


Tax and Finance on i-law.com

Content update: March 2023



Highlights:

- ▶ Foreign subsidies focus
- ▶ *World Accounting Report* content categories
- ▶ Recently published and forthcoming articles

Tax and Finance on i-law.com

Written by an international network of tax practitioners and experts, Tax and Finance on i-law.com features practical advice and commentary on the latest case law and statutory developments. Each publication includes fully searchable access to an archive of information dating back more than two decades.

This update also includes articles from *Farm Tax Brief* and *Competition Law Insight*, for readers with an interest in private client tax planning relating to agriculture and farm partnerships, and global antitrust regulation and practice.

Focus on foreign subsidies

Competition law practitioners will be aware that the EU Foreign Subsidies Regulation (FSR), which creates a new regulatory regime for companies that have received subsidies from non-EU countries, entered into force on 12 January 2023. For many, it “levels the playing field” by giving the European Commission broader investigative powers and the ability to reduce market distortion through merger control and other competition law enforcement tools. Competition Law Insight has an extensive archive of commentary on the FSR, including the articles below.

Foreign Subsidies Regulation

Impacts on mergers and acquisitions activity

The FSR addresses what is perceived as a regulatory gap in the EU’s ability to control distortive foreign subsidies granted by non-EU governments. While subsidies granted by EU governments have long been strictly regulated under EU state aid rules, foreign subsidies currently escape scrutiny under EU competition rules, public procurement rules, and foreign direct investment control rules and are not subject to effective review or enforcement under international trade instruments. www.competitionlawinsight.com/regulatory/foreign-subsidies-regulation-153506.htm

Foreign subsidies – uncertainty ahead?

EU clears way for new regime with broad definitions and an additional layer of regulatory requirements

On 30 June 2022, the Council of the EU and European Parliament reached a political agreement on the text for the Foreign Subsidies Regulation that will give far-reaching powers to the EC to control subsidies provided by non-EU governments to businesses active in the EU. The FSR defines “foreign subsidy” widely, largely mirroring the EU’s state aid rules. A financial contribution will constitute a foreign subsidy if three cumulative criteria are met. www.competitionlawinsight.com/regulatory/foreign-subsidies-uncertainty-ahead-151995.htm

Recalibrating single market access

Traditionally the single market has been open to all players from around the world. Investors not just from the US, Japan and other democracies, but also from China, Russia and Saudi Arabia could broadly invest at will. This is now changing, first, with the adoption of the EU Foreign Investment Screening Regulation and the consequent member state expansion and creation of domestic foreign investment control regimes. And now with the enactment in June 2022 of the EU Foreign Subsidies Regulation, which will come into force in 2023. www.competitionlawinsight.com/regulatory/foreign-subsidies-regulation-152195.htm

One of a kind?

A regulatory tool to level the EU foreign subsidies playing field
On 30 June 2022, the EU co-legislators (the European Parliament and the Council) agreed on regulation to control foreign subsidies that distort the EU internal market. The regulation is unprecedented and one of a kind in the EU legislative order, combining elements of state aid, merger control, public procurement and trade defence rules. www.competitionlawinsight.com/regulatory/one-of-a-kind-152196.htm

Abuse of dominance – Algorithms – Big Tech – Block exemptions – Cartels – Dumping – Employment – Enforcement – Gun-jumping – Immunity – Joint ventures – Leniency – M&A – Policy – Price-fixing – Regulatory – State aid – Vertical restraints

Written by practitioners, for practitioners, Competition Law Insight provides expert analysis and technical coverage of the cases, regulatory policy and trends shaping global approaches to antitrust and competition law. For more information on editorial submissions and subject matter, contact kate.clifton@lloydslistintelligence.com



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Recently published

Competition Law Insight

The new Digital Markets Unit

What test should apply to appeals against its decisions?

