

Series Editor's Preface

The postgraduate program in International Tax Law at the Vienna University of Economics and Business Administration is available either as a one-year full-time or a two-year part-time program. Students attend not only a vast number of courses, for which they prepare papers and case studies, and sit numerous examinations, they also write their Master's theses. These theses are a prerequisite for the academic degree "Master of Laws (LL.M.)".

The program follows a scheme under which the Master's theses of one particular program all discuss various aspects of the same general topic. The general topic of the 1999/2000 full-time program was "Electronic commerce and taxation", that of the 1999/2001 part-time program "Transfer pricing". We had selected "Partnerships in International Tax Law" as topic of the 2000/2001 full-time program, "Exemption and credit methods in tax treaties" for the 2001/2002 full-time program, "Permanent Establishments in International Tax Law" for the 2002/2003 full-time program, and "Non-discrimination provisions in tax treaties" for the 2001/2003 part-time program. The full-time program 2003/2004 had the general topic "Triangular Cases", and the part-time program 2003/2005 dealt with "Source versus Residence in International Tax Law". The respective Master's theses were published in edited volumes.

The general topic for the 2004/2005 full-time program was "Tax Treaty Policy and Development". A common subject does not only encourage students to discuss their theses with each other, but also permits looking after the students in accompanying courses. Prof. *Jacques Sasseville* introduced the students to the subject matter at the beginning of the year. *Markus Stefaner* and *Mario Züger* held seminars in which the structure of the papers and the intermediary results were analyzed critically. It was with great commitment that they supported the students who prepared their Master's theses, and their numerous suggestions helped improve the quality of the Master's theses and, as a consequence, the quality of the present volume. In both of my functions as the scientific director of the postgraduate program and the editor of this series I wish to express my gratitude to the two colleagues.

I am grateful also to the students themselves. They pursued the program with great enthusiasm. This postgraduate program did not only give them the opportunity to talk to academics and scientifically qualified interns from all over the world and to acquire a wealth of knowledge, they also learnt how to tackle and solve complex issues using a structured approach. The Master's theses now available bear witness to this. I hope that the results of these papers will both influence the scientific discussion and be of use to tax practitioners.

Michael Lang

Editors' Preface

The present volume comprises the master thesis of full-time students attending the 2004/2005 class of the postgraduate LLM program “International Tax Law” at the Vienna University of Economics and Business Administration. The general topic of their thesis was “Tax Treaty Policy and Development”.

The importance of tax treaty policy and its reaction to current issues in tax treaty application as well as tax planning are beyond doubt. Notwithstanding the fact that the world-wide tax treaty network in large part conforms to a model tax treaty, most tax treaties contain deviations. These deviations are mostly caused by the special importance of a sector of the economy, particularities in the tax laws of the contracting states, or tax planning schemes revealed by tax administrations. Due to increasing integration of world-wide economies, such deviations gain more and more importance. At the same time, some states feel the need to not only make changes to the model treaties, but also to further deviate from the model in their negotiating position. Sometimes, a deviating negotiating position even results in a model of its own – e.g. the US-model.

This volume is dedicated to the analysis and comparison of tax treaty policies in different economic areas. It aims at highlighting differences in tax treaty policies within the economic areas and between the respective economic area and the rest of the world. Furthermore, this volume strives to show the funding of policies in the economic situation of the concerned states. An additional goal is to emphasize current issues in tax treaty application and resulting trends in the tax treaty policies of individual states as well as in the model treaties.

We considered it our task to provide the students with comments and support in writing their papers and to be available as discussion partners. In a seminary we organized in April 2004 at the Vienna University of Economics and Business Administration, the students had the opportunity to present and defend their papers. However, it was all-important to us that the students develop their own ideas. Thus, the responsibility for the contributions and the views held therein remains solely with the authors.

It was a great pleasure to work with students coming from different countries and different professional backgrounds. We would like to thank the students for their commitment and congratulate them on the successful completion of their studies.

We would like to express our gratitude to Linde publishing house for the opportunity to publish the present result of intensive research and discussions – also on behalf of all of the authors. As always, Linde publishing house facilitated the publication with their professional and unbureaucratic cooperation. Moreover, we would like to express our sincere thanks to the staff at the In-

Editors' Preface

stitute for Austrian and International Tax Law. With great dedication, they helped in coaching the students and assisted them in their research. Special thanks go to those assistants who dealt with similar topics in their research and always found time to discuss their ideas with the authors of this volume.

Markus Stefaner

Mario Züger

Table of Content

Series Editor's Preface	5
Editor's Preface	7
Table of Content	9
List of Abbreviations	11

Part I. Economic and Structural Aspects of Tax Treaty Policy

Igor Loncarevic Economic relevance of Double Taxation Conventions	17
Daniel Harris Reduction and elimination of Economic Double Taxation by Tax Treaties	39
Rainer Romstorfer Capital Export and Capital Import Neutrality in Tax Treaties	63
Danny Septriadi Tax Treaty Negotiation.....	83
Eduardo Medina Zapata The Impact of the OECD on Tax Treaties	105
Michael Petritz Most-Favoured-Nation Treatment – an Infringement of Fundamental Concepts in Tax Treaties?	127
Mahesh Shah Trends in the Application of Anti-Avoidance Concepts in Tax Treaties	151
Sunil Gupta Subject-to-Tax Clauses in Tax Treaties	177

Part II. Regional Aspects of Tax Treaty Policy

Manoela Floret Silva Xavier Tax Treaty Policy in Latin America	201
Jose Luis Carrillo Alor Trends in Tax Treaty Policy of Emerging Countries	221
Qiaoping Cai Trends in Tax Treaty Policy of Developing Countries	237
Johan Melort The Future of Tax Treaties in the EU	257

**Part III. Trends and Developments in respect of specific
Tax Treaty Provisions**

Maria Soledad González-Márquez	
Trends in Interpreting the Personal Scope of Tax Treaties	281
Beatrix Polster	
Limitation-on-Benefits-Clauses	303
Dietmar Herbrich	
The Future of Taxing Business Profits	329
Alexandre Thorr	
Trends in transfer pricing	351
Zoltan Gerendy	
The Future of Source Taxation at Passive Income	373
Lucie Wimetalova	
Trends in Taxing Employees	391
Erika Galea	
Trends in the Methods of Avoiding Double Taxation	411
Christiane Wegerer	
Refund Provisions	429
Yulia Kuleshova	
Trends in Interpretation of Non Discrimination Clauses	451
Fotini Avarkioti	
Future of the Mutual Agreement Procedure	477
César Gil Hernández	
Trends in the Exchange of Relevant Tax Information	499
Willem van der Berg	
Future of Inheritance and Gift Tax Treaties	517