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From the Managing Editor

EDITORIAL

It is a pleasure to welcome onto the Consulting Editorial Board the Honourable Mr Justice Park QC who sits in the Chancery Division of the High Court of England and Wales. For a long time he was the Chairman of the Revenue Bar Association and we are grateful for his willingness to support the journal. His experience of many of the legal issues with which the EC Tax Journal is concerned will be invaluable as we seek to consolidate the work of the last three years.

In the first article of this issue Professor Easson discusses further developments in relation to tax competition. His comment on the recourse by EU member states to a non-enforceable code to deal with the problem of harmful tax competition is worth highlighting. He says at page 6 that:

"What is puzzling...is that the EC Treaty already contains provisions -- articles 92 and 93 -- that appear to prohibit or restrict most of the practices that are likely to be identified as "harmful" according to the criteria adopted in the code..."

In other words why treat tax competition as only a political problem when it clearly may be a legal problem? Failure to apply the law in this context may well lead to a loss of respect for it.

The reason why political remedies may be preferable to legal ones is, perhaps, demonstrated in the article by Carlos Benítez and Diego del Cuadro on state aid and taxation in Spain. The authors demonstrate just what far-reaching problems can arise when the law on state aids is applied to taxation. It would be understandable if the Commission were to believe that applying the law on state aid to taxation was not always politically appropriate. Yet the fact that applying the law on state aid to taxation causes serious difficulties is not a reason for failing to apply it.

As readers of this journal will be well aware the prohibition against discrimination on grounds of nationality is another aspect of general EC law which has a significant impact on the direct tax systems of member states. We are pleased to be able to include Dr Martin Lausterer's thoughtful article on the *Saint Gobain* case, which raises the issue of whether or not it is discriminatory to treat the German permanent establishment of a French company differently from a German subsidiary. It also

demonstrates how important are the issues addressed in Dr Teixeira's book, concerning the treatment of distributed corporate profits, which is reviewed in this issue.

The issue of discrimination on grounds of nationality features again in Heather Corben's article on the *ICI* case which, rightly, suggests that further cases may be expected to arise in relation to UK taxation. Indeed, cases concerning direct taxation and discrimination continue to be referred to the ECJ from around the EU. On 5th September 1998 it was announced in the Official Journal (OJ C 278/23) that a case (C-251/98) has been referred to the ECJ from the Appeal Court in the Hague, asking whether or not it is compatible with EC law for a Netherlands' wealth tax exemption to be confined to shareholdings in companies established in the Netherlands.

Finally, Stephen Coleclough reminds us that it is not just direct taxation which has to be viewed in a broader economic context. VAT too must be understood against the general economic conditions of the states in which it is collected.

Articles for inclusion in the next issue of the journal should be with the Managing Editor by 7th December 1998.

Timothy Lyons

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October 1998