANTI-ABUSE INTERNATIONAL TAX LEGISLATION: RECENT DEVELOPMENTS**

Bruno Gouthière

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### EUROPEAN UNION:

**THE THREE Ds OF DIRECT TAX JURISDICTION: DISPARITY, DISCRIMINATION AND DOUBLE TAXATION**

Sjoerd Douma

The author first considers the consequences of the coexistence of national tax systems, including the existence of disparities between jurisdictions, the fact that the Member States may treat situations that arise fully within their own jurisdiction differently from those that are partly within and partly without their jurisdiction, and international juridical double taxation. The author then analyses to what extent the Community principles of non-discrimination and non-hindrance prohibit the impediments resulting from the facts that different rules apply in different jurisdictions, that the rules in a single jurisdiction treat internal and cross-border situations differently, and that tax jurisdictions tend to overlap. Finally, the author argues against the concept of "dislocations".

### POLAND:

**TAX TREATY INTERPRETATION IN THE CASE LAW OF THE POLISH COURTS**

Dr Wojciech Morawski and Dr Adam Zalasinski

The authors consider tax treaties and Polish domestic law, analyse the significance of Art. 31 to Art. 33 of the Vienna Convention and examine the general relevance of the OECD Model and Commentary, in particular the importance of referring to domestic law in respect of treaty provisions based on Art. 3(2) of the OECD Model Convention. The relevance of tax and other treaties is then analysed. The authors conclude by examining the significance of Community law for this topic.

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### INTERNATIONAL:

**THE 2006 LEIDEN ALUMNI SEMINAR: CASE LAW ON TAX TREATY INTERPRETATION**

Raffaele Russo

This note provides a summary of the 2006 Leiden Alumni Seminar on recent developments regarding case law and tax treaty interpretation and the related discussions.

### MOLDOVA:

**MOLDOVAadopts procedures authorizing reduced social tax rate and repayment in instalments of social tax debts**

Iurie Lungu

Details are provided of procedures adopted by Moldova to reduce the rate of social tax and to facilitate the repayment of social tax debts, which are part of Moldova's implementation of balanced economic and tax policies together with the introduction of structural changes.

### RUSSIA:

**THE DEVELOPMENT OF A GROUP TAXATION REGIME IN RUSSIAN TAX LAW**

D.V. Vinnitsky

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EUROPEAN UNION:
THE DOCTRINE OF THE ABUSE OF COMMUNITY LAW: THE SWORD OF DAMOCLES HANGING OVER THE HEAD OF EC CORPORATE TAX LAW?
Olivier Rousselle and Howard M. Liebman
The intention of this article is to determine whether or not, and if so, to what extent, the principle of abuse of Community law, as raised in the European Court of Justice (ECJ) Halifax case, applies to direct taxation. In this respect, the authors also briefly discuss the ECJ's decision, as an understanding of the Halifax case is necessary to appreciate its implications for corporate taxation.

INVESTMENT FUNDS, TAX PLANNING AND STATE AID
Prof. Dr Raymond H.C. Luja
With regard to this topic, the author reviews a Commission decision that potentially affects specialized investment fund regimes in the European Union, considers a European Court of Justice (ECJ) judgment that indicates a more vulnerable position for tax advisers with regard to their clients, tax planning and State aid, and revisits the question of regional tax autonomy by examining the ECJ's decision in respect of Portugal and the Azores.

GERMANY/NETHERLANDS/UNITED KINGDOM/UNITED STATES:
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Dr Amar Mehta
In this article, the author considers the issue of cross-border leasing with particular reference to transaction (lease) characterization, tax depreciation, and the income recognition and anti-avoidance rules in Germany, the Netherlands, the United Kingdom and the United States.

IRELAND:
THE ADOPTION OF INTERNATIONAL FINANCIAL REPORTING STANDARDS FOR TAX PURPOSES BY IRELAND
Liam Grimes and Tom Maguire
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“TRENDSETTING” DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS?
Roustam Vakhitov
In this article, the author examines two recent and potentially influential decisions of the European Court of Human Rights.

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HUNGARY:
HIGHER TAXATION TO REDUCE THE BUDGET DEFICIT
Dr Roland Felkai
Details are provided of the recent far-reaching budgetary reform designed to place Hungary's finances on a sound basis. The reform is controversial, as the measures focus on tax increases, whilst the reductions in government spending are minimal.
ITALY:

PARTICIPANTS IN FOREIGN TRANSPARENT ENTITY DENIED TREATY BENEFITS (THE GOOD, THE BAD AND THE UGLY)
Michele Gusmeroli
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UKRAINE:

UKRAINE’S TAX TREATIES: STATUS AND EFFECTIVENESS
Konstantin Kuznetsov
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New design makes the IBFD's journals more reader friendly

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In this article, the authors examine the threat that, in their opinion, income tax base erosion poses to the German economy. They then consider the danger that German government tax policies could have for the public finances. The authors conclude by arguing for a tax on all compensation for capital as (part of ) a solution to these problems.
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United Kingdom/International
Do UK Tax Planning Disclosure Developments Imply a General Change of Approach by Tax Authorities?
Simon Wilks, Alan Arenstein and Phil Greenfield

The authors consider the background to this issue, disclosure regimes and international cooperation, the Seoul Declaration of September 2006 and its implications for disclosure regimes, and the changes to the United Kingdom's regime that have effect from 1 August 2006.

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Opinion Statement of the CFE Task Force on ECJ Cases on the Judgment in the Case of Marks & Spencer plc v. Halsey (Case C-446/03) – Judgment Delivered 13 December 2005

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This note considers the new Italian anti-avoidance rule introduced to counter foreign entities that have no real tax residence abroad. In particular, details are provided of the application of the new anti-avoidance rule, its primary effects, disproving the relevant assumption, compatibility with the EC Treaty and tax treaties, the implications regarding the Italian controlled foreign company legislation, and the entry into force and consequences of the legislation.

Russia
Amendments to the Russian Tax Code Promulgated – Roustam Vakhitov

In this note, the author provides details of various laws which amend the Tax Code. The amendments primarily change a number of general definitions and administrative procedures, but also amend provisions relating to specific taxes.
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European Union/Netherlands

Scorpio and the Netherlands: Major Changes in Artiste and Sportsman Taxation in the European Union

Dr Dick Molenaar and Dr Harald Grams

In this article, the authors first discuss the special taxing rules for artistes and sportsmen and their effects. They then proceed to consider the implications of the European Court of Justice’s judgment in the Scorpio case. Finally, the authors discuss the reasons behind the decision of the Netherlands to end the taxation of non-resident artistes and sportsmen.

European Union

Inaugural Lecture by Prof. Dr D.M. Weber: In Search of a (New) Equilibrium between Tax Sovereignty and the Freedom of Movement in the EC

Gerard Blokland

The author reports on the inaugural lecture of Prof. Weber, Professor of European Corporate Taxation at the University of Amsterdam. Prof. Weber first provides a preliminary survey of the subject and then considers the tax sovereignty of the Member States as a starting principle before dealing with three inherent consequences of this principle, i.e. different taxation systems and disparities, the freedom to limit tax jurisdiction and the fact that the Member States are independent.

Portugal

The International Business Centre of Madeira: Profile, Tax Incentives and Perspectives

Rui Nascimento

This article deals with the International Business Centre of Madeira (Centro Internacional de Negócios da Madeira, IBCM) that can, broadly, be defined as a preferential tax regime on Portuguese territory. In this respect the author deals with the various zones in the IBCM, the tax incentives available and, finally, considers, critically, the current IBCM and its future.

Netherlands Antilles

Proposed and Enacted Amendments to Netherlands Antilles Tax Law

Wendela M.M. van den Brink-van Agtmaal

In this article, the author considers various changes to the tax regime of the Netherlands Antilles that have been implemented and are intended to be implemented in the future in response to EU and OECD developments. Specifically, details are provided of the changes that, at the time of writing, had yet to be enacted and of developments regarding the Netherlands Antilles and tax treaties.

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Triangular Cases: Art. 15 of the OECD Model, Income from Employment and the Definition of Terms

Bente Møll Pedersen

This note considers a recent Danish tax case that involved the interpretation of Art. 15 of the OECD Model Convention regarding employees’ remuneration and the definition of the term "permanent establishment". In this respect, the author specifically comments on tax treaties and the interpretation of treaties with regard to the Vienna Convention on the Law of Treaties of 23 May 1969.

European Union

Vienna Conference on "The EU and Third States: Direct Taxation"

Rita Szudoczky

The conference on "The EU and Third States: Direct Taxation" organized by the Institute for Austrian and International Tax Law of the Vienna University of Economics and Business Administration in cooperation with the European Commission and the City of Vienna was held in Vienna on 13 and 14 October 2006.
Norway
Budget for 2007 – Increased Taxation Increases Budget Surplus – Thor Leegaard

The author provides details of the Budget for 2007. Specifically, the overall effects of the Budget are considered and particulars are given relating to the changes in respect of pensions and the net wealth tax, the exit tax amendments and certain other changes, as well as (unfulfilled) rumours regarding potential changes to the exemptions for dividends and capital gains on shares.
Articles

European Union
Free Movement of Capital, Third Country Relationships and National Tax Law: An Emerging Issue before the ECJ – Axel Cordewener, Georg W. Kohler and Clemens Philipp Schindler
The authors provide a survey of the dogmatic and practical issues that have been raised in legal doctrine and by the European Court of Justice with regard to Art. 56 to Art. 58 of the EC Treaty. They then consider the relevance of these issues to capital movements between Member States and third countries.

Germany
Tightening of the German Anti-Treaty-Shopping Rule – Dr Petra Eckl
In this article, the author first outlines the development of the German anti-treaty-shopping rule. She then examines the implications of the various “Hilversum” decisions, before considering the amended anti-treaty-shopping rule and the EC law aspects of the amended law.

Nordic Countries
Taxation of Corporate Shareholders in the Nordic Countries – Part 1 – Thor Leegaard
In Part 1 of this article, the author focuses on the technical aspects of the similar participation exemption regimes in the Nordic countries by first discussing the scope of the regimes. The conclusion to the scope of the regimes and the anti-avoidance rules form the subject matter of Part 2.

International
International Tax Implications of Tradable Allowances – Katalin Csikós
This article focuses on the international tax aspects of tradable allowances, in particular the application of the distributive rules of the OECD Model Convention. As most of the identified problems emerge in the domestic context, the tax, accounting and legal treatment of the allowances in Hungary, the United Kingdom and the United States are addressed as a foundation for the international analysis.

EC Update

What's Going On In ...

European Union
The Influence of European Law on Direct Taxation – Recent and Future Developments – Alexander Fortuin, LL.M.
On 24 November 2006, the Confédération Fiscale Européenne, in cooperation with the Netherlands Association of Tax Advisers and the Amsterdam Center for International Law, held a congress in Amsterdam entitled “The Influence of European Law on Direct Taxation – Recent and Future Developments”.

Italy
New Italian Tax Regime for Stock Option Plans – Arnaldo Salvatore
The author provides a short overview of the new tax regime for employee stock option plans, which was recently introduced in Italy. Specifically, the author outlines the new regime, summarizes the requirements that must now be satisfied to qualify as a tax-favoured employee stock option and briefly considers the implications of the new regime.

