

Settlement of Disputes in Tax Treaty Law

Michael Langford and Martin Giger



Settlement Of Disputes In Tax Treaty Law Eucotax Series On European Taxation 6

Christoph Marchgraber



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Procedural Rules in Tax Law in the Context of European Union and Domestic Law Michael Lang, Pasquale Pistone, 2010-10-29 This timely work seeks to identify the differences between the domestic procedural rules and principles of an array of EU and non EU countries and analyse them in the context of European Union law requirements Specific attention is paid to the impact of State aid rules on procedural law in tax matters on constitutional law requirements as well as tax treaty law issues Since customs law is already harmonized in the form of the Community Customs Code it serves as a starting point to examine the extent to which harmonized procedural law is possible Harmonized procedural law is also discussed in the context of a possible future Common Consolidated Corporate Tax Base as well as an EU tax levied at the European Union level

The Impact of Tax Treaties and EU Law on Group Taxation Regimes Bruno da Silva, 2016-07-11 Should the income of a corporate group be taxed differently solely because the traditional structure of the income tax system considers each company individually Taxation affects business decisions including location the form in which business is carried out and the efficient allocation of company resources Disparities differences arising from the interaction of different tax systems and obstacles distortions created by domestic legislation arising from differences between domestic and cross border situations both become more acute when a business chooses to set up or acquire other companies thus forming a group usually operating in multiple jurisdictions Responding to such ever more common developments this book is the first in depth analysis of how tax treaties and EU law influence group taxation regimes Among the issues and topics covered are the following analysis of the different tax group regimes adopted by different countries advantages and disadvantages of a variety of models application of the non discrimination provision of Article 24 of the OECD Model Tax Convention to group taxation regimes application of the fundamental freedoms of the TFEU to group taxation regimes following the three step approach adopted by the EU Court of Justice uncertainty raised by the landmark Marks interrelations between tax treaties and EU Law in the context of tax groups and per element approach The analysis considers concrete examples as well as relevant case law With its analysis of the standards required by the two sets of norms tax treaties and EU law and their interaction particularly in terms of non discrimination this book sheds clear light on ways to overcome the disparities and obstacles inherent in group taxation regimes As a thorough survey of the extent to which the interpretation of tax treaties and EU law affect group taxation regimes this book has no peers All taxation professionals whether working in EU Member States or in EU trading partners will appreciate its invaluable insights and guidance

International Juridical Double Taxation from an Ability-to-Pay Perspective under EU Law Maria Júlia Ildefonso Mendonça, 2023-01-22 The hurdles emerging from the parallel exercise of Member States tax sovereignty have been examined by the CJEU and intensely discussed by scholars By uncovering a paradox in the CJEU s case law this groundbreaking book provides a constructive alternative to the deadlock created by the CJEU when ruling that international juridical double taxation although constituting an obstacle to

free movement is not contrary to EU law The book the first in depth treatment of this perspective enables taxpayers facing international juridical double taxation to understand how their ability to pay is protected under EU law and the limitations that protection faces Every aspect of the matter is rigorously examined including the following important differences between the traditional notion of double taxation and the current definition under Council Directive 2017/1852 legal means and methods designed to eliminate international juridical double taxation and the policies underlying them freedoms of movement as prohibitions that limit the exercise of Member States taxing powers consideration of expenses related to economic activity and personal and family circumstances and in depth discussion of taxation of income derived from source versus residence Member State Throughout the book the author refers to the case law of the CJEU on both international juridical double taxation and taxpayers ability to pay as well as the relevant academic literature allowing the reader to understand the current state of EU law on these matters and their relation The author s remarkable venture into this challenging field with a deeply informed construction of instrumental categories and critical review of their content culminates with a viable reformulation of the serious and growing problem of international juridical double taxation The book will be welcomed by taxation professionals in practice policymakers and academia *EU Tax Law and Policy in the 21st Century* Werner Haslechner, Georg Kofler, Alexander Rust, 2016-04-24 Major changes in EU tax law demand an analysis of not just the current state of the field but also forthcoming EU level policy initiatives and their likely implications for taxpayers regulators and national legislatures alike This book the first in depth commentary and analysis of such developments offers exactly that Twenty EU tax and policy experts examine the impact of EU Treaty provisions and recent ECJ case law on EU tax law and provide well informed assessments of current and anticipated EU tax policy initiatives and their potential impacts Taxpayers their advisors national tax administrations and national legislators will find relevant chapters to aid their understanding of and to allow them to proactively address EU tax law issues such as non discrimination state aid rules fundamental freedoms discretionary power of national tax authorities tax competition in the internal market cross border exchange of tax information corporate tax harmonization EU and Member States external relations and the limits of judicial authority in tax policy As an authoritative detailed guide to recent and future developments in EU tax law with highly informed insights into their practical effect this book will be a welcome addition to the arsenal available to tax practitioners dealing with European tax matters as well as interested policymakers and academics National Legal Presumptions and European Tax Law Claudia Sanò, 2016-04-24 Determining the burden of proof in tax law cases is usually what contributes most to the case s outcome Legal presumptions those inferences that are laid down in the law rather than being the result of the court s reasoning play a critical role in such determinations This very useful book uncovers the details of such presumptions which are shared among European tax law systems thus revealing a remarkably clear path through the course of a tax law case in any Member State in the context of EU law Referring to both legal theory and relevant case law the

