

A GUIDE TO THE

A dark blue rectangular area with a pattern of small white stars, resembling the European Union flag. The text is overlaid on this pattern.

European  
**VAT**  
Directives

Introduction to  
European VAT **2024**

Volume **1 & 2**

Ben Terra – Julie Kajus



# A Guide to the European VAT Directives 2024

## Why this book?

Volume 1: Introduction to European VAT

This book offers a systematic survey of the implications of the EU legal principles on indirect tax matters and of the EU VAT rules in force, and it provides a discussion of the case law of the Court of Justice of the European Union in indirect tax matters, especially in VAT.

Volume 1 is divided into two parts: I) General Subjects; and II) European VAT. Part I "General Subjects" deals with six subjects: 1) Sources of EU Tax Law; 2) Legal Principles; 3) Legal Acts; 4) Judicial Remedies and Judicial Protection; 5) Effectiveness of EU (Indirect Tax) Law; and 6) Methods of Interpretation. In Part II, after a general introduction on VAT as fiscal phenomenon, the European VAT is discussed as provided for in the VAT Directive (i.e. Directive 2006/112/EC replacing the First and Sixth VAT Directives) and Implementing Regulation (EU) No. 282/2011 (recast) as amended. VAT issues are illustrated by excerpts of decisions of the Court of Justice of the European Union.

Volume 2: Integrated Text of the VAT Directive and the Implementing Regulation/Integrated text of the Sixth VAT Directive.

Volume 2 of A Guide to the European VAT Directives consists of two parts. Part I contains an integrated text of the VAT Directive (Council Directive 2006/112/EC on the common system of value added tax, as amended) and the Implementing Regulation (Implementing Regulation (EU) No. 282/2011, as amended), including references to the guidelines of the VAT Committee. It also contains the two refund VAT Directives (Council Directive 2008/9/EC, as amended, and the Thirteenth Directive (86/560/EEC)) and the three directives granting exemption on importation (Directive 2006/79/EC, Directive 2007/74/EC and Directive 2009/132/EC). Part II contains an integrated text of the Sixth VAT Directive as applicable until 1 January 2007.

Volumes 1 and 2 accompany the Terra/Kajus database European VAT Directives, part of the IBFD digital Tax Research Platform.

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# **A Guide to the European VAT Directives**

**Volume 1**

**Introduction to European VAT**

**2024**

*Ben Terra – Julie Kajus*

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# Preface

It has been said that VAT “arouses as much interest as a new execution technique does to somebody waiting in death row”. On the other hand, it has been suggested that VAT may be thought of as the Mata Hari of the tax world, “many are tempted, many succumb, some tremble at the brink, while others leave only to return, eventually, the attraction appears irresistible”. Between the ends of this spectrum VAT is a day-to-day reality within the European Union.

As of 1 July 2013, 28 Member States (from 31 January 2020, 27 Member States) levy VAT based upon a “uniform basis of assessment”. In these Member States the national VAT laws are based on EU legislation, predominantly Directive 2006/112/EC on the common system of value added tax, the recast of the First and Sixth VAT Directives, as amended.

A directive is binding upon each Member State to which it is addressed as to the result to be achieved, but allows the national authorities to choose the form and methods of reaching such end. As a result of this freedom of choice national VAT laws are not identical. However, in the final analysis EU legislation is decisive; individual taxpayers can derive rights from it.

In 1990, we wrote *A Guide to the European VAT Directives*, a two-volume commentary on the European VAT directives. In 1992 these bound volumes were replaced by a loose-leaf version, eventually of six binders of several thousands of pages. In 2004 the loose-leaf version was replaced by an even more extended digital version (updated regularly).

The digital version of the “European VAT Directives”, part of the IBFD digital Tax Research Platform, is accompanied by two bound volumes (replaced yearly):

Volume 1 (“Introduction to European VAT”) is meant to serve as a textbook for advanced students of tax law and/or EU law and as a reference book for (indirect) tax law or EU law practitioners. It offers a systematic survey of the implications of the legal principles on indirect tax matters and VAT rules of the European Union in force and a discussion of the case law of the Court of Justice of the European Union in indirect tax matters, particularly in VAT.

Volume 1 is divided into two parts:

- I) General subjects;
- II) European VAT.

Part I “General subjects” deals with six subjects:

- 1) Sources of EU tax law;
- 2) Legal principles;
- 3) Legal Acts;
- 4) Judicial remedies;
- 5) Effectiveness of EU (indirect tax) law; and
- 6) Methods of interpretation.

## Preface

In Part II, after a general introduction on VAT as fiscal phenomenon, the European VAT is discussed as provided for in the Sixth VAT Directive as replaced by Council Directive 2006/112/EC on the common system of VAT (the Recast VAT Directive, referred to as “the VAT Directive”). VAT issues are illustrated by excerpts of decisions of the Court of Justice.

In the interest of brevity, we have at various places omitted citations, references to the European Court Reports and footnotes from quoted materials without specifically mentioning the omission.

We have included the changes by the VAT package and updated all chapters and references with the changes by the Lisbon Treaty.

Volume 2 consists of two parts. The first part contains an (unofficial) integrated text of Council Directive 2006/112/EC on the common system of value added tax (“the VAT Directive”), as amended, including implementing Regulation (EU) No. 282/2011, as amended; references to guidelines of the VAT Committee; the refund VAT Directive 2008/9/EC, as amended; the Thirteenth (refund) Directive (86/560/EEC); and the three directives granting exemption on importation (Directive 2006/79/EC on the exemption from taxes of imports of small consignments of goods of a non-commercial character, Directive 2007/74/EC on the exemption from VAT and excise duty of goods imported by persons travelling from third countries and Directive 2009/132/EC regarding exemption from VAT on the final importation of certain goods).

The second part is an (unofficial) integrated text of the Sixth VAT Directive as applicable until 1 January 2007.

Although around 1,000 cases are covered in Volume 1 of this book, the choice to omit others is entirely ours. We welcome comments from readers.

