

Table of Contents

Preface	V
List of abbreviations	XIII
Literature cited in the text	XVII
List of court cases	XXI
1. The problem of double taxation	1
1.1. Basics of international law	1
1.2. Circumstances giving rise to double taxation	1
1.2.1. Taxation of worldwide income (full tax liability) in two states	1
1.2.2. Full tax liability and limited tax liability	2
1.2.3. Limited tax liability in two states	2
1.2.4. Economic double taxation	3
1.3. Elimination of double taxation	3
1.3.1. Double taxation conventions	3
1.3.2. Unilateral measures	4
2. State practice in the conclusion of DTCs	5
2.1. Conventions in international law	5
2.2. The importance of model conventions	5
2.3. The importance of the OECD Model	6
2.4. Bilateral peculiarities	7
2.5. Bringing the Tax Treaties in Line with the OECD Model	8
3. The effects of DTCs	9
3.1. The allocation of taxing rights	9
3.2. The limiting effects of DTCs	9
3.3. The relationship to domestic law	10
3.3.1. Implementation of DTCs into domestic law	10
3.3.2. Priority of DTC law	10
3.3.3. Priority of domestic law	11
3.3.4. What to consider first in practice: DTC or domestic law?	11
4. The interpretation of double taxation conventions	13
4.1. Principles of interpretation in international law	13
4.2. The use of principles of interpretation stemming from international law with respect to DTCs	16
4.2.1. Autonomy of DTC law	16
4.2.2. The importance of domestic law	17
4.2.3. The importance of the OECD Model and its Commentary	19

Table of Contents

4.2.4.	The importance of changes in the OECD Model and its Commentary	22
4.2.5.	The importance of OECD reports	25
4.2.6.	The importance of administrative practice	26
4.2.7.	The importance of other countries' court decisions	26
4.3.	The importance of interpretation rules set out in DTCs	27
4.3.1.	Art. 3(2) OECD Model	27
4.3.2.	The binding qualification of the source state according to Art. 23(1) OECD Model	30
4.3.3.	The relevance of later commentaries	33
5.	Treaty abuse	35
5.1.	Denial of treaty benefits	35
5.2.	The application of domestic anti-abuse principles?	35
5.3.	The application of abuse rules of international law?	36
5.4.	Art. 29(9) OECD Model – The Principal Purpose Test	37
6.	The structure and system of DTCs	39
6.1.	Applying the convention	39
6.2.	Persons covered	40
6.3.	Taxes covered	41
6.4.	Allocation rules	41
6.5.	Methods for elimination of double taxation	43
7.	Persons covered	45
7.1.	Full tax liability as a prerequisite for the application of the DTCs	45
7.1.1.	Full tax liability	45
7.1.2.	Effects of the DTC non-discrimination rules	46
7.1.3.	Effects of other DTCs	46
7.2.	Treaty entitlement of corporate entities that are subject to limited tax liability	47
7.2.1.	Public law corporations	47
7.2.2.	Corporate entities that are exempt from full tax liability	48
7.3.	Treaty entitlement of partnerships and/or partners	48
7.4.	Treaty entitlement and limitations	50
7.5.	Residence state in the case of dual residence	51
7.5.1.	Necessity of determining the residence state	51
7.5.1.1.	Allocation rules	51
7.5.1.2.	Method article	52
7.5.2.	Criteria	52
7.5.2.1.	Permanent home	52
7.5.2.2.	Centre of vital interests	53

