

WEB SITE

Visit our website

at

<http://www.khpplc.co.uk>



Key Haven Publications PLC
PO Box 669
Oxford OX3 3AU
Telephone: 01865 352121; Facsimile 01865 351081
www.khpplc.co.uk

THE EC TAX JOURNAL

E C T J

Volume 9, Issue 1, 2007

EDITORIAL BOARD

Robert Venables QC, MA, LL.M, FTII (Chairman)
Timothy Lyons QC, LL.M, Ph.D, FTII, Barrister (England, Wales & Ireland)
(Consulting Editor)
Keith M Gordon MA, ACA, CTA, Barrister (Joint Managing Editor)
Ian Hutton LLB, Ph.D, Barrister (Joint Managing Editor)

CONSULTING EDITORIAL BOARD

The Right Honourable Lord Slynn of Hadley
Sir Andrew Park
His Honour Sir Stephen Oliver QC

*For details of the
Advisory Editorial Board please refer over*

All editorial correspondence should be addressed to:
Keith M Gordon, Joint Managing Editor
Atlas Chambers
3 Field Court
Gray's Inn
London WC1R 5EP

The EC Tax Journal
is published by
Key Haven Publications PLC
PO Box 669
Oxford OX3 3AU
Telephone: 01865 352121; Facsimile 01865 351081
Visit our Website at:
www.khpplc.co.uk

DISCLAIMER

The views contained herein are put forward for further consideration only and are not to be acted upon without independent and professional advice.

Neither the Publisher nor the Authors or Contributors can accept any responsibility for any loss occasioned to any person no matter howsoever caused or arising as a result of or in consequence of action taken or refrained from in reliance on the contents hereof.

©2007 KEY HAVEN PUBLICATION PLC

The moral rights of the authors have been asserted

Conditions of Sale

All rights strictly reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission of the publisher.

Any person infringing the publisher's copyright will be liable to criminal and/or civil proceedings.

Papers are invited for publication on the understanding that they contain original unpublished material not submitted to any other journal and may be subject to anonymous peer review. The decision of the Managing Editors to accept, reject or modify any paper shall be final. Style sheets are available from the publisher on request.

Reference to this journal should indicate year of issue and volume, issue and page numbers. For example Vol2, Issue 3, page 150, of 1999 should be referred to as: ECTJ2/3 [1999] 150.

Printed in England by Dearne Valley Printers.

THE ADVISORY EDITORIAL BOARD

Peter Cullen

Academy of European Law
Trier

Professor Marc Dassesse

Free University of Brussels (ULB)
Brussels

Marc Quaghebeur

Price & Partners
Association des Avocats
Brussels

Michel Vanden Abeele

Director General
Taxation and Customs Union Directorate
Brussels

Professor A Easson

Faculty of Law, Queen's University
Ontario

Christian Emmeluth

Copenhagen

Prof. Dr. Marjaana Helminen

University of Helsinki, Faculty of Law
Helsinki

Jean-Marc Tirard

Tirard Naudin
Paris

Guglielmo Maisto

Maisto e Associati
Milano

Véronique De Meester

Oostvogels & De Meester
Luxembourg

THE ADVISORY EDITORIAL BOARD

Wouter van Dalen

Netherlands

Redmar A Wolf

Baker & Mc Kenzie

Amsterdam

Francisco de Sousa da Câmara

Morais Leitão & J Galão Teles & Associados

Lisbon

Paul Farmer

Pump Court Tax Chambers

Jonathan Schwarz

3 Temple Gardens Tax Chambers

London

Chris Tailby

Tax Practice Director's Office,

London

Stephen Bill

Head of VAT

European Commission-Office

Brussels

CONTENTS

| | Page No |
|---|----------------|
| Editorial | vii |
| | |
| General Approach of the European Court of Justice and Limitation of Benefits Clauses in Double Tax Conventions Christian Koch | 1 |
| | |
| The Taxation of Outbound Dividends in the EC: Has AG Geelhoed Got It Right? Stephen Gingell | 11 |
| | |
| The Legitimacy of CFC Legislation within the Community Grahame Turner | 23 |
| | |
| Free Movement of Capital and Third Countries Fokion Vounatsos | 49 |
| | |
| ECJ Reports Piotrek Bogus | 63 |

EDITORIAL

We are grateful to the LLM students at the Centre for Commercial Law Studies at Queen Mary, University of London for the four leading articles in this issue. These articles are based upon the most accomplished presentations the students gave in May 2006 at a seminar arranged by the students themselves. Our thanks must be extended to Tom O'Shea, Lecturer in Tax Law at the Centre for inspiring the students and ensuring that their presentations were converted into an article format and to Inese Jundze who led the student organising team and put the whole event together. The 2007 Student EC Tax Conference will take place in mid-May and will be organised by the students of the 2007 EC Tax class.

In the opening article, Christian Koch considers the compatibility of Limitation of Benefit clauses in double taxation agreements with European Community law. This article was written in advance of the ECJ's decision in the ACT IV GLO which clarified some of the Court's thinking in this area.

In the second, Stephen Gingell focuses on and analyses the Advocate-General's opinion in the ACT IV GLO case - the article was written before the final decision of the Court in December.

The third article is by Grahame Turner. Although written before the final decision of the ECJ in Cadbury Schweppes, this article provides a useful analysis of the UK's CFC legislation.

In the fourth article, Fokion Vounatsos summarises recent cases on free movement of capital and third countries.

Finally, in his regular review, Piotrek Bogus, a student in Warsaw, provides a summary of a recent decision by the European Court of Justice.