Ben Terra/Julie Kajus

1 January 2024



# Table of Contents

<b>Preface</b>	<b>v</b>
<b>Table of Contents</b>	<b>vii</b>
<b>List of Abbreviations</b>	<b>xxiii</b>
<b>Part I General Subjects</b>	<b>1</b>
<b>Chapter 1 Sources of EU Tax Law</b>	<b>3</b>
1.1 Introduction	3
1.2 Primary law	3
1.3 The Lisbon Treaty	4
1.3.1 Institutional framework	6
1.4 International agreements	15
1.5 International customary law	18
1.6 General principles	19
1.7 Indirect taxation and primary EU law; the <i>acquis</i>	19
1.8 Secondary law	22
1.9 Fundamental freedoms	22
<b>Chapter 2 Legal Principles</b>	<b>27</b>
2.1 Introduction	27
2.2 Fundamental legal principles	28
2.2.1 The principles of conferral, subsidiarity and of proportionality	29
2.2.2 The principle of sincere cooperation	32
2.2.3 The principle of non-discrimination on grounds of nationality	33
2.3 Fundamental rights	35
2.3.1 Charter of Fundamental Rights of the European Union	36
2.4 General principles	47
2.4.1 The principles of equivalence and effectiveness	48
2.4.2 Abuse of law	51
2.4.3 The principle of prohibition of abuse of law in VAT	53
2.5 Fiscal neutrality	71
<b>Chapter 3 Legal Acts</b>	<b>79</b>
3.1 Introduction	79
3.2 Regulations	79
3.2.1 Customs Regulations	79
3.2.2 VAT implementing Regulation	80

## Table of Contents

3.2.3	Administrative cooperation Regulation	81
3.2.4	Statistics Regulations	84
3.3	Directives	87
3.4	Decisions	87
3.4.1	Own resources Decision	88
3.5	Obligation to motivate legal acts	91
3.6	Recommendations and opinions	93
3.7	Explanatory notes	93
<b>Chapter 4 Judicial Remedies and Judicial Protection</b>		<b>95</b>
4.1	Introduction	95
4.1.1	The EFTA Court	95
4.2	Direct appeals	96
4.3	Violation of EU law by a Member State	97
4.3.1	Infringement proceedings against a Member State	97
4.3.1.1	No infringement procedures have been initiated	98
4.3.1.2	Discontinuation of an infringement procedure	98
4.3.1.3	The principle of reciprocity	99
4.3.1.4	Political motives	100
4.3.1.5	Enforcement of an infringement procedure by an individual	100
4.3.1.6	The principle of sincere cooperation	102
4.3.1.7	Breach of EU law by the highest court of a Member State	102
4.3.2	Non-compliance with judgments	106
4.3.2.1	Penalty payments	107
4.3.3	Infringement proceedings between Member States	108
4.4	Direct access by individuals	109
4.4.1	Review of the legality of acts	109
4.4.2	Failure to act	111
4.4.3	Compensation for damages	113
4.4.4	Disputes between the European Union and its servants	115
4.5	Preliminary questions	115
4.5.1	Court or tribunal against whose decisions there is a judicial remedy	116
4.5.2	Court or tribunal against whose decisions there is no judicial remedy	116
4.5.3	Rephrasing questions	117
4.5.4	Relevance of questions	117
4.5.5	Changing the subject matter of the question by the parties	118
4.5.6	Application of EU law not referred to	118
4.5.7	The requirement of national courts to raise of their own motion an issue concerning the breach of provisions of EU law	119
4.5.8	Failure to ask a preliminary question	119
4.5.9	Exclusion of all State liability	120

4.5.10	Application for a revision of a judgment of the Court of Justice by an individual	121
4.5.11	Qualifications for the court of reference	122
4.5.12	Hypothetical questions	122
<b>Chapter 5</b>	<b>Effectiveness of EU (Indirect Tax) Law</b>	<b>125</b>
5.1	Introduction	125
5.2	Direct effect of directives	129
5.3	Reverse direct effect	133
5.4	Horizontal effect	135
5.5	Reconciliatory interpretation	137
5.5.1	The supremacy of Union law and VAT	142
5.6	National time limits	148
5.7	Liability for damages	155
5.8	Obstacles put forward against liability for damages	159
5.8.1	Limitation of the temporal effect of judgments	160
5.8.2	Respect for <i>res judicata</i>	167
5.8.2.1	The ECtHR as guardian of the case law of the Court of Justice	174
5.8.3	Unjust enrichment	177
5.8.3.1	Passing on taxes	179
5.8.4	Interest on sums collected in breach of EU law	186
<b>Chapter 6</b>	<b>Methods of Interpretation</b>	<b>191</b>
6.1	Introduction	191
6.1.1	What is evident?	192
6.2	<i>Acte éclairé</i>	193
6.3	<i>Acte clair</i>	200
6.3.1	Equally obvious to the courts of the other Member States	201
6.3.2	Twenty-four authentic languages	203
6.3.3	EU terminology	208
6.3.4	Contextual interpretation method	211
6.3.4.1	Consistent interpretation	213
6.3.5	The teleological interpretation method	213
6.3.6	The state of evolution of EU law	215
6.3.7	Historical interpretation method	216
<b>Part II</b>	<b>VAT</b>	<b>221</b>
<b>Chapter 7</b>	<b>Introduction to VAT as Fiscal Phenomenon</b>	<b>223</b>
7.1	General	223
7.1.1	Legal character	225
7.1.2	Tax on consumption	226