author assesses whether and to what extent national legal presumptions may be deemed to be consistent with EU law and when this is not the case under which conditions they may be reconciled The analysis unfolds along such avenues as the following the meaning of the concept of legal presumption as developed by legal theory and authoritative academic literature special considerations regarding presumptions in customs law VAT and direct taxation harmonized and unharmonized how tax authorities use presumptions to simplify the assessment of tax and tackle tax avoidance or evasion particularly in cross border situations justifications asserted by the Member States in relation to restrictions on fundamental freedoms and standards of compatibility for national legal presumptions with EU law resulting from CJEU case law With reference to national experience using Italy and Belgium as specific examples the analysis culminates in an elaboration of criteria for legal presumptions capable of meeting the test of compatibility with EU law As an in depth investigation of possible inconsistencies and conditions for the coexistence of EU and Member State tax law this book will be welcomed by both taxation authority officials and taxpayer counsel The understanding it imparts on the actual impact of EU law on the recourse to legal presumptions by national tax legislatures and the protection of European taxpayers is unsurpassed Limitation on Benefits Clauses in Double Taxation Conventions Félix Alberto Vega Borrego, 2016-04-24 Upfront planning for international structures is crucial to ensure coverage under bilateral tax treaties However because treaty shopping whereby a third party national or a corporation sets up a shell company in order to minimize or eliminate income tax can potentially be facilitated by taking advantage of double taxation conventions companies must carefully scrutinize and comply with requirements found in the limitation on benefits LOB clauses in tax treaties This second edition of the only publication directly analysing the legal framework and application of LOB clauses in double taxation conventions adds detailed coverage of such major recent developments as the recent tax treaties concluded between the United States US and European Union EU Member States the last version of the US Model Tax Convention 2016 the OECD G20 project on Base Erosion and Profit Shifting BEPS and relevant new rulings handed down by the European Court of Justice Among the subjects and topics covered are the following definition of the concepts of person and residence provided in the OECD model concept of beneficial owner application of domestic anti avoidance rules adoption of specific provisions to counter the phenomenon of treaty shopping determination of sufficient nexus with the state of residence or a real business purpose and possible consequences of the incompatibility of LOB clauses with EU law This new edition will continue to provide tax attorneys tax professionals and government officials with the perspective needed for effective decision making in this realm of international taxation Academics and researchers in taxation will also appreciate the in depth and up to date coverage of this important subject *Selectivity in State Aid Law and the Methods for the Allocation of the Corporate Tax Base* Jérôme Monsenego, 2018-06-05 High profile cases before the European Commission and the EU courts have intensified scrutiny of the link between State aid law and the taxation of multinational enterprises Certain decisions have raised questions about fiscal sovereignty and the interpretation of the rules

on State aid in particular the notion of selectivity which have not been addressed in detail by existing research The combination of the evolution of the notion of selectivity in State aid law on the one hand and the need to adapt the rules for the taxation of the profits of multinational enterprises to the modern economy on the other hand makes it necessary to assess whether existing as well as alternative rules for the allocation of the corporate tax base might entail a selective treatment This book responds to the need of research in the area of State aid law applied to the taxation of the income of multinational enterprises focusing on the crucial concept of selectivity The analysis proceeds with a detailed investigation of the theoretical issues that arise when applying the selectivity test in State aid law to three methods for the allocation of the corporate tax base between the members of multinational enterprises the arm's length principle transfer pricing safe harbours and systems of formula apportionment This research project is conducted at a theoretical level without considering national provisions or particular tax treaties The author suggests an analytical framework on the application of the selectivity test to the three allocation methods It is concluded that these methods are likely to have certain selective features with varying possibilities to be justified by the inner logic of a corporate income tax system It is also demonstrated that selectivity occurs for different reasons due to the different rationales of the three allocation methods This book is intended at contributing to the academic literature on the impact of State aid law on the principles for the taxation of the income of multinational enterprises The outcome of this research project is also relevant for lawmakers who need to reconcile the imperatives of State aid law with the design of rules that match their tax policies as well as for judges or lawyers who apply the rules on State aid to tax provisions

