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The Nordic Multilateral Tax Treaty

as a Model for a Multilateral EU Tax Treaty

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The Nordic Multilateral Tax Treaty as a Model for a Multilateral EU Tax Treaty

Why this book?
Despite the EU internal market, income tax treaties concluded between the EU Member States are still bilateral. Only the Nordic countries (Denmark, the Faroe Islands, Finland, Iceland, Norway and Sweden) have concluded a multilateral income tax treaty. The treaty is one of the few multilateral income tax treaties existing worldwide, and it has functioned fairly well. It is based on the OECD Model Convention but modified to meet the needs of a multilateral treaty.

If the Nordic multilateral tax treaty would be modified to better comply with the requirements of EU law, it could provide a good model for a multilateral EU tax treaty covering all EU Member States. Such a multilateral EU tax treaty would abolish many of the obstacles caused by the unintegrated direct tax systems of the Member States to the functioning of the internal market.

This book first examines the requirements that EU tax law puts on a multilateral EU tax treaty and then studies the Nordic multilateral tax treaty, article by article, with the purpose of answering the question of how the Nordic treaty should be modified in order for it to function as a model for a multilateral EU tax treaty. The book is essential reading for those interested in the EU law issues related to tax treaties, as well as for anyone interested in the details of the Nordic multilateral tax treaty.

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Table of contents

Sample chapter

Introduction to the Topic

1.1. International double taxation as an obstacle to the EU internal market

Internal market

Economic integration of the EU Member States and the creation of an internal market are the most important objectives of the European Union and the EU founding treaties. These objectives are achieved by establishing an internal market and an economic and monetary union.[1] Obstacles, including tax obstacles, to the free movement of goods, persons, services and capital must be abolished.[2] Taxes may not prevent or restrict the free movement of goods, persons, services or capital between the EU Member States. The laws, including tax treaties, of the Member States must be coordinated to the extent required for the functioning of the internal market.[3]

International double taxation

Despite the European Union, the EU Member States have broad sovereignty in the area of direct taxation. Each Member State decides the criteria that determine the scope of direct taxation in that particular state. However, the Member States must exercise their taxing powers consistently with their obligations under the EU founding treaties (primary EU law) and the legislative provisions enacted on the basis of such treaties (secondary EU law). Presently, there are only four Council directives on direct taxes,[4] which leaves the area of direct taxation scarcely unharmonized. Each EU Member State has its own tax system which differs from those of the other Member

1. Art. 3 *Treaty on European Union* (*TEU*).
2. Arts. 18, 21, 45, 49, 56 and 63 *TFEU*.
3. Art. 5 *TEU*.
4. These are the Parent-Subsidiary Directive (Council Directive 2011/96/EU on the Common System of Taxation Applicable in the case of Parent Companies and Subsidiaries of Different Member States, 30 November 2011), the Merger Directive (Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States), the Interest and Royalties Directive (Council Directive 2003/49/EC on a Common System of Taxation Applicable to Interest and Royalty Payments Made between Associated Companies of Different Member States, 3 June 2003) and the Savings Directive (Council Directive 2003/48/EC on Taxation of Savings Income in the form of Interest Payments, 3 June 2003).

States. The simultaneous application of these unintegrated tax systems leads to conflicts, especially in cross-border situations, and international double taxation may arise.

International double taxation constitutes restrictions on the operation of the internal market. Its harmful effects on the exchange of goods and services and movements of capital, technology and persons are so well known that it is scarcely necessary to emphasize the importance of removing the obstacles that double taxation presents to the development of cross-border economic relations. The elimination of international double taxation is one of the central Union objectives. EU tax law, however, does not include a general provision explicitly requiring the elimination of international double taxation. EU law does not include general rules for the purposes of dividing the taxing rights between the Member States in order to eliminate international double taxation.

There are no EU law rules that would exhaustively eliminate international double or multiple taxation caused by the simultaneous application of the tax systems of two or more Member States. The Member States are not obliged to adapt their own tax systems to the different tax systems of the other Member States in order to eliminate the double taxation arising from the exercise in parallel by the Member States of their fiscal sovereignty. Nor is one State obliged to refrain from taxation in order to eliminate international double taxation caused by the simultaneous taxation by itself and another state. However, because of the objectives of the internal market, Member States should ensure that their tax systems do not cause international double taxation.