## Table of Contents

7.2	General indirect tax on consumption	226
	7.2.1 General tax	227
	7.2.2 Consumption	229
	7.2.3 Indirect	231
7.3	Neutrality	234
	7.3.1 Internal neutrality	235
	7.3.1.1 Legal neutrality	235
	7.3.1.2 Competition neutrality	236
	7.3.1.3 Economic neutrality	236
	7.3.2 External neutrality	237
7.4	Systems of levying turnover taxes	238
	7.4.1 Single-stage levies	239
	7.4.1.1 Manufacturer's tax	239
	7.4.1.2 Wholesale tax	240
	7.4.1.3 Retail sales tax	241
	7.4.2 Multiple-stage levies	242
	7.4.2.1 Cumulative cascade systems	242
	7.4.2.2 Non-cumulative systems	244
	7.4.2.3 Synopsis	244
	7.4.3 Examples	244
	7.4.3.1 Single-stage (cumulative) taxes	244
	7.4.3.1.1 Manufacturer's tax	244
	7.4.3.1.2 Wholesale tax	245
	7.4.3.1.3 Retail sales tax	245
	7.4.3.2 Multiple stage levies	245
	7.4.3.2.1 All stage tax	245
	7.4.3.2.2 Dual-stage taxes	246
7.5	Systems of levying a VAT	246
	7.5.1 Extent of vertical coverage	246
	7.5.2 Treatment of capital equipment	247
	7.5.2.1 Consumption type	247
	7.5.2.2 Income type	247
	7.5.2.3 Product type	248
	7.5.3 Methods of calculation	248
	7.5.3.1 The direct subtraction and the addition methods	249
	7.5.3.2 The tax credit method	249
	7.5.3.3 Example of the tax credit method	250
	7.5.4 Summary	250
7.6	The VAT as fiscal phenomenon	250
	7.6.1 Advantages	251
	7.6.1.1 Fiscal advantages	251
	7.6.1.2 Psychological advantages	252
	7.6.1.3 Economic advantages	253
	7.6.2 Disadvantages	254
	7.6.2.1 Is VAT a regressive tax?	254

7.6.3	Some idiosyncrasies of VAT	257
7.6.3.1	Scope of the VAT	257
7.6.3.2	VAT is not a cost price factor	258
7.6.3.3	The recouping effect	259
7.6.3.4	Exemptions	259
7.6.3.5	Exemption at the retail level	261
7.6.3.6	Consequences of the deduction mechanism	262
<b>Chapter 8</b>	<b>Subject Matter and Scope</b>	<b>263</b>
8.1	Introduction	263
8.1.1	Dates of introduction and expiry dates	269
8.2	The Recast: the VAT Directive	269
8.2.1	Amendments to the VAT Directive	269
8.3	Subject matter	274
8.4	Scope	274
8.4.1	Illegal transactions	275
8.4.1.1	Carousel fraud/denial of transactions	280
8.4.1.2	The knowledge test	287
8.4.2	Transactions without consideration	295
8.4.3	Payments without transactions	296
8.4.4	Transactions for consideration	298
8.4.4.1	From a direct to an indirect link	314
8.4.5	Legal relationship	328
8.4.6	Acting as such	330
8.4.7	Tax amnesty	331
8.5	Territorial scope	335
8.5.1	Extra-territorial activities	336
<b>Chapter 9</b>	<b>Taxable Persons</b>	<b>339</b>
9.1	Introduction	339
9.1.1	Any person in any place	339
9.1.2	Whatever the purpose or result	341
9.2	Economic activities	343
9.2.1.	Exploitation of tangible or intangible property	347
9.2.2	Occasional activities	351
9.3	Preparatory acts	356
9.4	Acting independently	363
9.4.1	VAT grouping	370
9.4.1.1	The territorial scope of VAT grouping	379
9.5	Public bodies	384
9.5.1	Activities engaged in as public authorities	388
9.5.2	Assimilation to activities engaged in as public authorities	401
9.5.3	Road tolls	404
9.5.4	Parking charges	407
9.5.5	Granting of licences for third generation mobile telecommunications systems	411

## Table of Contents

9.6	“Special” taxable persons	412
9.6.1	Societas Europaea	413
9.6.2	EEIG	414
9.6.3	General legal aspects of the Societas Europaea	416
9.6.4	Indirect tax aspects of the Societas Europaea	418
9.6.5	Societas Cooperativa Europaea	421
9.6.6	The certified taxable person	422
<b>Chapter 10 Taxable Transactions</b>		<b>423</b>
10.1	Introduction	423
10.2	Supplies of goods	423
10.2.1	Member States must treat as supplies of goods	429
10.2.1.1	Tangible property	429
10.2.1.2	Transfers by order made in the name of a public authority	430
10.2.1.3	Hire/purchase and finance lease	432
10.2.1.4	Commission	438
10.2.1.5	Definition of distance sales	438
10.2.1.6	Facilitation of distance sales – The deeming provision	439
10.2.1.6.1	VAT rules for the digital age – Proposal	440
10.2.1.7	Private use/Self-supply	441
10.2.1.8	Transfers to another Member State	444
10.2.1.9	Call-off stock	447
10.2.1.9.1	VAT rules for the digital age – Proposal	450
10.2.2	Member States may treat as supplies of goods	450
10.2.2.1	Certain interests in immovable property and rights in rem	450
10.2.2.2	Supplies under a contract to make up work	451
10.2.2.3	Works of construction	452
10.2.2.4	Internal supplies	453
10.2.2.5	Transfer of a going concern/the “no-supply rule”	458
10.3	Intra-Community transactions	464
10.3.1	Goods excluded from intra-Community acquisitions	465
10.3.2	Exceptions: Intra-Community transactions not subject to VAT	466
10.3.3	Second-hand goods	469
10.3.4	Intra-Community supply of services	469
10.3.5	New means of transport	470
10.3.6	Intra-Community acquisitions of goods	474
10.4	Supplies of services	477
10.4.1	Qualification as services	479
10.4.1.1	Composite supplies	482
10.4.2	Private use/non-business use	491
10.4.3	Private use and allocation of assets	495
10.4.4	Business purpose test	504

10.4.5	Undisclosed agent	508
10.4.5.1	Undisclosed agent and electronic services	511
10.4.5.1.1	VAT rules for the digital age (VIDA) – Proposal	514
10.4.6	Transfer of a going concern/the “no supply rule” of services	518
10.5	Importation	520
10.6	Vouchers	521
<b>Chapter 11 Place of Taxable Transactions</b>		<b>525</b>
11.1	Introduction	525
11.2	Supply of goods	525
11.2.1	Supply of goods without transport	525
11.2.2	Supply of goods with transport	525
11.2.2.1	Sales by connected contract and importation	527
11.2.2.2	Distance sales	528
11.2.2.3	Installation and assembly	532
11.2.2.4	Chain transactions and the proof of transport	535
11.2.2.5	Importation by a non-taxable legal person followed by a transfer	536
11.2.3	Supply of goods on board ships, aircraft or trains	537
11.2.4	Supply of goods through distribution systems	538
11.3	The place of intra-Community acquisitions	541
11.3.1	Triangulation	544
11.3.2	Simplification measures for triangulation	547
11.3.2.1	Case law on intra-Community triangulation	549
11.4	Supply of services	556
11.4.1	Particular provisions	557
11.4.1.1	Services supplied by an intermediary to non-taxable persons	557
11.4.1.2	Supply of services connected with immovable property	558
11.4.1.2.1	Case law on time share interests and the place of supply	560
11.4.1.2.2	Case law on supply of services directly or indirectly connected with immovable property	564
11.4.1.2.3	Services rendered by an intermediary consisting of arranging hotel accommodation	566
11.4.1.3	Supply of transport	568
11.4.1.4	Supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services and/or services related to the admission, ancillary transport activities and valuations of and work on movable property	571
11.4.1.5	Supply of restaurant and catering services	579
11.4.1.6	Hiring of means of transport	580
11.4.1.7	Supply of restaurant services on board ships, aircraft and trains	582

