
THE EC TAX JOURNAL

E C T J

Volume 3, 1998 Issue 1

EDITORIAL BOARD

Timothy Lyons LLM, PhD, FTII, Barrister (England, Wales & Ireland)
(Managing Editor)

Amanda Hardy LLB, LLM, AKC, Barrister
(Deputy Editor)

Fay Lau LLM, Solicitor
(Assistant Editor)

CONSULTING EDITORIAL BOARD

The Right Honourable Lord Slynn of Hadley
The Honourable Mr Justice Park QC
His Honour Stephen Oliver QC
Robert Venables QC

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

All editorial correspondence should be addressed to
Timothy Lyons, The Managing Editor,
24 Old Buildings, Lincoln's Inn, London WC2A 3UJ

The EC Tax Journal
is published by
Key Haven Publications PLC
7 Crescent Stables
139 Upper Richmond Road
London SW15 2TN

Telephone +44 (0) 181 780 2522, Facsimile +44 (0) 181 780 1693

Disclaimer

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 Publishers 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.

© 1998 KEY HAVEN PUBLICATIONS PLC

All rights strictly reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the 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Papers are invited for publication on the understanding that they contain original unpublished material not submitted to another journal and may be subject to anonymous peer review. The decision of the Managing Editor to accept, reject or modify any paper shall be final. Style sheets are available from the publishers on request.

References to this journal should indicate year of issue and volume, issue and page numbers. For example Vol 2, Issue 1, page 4, should be referred to as : ECTJ 2/1 [1997] 4.

Printed in England by the Book Factory London.

THE ADVISORY EDITORIAL BOARD

Carlos Benítez

Gomez-Acebo & Pombo
Madrid

Philip Bentley QC

Stanbrook & Hooper
Brussels

Francisco de Sousa da Câmara

Morais Leitão & J Galvão Teles
Lisbon

Jean-Yves De Cara

Cabinet de Maître Bismuth
Lyon

Stephen Coleclough

Coopers & Lybrand
Birmingham

Peter Cullen

Europa Institute
University of Edinburgh

James Currie

Director General

DG XXI

European Commission
Brussels

William van Dalen

Loyens & Volkmaars
Rotterdam

Professor Marc Dasse

McKenna & Cuneo
Brussels

Professor A Easson

Queen's University
Kingston, Canada

Christian Emmeluth

Koch-Nielsen & Grønborg
Copenhagen

THE ADVISORY EDITORIAL BOARD

Paul Farmer

Chambers of Advocate General Jacobs
Court of Justice of the European Communities
Luxembourg

John H Hickson

A & L Goodbody
Dublin

David L Hinds

S J Berwin & Co
London

Elizabeth Keeling

King's College
London

Doctor Hans-Michael Pott

Schäfer Pott
Düsseldorf

Marc Quaghebeur

Price Blanpain Quaghebeur Maeyaert
Brussels

Peter Schonewille

European Commission
Brussels

Professor Dott Tommaso Di Tanno

Studio Di Tanno
Rome

Jean-Marc Tirard

Tirard Naudin
Paris

Peter Wilmott

Prisma Transport Consultants s.a
Brussels

Contents of Volume 3, Issue 1

CONTENTS

	Page No
Editorial	v
Harmful Tax Competition: the EU and OECD Responses Compared Alex Easson	1
State Aid and Taxation in Spain Carlos Benítez & Diego del Cuadro	17
Commentary on The <i>ICI v Colmer</i> Case Heather Corben	29
Unlawful German Tax Discrimination Of Permanent Establishments Before The European Court Of Justice Dr Martin Lausterer	35
Bernd von Hoffman v Finanzamt Trier Stephen Coleclough	53
Book Review	57
Books Submitted for Review	59

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

24 Old Buildings
Lincoln's Inn
London WC2A 3UJ

October 1998