Romania
Car Registration Tax – The First Romanian ECJ Case? – Cosmin Flavius Costaş
In this note, details are provided of the Romanian car registration tax and the possible conflict with EC law. In this respect, the author comments on current EC law and the case law of European Court of Justice (ECJ) with regard to a possible ECJ case on this topic.
Sweden
Swedish Advance Rulings: Group Contribution Regime Contrary to EC Law - Dunja Brodic

The author describes the background to and the substance of two recent advance rulings given by the Swedish National Board on Advance Rulings (Skatterättssnämnden) regarding the Swedish group contribution regime being contrary to EC law. The author then comments on the rulings and suggests actions that companies could consider taking in the light of the rulings.
Articles

Netherlands

The author considers the most important changes to the Netherlands Corporate Income Tax Act that have been introduced by the Act “Working on Profit”, including the reduction in the corporate income tax rate to primarily 25.5%, the introduction of “royalty” and “interest” boxes, and the amendments to the participation exemption regime. In conclusion, the changes to the Netherlands dividend withholding tax regime are outlined.

Italy
Private Equity Funds, Permanent Establishments and Italian Operations – Emidio Cacciapuoti

This article first considers the implications of the recent Philip Morris case and undertakes an in-depth investigation of the legal structure and operations of private equity funds in Italy. In relation to this, the author then analyses the circumstances under which, according to Italian and international tax rules, a non-resident person may be deemed to have a permanent establishment (PE) in Italy. Finally, the implications of the allocation of profits to a PE are considered.

Nordic Countries
Taxation of Corporate Shareholders in the Nordic Countries – Part 2 – Thor Leegaard

In Part 2 of this article, the author concludes his discussion on the scope of the participation exemption regimes in the Nordic countries started in Part 1. A detailed consideration of the relevant anti-avoidance rules forms the subject matter of the remainder of Part 2.

Lithuania
The Doctrine of Substance over Form in Lithuanian Tax Law – Julius Bernatonis

This article analyses the development of the doctrine of substance over form with regard to tax reform in Lithuania. Lithuanian court jurisprudence in relation to this issue is then examined. The article concludes with a consideration of the EC law implications of Lithuania’s accession to the European Union for this topic.

On 1 January 2007, Bulgaria and Romania acceded to the European Union. The following article examines the tax system of Bulgaria in relation to the acquis communautaire. A subsequent article will consider Romania in this respect.

Bulgaria
EU Accession and the Bulgarian Tax System – Konstantin Lozev

EC Update

What’s Going On In ...

Poland
New Dividend Taxation System in Poland – Dr Adam Zalasiński

A new system of dividend taxation in Poland has been introduced by way of amendments to the Corporate Income Tax Act. The new provisions entered into force on 1 January 2007 and substantially amend the tax environment for direct investment in Poland. It should be noted that the provisions may give rise to problems with EC law in respect of some of Poland’s treaty partners.

Slovenia
The Slovenian Tax Reform 2006 – Gregor Zorman, LL.M.

Slovenia implemented a new tax reform in 2006. In this note, the author considers some of the major changes of the reform that primarily reflect the implications of tax competition and economic growth, and the requirements of EC law.
Special Issue

European Union
Denkavit Internationaal: The Case, the Meaning, the Implications, and the Procedural and Practical Issues

On 14 December 2006, the European Court of Justice (ECJ) gave its decision in the case of Denkavit Internationaal BV, Denkavit France SARL v. Ministre de l’Économie, des Finances et de l’Industrie. In this Special issue of European Taxation, the guest editor, Prof. Frans Vanistendael, and a distinguished group of authors comment, inter alia, on the Denkavit Internationaal decision itself and the implications for dividend payments, procedure and practice, and ECJ case law.

Denkavit Internationaal: The Balance between Fiscal Sovereignty and the Fundamental Freedoms?
– Prof. Frans Vanistendael

Denkavit Internationaal Case and Its Consequences: The Limit between Distortion and Discrimination
– Thierry Pons

The ECJ Case Law on Cross-Border Dividends Revisited – Prof. Mr. Lieven A. Denys

Denkavit Internationaal: The Procedural Issues – Alexander Fortuin, LL.M.

Denkavit Internationaal: The Practical Issues – Prof. Dr Gerard T.K. Meussen

Article

On 1 January 2007, Bulgaria and Romania acceded to the European Union. The following article examines the tax system of Romania in relation to the acquis communautaire. An article in European Taxation 4/2007 considered Bulgaria in this respect.

Romania
EU Accession and the Romanian Tax System – Valentin Tic-Chiliment

EC Update

What’s Going On In ...

France
Quoted Real Estate Investment Companies: Recent Tax Changes – Henry Lazarski

The author considers the recent amendments that have been made to the regime for quoted real estate investment companies (sociétés d’investissement immobilier coté) and the implications of these changes.

Slovak Republic
Changes to Slovak Tax Legislation – Mark Gibbins and Zuzana Blažejová

Slovak tax legislation has recently been subject to amendments that have effect from 1 January 2007. In this respect, the authors wish to draw attention to the most significant amendments to the Income Tax Act and the Value Added Tax Act.

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## Contents

**Volume 47 - Number 6 - June 2007**

### Articles

**European Union**

**Why the ECJ Should Interpret Directly Applicable European Law as a Right to Intra-Community Most-Favoured-Nation Treatment - Part 1** - Servaas van Thiel

In Part 1 of this article, the author considers the interpretation by the European Court of Justice (ECJ) of the EC law prohibition against income tax discrimination and, in the author's opinion, the unwarranted criticisms of the ECJ's income tax case law.

**International**

**OECD Proposal To Improve the Resolution of Tax Treaty Disputes** - Jeffrey Owens

The author describes the proposals contained in the OECD Report on "Improving the Resolution of Tax Treaty Disputes". Specifically, the author describes the new arbitration procedures and other features of the Report, before presenting his concluding comments.

**Norway**

**The Norwegian Response to the EFTA Court Judgment in the Fokus Bank Case** - Andreas Bullen

The author's intention in this article is to describe Norway's response to the judgment of the EFTA Court in Fokus Bank, in particular as Norway has been unusually inventive in finding ways to reject and discourage claims for the repayment of discriminatory withholding tax subsequent to this case.

**Russia**

**Taxation of the Upstream Oil and Gas Industry in Russia - An Update** - Dr Mikhail Klubnichkin and Olga Sivolobtchik

The authors provide an update of recent changes in Russian taxation that affect the oil and gas industry. Specifically, the authors consider the changes that were introduced into the Tax Code of the Russian Federation in respect of the specific taxes for oil and gas production and covering the general principles of taxation and tax administration.

**Czech Republic**

**Taxation of Limited Partnerships in the Czech Republic** - John Ploem, Daniel Kunc and Jan Cernohouz

In this article, the authors deal with the issues relating to the taxation of, and the tax issues arising in respect of, special transactions involving Czech limited partnerships.

**Jersey**

**Battle of the Offshore Giants - Jersey Makes Its Move** - Anton Joseph

The author describes the recent tax changes that have been introduced in Jersey regarding trusts and trustee companies, and cell companies.

### EC Update

**Human Rights Issues and Developments**

**Human Rights and Admissibility in Trivial Tax Matters** - Hans Pijl

The author, in this regular feature of European Taxation, examines the concept of human rights and the admissibility of cases in respect of (apparently) trivial tax matters as viewed by the UN Human Rights Committee and the European Court of Human Rights.

**What's Going On In ...**

**Denmark**

**Offering and Taxation of Online Games In Denmark** - Arne Molin Ottosen and Peter Nordentoft

In this note, the authors consider the implications for gaming in Denmark of a recent Danish High Court decision and the issuing of clarification on the taxation of winnings by the Danish Ministry of Taxation.
Italy
First-Time Implementation of Tax Rules for Trusts in Italy – Giovanna Chiesa

The Italian Finance Bill for 2007 has, for the first time, introduced tax provisions for trusts. The new rules primarily cover (1) the qualification of trusts as taxable persons, (2) the circumstance in which trusts are deemed to be resident in Italy for tax purposes and (3) the application of a tax transparency regime to certain trusts. The rules apply to income arising from 1 January 2007, regardless of when the trust was established.

Latvia
Recent International Income Tax Changes in Latvia – Valters Gencs

In this note, the author comments on the significant tax developments in Latvia during 2006, which included changes to the penalty regime (with effect from 2007), new tax holidays, and amendments to the rules for interest and bad debts. The author also reports on the further corporate income tax and personal income tax changes introduced in 2007.

Luxembourg
Absence of Loss Relief Rules for Non-Residents May Violate EC Treaty – Anja Taferner

On 29 March 2007, Advocate General Paolo Mengozzi of the European Court of Justice gave his Opinion in Grand Duchy of Luxembourg v. Hans Ulrich Lakebrink and Katrin Peters-Lakebrink. The case concerns the taxation of non-resident taxpayers who derive the majority of their income in Luxembourg, but who also incurred losses in their state of residence. The Advocate General concludes that the Luxembourg rules in question violate the EC Treaty and recommends that the ECJ decides for the taxpayer.

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European Union
Why the ECJ Should Interpret Directly Applicable European Law as a Right to Intra-Community Most-Favoured-Nation Treatment – Part 2 – Servaas van Thiel

In Part 2 of this article, the author considers the question to what extent the directly applicable EC law on non-discrimination, as interpreted and enforced by the Community Courts, should be understood as a most-favoured-nation treatment obligation and, if so, how this would affect tax treaties.

European Union/Portugal/Spain
Regional Fiscal Autonomy from a State Aid Perspective: The ECJ’s Judgment in Portugal v. Commission
– Saturnina Moreno Gonzalez

With regard to the judgment in Portugal v. Commission, the author considers the Commission’s interpretation of the criteria of geographical or regional selectivity, analyses the hypothesis and the conditions established, under which the general or selective character of the tax incentives for firms operating or with a domicile in certain geographical zones of a Member State may be understood and, finally, expresses doubts regarding parts of the judgment and considers the possible implications for Spain.

Germany
Reform of the Reorganization Tax Act and Related Changes – Dr Joachim Englisch

The author describes the reform of the German Reorganization Tax Act. In particular, he considers the extension of territorial scope in respect of foreign entities and reorganizations and privileged restructuring operations relating to mergers, divisions and changes of legal form, and reorganizations of transparent entities and singular successions asset transfers. The author also reflects on related changes regarding exit taxes and the transfer of the registered office or place of management.

Belgium/United States
The New Belgium-US Income Tax Treaty – An Analysis – Arthur Bax and Steven Claes

This article provides an analysis of selected provisions of the new Belgium-US Income Tax Treaty. Specifically, the authors consider, with regard to corporate taxation, the treatment of fiscally transparent entities, dual resident companies, investment income, limitation on benefits, double taxation relief, and the mutual agreement and arbitration procedures.

EC Update

What’s Going On In ...

Sweden
New Swedish Rules on Cross-Border Reorganizations following Directive 2005/19/EC – Anna Berglund

In this note, the author considers the new Swedish rules on cross-border reorganizations introduced as a result of Directive 2005/19/EC. The changes apply from 1 January 2007.

United Kingdom
Does the Gaines-Cooper Case Change the Rule on What is a Day of Tax Presence in the United Kingdom? – Douglas Roxburgh

In this note, the author examines the implications of the recent decision of the UK Special Commissioners in the Gaines-Cooper case in relation to what constitutes a day of tax presence in the United Kingdom with regard to the meaning of residence, ordinary residence and domicile.

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Articles

European Union
Free Movement of Capital and Third Countries: Exploring the Outer Boundaries with Lasertec, A and B and Holbök – Axel Cordewener, Georg W. Kojler and Clemens Philipp Schindler

In this article, the authors arrive at some preliminary conclusions in respect of the European Court of Justice decisions in Lasertec, A and B and Holbök regarding, first, the relationship between the free movement of capital and the other fundamental freedoms and, second, the interpretation of the grandfather clause in Art. 57(1) of the EC Treaty.