The DMU has been established in shadow form since April 2021, but without any legislative powers. The UK Government is expected to bring forward legislation that will give the DMU power to administer a new ex ante regulatory regime for the largest tech companies, or so-called “strategic market status” firms.

www.competitionlawinsight.com/regulatory/the-new-digital-markets-unit-153432.htm

The intersection of antitrust and labour

New Canadian legislation and guidance on wage-fixing and no-poach agreements

In many jurisdictions there has been new attention on applying competition law to labour markets, including the issuance of new guidance and policy from competition regulators. In Canada, the impetus to ensure competition law applies to labour markets has even resulted in a change to legislation.

www.competitionlawinsight.com/corporate-issues/the-intersection-of-antitrust-and-labour-153443.htm

BMW v CMA

The CAT and High Court hit the brakes on the regulator’s extraterritorial powers

The UK Competition Appeal Tribunal and High Court have issued a single judgment in *Bayerische Motoren Werke AG v Competition and Markets Authority*, relating to applications by BMW AG and Volkswagen AG against decisions of the UK Competition and Markets Authority.

www.competitionlawinsight.com/practice-and-procedure/bmw-v-cma-153444.htm

Five minutes with... Dr Anca Cojoc

The former CMA economist, competition litigation, investigations and mergers expert discusses her new role at Cornerstone Research, along with some of the trends and challenges to keep an eye on over the coming months.

www.competitionlawinsight.com/competition-issues/five-minutes-with...-dr-anca-cojoc-153170.htm

Farm Tax Brief

Mixed-use claims on small farms

A spectrum of allowability

There have recently been two very different cases on the highly topical question of mixed-use Stamp Duty Land Tax (SDLT) relief. The *Averdieck* claim was disallowed and made the national press and then the *Withers* case allowed a claim for mixed-use SDLT.

www.farmtaxbrief.com/revenue/sdl-t-mixed-use-claims-on-small-farms--a-spectrum-of-allowability-153039.htm

Where is the apart-hotel on the spectrum?

The impact on farm diversification

This article considers the spectrum of trading assets to the holding of assets as an investment in the context of the world of farming. Succession planning for farmers has been very much in the news and the need to achieve Business Property Relief on diversified activities is very important.

www.farmtaxbrief.com/disputes/where-is-the-apart-hotel-on-the-spectrum-the-impact-on-farm-diversification-153040.htm

Finance Bill 2022 published

Farm tax considerations

The Autumn Finance Bill 2022 and explanatory notes were published on 22 November 2022 and updated on 21 December 2022. The Bill had only 14 pages, 12 clauses and no schedules. It legislates for the key tax changes announced in the Autumn Statement.

www.farmtaxbrief.com/guidancerules-and-legislation/finance-bill-2022-published-153042.htm

Trusts and Estates

Delays in starting probate claims

McElroy v McElroy [2023] EWHC 109 (Ch)

It is well established that no statutory limitation period applies to claims brought to propound or to challenge the validity of a will. But does that really mean that a probate claim can always be brought irrespective of how long has passed since the deceased’s death? Or will there be circumstances in which the claimant will be told: “sorry, you’re too late”? The recent decision in *McElroy v McElroy* [2023] EWHC 109 (Ch) provides a helpful illustration of when a long delay in bringing a probate claim will be considered too long.

www.i-law.com/ilaw/doc/view.htm?id=433006

The merry widow

Two inheritance disputes involving spouses of the deceased

This claim by an elderly widow under the Inheritance (Provision for Family and Dependents) Act 1975 garnered significant media attention, but it also provides procedural guidance in claims where reasonable financial provision has clearly not been made for the claimant.

www.i-law.com/ilaw/doc/view.htm?id=433005

The doctrine of lapse and section 33 of the Wills Act 1837

Burns v Bean [2021] EWHC 838 (Ch)

In general terms, where a beneficiary of a will dies before the testator and there is no substitute beneficiary named in the will, the gift shall lapse. An important exception, however, to the doctrine of lapse is contained in s33 of the Wills Act 1837.

www.i-law.com/ilaw/doc/view.htm?id=433004

World Accounting Report

What to expect in the year ahead from the FRC

Key focus areas for corporate reporting enforcement activities and audit inspections

The UK’s Financial Reporting Council has published a number of documents that give an idea of its focus for the coming year and beyond. This article provides an overview of its supervisory priorities, including its activities in the area of sustainability reporting.

www.i-law.com/ilaw/doc/view.htm?id=432998

IASB: The year ahead

A useful steer on the board’s priorities for 2023

In December 2022, IASB chair Andreas Barckow gave two speeches providing some insights into his priorities and concerns. These provide a useful steer about what to expect from the board in 2023. The first speech was given at a one-day conference held by EFRAG in Brussels, for which the theme was “where is corporate reporting heading?”