## Table of Contents

11.4.1.8	Supply of TBE services to non-taxable persons	583
11.4.1.8.1	Place of supply in Member State of supplier – Threshold	589
11.4.1.9	Supply of services to non-taxable persons outside the Community	590
11.4.1.9.1	Case law on intangible services	592
11.4.2	Main rule for supplies to taxable persons	597
11.4.2.1	“A taxable person acting as such”	599
11.4.3	The concept of an establishment	602
11.4.3.1	Case law of the Court of Justice on the subject of establishments	603
11.4.4	Dual capacity	619
11.4.5	Main rule for supplies to non-taxable persons	620
11.4.6	Use and enjoyment override	621
11.5	Importation of goods	625
<b>Chapter 12 Chargeable Event and Chargeability of VAT</b>		<b>631</b>
12.1	Introduction	631
12.2	Supplies of goods and services	631
12.2.1	The main rule	631
12.2.2	Supplies which give rise to successive statements of account or payments	635
12.2.3	Payments on account	639
12.2.4	Chargeability on a later date than that of the chargeable event	648
12.2.5	Facilitating the supply pursuant to Article 14a	650
12.2.6	Intra-Community supplies of goods	651
12.3	Intra-Community acquisitions	652
12.4	Importation	653
<b>Chapter 13 Taxable Amount</b>		<b>663</b>
13.1	Introduction	663
13.2	Supplies of goods or services	663
13.2.1	Barter transactions	669
13.2.2	Promotion schemes	672
13.2.2.1	The voucher Directive	683
13.2.3	Subsidies	686
13.2.3.1	State aid	692
13.2.3.2	Third party payment	697
13.2.4	Service charges	701
13.2.5	Credit cards	701
13.2.5.1	Factoring	702
13.2.6	Gaming machines, bingo and other games	708
13.2.7	Binding in honour only	710
13.2.8	Investment gold	710



13.2.9	Subjective or objective valuation of supplies	711
13.2.9.1	Open market value	713
13.2.10	Disbursements	717
13.2.11	Full cost of self-supplied services	721
13.2.11.1	Internal supplies	724
13.2.12	Advance payment in the event of cancellation and tie-in contracts	730
13.2.13	VAT in- or exclusive	742
13.2.14	Second-hand goods and works of art	747
13.2.15	Rounding of VAT amounts	750
13.2.16	Crowdfunding	754
13.2.17	VAT implications of transfer pricing	755
13.2.18	VAT treatment of sharing economy	757
13.3	Intra-Community acquisitions	763
13.4	Importation of goods	764
13.5	Miscellaneous provisions	769
13.5.1	Cancellation, refusal, total or partial non-payment or price reduction	770
13.5.2	Exchange rates	791
13.5.3	Returnable packing costs	792
<b>Chapter 14 Rates</b>		<b>793</b>
14.1	Introduction	793
14.2	Application, structure and level of rates	794
14.2.1	Annex III	799
14.3	Case law on rate differentiations	799
14.4	Case law on zero rates	818
<b>Chapter 15 Exemptions</b>		<b>823</b>
15.1	Introduction	823
15.2	Exemptions without the right to deduction	824
15.2.1	Exemptions for certain activities in the public interest	825
15.2.1.1	Postal services	826
15.2.1.2	Hospital and medical care	829
15.2.1.3	Medical care	834
15.2.1.4	Human organs, blood and milk	842
15.2.1.5	Dental technicians	842
15.2.1.6	Cost sharing exemption of independent groups of persons	844
15.2.1.7	Welfare and social security work	852
15.2.1.8	Protection of children	861
15.2.1.9	Education	861
15.2.1.10	Private tuition	864
15.2.1.11	Supplies of staff by religious or philosophical institutions	866
15.2.1.12	Trade unions	866
15.2.1.13	Sport or physical education	867

## Table of Contents

15.2.1.14	Cultural services	871
15.2.1.15	Fund-raising	873
15.2.1.16	Transport services for sick or injured persons	874
15.2.1.17	Public radio and television	874
15.2.1.18	Limitations with regard to the exemptions	874
15.3	Exemptions for other activities	880
15.3.1	Insurance and reinsurance transactions	881
15.3.2	Financial transactions	895
15.3.2.1	Granting of credit	898
15.3.2.2	Credit guarantees	903
15.3.2.3	Transactions concerning negotiable instruments, but excluding debt collection	904
15.3.2.4	Transactions concerning currency	911
15.3.2.5	Transactions in shares	913
15.3.2.6	Management of special investment funds	923
15.3.3	Postage stamps	935
15.3.4	Betting, lotteries	936
15.3.5	Immovable property	941
15.3.6	Goods used wholly for an exempt activity	942
15.3.7	Facilitating distance sales by non-established persons	943
15.4	Exemptions relating to intra-Community transactions	944
15.4.1	Case law regarding exempt intra-Community transactions	949
15.4.2	Amendment of Article 138(1) – New substantive conditions	964
15.4.3	Case law on intra-Community chain transactions	965
15.4.4	Amendments regarding the proof of transport	968
15.5	Exemptions on importation	970
15.5.1	Low value goods and a special import scheme	980
15.6	Exemptions on exportation	980
15.7	Exemptions related to international transport	990
15.8	Exemptions relating to certain transactions treated as exports	1004
15.9	Exemptions for the supply of services by intermediaries	1006
15.10	Exemptions for transactions relating to international trade	1006
15.10.1	Customs warehouses, warehouses other than customs warehouses and similar arrangements	1007
15.10.2	Transactions exempted with a view to export	1014
<b>Chapter 16 Immovable Property</b>		<b>1015</b>
16.1	Introduction	1015
16.1.1	Legislative history of the supply of buildings and building land	1017
16.1.2	Definition of immovable property	1020
16.2	Handing-over of a work of construction	1021
16.3	Letting and leasing	1022
16.3.1	Case law on exempt letting and leasing	1023
16.3.1.1	Lease below a minimum required amount	1023