A Hypothesis for Radical Tax Reform in the European Union – The Implications of the Abolition of Corporate Income Taxes – Luca Cerioni

This article draws attention to a series of interpretational problems that would be raised by a scenario in which, as a result of the abolition of corporate income taxes in the Community, corporate entities would become fiscally transparent within the Community. It is also, ultimately, argued that far-reaching solutions would be appropriate to avoid the re-emergence of issues that the abolition of corporate income taxes could otherwise be expected to resolve.

Italy
Permanent Establishments under Italian Tax Law: An Overview – Raffaele Russo and Edoardo Pedrazzini

In this article, the authors address the concept of a permanent establishment for Italian tax purposes, taking into account domestic law and Italy’s tax treaty network. The various sections of the article include the relevant tax authority pronouncements. A special section considers landmark tax cases.

International
Advance Rulings on the Application of Tax Treaties – Federico Balbiano di Colcavagno

The concept behind this article is derived from the practice of many states that have adopted advance agreements to determine the value of operations within a group of companies. The question considered by the author is whether or not and how such advance agreements could be used for the purpose of resolving in advance possible conflicts between states with regard to all the possible international tax implications, especially in respect of tax treaties.

Cross-Border Taxation of Employee Stock Options: How to Improve the OECD Commentary – Part 1 – Frank P.G. Potjens and Marcel Jakoben

In the first part of this two-part article, the authors discuss if, and when, employee stock option benefits should be taxed as employment income (Art. 15 of the OECD Model) or as capital gains (Art. 13 of the OECD Model).

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What’s Going On In ...

France
New Guideline on Recognition of Transparency Principle for Foreign Partnerships – Séverine Baranger, LL.M.

On 29 March 2007, the French tax administration issued a Guideline on the application of tax treaties to French-source passive income received via foreign partnerships. This note considers the Guideline by way of a summary of the OECD approach in the situations covered by the Guideline, and descriptions of the traditional French translucency approach, the changes entailed by the Diebold decision and the most important provisions of the Guideline.
Articles

European Union
Direct Investments and Third Countries: Things are Finally Moving ... in the Wrong Direction
– Renata Fontana, LL.M.

The author summarizes the latest European Court of Justice (ECJ) decisions regarding direct investment and third countries, considers the interaction between the freedom of establishment and the free movement of capital, and concludes with some critical final remarks regarding the ECJ's judgments. Readers should note that another article on this topic was published in European Taxation 8-9 (2007).

Tax Harmonization in Europe: The Determination of Corporate Taxable Income in the Member States
– Andreas Oestreicher and Christoph Spengel

In relation to this topic, the authors consider the purpose of tax accounting and the common criteria for evaluating tax rules, compare selected International Financial Reporting Standards (IFRS) with tax practices in the Member States and draw some interim conclusions. The authors then focus on company tax burdens and specifically the consequences on the effective levels of company tax burdens in selected Member States if IFRS were to be used to define the tax base.

Recent Developments regarding the OECD Model Convention and EC Law – Dr Christiana HJl Panayi

The author considers six recent developments regarding the OECD Model Convention and EC law. The developments considered relate to proposed changes in respect of service permanent establishments (PEs), the taxation of artistes and sportsmen and the attribution of profits to PEs, recent case law on the concept of beneficial ownership, including the Indofood case, and non-discrimination, including the latest OECD discussion draft, and proposed changes to the OECD mutual assistance procedure.

International
Cross-Border Taxation of Employee Stock Options: How to Improve the OECD Commentary – Part 2
– Frank P. Potgens and Marcel Jakobsen

In the second part of this two-part article, the authors continue their analysis of the cross-border taxation of employee stock options, with particular emphasis on the allocation of stock option benefits to different periods of service and other issues. The authors conclude with their suggestions as to the amendment of the Commentary on Art. 15 of the OECD Convention Model.

EC Update

What’s Going On In ...

Czech Republic
Supreme Administrative Court Gives First Decision on Application of Domestic Substance-over-Form Rule in Tax Treaty Context – Dr Tigran Mkrtchyan

The Supreme Administrative Court recently gave its decision in a case involving the application of the domestic substance-over-form rule to the 1980 Cyprus–former Czechoslovakia tax treaty. The case is noteworthy because this is the Court's first ruling on the application of domestic general anti-avoidance rules (GAAR) in the tax treaty context and the relationship between GAAR and tax treaties is a topic of significant debate in the international tax literature.

Germany
The New German Unilateral Switch-Over and Subject-to-Tax Rule – Richard Resch

Germany is in the process of introducing sweeping measures to counter tax avoidance. A new unilateral switch-over and subject-to-tax provision has been introduced and the anti-treaty-shopping rule has been tightened. Further measures to combat transfers of profits outside Germany and revisions to the general anti-abuse rule are under way. This article addresses the unilateral switch-over and subject-to-tax provision and its compatibility with treaty law.
In this note, the author comments on events in the UK Parliament and at the Commission that have highlighted the perceived unfairness of the availability of the remittance basis for UK non-domiciliaries. He also considers new material from Her Majesty's Revenue and Customs on how domicile outside the United Kingdom should be established and the remittance basis claimed.
Articles

European Union

Freedom of Establishment and Oy AA – Prof. Maarjaana Helminen

In this article, the author examines how the European Court of Justice (ECJ) interprets the freedom of establishment and, in particular, considers how the Court dealt with the possible justifications for a restriction on the freedom of establishment in relation to the recent ECJ Oy AA case.

European Union/Netherlands

Renneberg: Is Mortgage Interest Paid on an Owner-Occupied Dwelling in Belgium Deductible from Netherlands-Source Employment Income? – Prof. Dr Frank P.G. Pötgens and Wessel W. Geursen

This case has been referred to the European Court of Justice. Accordingly, the authors consider the facts and the dispute, the Netherlands Supreme Court’s decision, the Netherlands characterization of Mr Renneberg as a limited resident taxpayer, Mr Renneberg’s access to the ECTreaty, the relevance of the differences between personal allowances and negative income from an EC law perspective, the distinction between discrimination and disparity, and the possible grounds that could justify discrimination.

Switzerland/European Union

The Switzerland-EC Agreement on the Free Movement of Persons: Measures Equivalent to Those in the EC Treaty – A Swiss Income Tax Perspective – Marcel R. Jung

In relation to this topic, the author first outlines the background of Switzerland’s relations with the Community. The relevant Swiss international tax law is then discussed. The article continues with an analysis of the interpretation and application of the EU/Switzerland Agreement of 21 June 1999 on the Free Movement of Persons. Finally, the effect on Swiss income tax law is considered.

Spain/International

“The Bermuda Triangle Approach”: The Spanish Reaction to Uncooperative and Low-Tax Countries – Dr Alejandro García Heredia

In this article, the author first considers the Spanish approach to uncooperative and low-tax countries in the context of the OECD and EU criteria. The concepts developed by Spain to limit harmful tax practices are then considered. Finally, the author focuses on the specific defensive measures adopted by Spain.

EC Update

CFE News

Opinion Statement on the ECJ Halifax Judgment (C-255/02) – August 2007

What’s Going On In ...

Czech Republic

Tax Reform in the Czech Republic – Dana Trezziová

The Czech Republic has introduced comprehensive tax reforms with effect from 1 January 2008 as part of a major public finance reform package. The tax reforms, which represent a general shift from direct taxation to indirect taxation, include corporate, individual, energy, excise, real estate, inheritance, gift and VAT tax measures, as well as provisions regarding binding tax rulings and reserves.

Ireland

Recent Developments – Tom Maguire

This year saw two Finance Acts enacted in Ireland. The first contained significant amendments in Irish law, with the second solely amending stamp duty legislation. The latter was enacted following Ireland’s General Election and eliminated the charge to stamp duty for first-time buyers of residential property. This note concentrates on some of the main amendments in the first Finance Act 2007.

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## Contents

**Volume 47 – Number 12 – December 2007**

### Articles

**European Union/France**

**Deduction of Losses Incurred in Another Member State by a Non-Resident Subsidiary following Marks & Spencer**

Julien Saïac

The author approaches this topic by first briefly outlining the Marks & Spencer case as decided by the European Court of Justice (ECJ) and then considering the consequences in France. Next, loss carry-over and forfeiture in the European Union is examined, with special attention being paid to the practical aspects of the ECJ’s decision. The author ends with some conclusions. An Appendix sets out the relevant loss relief provisions in 25 Member States.

**International**

**European Holding Company Tax Regimes: A Comparative Study**

Wim Eynatten

In this article, the author first considers the general tax criteria in respect of holding company locations. Eleven holding company locations are then examined, in turn. The article ends with some general conclusions. An Appendix is included, which sets out details of rules regarding holding companies in various key locations for holding companies in Europe.

**European Union**

**Case-Law-Based Anti-Avoidance Measures in Conflict with Proportionality Test – Comment on the ECJ Decision in Kofoed**

Dr Adam Zalański

This article analyses the legality of case-law-based anti-avoidance measures with regard to EC law and the European Convention on Human Rights (ECHR). The author begins by describing the facts and the legal background to the European Court of Justice (ECJ) findings in Kofoed. Then, the Advocate General’s Opinion and the ECJ’s decision are reported. Finally, such anti-avoidance measures applying in respect of cross-border company reorganisations are tested against EC law and the ECHR.

**Hungary/European Union**

**The Compatibility of the Hungarian Tax System with EC Law**

Rita Szudoczky and Levente Torma

The authors examine the question of the compatibility of Hungary’s tax system with EC law from the perspective of direct taxation, i.e. in relation to corporate and personal income taxes, and then indirect taxation, i.e. with regard to the local business tax and VAT.

### EC Update

**Human Rights Issues and Developments**

**The “Determination of a Criminal Charge” and Tax Matters**

Philip Baker QC

On 23 November 2006, the Grand Chamber of the European Court of Human Rights issued its judgment in Jussila v. Finland, that case should now be regarded as the leading case on the issue of when administrative penalties imposed in a taxation context involve the “determination of a criminal charge” for the purposes of Art. 6 of the European Convention on Human Rights.

### What’s Going On In...

**Denmark**

**New Danish Limitations on Interest Deductions**

Niels Bjarsholm and Inger Toft Thiensen

Two Acts were passed in Denmark in the spring of 2007 concerning interest deductions. These were Act 540 of 6 June 2007 on Controlled Foreign Company Taxation and Counter Measures Against Private Equity Funds and Act 344 of 18 April on Hybrid Financing Instruments and the Taxation of Tax Losses, etc. This note considers the significance of the two Acts.

**International**

**The 2007 Leiden Alumni Seminar: Case Law on Treaty Interpretation**

The third annual Alumni Seminar was held at the International Tax Center of the University of Leiden, the Netherlands, on 29 August 2007. The Seminar addressed recent case law on the interpretation and application of tax treaties. The panelists were Vikas Chaturvedi (alumnus 2005/06), Ramona Piscopo (alumnus 2004/05) and Roustam Yaknitzov (alumnus 2000/01). The panel was chaired by Raffaele Russo (alumnus 2001/02).

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Contents

Volume 48 – Number 1 – January 2008

Articles

France
Beneficial Ownership – A French Perspective – Bruno Gibert and Yacine Ouamrane

The purpose of this article is not to end definitively the debate on the meaning of the concept of beneficial ownership. Rather, the authors discuss how French administrative doctrine and more recently the French tax courts have interpreted this concept.

