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# THE EC TAX JOURNAL

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## The Editorial

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# EDITORIAL

This is my first editorial as Joint Managing Editor of the EC Tax Journal and this is the second Issue under the new team of Katherine Holmes and myself. I hope that if readers have any comments or criticisms they will put pen to paper and pass them on to us at the address above. It would be nice to hear from you rather than speaking into a void!

The first article in this Issue is by Philip Bentley QC and sets the scene for what we hope will develop into a series of articles, under different authorship, on the workings of the EU institutions and the 'nut and bolts' of the EC machine, with particular reference to taxation. Philip's article outlines the way in which EC tax legislation is made and distils the three important characteristics of the legislative process as it applies to tax – the requirement for unanimity, the initiating role of the Commission and the input of the Economic and Social Committee and the European Parliament. It is hoped to commission an article on the work of ECOSOC for a subsequent Issue.

The article by Dr Borgsmidt, 'Principles of Equivalence and Effectiveness', analyses what community law requires of the relevant national law in relation to claims for recovery of taxes which were wrongly claimed by the Member State and is again the beginning of what it is intended will be a series of article on the fundamental principles of EC law, with particular reference to taxation.

Dr Borgsmidt's article follows up on her earlier article in Volume 4 Issue 1 of the Journal on 'Particular Aspects of the Fundamental Freedoms'.

Redmar Wolf has contributed a case note on the decision of the European Court of Justice in the *Abbey National* Case (Case C-408/98) and considers the implications of this case for recovery of VAT on the costs where a business or part of a business is transferred as a going concern.

Following Redmar's article is a case report by Peter Young on a case in which he was involved. The case which was heard in the UK Duties Tribunal, focussed primarily on the construction of Article 236 of the Community Customs Code, a time limit provision on repayment of customs duties. It appears that neither the European Court of Justice nor the UK Tribunal have ruled upon the precise construction of Article 236 before this case was heard.

The case was interesting because the Tribunal expressly recognised that Customs had unfairly ‘profited’ from its own wrongdoing (Customs had incorrectly classified imported goods for 9 years, and then only repaid overpaid duty for a three year period), but was unable to construe that the three year time limit imposed by UK legislation on repayment of duties did not apply in this case.

We close this Issue with an article by Penny Hamilton, ‘Setting The Boundaries: The Scope of VAT Exemptions’ in which Penny identifies some of the guiding principles which the European Court of Justice has laid down for itself and national courts in implementing and interpreting VAT directives and goes on to look in some detail at how these principles have been applied to the exemptions set out in Article 13 of the Sixth Directive.

The next Issue will be dedicated to the subject of tax and state aids and should make interesting reading. The Issue will give an over-view of the state aids regime, including issues such as Article 87(2) and Article 87(3) of the Treaty, the procedures for pre-clearance and the obligations on the Commission; the concept of unlawfully granted aid and illegal aid; and the consequences of an infringement of Article 87. There will also be articles on state aids and tax and the impact of unlawfully granted state aids.

Ann Humphrey  
July 2001

Joint Managing Editor