

used for governmental purposes or purposes related to the goals of the international organisation.

On 1 December 2017 the Supreme Court reiterated that the UN Convention codifies principles of international law in relation to the immunity of jurisdiction (HR 1 December 2017, ECLI:NL:HR:2017:3054, JIN 2018,15).

The Supreme Court ruled that, based on Dutch Procedural Code, the principle of immunity of jurisdiction must also be presumed in any litigation proceeding where the foreign state or international organisation does not appear as defended. From 2018, any Dutch judge is obliged to determine in such default proceeding if the foreign

state or international organisation falls under the principle of immunity of jurisdiction. Both cases show that litigation proceedings against foreign states and international organisations can be troublesome with regards to enforcement and concerning default proceedings.

The unique history and purpose of common law courts of equity

By William M. Kelleher

When it comes to the common law, England started it all really. In the late Middle Ages, England developed a Court of Chancery headed by the Lord Chancellor that handled cases in which an equitable remedy was sought. While this may be somewhat of an oversimplification, the de-

fining distinction between civil courts of law and courts of equity (such as Chancery) is that courts of law have exclusive jurisdiction whenever monetary damages can make a party whole. Thus, for example, if a party needed an injunction, and the jurisdiction at issue had both law courts and a court of equity, that party would look to the court of equity for that injunction be-

cause monetary damages would not make it whole.

In the late 1800s, after many years of declining importance, the English Parliament dismantled the English Court of Chancery. Likewise, most of the jurisdictions in the United States that inherited equity courts from England have fused their equity courts with their law courts, including the United States federal court system.

However, a few American states did not merge their equity courts. Most prominent among the surviving courts of equity is likely the Delaware Court of Chancery. That court is internationally known for being one of the world's premier venues for the resolution of corporate governance and control disputes. This prominent position partly results from the fact that so many corporations and other business entities are domiciled in Delaware. The Delaware Court of Chancery is routinely tasked with deciding whether huge corporate mergers can go forward or should be enjoined, and such questions often have to be answered in an expedited time frame of only a few days or weeks. That this modern court can – and very often does – act so ex-

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peditiously is particularly interesting, as one of the frequent criticisms made centuries ago of the now-defunct English Court of Chancery was that it act-

ed too slowly.

For those that are curious, in addition to Delaware, the US states of New Jersey, Mississippi and Tennes-

see are among the few US states that retain, in one form or another, courts of equity.

Italy introduces 3% web tax

By Prof Stefano Loconte
and Angela Cordasco

Digital transactions are no longer exempted from taxation: the 2018 Italian Budget Law has introduced a web tax on digital-based services, which will be definitely in force from 1 January 2019.

The introduction of the tax is aimed to avoid the situation in which big players of the online market (such as Google, Amazon and Facebook) make profits in our country without being subject to an indirect taxation. Indeed, this is another attempt to counter tax evasion of billions of euros on a global scale and finally, after several attempts of the Italian Parliament since 2013 (when the new tax was originally proposed by Deputy Francesco Boccia), it has succeeded.

The new tax, that is equal to 3% of



the value of the single digital transaction (VAT excluded), will be due on supplies of services – such as online advertising, web-hosting, downloading and similar services – and will be withdrawn directly at the time of payment by the purchaser. It is worth underlining that supplies of goods have been expressly excluded from the application of the new tax.

The web tax applies not only to Italian resident taxpayers, but also to non-resi-

dents who make profits in Italy through web transactions, whether or not they have a permanent establishment in Italy.

Indeed, it should also be noted that revenues of digital companies are subject not only to the web tax, but also to the other direct taxes due in Italy, with a higher effective tax impact.

Since the aim of the introduction of the web tax is to subject to taxation the 'over the top' of the web market, the law provides that if the web-taxpayer can prove that the number of online transactions made during the entire tax year is less than 3,000 (so called 'small taxpayers'), the web tax is not due.

However, by 30 April this year, the Ministry of the Economy and Finance shall issue a special decree that will specifically indicate which kind of services will be subject to the web tax.

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