European Union
Exit Taxation and ECJ Case Law – Gregor Führich

European Court of Justice case law puts increasing pressure on the income tax systems of Member States. German exit taxation, for example, probably infringes EC law. Amendments to the exit taxation regime will, however, likely lead to economic distortions or encourage corporate tax planning. Therefore, comprehensive European solutions should be considered to resolve fundamental problems arising out of EC law requirements, such as the Commission’s proposal on a common tax base for European groups or worldwide residence taxation.

Cyprus
The Continuing Advantages of Cyprus in International Tax Planning – Demetra Pipinga

In this article, the author first evaluates the background to, and the OECD and EU measures directed against, harmful taxation. She next examines the Cypriot tax system before 2004 and whether or not this did constitute harmful tax competition. Finally, Cyprus’s continuing advantages in relation to international tax planning following the reforms of 2002 are considered.

EC Update

CFE News

Opinion Statement on the ECJ Reemtsma Judgment (C-35/05) – October 2007

Opinion Statement of the CFE ECJ Task Force on the Concept of Abuse in European Law, Based on the Judgments of the European Court of Justice Delivered in the Field of Tax Law – November 2007

What’s Going On In ...

Denmark
New Danish Rules on Tax-Exempt Restructurings – Nikolaj Bjarnholm and Inger Toft Thiersen

On 12 April 2007, the Danish Parliament adopted Bill 1108 amending the Danish rules on tax-exempt restructurings by way of Act 343 of 18 April 2007 on restructurings and joint taxation. In general, the amended Act has retroactive effect from 1 January 2007. This note considers the importance of the provisions introduced by the Act.

European Union
Report on the EU Tax Law Group Meeting Held in Frankfurt am Main on 18 June 2007 – Alexander Fortuin and Joke Brabants

The third meeting of the EU Tax Law Group was held in Frankfurt on 18 June 2007. The first two meetings had been held in Amsterdam (April 2006) and Madrid (October 2006). The EU Tax Law Group is a network of EU tax lawyers, established in 2006. The purpose of the EU Tax Law Group is to hold meetings every six months to discuss new developments regarding EC tax law and opportunities for cross-border litigation.

United Kingdom
2007 Pre-Budget Report – Douglas Raxburgh

UK Chancellor of the Exchequer Alistair Darling presented his first Pre-Budget Report on 9 October 2007. As it contains proposals for fundamental tax changes, there will likely be amendments prior to the actual Budget in March 2008, due to lobbying or consideration of the practicalities of implementation. This note explains what is originally proposed for capital gains tax, inheritance tax and domicile and residence, the three significant areas of change.
Articles

France
Overview of the French CFC Legislation - Bruno Gouthière

In this article, the author reviews the French controlled foreign company (CFC) legislation. In so doing, he considers the context of and the basic principles governing the legislation, the application of the rules and the consequences, the compatibility of the legislation with tax treaties, relevant exceptions, practical aspects, and ways of avoiding the rules.

Denmark
Tax Avoidance and Capital Gains on Securities: Lessons from Recent Danish Supreme Court Cases - Jakob Bundgaard and Arne Molin Ottesen

Tax avoidance and active tax planning are global phenomena. The structures that are utilized are frequently the same across the tax world and it is, therefore, interesting to compare how such structures are evaluated in the relevant national courts. This article reviews recent Danish Supreme court cases that have considered tax avoidance or planning techniques in relation to the capital gains taxation of securities.

Belgium
The Belgian Patent Income Deduction - Eric Warson and Manuella Foriers

With regard to this topic, the authors examine the provisions on the Belgian patent income deduction (PID) introduced in 2007. The PID reduces the effective tax burden on the patent-related income to a maximum of 6.8%, instead of the statutory rate of 33.99%. The effective tax rate is, therefore, substantially lower than the rates for patent income in most other European jurisdictions.

EC Update

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What's Going On In ...

Italy/International
The Concept of a Permanent Establishment within a Group of Multinational Enterprises - Caterina Innamorato

This note reports on the Conference organized by the University of Castellanza in October 2007 regarding the Italian Supreme Court decision in Philip Morris and related issues. The debate that Philip Morris gave rise to is still relevant due to the important issues considered, i.e. the concept of a permanent establishment as applied in a multinational enterprises context, and the subsequent controversy.

Netherlands
Stand-By Fee Taxable in Residence State under Art. 15 of the OECD Model – Prof. Dr Frank P.G. Pötgens

This article considers the decision of the Netherlands Supreme Court of 22 December 2006. The Netherlands Supreme Court held that the employee's Residence State has the exclusive authority to tax a stand-by fee under Art. 15 of the Netherlands tax treaties that are based on the OECD Model Convention, provided that the employee is physically present in that State whilst he is on stand-by.

United Kingdom
Booke Allen (or NEC Semi-Conductors): Non-Discrimination, Advance Corporation Tax, Tax Treaties and the Free Movement of Capital – Brian Cleave, CB, QC

This note considers the important decision in Booke Allen given by the House of Lords (and the judgments in the courts below) in relation to the application of the non-discrimination articles of tax treaties to domestic law limitations on relief from advance corporation tax in respect of dividends paid by resident subsidiaries to non-resident parent companies, the implementation of tax treaties in domestic tax law, and the free movement of capital provisions of the EC Treaty.
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Germany

The German Tax Reform 2008 – Part 1 – Richard Resch, LL.M.

The Tax Reform Act 2008 features numerous corporate and personal income tax changes. Part 1 of this article focuses on the general systemic changes introduced, the corporate income tax rate reduction, the municipal business tax calculation, the retention privilege for partnerships and the new dual-income tax system. Part 2, which will be published in European Taxation 4/2008, discusses the new measures geared towards anti-avoidance.

International

“The Agency Element of Permanent Establishment: The OECD Commentaries from the Civil Law View”
by Sidney I. Roberts

In 1993, Sidney Roberts authored a famous article in Intertax on agencies and permanent establishments regarding the OECD Commentaries from a civil law perspective. The article engendered much debate (for example, see Avery Jones et al., “Agents as Permanent Establishments under the OECD Model Tax Convention”, European Taxation 5 (1993), pages 154 to 181). It was, however, very long and complex. European Taxation is, therefore, pleased to publish an abstract of the article, which should serve both to refresh the debate and communicate the original concepts succinctly.

European Union

The Common Consolidated Corporate Tax Base – Issues for Member States Opting Out and Third Countries
- Dr Christiana HJ Panayi

In this article, the author considers how the Common Consolidated Corporate Tax Base (CCCTB) could affect jurisdictions that are outside the regime, whether Member States or third countries. In this respect, particular emphasis is placed on the position of non-CCCTB Member States, i.e. Member States that opt out of the CCCTB. The article specifically examines the general benefits of consolidation, the proposed rules on the taxation of inbound and outbound investment, and some anti-abuse issues.

European Union

Amurta: A Tribute to (the Late) Advocate General Geelhoed – Prof Jaap Bellingwout

On 8 November 2007, the European Court of Justice delivered its decision in the Amurta case, which addresses economic double taxation on cross-border profit distributions within the European Union. The case draws on the legacy of the Opinions of Advocate General Geelhoed, wherein he has developed a highly relevant framework for deciding individual cases in this area. This article, following a summary of Geelhoed’s thoughts, discusses the Amurta case and its implications.

European Union

Balancing the Fundamental Freedoms and Tax Sovereignty: Some Thoughts on Recent ECJ Case Law on Direct Taxation – Gianluigi Bizzioli

In this article, the author first considers the recent case law of the European Court of Justice (ECJ) in respect of the fundamental freedoms and, in particular, in relation to which freedom applies in a given circumstance. The author then examines the various justifications employed with regard to national tax provisions in respect of discrimination and/or restriction, with emphasis on assessing whether or not there is a direct link between the two issues.

United Kingdom

UK Real Estate Investment Trusts – The First Twelve Months – Rosalind Rowe and Simon Beadle

2007 saw the start of the UK Real Estate Investment Trust (REIT) regime. More than 30 years of lobbying had finally achieved a tax regime for property companies that matched other major economies. This article initially examines the key features of UK REITs, and how sentiment has changed with the development of the credit crunch. The article then considers the future, focusing on Property Authorised Investment Funds and the prospects for 2008.

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Hungary
Tax Changes in Hungary In 2008 – Dr Roland Felkai
In this note, the author reviews various recent tax-related changes that have been introduced in Hungary. The changes generally have effect from 1 January 2008. The author pays specific attention to developments regarding corporate and personal income tax, VAT, the local government tax on real property, and the gift tax.

Netherlands
Developments Regarding the Netherlands Interpretation of the Term “Employer” in Art. 15 of the OECD Model – Hans de Vries
The Netherlands’ interpretation of the definition of an employer for treaty purposes has changed from a formal approach to a more economic one. The latest development in this respect is a series of decisions of the Netherlands Supreme Court, which are discussed in the first part of this note. The second part of this note deals with the question of which part of salary income is subject to Netherlands wage tax for an employee who is not a resident of the Netherlands.

Poland
Trading Receivables Could Be a Difficult Business – Filip Świtalsa
This note considers the tax issues relating to the purchase and the sale of receivables in Poland. Apart from the “natural” issues relating to VAT treatment of factoring, arising in connection with the unclear wording of Art. 138 (d) 3 of the Sixth VAT Directive and the rectification brought about by Art. 135 1. (d) of Directive 2006/112/EC, there are certain issues relating to corporate income tax and the transaction tax.

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Germany
The German Tax Reform 2008 – Part 2 – Richard Resch, LL.M. and Andreas Perdelwitz, LL.M.
This second of a two-part article concludes the outline of the German Tax Reform 2008. Whereas Part 1 focussed on general systemic changes, including rate reductions, Part 2 addresses the introduced measures geared towards anti-avoidance, i.e. the new limitation on deductibility of interest, the loss deduction limitation for substantial changes in ownership, the measures to counter security lending schemes and the amendments of the transfer pricing rules.

European Union
Columbus Container Services – A Victory for the Member States’ Fiscal Autonomy – Prof. Dr Gerard T.K. Meusen
On 6 December 2007, the European Court of Justice (ECJ) delivered its ruling in the much anticipated case of Columbus Container Services. From a number of perspectives, this is a very interesting ECJ tax law case, particularly with regard to the fiscal autonomy of the Member States and the withdrawal of the ECJ in direct tax cases regarding the topic of treaty override, based on its own interpretation of its competence.

European Union
International Tax Consolidation in the European Union: Evidence of Heterogeneity – Savina Princen and Marcel Gérard
With regard to this topic, the authors first consider the concept of tax neutrality and its domestic and international implications. They next focus on the rules that each Member State has for a corporate group to adopt group taxation. As a result of the diversity of the national group taxation regimes within the European Union, the authors then suggest a typology for these systems as well as examining the intrinsic features of tax consolidation systems.

International
An Analysis of the Special Treaty Provisions Relating to Continental Shelf Activities – Niken Susanti
The primary purpose of this article is to analyse the offshore provisions inserted by Denmark, Ireland, Latvia, Lithuania and the United Kingdom into their tax treaties. In this respect, these offshore provisions consist of two parts, i.e. first, the concept of an offshore permanent establishment (PE) and, second, the special income attribution rules in relation to continental shelf offshore PEs, independent personal services and employment.

Turkey
Taxpayers’ Rights – The Turkish Model – Nilgün Serim
In this article, the author first considers the origins and development of the concept of taxpayers’ rights in Turkey from the Ottoman Empire to the Republic. Following this, the current status of the taxpayers’ rights in Turkey is examined. The author concludes by setting out her opinions and suggestions with regard to this topic.