16.3.1.2	Lease of garages to residents	1024
16.3.1.3	Surrender of a lease to the landlord	1024
16.3.1.4	Assignment of a lease to a third party	1025
16.3.1.5	Inducement payments to future tenants	1026
16.3.1.6	“Normal rent” between associated parties	1027
16.3.1.7	Letting of tents, caravans and mobile homes	1028
16.3.1.8	Letting of short-term accommodation	1028
16.3.1.9	Exemption of letting by way of exception	1029
16.3.1.10	Damages for incorrect exemption of leasing	1029
16.3.1.11	Usufructuary rights treated as a lease	1030
16.3.1.12	Leasing of prefabricated houses	1032
16.3.1.13	Installation of vending machines	1034
16.3.1.14	Leasing of part of a farm	1035
16.3.1.15	Letting of water-based mooring berths	1035
16.3.1.16	Granting of fishing rights	1037
16.3.1.17	Leasing out of State-owned maritime property	1037
16.3.1.18	Services applied additionally with or without a lease	1038
16.3.1.19	Leasing an immobilized houseboat	1045
16.3.1.20	Rent-free use for residential purposes by managers and their family	1047
16.3.1.21	Contract for the transfer of the use of land comprising vineyards for agricultural purposes	1049
16.3.2	Option for taxation in cases of letting and leasing	1050
16.3.2.1	The right to abolish the right to opt	1050
16.3.2.2	Anti-device law and option	1051
16.3.2.3	The nature of a taxed lease contract	1053
16.3.2.4	Exclusions from the right to opt	1055
16.3.2.5	Lease and sublease/sale and leaseback	1058
16.3.2.6	Lack of occupancy	1061
16.4	Supplies of buildings or parts thereof	1063
16.4.1	Case law on supplies of buildings	1064
16.4.1.1	Buildings or building land	1064
16.4.1.2	First occupation and conversion	1068
16.4.1.3	Transfer by a public limited company of a building to a shareholder as the counterpart to the buy-back of its shares	1070
16.4.2	Option for taxation in cases of supplies of buildings or parts thereof	1072
16.4.2.1	Retrospective restriction of the right to opt	1073
16.5	Supplies of land	1073
16.5.1	Case law on the supply of land	1074
16.5.1.1	Sale of land and construction of a building	1074
16.5.1.2	Definition of building land	1075
16.5.1.3	Deemed supply	1075
16.5.1.4	Land which has not been built on, but intended to be built on	1077

16.5.2	Option for taxation in cases of supplies of land	1078
16.5.2.1	Separate buildings from land on which they stand	1079
<b>Chapter 17 Deductions</b>		<b>1081</b>
17.1	Introduction	1081
17.2	Origin and scope of right of deduction	1083
17.2.1	Supplies to a taxable person	1084
17.2.1.1	Inactivated taxable persons	1089
17.2.2	Internal supplies	1092
17.2.3	Intra-Community acquisitions	1094
17.2.4	Importation	1095
17.2.5	Transactions carried out outside the Member State and zero-rated transactions	1098
17.2.5.1	Transaction carried out outside the Member State	1098
17.2.5.2	Exempt cross-border transactions	1101
17.2.5.3	Exempt insurance and financial transactions with customers outside the Union	1102
17.2.6	Refunds	1102
17.2.6.1	Refunds to taxable persons established in another Member State	1105
17.2.6.2	Registered office in a Member State but also having a fixed establishment in another Member State	1114
17.2.6.3	Thirteenth Directive refunds	1117
17.2.6.4	Occasional intra-Community supplies of new means of transport	1122
17.3	Proportional deduction/apportionment	1123
17.3.1	Allocation on sectorial basis	1133
17.3.2	Incidental transactions	1139
17.3.3	Including in the denominator the amount of subsidies	1146
17.4	Restrictions on the right of deduction	1148
17.4.1	The stand-still clause	1150
17.4.2	Cyclical economic reasons	1162
17.5	Rules governing the exercise of the right of deduction	1165
17.5.1	Supplies to a taxable person	1165
17.5.1.1	Supplies not actually made by the "right" supplier	1179
17.5.1.2	Good faith	1183
17.5.2	Reverse charged supplies to a taxable person	1187
17.5.3	Method of deduction	1191
17.5.4	Importation	1197
17.5.5	Fictitious transaction	1197
17.5.6	Intra-Community acquisitions	1198
17.5.7	Authorizations to make deductions	1199
17.5.8	Excess amounts	1200
17.6	Adjustment of deductions	1212
17.6.1	Recalculation	1213
17.6.2	Adjustment periods	1229

17.6.3	Services which have characteristics similar to those normally attributed to capital goods	1244
17.6.4	Private use of immovable property	1245
17.7	The maze of VAT on shares and dividends	1249
17.7.1	Acquisition and the sale of securities and placements in securities ( <i>EDM</i> )	1253
17.7.2	Issuing shares in connection with an IPO ( <i>Kretztechnik</i> )	1257
17.7.3	General costs and direct link ( <i>Investrand</i> )	1259
17.7.4	No attribution to downstream activities/the pre-pro rata ( <i>Securenta, Związek Gmin Zagłębia Miedziowego</i> )	1261
17.7.5	Pure holding company re-invoicing subsidiaries ( <i>Portugal Telecom</i> )	1266
17.7.6	Costs incurred on sale of shares/link with totality of business activities ( <i>SKF</i> )	1268
17.7.7	Expenditure connected with capital transactions by holding company ( <i>Larentia</i> )	1273
17.7.8	Holding company supplying services to its subsidiaries free of charge ( <i>MVM, W</i> )	1274
17.7.9	The letting of a building by a holding company to its subsidiary constitutes involvement in the management of that subsidiary ( <i>Marle Participations</i> )	1278
17.7.10	The right to deduct input VAT by a holding company relating to consultancy services even if ultimately the planned economic activity was not carried out ( <i>Ryanair, Sonaecom</i> )	1280
17.7.11	The law as it stands	1283

