

Series Editor's Preface

The postgraduate program in International Tax Law at the Vienna University of Economics and Business (WU) 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 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) and "International Group Financing and Taxes" (2011/2012 full-time program).

The general topic for the 2011/2013 part-time program was "Limits to Tax Planning". 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. Luc De Broe* introduced the students to the subject matter at the beginning of the program. *Dr. Karin Simader* and *Dr. Elisabeth Titz* 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 prepared 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 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 also grateful 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 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

Editor's preface

The present volume comprises the master theses of the part time class of 2011/13 of the postgraduate LLM program “International Tax Law” at WU (Vienna University of Economics and Business). The topics of all individual theses root in one common general topic: Limits to Tax Planning.

International tax planning and its limits have continuously been hot topics in the academia as well as in tax practice over the last years. Tax planning may affect both, a taxpayer's overall tax burden and the revenues of the countries in which the taxpayer is doing business. Naturally, these countries and their tax authorities are focusing on measures that shield their tax revenues from international tax planning. Especially nowadays, the topic of tax planning and its limits is therefore increasingly in the focus of these countries as well as of international organizations, such as the OECD.

This book provides for an analysis of various measures and phenomena of tax planning, such as corporate residence, the set-up of partnerships and holding companies, transfer pricing, and the shopping into tax treaties, specific tax treaty rules and EU Directives. The main focus of this book lies on countermeasures to tax planning: CFC rules, thin cap rules, interest barrier rules and tax collection at withholding are examined as examples for national measures. The tax treaty law measures presented in this book include mutual assistance, LOB, subject-to-tax and activity clauses, the beneficial ownership concept, as well as anti-abuse rules of specific allocation rules. Within the EU, anti-tax planning measures must respect Union law, which includes the fundamental freedoms, as well as provisions of secondary EU law, such as the Savings, Merger, Parent-Subsidiary and Interest and Royalty Directive, but also the harmonized area of indirect taxes and the CCCTB.

The students achieved to identify the core issues of their individual topic and to present them in a scientific and comprehensive way. They have done a great job in writing their theses in close cooperation with each other, which has been the foundation for creating this comprehensive book. It impressively reflects the great variety of the students' personal, cultural, and professional backgrounds.

It was our task and pleasure to provide the students with critical support at all stages of their research and to motivate them to develop their own ideas and thereby contribute to the scientific discussion. We would like to thank the students for their commitment and congratulate them on the successful completion of their studies.

Additionally, we would like to express our sincere thanks to the publisher *Linde* for the opportunity to publish this volume. Sincere thanks are also given to Ms *Margaret Nettinga* who contributed valuably to the completion of this book by revising the theses from a linguistic point of view.

*Karin Simader
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