7.5.2.3. Habitual abode	53
7.5.2.4. Nationality	54
7.5.2.5. Mutual agreement procedure	54
7.5.2.6. Place of effective management	54
8. Taxes covered	56
8.1. Taxes on income	56
8.2. Taxes on capital	56
8.3. Comparability	57
8.4. Inheritance and gift taxes	58
9. Allocation rules	59
9.1. Income from immovable property	59
9.1.1. Immovable property	59
9.1.2. Allocation of taxing rights	59
9.2. Business profits	60
9.2.1. Profits of an enterprise	60
9.2.2. Allocation of taxing rights	61
9.3. International shipping and air transport	67
9.3.1. International shipping and air transport	67
9.3.2. Allocation of taxing rights	67
9.4. Dividends	68
9.4.1. Dividends	68
9.4.2. Allocation of taxing rights	69
9.5. Interest	72
9.5.1. Interest	72
9.5.2. Allocation of taxing rights	72
9.6. Royalties	74
9.6.1. Royalties	74
9.6.2. Allocation of taxing rights	74
9.7. Capital gains	75
9.7.1. Alienation	75
9.7.2. Allocation of taxing rights	76
9.8. Independent personal services	78
9.8.1. Independent personal services	78
9.8.2. Allocation of taxing rights	79
9.9. Income from employment	81
9.9.1. Income from employment	81
9.9.2. Allocation of taxing rights	82
9.10. Directors' fees	84
9.10.1. Directors' fees	84
9.10.2. Allocation of taxing rights	84

Table of Contents

9.11.	Entertainers and sportspersons	85
9.11.1.	Entertainers and sportspersons	85
9.11.2.	Allocation of taxing rights	85
9.12.	Pensions	86
9.12.1.	Pensions	86
9.12.2.	Allocation of taxing rights	87
9.13.	Government service	88
9.13.1.	Government service	88
9.13.2.	Allocation of taxing rights	89
9.14.	Students	90
9.14.1.	Payments to students and business apprentices for their maintenance, education or training	90
9.14.2.	Allocation of taxing rights	90
9.15.	Other Income	91
9.15.1.	The concept of “other income”	91
9.15.2.	Allocation of taxing rights	92
9.16.	Taxation of capital	92
9.16.1.	Capital	92
9.16.2.	Allocation of taxing rights	93
10.	Methods for elimination of double taxation	94
10.1.	The importance of the method article	94
10.1.1.	Relation to the allocation rules	94
10.1.2.	Credit and exemption method	94
10.1.3.	Switch-over clauses	95
10.1.4.	No effect of the method articles	96
10.2.	Exemption method	97
10.2.1.	Effects	97
10.2.2.	Exemption from tax base	98
10.2.3.	Progression	99
10.3.	Credit method	101
10.3.1.	Effects	101
10.3.2.	Amount of allowable tax	102
10.3.3.	Maximum credit	104
11.	The implementation of treaty benefits in both contracting states	107
11.1.	Source state	107
11.2.	Residence state	108
11.3.	The importance of the evidence of taxation in the other contracting state	108
12.	The arm’s length principle of Art. 9 OECD Model	110

13. Non-discrimination	114
13.1. Scope of application of non-discrimination rules	114
13.2. Non-discrimination on the grounds of nationality	114
13.3. Non-discrimination on the grounds of the PE of an enterprise	115
13.4. Non-discrimination according to Art. 24(4) OECD Model	116
13.5. Non-discrimination in connection with the shareholders/partners of a company	117
14. Mutual agreement procedure	118
14.1. Mutual agreement procedure	118
14.2. Consultation procedure	120
14.3. Arbitration procedure	120
15. Exchange of information	123
15.1. Scope of application of the exchange of information	123
15.2. Types of exchange of information	124
15.3. Limitations on the exchange of information	125
15.4. Competence and obligation of secrecy	125
16. Assistance in the collection of taxes	127
17. Inheritance tax treaties	129
17.1. Structure	129
17.2. Scope of the convention	129
17.3. General definitions	130
17.4. Allocation of taxing rights	130
17.5. Special provisions	131
Annex 1: OECD Model Convention with Respect to Taxes on Income and on Capital (2017 update)	133
Annex 2: United Nations Model Double Taxation Convention Between Developed and Developing Countries (2017 update)	155
Annex 3: OECD Model Double Taxation Convention on Estate and Inheritances and on Gifts (1982 update)	187
Annex 4: OECD/G20 (MLI) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (2016)	195
Index	239