Integration Approaches to Group Taxation in the European Internal Market Ioanna Mitroyanni, 2008-10-13 The creation of a group taxation framework to subject affiliated entities resident in more than one EC Member State to a single set of rules is an experiment without precedent Group taxation normally deals with tax liability in the context of a single jurisdiction There is no system of group taxation worldwide which embraces more than one fiscal jurisdiction under a single regulatory umbrella This thought provoking work explores the prospect for creating a group taxation system extending across national borders in the EC The objective is to specify what shape the elements of such a system should take as well as to identify the areas of complexity or probable impasse Among the topics covered The relevant jurisprudential and legislative framework of the European Internal Market A survey of the tax systems of Canada Switzerland and the US with a focus on the principles pertaining to the division of power between the federal and sub federal tiers The policies for corporate taxation in integrated markets Administrative concerns compliance enforcement dispute resolution and re assessment of tax liability Tests for entitlement to group membership Tax base integration Territorial delineation of the group and Formulary apportionment In sum this book provides valuable insights into an area of significant importance to taxpayers their advisors and policymakers as well

EU Citizenship and Direct Taxation Erik Ros, 2016-04-24 Freedom of movement is a key principle of the European Union EU resulting in the right of every EU citizen to move and reside freely within the EU Many

EU citizens work in other Member States than their Member State of origin Direct taxes are not as such covered in the treaties and therefore have much smaller bases for harmonization at EU level than indirect taxes As a result decisions of European Court of Justice ECJ on the clash between the EU principle of free movement and Member States direct tax rules have a significant effect on national direct tax systems This book focuses on the relation between free movement rights of EU citizens and the legal autonomy of Member States in the area of direct taxation and will immediately engage tax practitioners and scholars The author asks and answers the question Has the willingness at EU level to make EU citizenship a key driver behind the integration process come at the expense of national direct tax autonomy The book s incomparably thorough analysis of the distinctive evolution mainly via ECJ case law of the relation between the EU principle of free movement of persons and Member States direct tax rules includes in depth discussion of the following elements and more the concept of EU citizenship in the EU s constitutional and institutional development how the ECJ has interpreted the concept of free movement with regard to economically inactive persons how the notion of EU citizenship has widened the ECJ s view on treaty access how the ECJ has addressed the clash between free movement of persons and direct taxation in the EU s constitutional context and numerous tax policy initiatives with regard to EU citizens before and after the Treaty of Lisbon This is the first book to investigate in such detail how the ECJ has tried to reconcile specific national direct tax rules with the general EU principle of free movement of persons from the perspective of EU citizenship This book explains that the ECJ is in the process of reconceptualizing the market freedoms relating to the free movement of persons also in the area of direct taxation as part of a broader EU citizenship right for all economically active EU citizens to pursue an economic activity in a cross border context a right beyond the aim of realization of the internal market As an extremely important analysis of the influence of EU law on the direct tax autonomy of Member States this book is sure to be itself of great influence in the practice and study of taxation in the EU

Double (Non-)Taxation and EU Law Christoph Marchgraber, 2016-04-24

Everywhere new tax rules are under development to engage with the ever increasing complexity and sophistication of aggressive tax planning and to reverse the tax base erosion it leads to The most prominent initiative in this context is the Base Erosion and Profit Shifting BEPS project of the OECD Although double non taxation is among the main issues the BEPS project intends to address this book shows that this phenomenon has not yet been fully understood Focusing on the fundamental freedoms and the State aid rules of the EU this book thoroughly explains the nature of double non taxation from an EU law perspective its relation to double taxation and the impact of EU law on these phenomena Among the issues dealt with in the course of the analysis are the following locating the gaps and inconsistencies among domestic tax systems exploited by taxpayers hybrid mismatch arrangements as a prime example of double non taxation political efforts undertaken within the EU in order to address double taxation and double non taxation double non taxation in the European VAT system the convergence of the fundamental freedoms and the State aid rules the ECJ s dilemma with regard to juridical double

taxation the deviating approach with regard to economic double taxation the potential impact of the ECJ's case law on the EU law compatibility of double non taxation The tax jurisprudence of the ECJ is referred to and comprehensively analysed throughout this whole book A final chapter provides an outlook on possible developments in the future By providing the first in depth analysis of EU law's impact on double non taxation and the double taxation relief standards with which it is intimately related this book takes a giant step towards greater legal certainty in this challenging area of tax law It will quickly take its place as a major practical analysis which benefits tax authorities scholars and tax practitioners across Europe and even beyond

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