www.i-law.com/ilaw/doc/view.htm?id=433002

Broader impacts of new sustainability reporting rules in Europe

Building on existing requirements

The European Union’s latest directive on sustainability reporting builds on the existing non-financial reporting requirements, but goes much further and some new features mean that it will not only be companies in the EU that are affected by its provisions. This article sets out key areas covered by the legislation and asks what consequences the radical nature of the changes could have.

www.i-law.com/ilaw/doc/view.htm?id=433000

EFRAG asks “where is corporate reporting heading?”

Shaping the future

In December 2022, EFRAG held a conference to ask “where is corporate reporting heading?”. The distinguished array of speakers included Commissioner Mairead McGuinness, whose words provided a high-level overview of how the European Commission is planning to shape the future of corporate reporting in Europe.

www.i-law.com/ilaw/doc/view.htm?id=432997

Coming soon

Competition Law Insight

New Irish competition legislation

The Competition (Amendment) Act 2022 (the 2022 Act) represents a significant reform of Ireland's competition law enforcement regime currently contained in the Competition Act 2002 as amended (the 2002 Act). The legislation, which became law last summer, is due to be brought into force in the coming months.

EU merger control trends 2022/2023

The year 2022 saw dealmakers feeling the pressure of having to navigate increasingly complex and unpredictable merger control environment globally including in the EU. The European Commission (EC) has stepped up scrutiny of mergers and acquisitions, adopting growingly aggressive approach in its merger control review. The divergence between competition authorities, in particular between the EC and the UK regulator, added yet another hurdle that transacting parties will likely continue to face going forward.

Farm Tax Brief

Planning permission but no construction doesn't provide mixed dwelling relief for SDLT

Stamp Duty Land Tax (SDLT) has featured throughout previous editions of FTB including in the form of the eligibility for mixed usage SDLT (FTB, February 2023). In a recent Upper Tribunal case, *Ladson Preston Ltd and AKA Developments Greenview Ltd v Revenue and Customs* [2022] UKUT 301 (TCC), it was found that a grant of planning permission but no actual construction of building does not qualify for Multiple Dwelling Relief (MDR) for SDLT, emphasising the significance of MDR in the context of property transactions that impact on farmers.

Renovation versus new build – understanding the detail

There is an apology by the editor to move from the technical interpretation of SDLT to the technical interpretation of VAT. However, these tribunals together with the topic of the month clearly show the complexity of all taxes connected with farm developments. The understanding of property development, new build, renovation etc, is very complex for VAT and SDLT purposes – some would say mind-blowing for the small farm business. However, this is a subject that farm tax advisers must come to terms with as part of farm survival.

Trusts and Estates

A golden ticket? Appealing multi-factorial judgments in the tax tribunals

This article discusses a case which is likely to have escaped the notice of most mainstream direct tax practitioners, above all those working in the private client sphere. At first sight, *WM Morrison Supermarkets plc v HMRC* [2023] UKUT 20 (TCC) seems to be about the fraught but niche question of whether cereal bars are “confectionary” and their consequential VAT treatment.

Modern formality: OMG, did I give my house away by email?

Amongst advocates' stock anxiety dreams is that in which the Court of Appeal raises a novel, irresistible and devastating point. So it was for Lee Hudson. He and Jayne Hathway had engaged in an interesting and expensive trial and first appeal, arguing about the constituent elements of the common intention constructive trust, when, after a few minutes in the Court of Appeal, Lewison LJ asked why it had never been argued that emails sent by Mr Hudson satisfied s53(1) of the Law of Property Act 1925.

World Accounting Report



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World Accounting Report

Primary Financial Statements – outreach feedback

The Primary Financial Statements project is probably the most important project that the IASB is seeking to complete this year. It will address investors' concerns about the lack of comparability and transparency in the way companies report their performance, with a focus on income statements – the board will work on cashflow statements separately in the future.

EFRAG – sustainability standards

The European Commission is currently working on the adoption of sustainability reporting standards into European Union law. There have been concerns about how European companies will cope with the significant step change in their reporting on sustainability matters in 2024.