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Denmark/France/Spain
Act Enacted Authorizing Termination of Tax Treaties with France and Spain – Nikolaj Bjørnholm and Arne Riis
A Bill authorizing the Danish Minister of Taxation to terminate the Denmark-France and Denmark-Spain tax treaties was passed and enacted by the Danish parliament. The Act entered into force on 1 March 2008 and the termination of both tax treaties could, therefore, become effective as early as 1 January 2009. This note considers the implications of the Act.

Germany
German Inheritance Tax Law Reform 2008 – Andreas Perdelwitz, LL.M.
On 11 December 2007, the German Ministry of Finance published a draft bill on the Reform of the Inheritance Tax and Valuation Law. In this note, the author examines the key features and the planned amendments included in the draft bill.
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Luxembourg

New Luxembourg Tax Regime for Intellectual Property Income – Frank Muntendam and Jose Chiarella 223

A beneficial tax regime for income from intellectual property rights has recently been approved by the Luxembourg House of Representatives and is effective from 1 January 2008. In this article, the authors describe the tax benefits provided by this regime and compare it with similar regimes, also applicable to intellectual property rights, currently in force in the Netherlands, Belgium and Ireland.

European Union

Cross-Border Loss Compensation and Permanent Establishments: Lidl Belgium and Deutsche Shell – Prof. Gerard T.K. Meusen 233

Recently, Advocate General Sharpston delivered her Opinion in Lidl Belgium, whilst the European Court of Justice (ECJ) gave its decision in Deutsche Shell. Both cases deal with the losses of a foreign permanent establishment (PE), for example currency losses in relation to the activities of a foreign PE. This article considers the implications of the Advocate General’s Opinion and the ECJ’s decision.

Italy/International

Can a Permanent Establishment Be a “Legitimate Heir” in a Domestic Consolidated Tax Regime? – Marco Adda 238

A recent Ruling issued by the Italian tax authorities presents an opportunity to verify if, with regard to a particular issue concerning the contribution of a permanent establishment (PE), there is still sufficient ground of justification to distinguish between a dependent entity (a PE) and an independent entity (a subsidiary) in the context of group tax regimes.

Poland/European Union

Polish Excise Legislation – The Potential Incompatibilities with EC Law – Dr Krzysztof Lasinski-Sulecki 245

Poland joined the European Union on 1 May 2004. On that date, most of the provisions of the new Excise Duty Law of 23 January 2004 (Ustawa z dnia 23 stycznia 2004 r. o podatku akcyzowym) came into force. Although the Excise Duty Law was prepared previously due to Poland’s accession, some of its provisions appear to be incompatible with EC law. The objective of this article is to consider these incompatibilities.

International/European Union

Greening Tax Complementary to the Sustainability Agenda? – Timo van den Brink 251

Environmental taxes are a potentially effective way of supporting policy action. This article examines a variety of approaches and instruments currently used or being developed to support sustainable economic development and protect the environment. In this respect, examples of positive measures enacted recently in five Member States are considered, as are the instruments that should be developed for alternative policy scenarios.

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Bulgaria

The 2007 Amendments to the Bulgarian Corporate Income Tax Act – Dr jur Lubka Tsenova 262

The Bulgarian Corporate Income Tax Act (CITA) was amended three times in 2007. This note considers the most significant of these amendments to the CITA.
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Poland
Recovery of Interest on Delayed VAT Refunds – Filip Świtala

This note considers the tax issues relating to the recovery of VAT in Poland based on the Eighth VAT Directive from a procedural viewpoint. Specifically, a recent court decision has held in favour of non-Polish EU VAT payers who wish to claim interest in the late repayment of VAT under the Eighth VAT Directive. The note, therefore, examines current practice and the significance of the court decision.

Romania
“Net-Of-Tax” Clauses in the Context of a Recent Decision of the Romanian High Court of Cassation and Justice – Mag. Ciprian Păun, LL.M.

Globalization and the transfer of technology and know-how mean that new juridical and economic aspects relating to international cooperation between commercial companies are of fundamental importance. In the context of many European companies using subsidiaries or affiliated companies to undertake large projects, the related issues of the payment for these services and the consequent fiscal treatment arise. This note considers a recent Romanian court case regarding these topics.

Slovak Republic
Changes to Slovak Tax Legislation – Mark Gibbins and Zuzana Blažejová

Slovak tax legislation was subject to a number of significant amendments, which generally have effect from 1 January 2008. The application of certain provisions of the amendments to the tax law, for example the changes relating to thin capitalization and transfer pricing, have, however, been postponed to 1 January 2009. This note summarizes the most significant amendments to the Income Tax Act, the Value Added Tax and the Act on Municipal Taxes.

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European Union
The purpose of this article is to examine the main trends in the income tax case law of the European Court of Justice regarding the possible justifications for discriminatory tax measures so as to provide guidance to national courts. The article, which is in two parts, focuses on the overriding public interest justifications that are often advanced by Member States in income tax cases.

Austria/Germany
Inheritance Tax – Quo Vadis? – Patrick Knörzer, Andreas Perdelwitz LL.M. and Natascha Schneider
In this article, the authors summarize the decisions of the Austrian and German Constitutional Courts regarding the unconstitutionality of inheritance tax and present an overview of the differing legislative reactions in the two states. Subsequently, the cross-border consequences of these developments are considered, with particular emphasis on the implications for cross-border situations of the termination of the 1954 Austria–Germany inheritance tax treaty.

Italy
The Interaction between Tax Treaties and Domestic Law: An Issue of Constitutional Legitimacy – Paolo Arginelli and Caterina Immamurato
The purpose of this article is to examine the effect that two recent decisions of the Italian Constitutional Court (Corte Costituzionale) could have on the interaction between tax treaties and domestic law within the Italian tax system. In addition, two examples of potential conflicts between tax treaties entered into by Italy and domestic law are considered.

Portugal
Portuguese Stamp Duty on Cross-Border Loans and Guarantees – Tânia de Almeida Ferreira
Stamp duty, the oldest Portuguese tax, must be carefully considered in the context of transactions involving both internal and cross-border loans and/or guarantees. Created on 24 December 1660, stamp duty has been subject to several amendments. In 2000, in an attempt to bring this archaic tax up to date, a new stamp duty law was introduced. This article examines some transactions involving cross-border loans and guarantees and the impact that stamp duty has on each of them.

EC Update

Human Rights Issues and Developments

Some Recent Decisions of the European Court of Human Rights – Philip Baker QC
This article examines some recent cases of the European Court of Human Rights on tax matters. The cases examined relate to searches of premises by revenue officers, taxes that impose an excessive burden and legal aid in tax appeal cases.

What's Going On In ...

European Union
Vienna Conference on "Common Consolidated Corporate Tax Base – The Possible Content of Community Law Provisions" – Dr Tigran Mkrtchyan
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France

Details have been provided regularly of the various changes to the taxation of gains realized by non-residents in respect of real property situated in France. These changes are generally introduced in the annual Finance Laws. The Finance Law for 2008 (hereinafter: the Law) has continued this tradition. Specifically, the Law not only introduces a wider definition of real property gains, but also reorganizes and clarifies the taxing provisions regarding non-residents.

Latvia
Recent Changes to Latvian Tax Legislation – Zigurs G. Kronbergs, BSc, ARCS, MA, ACA, FCCA 324

A number of amendments to Latvian tax legislation were introduced towards the end of 2007, which were associated with the 2008 Budget and prior to the resignation of the government in December 2007. Since then, further amendments have been made and others are still being legislated for. The amendments cover direct and indirect taxes. This note provides an overview of the amendments that have been made to the corporate and personal income tax rules.

Switzerland
Business Tax Reform Act II Approved in Referendum – Measures and Entry Into Force – Marcel R. Jung 326

On 23 March 2007, the Federal Parliament passed the Federal Act on the Improvement of Tax Law for Entrepreneurial Activity and Investments (Business Tax Reform Act II). The draft act was subject to referendum. On 24 February 2008, the Swiss electorate approved the draft act, but voting was very close, with only 50.5% of the votes in favour. This note examines the new provisions contained in the draft act.

United Kingdom
2008 Budget – Douglas Roxburgh 331

UK Chancellor of the Exchequer, Alistair Darling, presented his first Budget to the House of Commons on 12 March 2008 following his Pre-Budget Report of 9 October 2007, which was reviewed in European Taxation 1 (2008). This note deals with the Budget proposals that are of relevance to the majority of tax technicians and practitioners.

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In Part 2 of this article, the author considers the second of the overriding public interest justifications frequently invoked by Member States, i.e. the need to preserve the balanced allocation of tax jurisdiction. That justification, though once rejected by the European Court of Justice, has subsequently been accepted. The article ends with the author setting out his extensive conclusions on the subject matter in question.

International
The "Enhanced Relationship": A Challenge for Revenue Bodies and Taxpayers – Jeffrey Owens

In this article, the author examines the concept and the potential benefits of an "enhanced relationship" between revenue bodies and (corporate) taxpayers, with special emphasis on the findings of The Cape Town Report and its recommendations. The author concludes by commenting on issues in this area to date and considering future developments.

European Union/Finland
The Future of Source State Dividend Withholding Taxes in Finland and the European Union – Prof. Marjaana Helminen

This article analyses the compatibility of the domestic dividend withholding tax systems of the Member States with EC law using the Finnish tax system as an example.

European Union
EC Cross-Border Insolvency Regulation Tax Horizon – Watch the Present, It Is Not What It Was! – Ricardo Pereira

Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (hereinafter: the Regulation) came into force in all Member States except Denmark on 31 May 2002. As it is inherently an instrument regulating the operation of the Single Market, it has been seen as the culmination of almost 40 years of efforts regarding insolvency and bankruptcy. This article assesses the Regulation's effect on the domestic legal rules for foreign tax claims regarding insolvency.

Portugal/European Union
The Concept of a "Branch of Activity" in the EC Merger Directive and Issues regarding its Implementation in Portugal – Julija Petkевичa

In this article, the author first considers the concept of a "branch of activity" defined in the EC Merger Directive, especially in respect of the various uncertainties that exist regarding the interpretation of this concept, and the case law of the European Court of Justice. In this context, the author then examines the concept of a "branch of activity" with reference to Portugal's experience of its implementation.

Greece/European Union
Greek Capital Gains Tax on the Transfer of Shares and EC Law – Ioannis F. Stavropoulos, LL.M.

The author first considers the history of the privileged regimes in Greece relating to the taxation of capital gains on the transfer of shares. He then outlines the current regime regarding the taxation of shares. Next, he examines the EC law aspects that may be relevant to this regime, with especial emphasis on the State aid rules. The author finally notes that the government is planning to amend the current regime regarding listed shares.

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Bulgaria
Amendments to the Bulgarian Personal Income, VAT, and Excise Duties and Warehouse Acts – Dr jur Lubka Tsenova

Various amendments have recently been made to the Bulgarian Personal Income Act, VAT Act, and Excise Duties and Warehouse Act. This note summarizes the most important changes to these Acts.
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Moldova
Zero-Rate Corporate Income Tax in Moldova – Vasile Folea 387

This note considers the rationale, operation and implications of the 0% corporate income tax (CIT) recently introduced in Moldova. The author also considers the background to the introduction of the 0% CIT.

Turkey
Advance Pricing Agreements in Turkey – Prof. Dr Billur Yalta 390

Turkey introduced transfer pricing legislation and an advance pricing agreement (APA) procedure for the first time in the new Corporate Income Tax Act SS20 of 21 June 2006 (hereinafter: the Act). Although the transfer pricing legislation entered into force on 1 January 2007, the APA procedure generally applies from 1 January 2008. This note examines and clarifies the procedural rules of the new APA regime that are contained in the Act.

