

EDITORIAL

This issue of the Journal celebrates two important anniversaries, the 25th anniversary of the *Avoir Fiscal* judgment on the 28th January 2011 and the 50th anniversary of the Court's *Humblet* judgment on the 16th December 2010. The jurisprudence of the Court of Justice of the European Union (ECJ) demonstrates that European tax law continues to be problematic for tax authorities and taxpayers. Many national tax rules are protectionist and/or discriminatory in nature and focus on the national territory, ignoring the internal market and the fundamental freedoms guaranteed by the Treaty on the Functioning of the European Union.

Grahame Turner examines the impact of EU law on the direct tax rules of the United Kingdom, concluding that the United Kingdom has not had to make swathes of amendments to its national legislation and that it is clear from the extensive post-ECJ litigation in the courts of the United Kingdom that "insufficient investment is being made to understand EU Law and the decisions of the ECJ".

In her contribution entitled "*Wholly Artificial Arrangements and Presumptions of Tax Avoidance*", Katerina Perrou discusses the concepts of "wholly artificial arrangements" and presumptions of tax avoidance in the Court's case law. Perrou draws attention to two Greek tax law provisions that appear to be incompatible with EU law.

Dr Tom O'Shea continues the tax avoidance theme with an article entitled "*Tax Avoidance and Abuse of EU Law*". O'Shea demonstrates that the Court's attitude to abuse of law is consistent across all the fundamental freedoms and that the EU Member States cannot claim "abuse" in situations where (tax) advantages that are freely available in another Member State are availed of by its nationals through the exercise the fundamental freedoms.

Stef Fløe Pedersen provides a comprehensive analysis of corporate exit taxes and freedom of establishment, highlighting that the levy of an immediate corporate exit tax may breach EU law in two scenarios: when a company transfers its residence by converting into a new company in the host Member State and when assets and liabilities are transferred between a head office and its permanent establishment.

Finally, Peter Harris examines recent developments in relation Jersey's "Zero-Ten" tax regime in an article entitled, "*The Treaty on the Functioning of the European*

Union ‘the Treaty’: The Constitutional position of the European Union Institutions on Jersey’s Zero-Ten regime”. Harris concludes that the “Zero-Ten” regime is now fully compliant with EU law.

Dr. Tom O’Shea
Editor
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