

# Preface

This volume in the “Series on International Tax Law” includes the master’s theses of the full-time students attending the 2020/21 class of the postgraduate LL.M. programme in International Tax Law at WU (Vienna University of Economics and Business). The general topic for this year is “Access to Treaties”. The access to tax treaty benefits is crucial for taxpayers in order to obtain treaty benefits. However, the application and interpretation of the tax provisions of the OECD Model Tax Convention is not always clear and, in fact, can often cause various difficulties. In this context, the BEPS project issued by the OECD has also led to many new provisions regarding the application of tax treaties in the Model Tax Convention. Against this background, given the importance of a comprehensive analysis of the access to Tax Treaties, this volume aims to develop academic insights, provide practical guidance, and enable an in-depth analysis of the specific aspects of this topic as well as to generate new and innovative approaches to issues arising in relation to the scope of the OECD MC.

Part I of this volume is titled “Tax Treaty Interpretation” and contains contributions that deal with the general theory of Tax Treaty access. The reader is provided with a background on the issues related to the legal status of the preamble for interpretation and the question of citizenship for the applicability of the agreement.

Part II is titled “Persons and Residents” and contains contributions that deal with the personal scope. The reader is first presented with an overview of the role and function of article 1 paragraph 1 OECD MC as well as the role and function of the term “Resident Person” within the OECD MC. Next, the reader is taken through chapters that deal with the tax treaty access to “hybrid entities”, the purpose of the saving clause in article 1 paragraph 3 OECD MC, article 4 paragraph 1 of the OECD MC and, in this context, the application of the tie-breaker as well as the personal Scope of the Mutual Agreement Procedure. Part II concludes with an analysis of the relation of the general rule of article 1 OECD MC with article 24 OECD MC regarding treaty access and the question whether article 24 amplifies the scope of article 1 in each of the various clauses.

Part III is titled “Taxes covered” and contains contributions that deal with the objective scope. First, the reader is provided with a background on the issues related to the taxes covered and the scope of double taxation conventions with several chapters geared towards discussing the characteristics of a tax and the list of taxes according to article 2 paragraph 3 of the OECD Model Conventions 2017. In addition, the reader is presented with a specific chapter geared towards taxes on estates and inheritances, and gifts according to article 2 paragraph 1 and 2 OECD MC 1982.

The final part of the volume, Part IV, is titled “Treaty shopping and Abuse” and contains contributions that deal with non-due treaty benefits and anti-abuse provisions. First the reader is provided with a background on the issues of beneficial ownership, especially against the background of its application in the distributive rules of passive income and its qualification as an anti-abuse provision. The reader is then taken through the developments in respect of the history and purpose of LOB clauses, the interpretation of all the provisions of article 29 OECD MC, the interrelation and possible overlapping of the LOB and the PPT clause and, lastly, the mode of application of the LOB and the question whether a direct application or a refund might be more appropriate if based on each LOB provision and the objective tests.

Although, without a doubt, the complexity of these topics provided the students with a formidable challenge, they have risen to the occasion with an impressive academic compilation on this topic. It was our pleasure to provide them with the support they needed for completing their research endeavours. We thank all of 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 provides the professional cooperation needed to make a project such as this a success. Sincere thanks also to Jenny Hill and Margaret McKinney who contributed to the completion of this book by revising the master’s theses from a linguistic perspective. Finally, it should also be mentioned that all opinions expressed in this book are personal opinions of the authors of each chapter and do not reflect the position of any organization to which the authors or editors are affiliated.

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