United States/United Kingdom
US Court of Appeals Decision in National Westminster Bank PLC v. United States – J.G. Rienstra 393

This note concerns the decision of the US Court of Appeals for the Federal Circuit in the National Westminster Bank case regarding US interest deductions for 1981 to 1987. The case involved Art. 7 (Business profits) of the 1975 UK-US income tax treaty and the application of the US branch interest rules of US Treasury Regulation § 1.882-5. The US Court of Appeals upheld the opinions of the US Court of Federal Claims that the US Treasury Regulation violated Art. 7.

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Spain
Group Taxation in Spain – Ralf Stepholt, Hugo Bascopé and Alexander Hering

As Spain is becoming more attractive as an investment location and following economic growth of 4% in 2007, there is increasing interest in offsetting the start-up losses of Spanish subsidiaries against the income of other domestic subsidiaries by establishing tax groups. This article provides an overview of the requirements for establishing, executing and winding up Spanish tax groups, which includes the consequences of group taxation, the declaration requirements and the consequences of its failure.

Czech Republic/European Union
The Compatibility of the Czech Participation Exemption with EC Law – Dr Tigran Mkrtchyan

Since its EU accession in 2004, the Czech Republic has strived to ensure the compatibility of its income tax system with EC law. Although several potentially discriminatory or restrictive Income Tax Act provisions were abolished or amended as part of a 2008 reform, it is argued that the extension, from 1 January 2008, of the scope of the participation exemption to include capital gains is likely to be incompatible with EC law.

Ireland
Finance Act 2008 – The Direct Tax Effects – Tom Maguire

The Finance Act 2008 in Ireland contained a number of developments from a direct tax perspective. It was signed into law by the President on 13 March 2008. This article briefly outlines some of the major changes contained in the Finance Act 2008.

Portugal/International
Withholding Tax Issues between Permanent Establishments and Head Offices: International and Portuguese Perspectives – Rui Camacho Palma

This article focuses on various issues that arise in law and in practice with regard to withholding tax on financial flows, both notional and real, between Portuguese permanent establishments and their head offices, as well as the related issue of the deductibility of internal charges.

EC Update

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CFE Forum 3 April 2008: Summary Report – Fraser Dickinson

What's Going On In ...

European Union

This note reports on the fourth meeting of the EU Tax Law Group, at which various topics of interest to EU tax practitioners were discussed.

Israel
Practicalities of Compliance with Israeli Transfer Pricing Regulations – Jonathan Lubick and Henriette Fuchs

With the issuing of the Israeli transfer pricing regulations in November 2006, Israel joined the approximately 40 countries with specific transfer pricing documentation requirements. This note summarizes the Israeli transfer pricing provisions as well as considering their implications.

Italy
An Unwritten Anti-Abuse Principle in the Italian Tax System – Caterina Innamorato

After summarizing the January 2008 Decision No. 8772 of the Italian Supreme Court (Corte di Cassazione), this note deals with the abuse of law (and/or of rights) doctrine as developed in both Italian and EC law. The effects of the decision on both the Italian tax authorities and taxpayers are then discussed.
Serbia
Taxation of Real Estate in Serbia – Ivana Blagojevic

In this note, the author considers all the relevant tax aspects of the taxation of real estate in Serbia that are of essential concern to investors interested in the real estate market in Serbia.

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Special Issue

The 2008 OECD Model Tax Convention – An Analysis of the Changes

International
The 2008 OECD Model Tax Convention – Guest Editor's Note – Raffaele Russo

Raffaele Russo, the Guest Editor of the European Taxation Special Issue on the 2008 OECD Model Tax Convention, outlines the contents and purpose of the Special Issue.

International
The 2008 OECD Model: An Overview – Raffaele Russo

This article contains an overview of the 2008 Update to the OECD Model Convention (hereinafter: the OECD Model). The 2008 Update contains clarifications with regard to the tie-breaker test under Art. 4(3) of the OECD Model and an alternative provision in this respect, an alternative provision on services, a revision to the Commentary on Art. 7, alternative provisions for real estate investment trusts, clarifications in relation to the definition of royalties, clarifications in relation to the application of the non-discrimination article, Art. 25(5) on mandatory binding arbitration, and some other clarifications.

International
The Attribution of Profits to Permanent Establishments: The 2008 Commentary on Art. 7 of the OECD Model Convention – Mary Bennett

This contribution analyses the changes made to the Commentary on Art. 7 in the 2008 Update of the OECD Model Convention. It also includes background information on the Authorised OECD Approach for attributing profits to permanent establishments as contained in the OECD Report on the "Attribution of Profits to Permanent Establishments".

International
The OECD Services Permanent Establishment Alternative – Hans Pijl

In this article, the main traits of the services permanent establishment (PE) paragraph of the 2008 OECD Model Convention (hereinafter: the OECD Model) are discussed, including some of the public comments on the discussion draft. With regard to this, the services PE paragraph was introduced in the Commentary in 2008 as an alternative for those countries that may want to opt for such a reduced PE threshold. It is, however, not in the OECD Model itself.

International

With regard to this topic, the author describes and analyses the proposed double tax convention treatment of distributions from Real Estate Investment Trusts (REITs) and capital gains derived from the disposal by investors of an ownership interest in REITs set out in the updated 2008 OECD Model Convention.

International
Taxation and Non-Discrimination: Clarification and Reconsideration by the OECD – Silke Bruns

In this article, the author considers the 2008 changes to the Commentary on Art. 24 of the OECD Model Convention (hereinafter: the OECD Model) on non-discrimination. Specifically, the author first examines the background to the changes, then the changes introduced into the 2008 OECD Model and, finally, the logic behind the changes and the concept of non-discrimination in double tax conventions.

International
Supplementary Dispute Resolution – Marlies de Ruiter

This article mainly focuses on the new supplementary dispute resolution mechanism in the 2008 OECD Model Convention. Before going into the details of and background to arbitration, the mutual agreement procedure is briefly considered, indicating what is its current status. Following this, a short description is provided of the OECD project on dispute resolution and its results. This leads to the primary focus of this article, i.e. arbitration.

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European Union
A European Model for Member States’ Legislation on the Taxation of Controlled Foreign Subsidiaries (CFCs) –
Part 1 – Prof. Cuglieardo Maisto and Prof. Pasquale Pistone, Coordinators

The original paper that forms the basis of this article was drafted in response to the Commission Communication of
10 December 2007 regarding the application of anti-abuse measures for direct taxation, with specific reference to
controlled foreign company (CFC) legislation, and to submit proposals to develop an EU model for this legislation.
Part 1 considers the key aspects of CFC legislation. Part 2 contains a comparative survey and an assessment of the
distorting effects of CFC legislation in four Member States, and proposals concerning ‘best practice’ for such
legislation.

Germany
The New German Transfer Pricing Rules on Cross-Border Relocation of Functions: A Preliminary Analysis
– Patrick Cauwenbergh and Mayra O. Lucas MAs

Germany’s new transfer pricing rules introduce a special tax treatment for business restructurings, which currently
seems unmatched in other countries. After some introductory remarks on business restructurings and the OECD
efforts in this area, the article examines, from a foreign perspective, the German provisions specifically dealing with
a “relocation of functions”. It then provides a preliminary analysis of potential concerns arising from this new
legislation in light of the OECD Transfer Pricing framework and EC law.

Italy
The Evolution of the Concept of the Place of Management in Italian Case Law and Legislation: Interaction with Tax
Treaties and EC Law – Gianluigi BizziO

The author, first, analyses recent Italian tax court decisions regarding the interpretation of the concept of “place of
management” and then provides a brief description of the functioning of the legislative presumption of residence
for companies and entities (Art. 73(S-bis) and (S-ter) of the Consolidated Income Tax Act). Subsequently, the article
deals with the interaction between this case law and the legislative presumption of residence, on the one hand,
and tax treaties and EC law, on the other.

Bulgaria/European Union:

In this article, the author considers the implementation of the Savings Directive in Bulgaria and outlines specific
issues for Bulgaria and other current (and future) Member States, with particular emphasis on the interaction with
the systems of the three transitional Member States (Austria, Belgium and Luxembourg). In this respect, the author
suggests solutions to the problems raised and their compatibility with the case law of the European Court of Justice
and EC law in general.

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Opinion Statement of the CFE ECJ Task Force on ECJ, Columbus Container Services BVBA & Co v. Finanzamt Bielefeld-
Innenstadt, 6 December 2007, C-298/05 – April 2008

Opinion Statement of the Confédération Fiscale Européenne on the OECD International VAT/GST Guidelines –
April 2008

What’s Going On In ...

Czech Republic
The Effective Personal Income Tax Rate in the Czech Republic – Jan Široký and Anna Kovárová

In this note, the authors consider the implications in respect of the effective tax rate in the Czech Republic of the
introduction of the flat personal income tax at a rate of 15%.
In November 2007, the Danish government proposed two bills to amend the Act on Taxation of Pension Schemes and the Act on Taxation of Pension Yields so as to introduce deductions in respect of contributions to foreign pension schemes within the European Union and European Economic Area. The bills have been enacted with effect from primarily 1 January 2008. This note considers the amendments introduced by the two bills.
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Articles

European Union
A European Model for Member States' Legislation on the Taxation of Controlled Foreign Subsidiaries (CFCs) – Part 2 – Prof. Guglielmo Maisto and Prof. Pasquale Pistone, Coordinators

The original paper that forms the basis of this article was drafted in response to the Commission Communication of 10 December 2007 regarding the application of anti-abuse measures for direct taxation, with specific reference to controlled foreign company (CFC) legislation, and to submit proposals to develop an EU model for this legislation. Part 2 contains a comparative survey and an assessment of the distorting effects of CFC legislation in four Member States, and sets out proposals concerning "best practice" for such legislation.

European Union
The Fundamental Freedoms and Third Countries: Recent Perspectives – Dr Christiana HJI Panayi

The European Court of Justice interpretation of Art. 56 of the EC Treaty suggests that movements of capital to or from third countries may enjoy less protection under EC law. In addition, the fact that a certain activity could be covered (and protected) under more than one fundamental freedom, has important implications for third country nationals. This leads to the question of how the tax treatment of third country nationals has been affected by such an interpretation of the fundamental freedoms.

Austria/European Union
Taxation of Cross-Border Portfolio Dividends in Austria: The Austrian Supreme Administrative Court Interprets EC Law – Thomas Bieber, Werner Haselehner, Georg Kofler and Clemens Philipp Schindler

In this article, the authors discuss the Austrian Supreme Administrative Court's decision of 17 April 2008 wherein it was decided that the discriminatory treatment of cross-border intercompany portfolio dividends, in comparison to equivalent domestic dividends, constitutes a prohibited restriction of the free movement of capital, but that granting an indirect foreign tax credit can cure the breach of EC law.

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Serbia
Taxation of Capital Gains of Non-Resident Companies in Serbia – Ivana Blagojevic

The author considers the mechanism for the taxation of capital gains realized by non-resident entities in Serbia, with special emphasis on capital gains realized on the sale of Serbian securities and equity interests in Serbian companies.

Slovenia

In this note, the authors consider the effect in Slovenia of the implementation of Directive 2005/56/EC on cross-border mergers of limited liability companies with regard to the tax treatment of such mergers. The authors also briefly survey all of the tax-neutral cross-border reorganizations that may now be carried out in Slovenia.

