

The EC Tax Journal

BOOK REVIEWS

TAX TREATIES AND EC LAW

Edited by Wolfgang Gassner, Michael Lang and Eduard Lechner Published by Kluwer Law International (October 1997)

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Tax Treaties and EC Law originated as a seminar tackling the subject of Double Taxation Conventions and EC Law which was held on 13th May 1996 at the University of Economics and Business Administration in Vienna, in co-operation with the Austrian branch of the International Fiscal Association.

The ten Chapters therefore each tackle a different area of impact of EC Law on tax treaties. As the preface rightly states, in view of the direct applicability of numerous EC law provisions, all the questions discussed in this work are, as well as being of academic interest also of substantial practical importance.

Chapter One, by Dr Moris Lehner of the Freie Universität Berlin addresses how competence is allocated between Member States and the Community to abolish double taxation within the scope of EC Law.

Chapter Two, by Dr Michael Lang of the Vienna University of Economics and Business Administration deals with the question of the binding effect of the EC Fundamental Freedoms on tax treaties and concludes that there is no special justification for discrimination that arises through a tax treaty.

Chapter Three, by Dr Martin Jann of the Vienna University of Economics and Business Administration discusses how EC Law affects benefits available to non-resident taxpayers under tax treaties and includes an interesting discussion on the justification of discrimination.

Chapter Four, by Dr Eduard Lechner of the Institut für Recht der Wirtschaft of the University of Vienna and Deloitte & Touche, Wein addresses the serious implications of EC Law on the exemption of losses under tax treaties and provides an interesting proposed solution which is in compliance with EC Law.

Chapter Five, by Mag Joseph Schuch of the Vienna University of Economics and Business Administration deals with whether EC law will transform tax treaties into most-favoured-nation clauses.

Chapter Six, by Mag Gerald Toifl of the Vienna University of Economics and Business Administration deals with the EC fundamental freedoms and non-discrimination provisions in tax treaties and contains an interesting discussion on the legal consequences of an infringement of treaty law or EC law with particular reference to Austria.

Chapter Seven, by Dr Michael Tumpel of the Institut für Recht der Wirtschaft of the University of Vienna addresses residence under Treaty law and the significance for the parent-subsidiary and merger directives.

Chapter Eight, by Dr Andrea Lahodny-Karner of the Vienna University of Economics and Business Administration deals with transfer pricing, the mutual agreement procedure and EC arbitration procedure and concludes that the Arbitration Convention has represented a step in the right direction.

Chapter Nine, by Mag Christopher Urtz of the Vienna University of Economics and Business Administration discusses the exchange of information according to the EC mutual assistance directive and tax treaties in Austria and includes an interesting discussion of secrecy as required by Article 26 of the OECD Model and the EC Mutual Assistance Act, adopted in Austria.

Finally, Chapter Ten by Dr Claus Staringer of the Institut für Recht der Wirtschaft der Universität Wien deals with tax credits according to section 10(3) of the Austrian Corporation Tax Act and Treaty Law.

In summary, this book is an extremely interesting collection of papers which addresses familiar and new issues from thought provoking and stimulating perspectives, especially the Austrian experience and economic standpoint.

VISIONS OF THE TAX SYSTEMS OF THE XXIST CENTURY

By the International Fiscal Association

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This book is the published proceedings of the Symposium held in Geneva in 1996 during the 50th Congress of the International Fiscal Association and contains two keynote papers, one by Professor Charles E McLure, Jr of the Hoover Institution, Stanford University on tax policies for the XXist century and the other by Dr

Mervyn King, Chief Economist of the Bank of England on tax systems in the XXIst century. There is also a summary of the panel discussion.

Both papers are fascinating reading and the report of the panel discussion which takes place between the paper's authors and Professor Sven-Olof Lodin, deputy Director General of the Federation of Swedish Industries, Mrs Milka Casenegra de Jantscher former deputy director of the Tax Administration of Chile and former Head of the Tax Administration Division of the Fiscal Affairs Department, International Monetary Fund, Washington, Professor Mario Monti, Member of the European Commission, Professor Wolfgang Ritter, chairman of the Tax Committee of the Federation of German Industries and Dr Partho Shome, Director of National Institute of Public Finance and Policy, New Delhi is illuminating.

In the light of the recent United Kingdom budget, Professor McLure's predications as to the shift from public financing of social security to privatisation, the lowering of direct taxation and the shift from income based taxes to consumption based taxes with an increase in the use of "green" taxes are especially pertinent.

Mervyn King's paper agrees that there is likely to be a marked shift from income to consumption taxation, and sees another large shift influenced by the size and scope of the many international transactions now taking place, but he also deals with the fascinating question of how changes in information technology will pose major questions about the ability of the tax authorities of the future to observe and monitor the tax base.

Amanda Hardy