

Series Editor's Preface

The postgraduate program in International Tax Law at WU (Vienna University of Economics and Business) 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, but 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 look at various aspects of the same general topic. The previous general topics were "Electronic Commerce and Taxation" (1999/2000 full-time program), "Partnerships in International Tax Law" (2000/2001 full-time program), "Transfer Pricing" (1999/2001 part-time program), "Exemption and Credit methods in Tax Treaties" (2001/2002 full-time program), "Permanent Establishments in International Tax Law" (2002/2003 full-time program), "Non-discrimination Provisions in Tax Treaties" (2001/2003 part-time program), "Triangular Cases" (2003/2004 full-time program), "Tax Treaty Policy and Development" (2004/2005 full-time program), "Source versus Residence in International Tax Law" (2003/2005 part-time program), "The Relevance of WTO Law for Tax Matters" (2005/2006 full-time program), "Conflicts of Qualification in Tax Treaty Law" (2006/2007 full-time program), "Taxation of Artistes and Sportsmen in International Tax Law" (2005/2007 part-time program), "Fundamental Issues and Practical Problems in Tax Treaty Interpretation" (2007/2008 full-time program), "Dual Residence in Tax Treaty Law and EC Law" (2008/2009 full-time program), "Taxation of Employment Income in International Tax Law" (2007/2009 part-time program), "The EU's External Dimension in Direct Tax Matters" (2009/2010 full-time program), "History of Tax Treaties" (2010/2011 full-time program), "Permanent Establishments in International and EU Tax Law" (2009/2011 part-time program), "International Group Financing and Taxes" (2011/2012 full-time program), "Limits to Tax Planning" (2011/2013 part-time program), "Exchange of Information for Tax Purposes" (2012/2013 full-time program), "Tax Policy Challenges in the 21st Century" (2013/2014 full-time program), "Global Trends in VAT/GST and Direct Taxes" (2013/2015 part-time program) and "Non-Discrimination in European and Tax Treaty Law: Open Issues and Recent Challenges" (2014/2015 full-time program). The respective Master's theses were published in edited volumes.

The general topic for the 2015/2016 full-time program was “Preventing Treaty Abuse”. A common subject not only encourages students to discuss their theses with one another, but also permits supervision of the students in accompanying courses. Jacques Sasseville introduced the students to the subject matter at the beginning of the program. Daniel W. Blum and Markus Seiler held seminars in which the structure of the papers and the intermediary results were critically analyzed. It was with great commitment that they supported the students who were preparing their Master’s theses. Their numerous suggestions helped to improve the quality of the Master’s theses and, as a consequence, the quality of the present volume. In my function both as the scientific director of the postgraduate program and the editor of this series I would not only like to thank those two colleagues for their excellent engagement and efforts but also to express my gratitude to them.

I am also grateful to the students themselves. They pursued the program with great enthusiasm. This postgraduate program not only gave them the opportunity to talk to academics and scientifically qualified interns from all over the world and to acquire a wealth of knowledge, but they also learned 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.

Vienna, August 2016

Michael Lang

Editors' Preface

The present volume comprises the Master's theses of the full-time students attending the 2015/16 class of the postgraduate LL.M. program "International Tax Law" at WU (Vienna University of Economics and Business). The general topic this year was "Preventing Treaty Abuse", a topic which – thanks to its pivotal role in the OECD's Base Erosion and Profit Shifting (BEPS) project – has recently gained great attention in the tax world and is bound to become even more important in the years to come, when the OECD proposals are going to be implemented.

The intention behind choosing "Preventing Treaty Abuse" as the general topic for the master theses of the 2015/2016 LL.M. class was to assemble a collection of contributions which explore not only the very fundamentals of the abuse concept found around the globe, but also to analyze the existing measures to counter abuse under domestic and tax treaty law and to provide a profound analysis of the newly proposed anti-abuse measures of the BEPS action plans. The topics therefore cover a wide range of both topical policy and legal issues in relation to treaty abuse and its prevention. The majority of contributions analyze the proposals put forward by the OECD in BEPS action items 6 and 7, e.g. the insertion of a Limitation-on-benefits clause or a principal purpose test. However, also a closer look has been taken at the historical roots of the phenomenon of treaty abuse and its prevention. It is analyzed which lessons can be learnt from the US tax treaty policy and which effects the intensified fight against treaty abuse will have from a Non-OECD member state perspective. Also the question which impact the fundamental freedoms enshrined in primary EU law might have on anti-avoidance rules is studied. Finally, the relation between domestic and treaty based anti-avoidance is analyzed in great detail, identifying the methodical problems of ensuring a sound and abuse safe legal framework.

The topics we have chosen required the students to rise to a huge challenge. Some students had to deal with problems that have not yet gained much attention in literature. Others were required to analyze issues that, in contrast, have already generated many decisions by courts as well as scholarly comments in literature. Either way, great effort was needed to meet the requirements we imposed on the students. It was our task and our pleasure to provide the students with critical support at all stages of their research and during the writing of their theses'. Motivating them to develop their own ideas, to go the extra mile in their research and

then present their achievements was likewise demanding and rewarding. We would like to thank the students for their commitment and congratulate them on the successful completion of their studies.

In addition, we would like to express our sincere gratitude to the Linde publishing house for the opportunity to publish this volume. Having Linde as a partner means great support and the professional cooperation needed to make a project such as the one at hand a success. Sincere thanks are also given to Ms Margaret Nettinga, who contributed to the completion of this book by revising the Master's theses from a linguistic point of view.

Vienna, August 2016

Daniel W. Blum

Markus Seiler