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Netherlands/European Union
An Analysis of the Netherlands Dividend Withholding Tax on Shares – No Need to Abolish This Tax Yet?
– Dick E. van Sprundel

In this article, the author provides an overview of the Netherlands Dividend Withholding Tax Act 1965 (Wet op de dividendebelasting 1965, DWTA) and utilizes a number of examples to demonstrate whether or not, and to what extent, the DWTA is "EC proof". Given that the DWTA was substantially amended from 1 January 2007 to remove prohibited constraints following European Court of Justice (ECJ) case law, some landmark ECJ rulings are also discussed.

Austria
How to Acquire an Austrian Target – The Optimal Structuring for Foreign Investors – Andreas Baumann

This article first presents the basic tax consequences of asset and share deals in Austria, following which attention is, due to the subject matter, given to the position of both the seller and the purchaser with regard to corporations. On this basis, the article includes an outline of the most commonly utilized transaction model on which foreign investors generally base their investments.

Austria
The Austrian Stamp Duty Act – Comment and Analysis – Clemens Endfeller and Manfred Kuster

In this article, the authors provide in-depth comment on and analysis of the Austrian Stamp Duty Act (Gebührengesetz, GebG (hereinafter: the SDA or the Act)), with particular emphasis on the details of the SDA, the Act’s anomalies and the ways in which the provisions of the SDA may be (legally) circumvented.

European Union
A Comprehensive Solution for a Targeted Problem: A Critique of the European Union’s Home State Taxation Initiative – Ilan Benshalom

This article examines the Commission’s HST and CCCTB initiatives. It argues that both proposals undermine the long-term objective of a consolidated EU corporate tax regime. It suggests an alternative strategy, a comprehensive formulary tax allocation solution in one of the hard-to-tax sectors, such as the financial sector. This strategy requires more effort and political risk taking, but would better promote the long-term objective of a consolidated EU corporate tax regime.

EC Update

Human Rights Issues and Developments


This article examines the issue of discrimination in respect of entitlement to UK widower bereavement benefits and tax relief in the context of recent UK and European Court of Human Rights decisions.

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International
The 2008 Leiden Alumni Seminar: Case Law on Treaty Interpretation

The fourth annual Alumni Seminar was held at the International Tax Center of the University of Leiden, the Netherlands, on 28 August 2008. The Seminar addressed recent case law on the interpretation and application of tax treaties. The panelists were Sérène Baranger (alumna 2006/07), Wolfgang Oepen (alumnus 2002/03) and Michael Kandev (alumnus 2005/06). The panel was chaired by Raffaele Russo (alumnus 2001/02). The proceedings of the Seminar are summarized in this note.
According to the Netherlands Supreme Court, remuneration is borne by a permanent establishment (PE) within the meaning of Art. 15(2)(c) of the OECD Model Convention if, under Art. 7, the remuneration can be allocated to a PE of the employer in the state of activity. Consequently, the state of activity has primary taxing rights in respect of this remuneration, for which the residence state of the employee must grant double tax relief.
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Netherlands/Germany/United Kingdom
Optimizing the Interest Deduction Rules – A Never-Ending Story – Anouc van den Berg van Saparoos

This article provides an overview of current developments regarding the limitation of interest deductions in the anti-abuse legislation applying in the Netherlands, Germany and the United Kingdom. A comparison between the different regimes attempts to determine whether it would be advisable to use German legislation to optimize the Netherlands interest deduction rules, or whether it would be better to amend the current legislation based on that applying in the three jurisdictions or enact new legislation as recently proposed by three Netherlands tax professors.

European Union
The ECJ’s Judgment regarding the Tax Autonomy of the Basque Country – Daniel Armento

On 11 September 2008, the European Court of Justice (ECJ) gave its judgment in Joined Cases C-428/06 to C-434/06, dealing with the legislative autonomy in tax matters of Álava, Biscay and Gipuzkoa, the three “Historical Territories” which make up the Basque Autonomous Community in Spain. The author considers the background to the case, the decision itself and its implications. He believes that the criteria set out by the ECJ confirm the compatibility of Basque financial and tax autonomy with EC law.

France
Tax Treatment of Foreign Pension Funds – Daniel Gutmann, Stéphane Austry and Pierre Le Roux

In this article, the authors discuss the Paris Administrative Court of Appeals’ decision in the case of the Minister of Finance v. Fondation Stichting Unilever Pensioenfonds Progress (Case 06-3370), wherein the Court ruled that the treatment applicable to French pension funds under domestic tax law should be extended to foreign non-profit organizations of the same nature.

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CFE Opinion on the Consequences of the ECJ Interpretation of the VAT Treatment of Transactions between Head Offices and Branches (Case C-210/04, FCE Bank)

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Belgium
How “Permanent” Should a “Material Permanent Establishment” Be? – Frank Dierckx

In this note, the author considers the implications of a recent Belgian tax case regarding permanent establishments, with particular reference to the concept of a “material permanent establishment”.

European Union
Vienna Conference on “Recent and Pending Cases at the European Court of Justice on Direct Taxation”

– Larisa Gertzova, Konstantin Losev, Andreas Peridelvits L.L.M., and Dr Tigran Mkrtchyan

On 25, 26 and 27 September 2008, the Institute of Austrian and International Tax Law of the Vienna University of Economics and Business Administration hosted a conference on “Recent and Pending Cases at the European Court of Justice on Direct Taxation”. This note summarizes the proceedings of the conference.

France
Court Holds Passive Foreign Investment Company Regime To Be Incompatible with Freedom of Establishment and Free Movement of Capital – Séverine Baranger, L.L.M. and Dali Bouzoua

On 22 August 2008, the Court of Appeals of Nantes held that the French anti-abuse provision regarding foreign personal holding companies located in a low-tax jurisdiction was incompatible with the freedom of establishment and the free movement of capital. This note describes the French provision, the case and the Court’s decision, and
presents a brief analysis regarding the European Court of Justice judgments in respect of abuse and comparable anti-abuse provisions.

Iceland
Iceland – The New Corporate Tax Regime – Gardar Valdimarsson

Iceland has recently enacted significant changes to its corporate tax regime. The purpose of this note is to describe the amendments to as well as the main features of the Icelandic corporate tax system.

Italy
Italian Domicile and Centre of Vital Interests: An Emigrant’s Nightmare, an Immigrant’s Dream
– Michele Guanneri

This note briefly surveys some of the main Italian statutory provisions, Italian Supreme Court cases and rulings of the tax authorities regarding domicile (in domestic law) and the centre of vital interests (in treaty law). It then argues that an excessive focus on Italian individuals taking up residence abroad can result in a very inert centre of vital interests test, which, conversely, could benefit foreign individuals spending time in Italy.

United Kingdom
2008 Finance Act – Douglas Roxburgh

This note follows on from those of the author on the UK Pre-Budget Report (PBR) 2007 and UK 2008 Budget (Budget). It comments on the abolition of the income tax starting rate and on day counting determining tax presence in the United Kingdom. These are two of the topics covered in the PBR and the Budget and the relevant provisions are now embodied in Finance Act 2008, which became law on 21 July 2008.
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Netherlands/United Kingdom

In this article, the authors consider the most important aspects of the new income tax treaty and protocol signed by the Netherlands and the United Kingdom on 26 September 2008 (hereinafter: the new treaty). In particular, the authors examine the investment income, anti-avoidance, avoidance of double taxation, remittance basis, partnership, exchange of information and mutual agreement, and arbitration provisions of the new treaty.

Belgium
The Belgian Implementation of the EC Merger Directive and Associated Tax Law Amendments – Marc Tahan and Wouter Caers

In this article, the authors outline the specific provisions and implications of the introduction of the EC Merger Directive into Belgian tax law. The authors, however, first highlight the main changes that, at the same time, were introduced into the existing restructuring tax rules.

Bulgaria/European Union
Direct Taxation in Bulgaria – Two Years after Accession – Konstantin Loev

In this article, the author describes the latest amendments to the direct tax laws in Bulgaria, with particular emphasis on the developments with regard to bringing these laws into line with the EC Treaty freedoms and the effect of recent European Court of Justice decisions in this respect. Comparisons are also made with implementation efforts in other new Member States.

Italy

In this article, the author addresses the new tax settlement provisions introduced into the Italian Bankruptcy Law and supports the feasibility of including VAT in settlements under Italian and EC law. The author also argues that only a percentage of the VAT revenue is an EU own resource and considers how an appeal regarding the tax authorities’ refusal of a tax settlement proposal could be filed.

European Union
The Taxation of Hidden Reserves under the Common Consolidated Corporate Tax Base – Ulrich Schreiber

This article discusses the taxation of hidden reserves under the Commission’s Common Consolidated Corporate Tax Base (CCCTB) proposal. For fiscal reasons, the CCCTB regime should tax hidden reserves with regard to assets transferred between a non-group company and the group to avoid a tax-free cross-border transfer of hidden reserves. As a result, corporate share deals would be taxed that are currently tax exempt in most Member States. The author analyses this problem and highlights tax planning opportunities.

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Estonia
Estonia Reduces Withholding Tax on Non-Resident Income – Peep Kalamät

On 19 and 20 November 2008, the Estonian parliament made various changes to the Income Tax Act. The basic principle of Estonian corporate taxation was not changed, i.e. the retained earnings of companies remain exempt from corporate income tax. As a result of the law amendments, there are, however, changes to the withholding tax regime for non-residents. This note considers these changes.
Germany
8th Annual IFA Conference on International Taxation in Berlin – Andreas Perdelwitz, LL.M.

On 13 and 14 November 2008, the 8th Annual Conference on International Taxation, organized by the German International Fiscal Association (IFA) Branch in cooperation with Beck-Seminars, was held in Berlin. The Conference involved several presentations on primarily the latest German national developments with regard to international taxation, which were followed by panel discussions. This note summarizes the proceedings of the Conference.

Norway
Budget for 2009 – Tax Increases in a Bear Market – Thor Leegaard

In this note, the author provides details of the Budget for 2009. The most important changes are to net wealth tax, gift and inheritance tax, the exemption method in respect of the dividends and gains of corporate taxpayers and exit taxation. There are also changes to tonnage tax and the customs regime. Unless otherwise indicated, the changes apply from 1 January 2009.

Serbia
The Favourable Taxation of Serbian Holding Companies – Ivana Blagojevic

In this note, the author addresses the general but beneficial articles of the Serbian Corporate Income Tax Law that make Serbia very competitive with regard to holding companies compared to other countries in the region.

Turkey
Deductible and Non-Deductible Corporate Income Tax Expenses for Non-Resident Corporate Taxpayers – Ramazan Bicer

In this note, the author considers the deductible and non-deductible costs for non-resident corporate taxpayers in Turkey, primarily from the corporate income tax perspective. The focus is on practice and several examples are presented to explain significant details of the current rules for non-resident corporate taxpayers.

United Kingdom
2008 Pre-Budget Report – Douglas Roxburgh

UK Chancellor of the Exchequer, Alistair Darling, presented his second Pre-Budget Report (PBR) to the House of Commons on 24 November 2008. This note deals with the proposals in the PBR that significantly affect VAT, income tax, national insurance contributions, corporation tax and stamp duty land tax.

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Germany
Germany: The Annual Tax Act 2009 – Dr Petra Eckl

In this article, the author summarizes the most important amendments for corporate and individual investors engaged in inbound and outbound transactions contained in the Annual Tax Act 2009 (Jahresteuergesetz 2009).

Germany

In this article, the author discusses a recent decision of the German Federal Tax Court wherein the Court addressed the applicability of treaty benefits under the 1989 Germany–US tax treaty and protocol to US S-Corporations and determined that such corporations must be granted the participation exemption under Art. 10(2)(a) of the treaty. The author further discusses whether or not the same may still apply following the entry into force of the 2006 protocol to the treaty.