Bilateral treaties function inadequately

The EU Member States are allowed and encouraged to conclude bilateral and multilateral tax treaties in order to eliminate international double taxation. Member States may allocate taxing rights among each other for the purposes of eliminating double taxation either unilaterally or bilaterally in tax treaties. They have the right to decide the criterion based on which the allocation is to be done. They must also adopt necessary measures for purposes of eliminating double taxation, applying especially the internationally accepted tax law principles, including allocation principles based on the OECD Model Tax Convention (OECD Model). [5] In any case, Member States should ensure that double taxation is eliminated.

5. The OECD Model Tax Convention on Income and on Capital originates from 1963, but many of the bilateral treaties between the EU Member States are based on the 1977 or

Indeed, the EU Member States have concluded an impressive number of bilateral income tax treaties in order to eliminate international double taxation.[6] Bilateral tax treaties, however, do not eliminate all international double taxation and other international tax law problems. Although most of the bilateral tax treaties of the EU Member States are based on the OECD Model, they differ in detail. These differences lead to different tax treatment of different bilateral relations. The tax consequences arising from one bilateral treaty will differ from those arising from another.

Despite the network of bilateral tax treaties, the tax consequences that an EU resident faces depend heavily on the state in which he or she works, conducts business or invests capital. The differences between bilateral treaties lead to treaty shopping and artificial arrangements. The tax consequences may still be in conflict with EU law and may be discriminatory.

1.2. Multilateral treaty as a solution

Possible solutions

The cross-border tax problems caused by uncoordinated direct tax systems of the Member States could be eliminated or alleviated by several means. It has been proposed that the problems be resolved, for example, by the judicial application of the most favoured nation principle,[7]

later versions of the OECD Model. The OECD Model in its present form is originally from 1992, and the Model and its Commentary are continuously updated (the latest condensed version is from July 2010).

6. *See* e.g. Toifl (1998), at 55-82 about the bilateral tax treaties between the EU Member States).

7. *See* e.g. Commission (2005), at 17-18. However, the EU founding treaties do not include a most favoured nation clause that would require the Member States to make the benefits of a bilateral tax treaty available to residents of the Member States that are not parties to the treaty. Based on its existing jurisprudence, the EU Court does not seem to consider the most favoured nation principle as hindering Member States from concluding different bilateral tax treaties with different Member States. *See D.* (Case C-376/03), paras. 61-63; *Test Claimants in Class IV of the ACT Group Litigation* (Case C-374/04); *Orange European Smallcap Fund* (Case C-194/06), paras. 49-51. The most favoured nation principle, therefore, does not seem provide a solution to the international double taxation and other intra-EU, cross-border direct tax problems without a further legislative act. For the most favoured nation principle, *see also* e.g. Helminen (2013b), section 1.5.2.3; Hilling (2005), at 271-290; Raventós-Calvo (2005); Zester (2006); Cordewener and Reimer (2006); van Thiel (2007b); Pistone (2002), at 207-213; Wassermeyer (1998), at 21-26; Rädler (1998); Schuch (1996); Schuch (1998), at 35-36 (and included references); Cordewener and Reimer (2006a). However, some authors are of the opinion that horizontal discrimination, in addition to vertical discrimination, is also forbidden by the TFEU. *See* Cordewener (2007), at 210-212 about the different dimensions of non-discrimination.

by an EU directive,[8] by strengthening of source state taxation,[9] by an EU model tax convention[10] or by a multilateral EU tax treaty.[11] In any

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Those authors see that there is a conflict with the TFEU non-discrimination rules when the nationals of one Member State residing in certain Member States have the right to better tax treaty benefits than the nationals of the same state residing in another Member State. *See* e.g. van Thiel (2007); van Thiel (2007a), at 314-327. For other areas of law than direct taxation, *see also* e.g. *Roders* (Joined Cases C-367/93 to 377/93); *Matteucci* (Case C-235/87); *Kortmann* (Case C-32/80); *Gottardo* (Case C-55/00). The interpretation of the TFEU and the most favoured nation principle in this way would resolve many intra-EU, cross-border direct tax problems.

