

## EDITORIAL

This issue of the ECTJ features articles by Joel Phillips, Dr Maria Borg Scicluna, Matthias Thom and Tanja Warschow.

Joel Phillips' article is an updated version of his dissertation which won the BNA International prize for the best dissertation on the University of London MA in Tax Programme in 2011. It is entitled "Whether Freedom of Establishment Rights Exist in Relation to Companies Incorporated in one of the Overseas Countries and Territories". The author includes an analysis of the Court's recent *Prunus* decision and concludes that Article 199(5) TFEU creates freedom of establishment rights in relation to OCT companies.

Dr Maria Borg Scicluna, an associate with Fenech Farrugia Fiott Legal in Malta, writes about the limitation on benefits clause in the new US-Malta Double Taxation Agreement. The author concludes that one solution to the possible incompatibility of the LoB clause with EU law is for the US and the EU Member States to conclude a multilateral agreement rather than inserting LoB clauses in Double Taxation Agreements with individual Member States.

The third article, contributed by Matthias Thom, is entitled "An Examination of the Likely ECJ Response to Cross-border Loss Relief under German Tax Legislation". The author examines the compatibility of the German Consolidated Group regime *Organschaft* with EU law. In this respect, the author pays special attention to the principles established by the Court of Justice in its cross-border loss relief cases and considers their implications for the German regime. Finally, the author considers the attitude taken with respect to the issue of cross-border loss relief at the national level by academics, administration and jurisprudence. The author concluded that the *Organschaft* infringes EU law on certain points and should be made compatible with EU law by urgent legislative amendments.

Lastly, Tanja Warschow, an associate with Bech-Bruun, Copenhagen, Denmark, gives a Danish perspective on the concept of "beneficial ownership". The author concludes that the recent Danish case law on the topic of beneficial ownership are in line with EU law and international tax law and in particular, with the OECD proposal on beneficial ownership.