## **Chapter 18 Obligations of Taxable Persons and Certain Non-Taxable Persons** **1285**

18.1	Introduction	1285
18.2	Obligation to pay	1286
18.2.1	Persons liable for payment of VAT to the tax authorities	1286
18.2.1.1	Reverse charge mechanism	1291
18.2.1.1.1	VAT rules for the digital age – Mandatory RC – Proposal	1301
18.2.1.1.2	Optional and temporary application of the reverse charge mechanism and QRM	1301
18.2.1.2	Cross-border transactions	1302
18.2.1.3	Entering VAT on an invoice	1302
18.2.1.4	Fiscal representation	1310
18.2.1.5	Joint and several liability	1311
18.2.1.6	Optional reverse payment	1314
18.2.1.7	Split payment model	1315
18.2.2	Payment arrangements	1316
18.3	Identification	1318

## Table of Contents

18.4	Invoicing	1326
18.4.1	Concept of invoice	1326
18.4.2	Member State where the rules are applicable	1327
18.4.2.1	The invoicing rules of a single Member State	1328
18.4.3	Issue of invoices	1329
18.4.4	Simplified invoices	1329
18.4.5	Time when an invoice must be issued	1331
18.4.6	Summary invoices	1332
18.4.7	Self-billing	1332
18.4.8	Outsourcing to third parties outside the European Union	1333
18.4.9	Invoice details	1334
18.4.10	Content of a full VAT invoice	1334
18.4.11	Content of a simplified VAT invoice	1348
18.4.12	Paper invoices and electronic invoices	1349
18.4.13	Storage of invoices	1351
18.4.14	VAT rules for the digital age – (Electronic) invoicing – Proposal	1353
18.5	Accounting	1353
18.5.1	Facilitating, through the use of an electronic interface, supplies to a non-taxable person	1355
18.5.2	Keeping a register	1356
18.5.3	Payment service providers	1358
18.6	Returns	1360
18.6.1	Standard VAT return	1362
18.7	Recapitulative statements	1362
18.7.1	VAT rules for the digital age – Digital Reporting Requirements – Proposal	1366
18.8	Miscellaneous provisions	1366
18.8.1	Other obligations to prevent evasion	1366
18.9	Obligations in respect of certain importations and exportations	1378
<b>Chapter 19 Special Schemes</b>		<b>1381</b>
19.1	Introduction	1381
19.2	Small and medium-sized enterprises	1381
19.2.1	Small and medium-sized enterprises from 1 January 2025	1389
19.3	Farmers	1390
19.4	Travel agents	1396
19.4.1	Transactions of travel agents	1397
19.4.2	Treated as a single service	1403
19.4.3	The margin	1406
19.4.4	Outside the European Union, deductions and derogations	1413
19.5	Second-hand goods, works of art, collectors' items and antiques	1415
19.5.1	Margin scheme	1421

19.6	Investment gold	1429
19.6.1	General provisions regarding investment gold and exemption from VAT	1431
19.6.2	Taxation option for investment gold	1433
19.6.3	Transactions on a regulated gold bullion market	1434
19.6.4	Special rights and obligations for traders in investment gold	1435
19.7	Non-established taxable persons supplying services to non-taxable persons, distance sales of goods or certain domestic supplies of goods	1436
19.7.1	Non-Union scheme	1437
19.7.2	Union scheme	1440
19.7.2.1	VAT rules for the digital age – Proposal	1445
19.7.3	The special import scheme	1445
19.7.3.1	Special arrangements for declaration and payment of import VAT and exchange values	1448
<b>Chapter 20 Derogations</b>		<b>1449</b>
20.1	Introduction	1449
20.2	Derogations applying until the adoption of definitive arrangements	1449
20.2.1	Derogations for States which were members of the Community on 1 January 1978	1449
20.2.2	Derogations for specific States which acceded after 1 January 1978	1453
20.2.3	Derogations applicable to all Member States	1454
20.3	Derogations subject to authorization	1456
20.3.1	Special measures applied at 1.1.1977	1456
20.3.2	Special measures to simplify or prevent evasion or avoidance	1460
20.3.3	Agreements with third countries or international bodies	1468
20.3.4	Rationalisation Directive	1468
20.3.5	The quick reaction and the optional reverse charge mechanism	1469
20.3.5.1	Directives on the period of application of the optional reverse charge and QRM	1470
<b>Chapter 21 Miscellaneous</b>		<b>1473</b>
21.1	Introduction	1473
21.2	Implementing measures	1473
21.2.1	The Implementing Regulation	1475
21.3	VAT Committee and proposed Comitology Committee	1496
21.4	Conversion rates	1499
21.5	Taxes not to be characterized as turnover taxes	1500

Table of Contents

<b>Chapter 22 Final Provisions</b>	<b>1509</b>
22.1 Introduction	1509
22.2 Transitional arrangements and transitional measures	1509
22.2.1 The Green Paper	1511
22.2.2 Action plan for a definitive VAT system	1512
22.2.3 Follow-up to the action plan for a definitive VAT system	1513
22.2.4 Action plan for fair and simple taxation	1515
22.3 Transposition and entry into force	1516
<b>Table of Cases</b>	<b>1519</b>
<b>Index</b>	<b>1545</b>



## List of Abbreviations

ACT	Advance corporation tax
AG	Advocate General
AIF	Alternative investment funds
ATA	Admission temporaire/Temporary admission
AUT	Authorized unit trust
Bull.	Bulletin
C-	Court case number (as opposed to T- for General Court)
CAP	Common Agricultural Policy
CBR	Cross-border rulings
CC	Customs Code
CCIP	Implementing Customs Code
CCT	Common Customs Tariff
CESOP	Central Electronic System of Payment information
CFI	Court of First Instance
CJEU	Court of Justice of the European Union
CMR	Convention relative au contrat de transport international de marchandises par route
CN	Combined Nomenclature
COM	Document of the Commission of the European Union
CoR	European Committee of the Regions
Coreper	Comité des représentants permanents
CPA	Statistical classification of products by activity
CST	Civil Service Tribunal
CTP	Certified Taxable Person
DAUCC	Delegated Act Union Customs Code
DB	Defined benefit
DC	Defined contribution
DRR	Digital reporting requirements
EC	European Community/Communities
ECA	European Court of Auditors
ECB	European Central Bank
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOFIN	Council of Ministers for Economic Affairs and Finance
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
ECU	European Currency Unit
EDI	Electronic Data Interchange
EEA	European Economic Area
EEAS	External Action Service
EEC	European Economic Community
EEIG	European Economic Interest Grouping
EESC	European Economic and Social Committee
EESV	Europees Economisch Samenwerkingsverband

EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EFTA	European Free Trade Association
EIB	European Investment Bank
EMU	Economic and Monetary Union
EP	European Parliament
EPPO	European Public Prosecutor's Office
ESCB	European System of Central Banks
ESM	European Stability Mechanism
ESSC	European Statistical System Committee
EU	European Union
EUA	European Unit of Account
Eurojust	European Union's Judicial Cooperation Unit
Eupol	EU Agency for Law Enforcement Cooperation
FTE	Full-time equivalent
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GC	General Court
GDP	Gross Domestic Product
GNI	Gross National Income
GNP	Gross National Product
HS	Harmonized system
IAS	International Accounting Standards
IAUCC	Implementing Act Union Customs Code
IFRS	International Financial Reporting Standards
IGC	Intergovernmental Conference
IGP	Independent group of persons
IMC	Investment Fund Management Company
IMF	International Monetary Fund
IMSI	International Mobile Subscriber Identity
IOSS	Import One-Stop Shop
IP	Internet Protocol
IPO	Initial public offering
IPT	Insurance Premium Tax
I/S	Interessentskab
ITA	Agreement on trade in information technology products
ITC	Investment Trust Company
LRD	Limited risk distributor
MCA <sub>s</sub>	Monetary Compensatory Amounts
MCC	Mobile Country Code
MCC	Modernized Customs Code
MFF	Multiannual Financial Framework
MOSS	Mini One-Stop Shop
MTIC	Missing Trader Intra-Community
OECD	Organisation for Economic Co-operation and Development
OEIC	Open-ended Investment Company
OJ	Official Journal of the European Communities
OLAF	European Anti-Fraud Office

OMV	Open Market Value
OSS	One-Stop Shop
PAS	Postponed accounting system
QMV	Qualified majority voting
SAD	Single Administrative Document
SCAC	Standing Committee on Administrative Cooperation
SCE	Societas Cooperativa Europaea
SE	Societas Europaea
SICAV	Société d'investissement à capital variable, i.e. open-ended investment companies
SIM	Subscriber Identity Module
SLIM	Simpler Legislation for the Internal Market
SME	Small and medium-sized enterprises
SPE	Societas Privata Europaea
SVR	Single VAT registration
SWIFT	Society for Worldwide Interbank Financial Telecommunication
T-	Tribunal de Première Instance (now the General Court)
TBE services	Telecommunications, broadcasting or electronic services
TEDB	"Taxes in Europe" database (web portal)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TOGC	Transfer of a going concern
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UCC	Union Customs Code
UCIT	Undertaking for Collective Investment in Transferable Securities
UMTS	Universal Mobile Telecommunications System
VAT	Value added tax
VIDA	VAT in the digital age
VIIES	VAT Information Exchange System
VoIP	Voice over Internet Protocol
VTTL	VAT Total Tax Liability
WTO	World Trade Organization
www	World Wide Web

**Part I**  
**General Subjects**

# Chapter 1

## Sources of EU Tax Law

### 1.1 Introduction

This chapter considers the primary (legal) sources of EU tax law. Special attention is paid to the rules based on the Treaty of Lisbon.

### 1.2 Primary law

EU law can be divided into *primary and secondary Union law*.

Until 1 December 2009, the date the Treaty of Lisbon came into effect, the term *primary Community law* was used referring to provisions of the original three Treaties (ECSC, Euratom and EEC) as amended by later Treaties, such as the Single European Act, the Treaty on European Union (i.e. the Treaty of Maastricht), the Treaty of Amsterdam and the Treaty of Nice.

The Single European Act, which came into effect on 1 July 1987, introduced, inter alia, a cooperation platform for the coordination of foreign policy under the name European Political Cooperation; it reformulated the objective of the common market as an internal market (an area without borders) and set a deadline to realize this internal market, the well-known date of (31 December) 1992, when European indirect tax law underwent dramatic changes.

Under the Treaty on European Union (the Treaty of Maastricht of 1992) the original three Treaties underwent substantial changes, including the change of name from EEC to EC.<sup>1</sup> This Treaty also established the European Union (EU).

The ECSC Treaty expired on 23 July 2002. Since then the sectors coal and steel fall within the legal scope of now the Treaty on the Functioning of the European Union (TFEU).

The Treaty of Maastricht Union, lacking separate legal personality (in contrast to the present Union, see Article 47 Treaty on European Union (TEU) and Declaration 24 annexed to the Final Act of the Intergovernmental Conference, see section 1.3), was, metaphorically speaking, the roof of a building with three pillars:

- I. a Community pillar, comprising the two Treaties;
- II. a second pillar formed by a common foreign and security policy (CFSP, the former European Political Cooperation); and
- III. a third pillar formed by the provisions on cooperation between the Member States in the field of justice and home affairs.

The Treaty of Amsterdam was welcomed in 1997 with the words: "It was a difficult birth, but it is a beautiful baby". This Treaty came into effect on 1 May 1999, but introduced no new elements to the process of integration in Europe. It did, however, make over 140 changes to the EC Treaty and renumbered the Articles.

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1. The "E" for economic was omitted, since the Community also concerned itself with non-economic objectives, such as social, cultural and environmental policies.

The Treaty of Nice agreed on items which are indispensable for the extension of the European Union, such as the division of powers between the Member States (the weighted votes), the number of members of the European Parliament per country and the restricted seize of the Commission. It came into force on 1 February 2003.

Changes to the Treaties were introduced by the seven Acts of Accession on the occasion of the accession of respectively the United Kingdom, Ireland and Denmark (in 1973), of Greece (in 1981), of Spain and Portugal (in 1986), of Austria, Finland and Sweden (in 1995), of Poland, the Czech Republic, Hungary, Slovakia, Lithuania, Latvia, Slovenia, Estonia, Cyprus and Malta (in 2004), Bulgaria and Romania (in 2007) and Croatia (in 2013).

