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EUCOTAX Series on European Taxation

/ Series editor of EUCOTAX Series on European Taxation. The Hague : Kluwer Law International, 2007. The Hague : Kluwer Law International, 2007. (EUCOTAX Series on European Taxation; volumes 14-18).

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Detailed survey of tax treaty interpretations in 16 European countries taking into account court decisions since 1993, the OECD reports on partnership, changes in administrative practice at national level and recent Community law effecting taxation and tax practice.

This timely work seeks to identify the differences between the domestic procedural rules and principles of an array of EU and non-EU countries and analyse them in the context of European Union law requirements. Specific attention is paid to the impact of State aid rules on procedural law in tax matters, on constitutional law requirements as well as tax treaty law issues. Since customs law is already harmonized in the form of the Community Customs Code, it serves as a starting point to examine the extent to which harmonized procedural law is possible. Harmonized procedural law is also discussed in the context of a possible future Common Consolidated Corporate Tax Base as well as an EU tax levied at the European Union level.

In many recent judgments the European Court of Justice (ECJ) has tested the withholding tax regimes of Member States against the fundamental freedoms. In this book, the first systematic review of these judgments in the light of other ECJ case law and legal doctrine, the author's prodigious research has engendered a remarkably complete answer to the question of the extent to which EU Member States are allowed to levy withholding taxes, particularly on payments to non-residents. The book shows how the fundamental freedoms interfere with national tax laws - withholding tax regimes, and suggests informed and insightful answers to questions not yet clarified by the ECJ. The scope of treatment goes beyond the TFEU to the EEA Agreement, various agreements with Switzerland, and a number of association and partnership agreements with third countries. The focus remains fixed on the instrument of a withholding tax as such, not with individual countries or types of income.

The European Commission 's proposed Common Consolidated Corporate Tax Base (CCCTB) is the most ambitious project in the history of direct taxation within the EU. While retaining the right of Member States to set their own corporate tax rate, the proposed system allows for a ' one-stop shop ' for filing tax returns and consolidating prof its and losses across the EU. In this book – the first to offer guidance to practitioners whose work will be affected by these new developments – 19 prominent representatives of the business community, tax consultancy, academic taxation scholarship and tax administration discuss the proposed system ' s rationale, structure and uncertainties, ranging from very technical aspects, to the wording of the proposal, to political considerations. These topics include the following: eligibility; formation of a group; the concept of ' permanent establishment ' ; foreign tax credits; ' dual resident ' companies; consequences of entering and leaving; depreciation of fixed assets; repackaged asset transfers; appeals procedure; disagreements among Member States; subsidiarity and the ' yellow card procedure ' ; international aspects and tax treaties; sharing mechanism and transfer pricing; and anti-abuse rules. The discussion raises numerous issues likely to lead to future amendments, and for this reason, along with its practical value in developing an understanding of the proposed system ' s specific effects, the book will be welcomed by tax consultants and lawyers worldwide, corporate tax advisers, European tax authorities and tax researchers and academics.

This study analyses the case-law of the European Court of Justice on the freedom of establishment and the free movement of capital in matters of direct taxation. The author identifies two areas where cases from the European Court of Justice are especially important: what constitutes discrimination, and which circumstances may justify such discrimination. Among his specific approaches to the complex issues involved may be noted the following: the Court's interpretation of discrimination and restriction, both in general and in particular regarding the freedom of establishment and the free movement of capital; the grounds of justification, according to the rule-of-reason doctrine, accepted by the Court, such as the prevention of tax abuse, the preservation of fiscal coherence, the effectiveness of fiscal supervision, and the fiscal principle of territoriality; grounds rejected by the Court, such as lack of harmonisation, counterbalancing advantages, a new form of establishment being seen as subject to equal treatment, lack of Community competence in the field of tax treaty law, and the protection of tax revenue; the characteristics of national legislation on direct taxation that the Court has found to be in breach of the freedom of establishment and the free movement of capital; the neutrality between different forms of establishment, in the form of either a branch or a subsidiary (the pending Marks & Spencer case is subject to a thorough analysis in this respect); the degree of convergence between the freedom of establishment and the free movement of capital, especially in cases on direct taxation; and the territorial extension of the free movement of capital.

Compilation of 23 national reports dealing with domestic CFC provisions and the influence of tax treaties and EC law on CFC legislation and a summarising general report, originating from a joint conference on CFC legislation in Rust (Austria) from 3-6 July 2003.

A wide variety of legal approaches and techniques are presented in detail. Includes 18 country reports - from 14 EU Member States plus Norway, Hungary, Latvia, and the Czech Republic - as well as additional essays on such topics as international tax arbitration, social security conventions, the jurisdiction of international courts, and World Bank/ICSID dispute settlement procedures as all of these may be applied to the resolution of tax disputers.

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