Portugal
Regimes for Collective Investment in Real Property in Portugal: An Analysis – Carlos Loureiro and Julija Petkevica

This article discusses the specific tax regimes relating to the various forms of collective investment in immovable property in Portugal. Specifically, the authors describe the tax regimes applying to the various types of real estate investment funds and the domestic and international tax issues that may arise if investment is made through these vehicles from the perspective of corporate investors.

European Union
Derouin: Tax Treaties and Regulation No. 1408/71 – Double or Nothing? – Prof. Dr Frank P.G. Pütgens and Wessel W. Geersen

This article considers the European Court of Justice decision of 3 April 2008 in Derouin, with emphasis on the importance of the ruling for social security contributions, the 1968 France–UK tax treaty (the Treaty) and Regulation No. 1408/71 (the Regulation). In this respect, it should be noted that the Treaty and the Regulation follow different rules regarding the allocation of taxation rights and the designation of the applicable national social security legislation, respectively.

European Union
The EC Parent-Subsidiary Directive and the Decision of the European Court of Justice in Burda – Ioannis F. Stavropoulos, LL.M.

In this article, the author considers the evolution of the concepts of withholding tax and tax neutrality within the framework of the EC Parent-Subsidiary Directive and through the case law of the European Court of Justice, with specific reference to the recent case of Burda.

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European Union
Report on the EU Tax Law Group Meeting Held in Lisbon on 20 June 2008 – Joke Brabants

This note reports on the fifth meeting of the EU Tax Law Group, at which various topics of interest to EU practitioners were discussed.

Germany
Germany: Federal Tax Court Closes Loophole in Germany–Luxembourg Tax Treaty – Andreas Perdelwitz, LL.M.

In its decision of 4 July 2008, the Federal Tax Court (Bundesfinanzhof) held that the income of a German limited liability company derived from a participation as a typical silent partner of a Luxembourg company is not exempt in Germany in accordance with the Germany–Luxembourg tax treaty. In this note, the author considers the Federal Tax Court's decision.
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Luxembourg Increases its Tax Competitiveness – Jean Schaffner 164

The author, in this note, outlines the significant changes recently introduced into Luxembourg tax law by the Cooperation Act, the 2009 Tax Reform and the Capital Duty Act.

Montenegro
Withholding Tax on Dividends in Montenegro – Ivana Blagojevic 167

In this note, the author briefly outlines the adverse tax implications of holding structures in Montenegro as provided for by the Montenegrin Corporate Income Tax Law.

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France/United Kingdom
In this article, the author discusses the new France–UK tax treaty, signed on 19 June 2008, which will replace the 1968 tax treaty. The author outlines the complexities of the negotiation process, including a 2004 version of the treaty that was signed but did not enter into force, and provides a detailed analysis of each article, including a comparison with the existing treaty and the OECD Model.

European Union
The Proposed Amendments to the Savings Directive – Dr Christiana HJI Panyi
This article considers the Commission's recent proposal to amend the Savings Directive. Specifically, the proposed changes are examined after a brief overview of the Savings Directive. In this respect, the author demonstrates that the Commission appears to have taken note of the criticisms of the Savings Directive and has sought to close some of the loopholes. It is, however, not a panacea.

European Union
Renneberg: ECI Unjustifiably Expands Schumacker Doctrine to Losses from Financing of Personal Dwelling – Prof. Dr Gerard T.K. Meussen
In the November 2007 issue of European Taxation, an article considered the decision of the Netherlands Supreme Court of 22 December 2006 to request a preliminary ruling from the European Court of Justice (ECJ) in the case of Mr Renneberg. The author of the current article now critically examines the ECJ's decision of 16 October 2008 in Renneberg. Although the ECJ’s decision is understandable in the light of previous decisions, the author disagrees with it in this case.

European Union
The Non-Exercise of Taxing Powers by Member States and its Compatibility with EC Law – John Eild Sullivan
The author considers in this article forms of the non-exercise of taxing powers by Member States that are also general measures, and determines whether or not these are in breach of EC law. If, when exercising their taxing rights, Member States are subject to the supremacy of EC law, the same must be true when they decide not to exercise their taxing rights, as in so doing they are effectively exercising those very same rights.

European Union/Italy
Should Outbound Dividends Remain Taxed at Source in the European Union? Some Hints from the Italian Example – Antonella Magliocco and Alessandra Sanelli
This article analyses the taxation of cross-border dividends, particularly withholding taxes applied in source countries. It examines the determinants of the continued existence of this taxation in stark contrast to the dismantling of taxation at source on outbound interest. Possible future developments are examined, using recent Italian tax changes as a case study, particularly in the European Union, where several factors seem to support the gradual elimination of portfolio dividend withholding taxes.

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Comment by the CFE Task Force on ECJ Cases on the Judgment in Belgium SPF Finance v. Truck Center SA, Case C-282/07, Judgment of 22 December 2008

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Kosovo (UN Interim Administration Mission in Kosovo – UNMIK)
The Kosovan Tax System – Prof Dr Bedri Peci
In this note, the author first outlines the development of taxation in Kosovo and then describes the major features of direct and indirect taxation in the country, with specific reference to corporate income tax, personal income tax, withholding tax, real estate tax, the avoidance of double taxation, VAT, excise tax and customs duties.
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**Liechtenstein**  
**Fundamental Changes to Liechtenstein Tax Law** — *Thomas Hosp*  
In this note, the author considers the implications of the new tax law proposals in Liechtenstein, which, it is anticipated, will generally apply from 2010.

**Slovenia**  
**Tax Treatment of Business Bad Debts — The Example of Slovenia** — *Dr Marjan Odar*  
In this note, the author examines the Slovenian tax rules regarding the provisions for, and the write-off of, business bad debts, considers some of the relevant issues, and concludes by suggesting that the rules should be amended so as to make them simpler and more practical.

**Spain**  
**Abolition of Spanish Net Wealth Tax and its Effects** — *Ana Callefora*  
Act 4/2008 of 23 December 2008 abolished the taxation of Spanish wealth and the requirement to file net wealth tax returns with retroactive effect from 1 January 2008. The abolition of net wealth tax was one of the most eagerly awaited measures of 2008, and affects individuals resident in Spain and individuals not resident in Spain, but who own Spanish assets. This note considers the measure and its implications.

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Netherlands
The Netherlands Tax Treatment of Subsidiaries with Special Reference to Credit Regimes – Frekk P.J. Snel
This article investigates the Netherlands tax treatment of subsidiaries in the light of EC law and from the perspective of the Common Market. In this regard, the article focuses on the new Netherlands credit system and its compliance with EC law, especially regarding the rules determined by the European Court of Justice in Cadbury Schweppes, Test Claimants in the Fil Group Litigation, Melicke, Columbus Container and Test Claimants in the CFC and Dividend Group Litigation.

Luxembourg
Hidden Capital Contributions in Luxembourg – Clearing the Mist – Philippe Neefs and Oliver Hoor
The shifting of advantages motivated by the shareholding relationship to a company remains an obscure issue and the basis for the requalification of transactions into hidden capital contributions. Insofar as the concept of hidden capital contribution in Luxembourg is scarcely covered, this article aims at defining its main traits and clarifying its tax consequences. Consequently, descriptions of the concept and the resulting Luxembourg tax consequences are provided.

European Union/International
Non-Discrimination Provisions at the Intersection of EC and International Tax Law – Bruno Santiago
The purpose of this article is to propose the basis for what could be a future non-discrimination provision in an EU Model Treaty or a Multilateral Double Taxation Convention entered into between the Member States. In this respect, the author focuses on the concept of non-discrimination, notably the similarity test required, and attempts to find reasonable and identified criteria to deal with this concept.

European Union
Tax Sparing Credits in Tax Treaties: The Future and the Effect on EC Law – Morvan Meirelles
This article considers whether or not the Member States of the European Union should continue to rely on tax sparing provisions to assist developing or emerging economies from the perspectives of (1) the effectiveness of tax sparing credits in promoting development in developing or emerging economies and (2) the compatibility of tax sparing credits with EC law.

European Union
The Coherence Principle under EC Tax Law – Louan Verdoner
This article discusses the evolution of the coherence principle through an examination of significant European Court of Justice (ECJ) tax cases wherein Member States have raised the principle as a justification for denying equal treatment. The author concludes that the ECJ rarely accepts the coherence principle as a justification, despite the lack of EU harmonization, and that such instances where it is accepted are diminishing as the ECJ becomes more concerned with the discriminatory behaviour of Member States.

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France
France Adopts Tax Measures to Promote Islamic Finance – Bertrand Delaigue and Antoine Reillac
This note outlines the recent changes introduced by France to encourage the provision of Islamic Finance.
Poland
Polish Personal Tax Changes for 2009 – Anna Szyszka

In this note, the author surveys the significant changes introduced to personal taxation in Poland with effect from 1 January 2009.

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Netherlands
Netherlands Tax-Exempt Portfolio Investment Entity – Sylvia Dikmans

The Netherlands has a number of tax regimes to facilitate fund investment. In particular, the tax-exempt portfolio investment entity was enacted on 1 August 2007. This entity is intended to be tax neutral with the income being taxed at the investor level. Consequently, it is exempt from corporate income tax and distributions are exempt from dividend withholding tax. This article discusses the taxation of this regime, as well as the requirements for its applicability.

European Union/Belgium
The Belgian Participation Exemption and the ECJ Decision in Cobelfret – Frank Dierckx

This article considers the recent European Court of Justice decision in Cobelfret and the immediate implications of the case for the Belgian participation exemption, the EC Parent-Subsidiary Directive and EC law in general.

Germany
Legal Remedies in the German Tax System – Dr H. Krabbe

In this article, the author provides an introduction to and describes the administrative phase, courts, appeals, procedures and decision in respect of tax cases in Germany, a Civil Law jurisdiction.

Italy
The Judicial System in Italy – Caterina Innamorato

This article provides an introduction to, and a summary of, the various stages of judicial proceedings in respect of taxation in Italy, a Civil Law jurisdiction.

United Kingdom
Appeals in Tax Cases in the United Kingdom – Brian Cleave, CB, QC

The author, in this article, which has been written primarily for a non-British audience, describes the background to the system of appeals against the actions of the UK tax authorities relating to taxes on income and capital gains, including applications for judicial review and the effect of the rule of stare decisis, the changes taking place in 2009, and the reporting and citation of court decisions in the United Kingdom.

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Human Rights Issues and Developments

Some Recent Cases from the European Court of Human Rights – Philip Baker QC

This article examines some recent cases of the European Court of Human Rights on various indirect and direct tax matters. The two cases discussed here relate to the denial of VAT input tax deductibility, where the supplier has failed timely to pay over the VAT, and the repercussions of the Yukos affair in Russia.

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European Union
CFI Decision on Italian Specialized Investment Vehicles – Konstantin Lazev

The author, in this note, considers the recent decision of the Court of First Instance in the case of Associazione Italiana del risparmio gestito and Fineco Asset Management v. Commission.
Germany
New German Withholding Tax for Artistes and Sportsmen: Opportunities and Risks – Jörg Holthaus, Unna 333

This note considers the opportunities and risks under the new rules for foreign persons who derive income from artistic or sporting activities exercised in Germany as an employee with a German employer, with an employer from another Member State of the European Union or with an employer from other countries, or as a self-employed person.

Poland
Withholding Tax Exemption and Right to Usufruct Shares in a Subsidiary Company – Filip Switala 337

The author, in this note, considers the contrasting decisions reached by the European Court of Justice in Les Vergers du Vieux Tauves and the Lublin District Administrative Court in a Polish case in which the facts were similar.

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