On 13 December 2007, the Treaty of Lisbon, abolishing the European Union's three-pillar structure, was signed providing that the European Union will be founded on the Treaty on European Union as amended and on the Treaty on the Functioning of the European Union, replacing the EC Treaty.<sup>2</sup> The TEU and the TFEU are referred to as "the Treaties". The two Treaties have the same legal value. The Union replaces and succeeds the European Community (Article 1 TEU). The Treaty provides for a number of significant institutional changes (see further section 1.3.1).

*Primary EU law* now consists of the Treaties and its Protocols – including the Charter of Fundamental Rights, which has the same legal value as the Treaties – and the Euratom Treaty.

*Secondary EU law* refers to the decisions taken by the institutions entitled to take them under the Treaties.

These sources are discussed and examples are given below, mainly derived from European indirect tax law. We start with a brief overview of the Lisbon Treaty and the institutional framework of the Union.

### **1.3 The Lisbon Treaty**

At the Nice European Council in December 2000, a declaration on the future of the Union, the Nice Declaration, was adopted. The aim of this Declaration was to pursue institutional reform beyond the results of the 2000 Intergovernmental Conference ("IGC 2000"). It set out three steps for this reform: the launch of a debate on the future of the European Union, a Convention on institutional reform, the implementation of which was agreed by the Laeken European Council in December 2001, and finally the convening of an IGC in 2004.

According to the Laeken Declaration, which created it, the aim of the Convention was to examine four key questions on the future of the Union: the division of powers, the simplification of the Treaties, the role of the national parliaments and the status of the Charter of Fundamental Rights.

The Convention finished its work in July 2003, presenting a draft single constitutional text. This document served as the starting point for the IGC negotiations.

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2. The Euratom Treaty remains in force; for a consolidated version see OJ 2010, C 84, p. 1.

At their meeting on 18 June 2004, Heads of State or Government gave their agreement to the texts of the Agreement on the Constitutional Treaty. The IGC 2004 that had to give its final agreement has largely taken on board the Convention's proposals. In the end, even though the Intergovernmental Conference introduced a large number of editorial modifications, the real changes were limited to a "somewhat lesser ambition" with regard to the scope of qualified majority voting.

Several Member States' parliaments, however, had made ratification conditional upon an affirmative popular vote. This went wrong by the "non" and "nee" in the French and Dutch referenda.

After a period of reflection the (then) 27 Member States agreed on a non-constitutional Revision Treaty (hereinafter referred to as the Lisbon Treaty), all the same still containing largely the content of the 2004 Constitution proposal, notably the long overdue institutional reforms, but meticulously avoiding constitutional symbols, such as the word Constitution, a European flag, a European hymn and references to a European identity or tradition, or to even hardly objectionable principles such as representative and participatory democracy. Especially devoid of meaning is the repeal of the 2004 plan to incorporate the already existing EU Charter of Fundamental Rights (see section 2.3.1) into the TFEU, since that Charter was already, still is, and will continue to be applied by the Court of Justice as if it were Treaty law, more so since the Revision Treaty (Article 6 TEU) expressly provides that the European Union recognizes the Charter and that it has the same legal force as the Treaty itself (except for the United Kingdom, and Poland which have derogating Protocols).<sup>3</sup>

In short: the European Constitution may formally be dead; substantively it is very much alive. However, in a popular vote Ireland rejected the 2007 Revision Treaty.

After Dublin won guarantees that the Treaty would not infringe on its sovereignty in the areas of taxation, family issues and State neutrality another Irish plebiscite gave overwhelming support in autumn 2009.

The Treaty entered into force on 1 December 2009.

The Lisbon Treaty does not change much in the tax field. A new provision is added to Article 58 EC (now Article 68 TFEU) allowing individual Member States to restrict fiscally capital movement with third States. Another possibly substantive change is that at the end of Article 93 EC (now Article 113 TFEU), the words "... within the time limit laid down in Article 14" are replaced by "... and to avoid distortion of competition", which means that indirect taxes must not only be harmonized to the extent necessary for the functioning of the internal market, but also to the extent necessary to ensure a level playing field on that internal market. We are not sure whether such level playing field was not already necessary for the functioning of the internal market before the Lisbon Treaty became effective. Further, the order of the

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3. The Czech Republic also has an opt-out – secured by the Euro-sceptic Czech President Vaclav Klaus as a condition for signing the Lisbon Treaty. He wanted a guarantee that his country would not be exposed to property claims by Germans expelled from the then Czechoslovakia after World War II.

Articles 94 and 95 EC is reversed (now Articles 114 and 115 TFEU), but that does not change anything for taxation: a unanimous decision is still required for all EU tax measures, whether direct or indirect.

The United Kingdom's withdrawal from the European Union is widely known as Brexit, a portmanteau of "British exit". Following a referendum held in June 2016, in which 52% of votes were cast in favour of leaving the European Union, the UK government invoked Article 50 of the TEU,<sup>4</sup> the formal procedure for withdrawing, at the end of March 2017. This put the United Kingdom on a course to leave the EU by 29 March 2019.<sup>5</sup> After much political turmoil Brexit was delayed three times with the latest date set to 31 January 2020.

### 1.3.1 Institutional framework

At this place, it seems to be useful to give a brief overview of the institutions (taking into account the changes by the Lisbon Treaty). The institutional system of the European Union is unique in the world. There are seven institutions:

- the European Parliament;
- the European Council;
- the Council (not to be confused with the European Council);
- the European Commission (referred to as "the Commission");
- the Court of Justice of the European Union;
- the European Central Bank; and
- the Court of Auditors.

The European Parliament, the Council and the Commission are assisted, acting in an advisory capacity, by:

- the European Economic and Social Committee; and

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#### 4. Article 50.

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

5. In *Wightman and Others v. Secretary of State for Exiting the European Union*, C-621/18, Advocate General Campos Sánchez-Bordona proposed that the Court of Justice should declare that Article 50 TEU allows the unilateral revocation of the notification of the intention to withdraw from the EU.











The Home of International Taxation

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