

Preface

This volume in the “Series on International Tax Law” includes the master’s theses of the full-time students attending the 2019-20 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 “Hybrid entities in tax treaty law”. Just as tax avoidance has been a topic in vogue for the past few decades, aggressive tax planning involving exploitation of differences in the tax treatment of entities in two or more jurisdictions leading to the erosion of the tax base of jurisdictions has also been gaining significance in academic and tax policy related discussions. This is particularly relevant in the case of hybrid entities that are classified differently for tax purposes in different jurisdictions. These discussions were amplified owing to the OECD/G-20 Base Erosion and Profit Shifting (BEPS) Project in which, as part of Action Plan 2, recommendations were made regarding the design of domestic rules and the development of treaty provisions that would neutralize the tax effects of hybrid mismatch arrangements.

Against this background, given the importance of a comprehensive analysis of the treatment of hybrid entities in tax treaty law, 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 tackling hybrid mismatch arrangements leading to base erosion and profit shifting. Specifically, Part I of this volume, titled “Hybrid Entities and Tax Treaty Law” contains contributions that deal with how tax treaty benefits are granted to hybrid entities and how tax treaty policy is gearing toward preventing aggressive tax planning involving such entities. However, there are regional developments, particularly at the European Union (EU) level, that obligate EU Member States to coordinate the way that they treat hybrid entities for direct tax purposes. Part II of this volume, titled “Hybrid Entities and EU Law”, contains contributions that deal with these developments.

First, the reader is provided a background on the issues related to hybrid entities in tax treaty law with several chapters geared towards discussing how hybrid entities were treated under treaties prior the BEPS Project, how domestic courts have developed different approaches towards tackling this issue, and how different model conventions such as the OECD Model, the UN Model, and the US Model or specific countries such as the United States have been dealing with the question. The reader is then taken through the developments in respect of the tax treaty treatment of hybrid entities that have come about as a result of the BEPS Project with chapters geared towards exploring the implications of Action Plan 2, the newly added Articles 1(2) and 1(3) of the OECD Model Convention, the newly proposed domestic or treaty based anti-abuse rules such as limitation on benefits provisions and domestic controlled foreign corporation (CFC) rules or

the OECD Multilateral Instrument. Moving ahead, the reader is presented several chapters on how hybrid entities are treated under tax treaty law in specific situations such as collective investment vehicles (CIVs) or trusts and foundations and the interaction of hybrid entities with the non-discrimination provision in tax treaties, domestic group taxation regimes, or the newly proposed measures under Pillar 2 of the Inclusive Framework's work on taxing the digitalized economy from a tax treaty perspective. In addition, the reader is also presented with specific chapters geared towards tax treaty issues surrounding reverse hybrid entities and hybrid permanent establishment structures. This comprises Part I of this volume.

Part 2 of this volume consists of several chapters that discuss how hybrid entities are treated under EU law in the area of direct taxation. First, the reader is presented an overview of how primary law could have an impact on hybrid entities, especially in light of the jurisprudence of the Court of Justice of the European Union (CJEU) on this topic. Then, the reader is taken through chapters that deal with how hybrid entities are considered under specific direct tax directives such as the Parent Subsidiary Directive, the Interest and Royalty Directive, the Merger Directive, and the Anti-Tax Avoidance Directive (ATAD) with specific focus on the provisions of the ATAD that are specifically tailored to deal with such arrangements. Finally, this part is concluded with an analysis of a solution that has been proposed for the treatment of hybrid entities under EU law that allows for uniform classification.

Although, without a doubt, the complexity of these topics provided the students with a steep challenge, the students 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 Ms Jenny Hill and Ms Margaret McKinney who contributed to the completion of this book by revising the master's theses from a linguistic perspective. Finally, needless to say, the 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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