8. *See* e.g. Commission (2005), at 14-15. An EU directive introducing common provisions for purposes of allocating taxing rights among the Member States in intra-EU, cross-border direct tax situation would provide a solution. If such a directive were to exist, no more bilateral income tax treaties would be needed in relations between two Member States. However, because of the subsidiarity principle of EU law, it is questionable whether article 115 of the TFEU would even allow such a broad-reaching directive to be issued. EU law provisions should direct the domestic tax laws of the Member States only to the extent that it is necessary for the realization and functioning of the internal market. In accordance with the subsidiarity principle, the Union will take action with regard to direct taxation only if and to the extent that the objectives of the action cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Union. Even if permissible, the issuance of such a directive would be extremely difficult because of the unanimity requirement.

9. For a reference to source state taxation, *see* e.g. Pistone (2002), at 175-205 and 219-222. *See* Kemmeren (2001) and Kemmeren (2012), at 159-16, for how tax treaties based on the principle of origin would provide a solution. Adopting one of these alternatives, however, would require many open questions to be answered and it would require further development of administrative cooperation among the Member States. It would also seem to be a somewhat peculiar approach, considering that the existing EU direct tax directives (the Parent-Subsidiary Directive, the Interest and Royalties Directive and the Savings Directive) rely on residence-state taxation rather than source state taxation. The Parent-Subsidiary Directive does not allow taxation in either the source state or the residence state; the Interest and Royalties Directive allows taxation only in the residence state; and the idea of the Savings Directive is to guarantee information exchange in order to ensure that the residence state is able to tax. Strengthening source state taxation would mean a completely obverse approach compared to the directives. In any case, some legislative tool, such as a multilateral treaty, would be needed also for the purposes of strengthened source state taxation.

10. *See* Commission (2005), at 16-17. An EU model tax treaty could serve as the basis for the bilateral or multilateral tax treaties between or among the Member States. The model would afford certain flexibility to the Member States to choose the solutions that best fit the coordination of the national tax systems in the certain bilateral situation concerned and would still provide a guide to bilateral tax treaties that are compatible with EU law. For example the OECD has chosen the approach of a tax treaty model instead of a multilateral tax treaty, due to the number and variety of existing OECD countries. *See* para. 37, Introduction *OECD Model*. In addition, the Commission favoured this option in its communication issued on 23 October 2001. *See* Commission (2001), at 14. *See also* Pistone (2002), at 228-229; Pistone (2011), at 187-210; Kemmeren (1997), at 146 and 149; Kemmeren (2001), at 151-152; Kemmeren (2012), 175-176. However, many of the authors advocating for an EU model tax treaty see it only as a first step before the Union is ready for a multilateral treaty – the ultimate goal thus being a multilateral EU tax treaty.

11. For different solutions to the conflicts between tax treaties and EU law, *see* e.g. Commission (2005), at 12-19; Pistone (2002), at 207-235; Pistone (2011), at 187-210.

case, positive integration is needed[12] in order for the tax obstacles to the internal market to be minimized, and a multilateral EU tax treaty would be a good choice to coordinate the cross-border effects of the tax systems of the Member States. A multilateral tax treaty among the EU Member States should therefore be the ultimate goal in the European Union in this regard.

A multilateral EU tax treaty could resolve many of the international tax law problems not resolved by the bilateral tax treaties concluded by the EU Member States.[13] A multilateral EU tax treaty would ensure tax coordination for purpose of eliminating double taxation and other direct tax problems in intra-EU, cross-border situations.[14] However, despite the advantages of a multilateral tax treaty, such a treaty does not yet exist among the Member States.[15] The only multilateral income tax convention concluded by the EU Member States is the Arbitration Convention (i.e. the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (1990/436/EEC)). The Arbitration Convention provides for arbitration for purposes of eliminating double taxation, in a very limited area of international taxation, in the case of transfer pricing adjustments.[16]

Single income tax treaty

The introduction of a multilateral EU tax treaty would mean a single income tax treaty among the EU Member States. Bilateral income tax treaties would no longer be needed between the Member States covered by a multilateral

12. *See* e.g. Wattel (2011), at 157-166 how there are no EU law provisions which could be relied upon in eliminating the still remaining instances of double taxation in the European Union, and that positive integration is therefore needed.
13. A multilateral EU tax treat was already proposed in 1962 as a solution to the EU tax law problems by the Neumark Report. Neumark Report (1962). For the opinion that a multilateral EU tax treaty would resolve many of the tax problems in the European Union, *see also* e.g. Commission (2001), at 406, 479; Commission (2005), at 15-16; Hamaekers (1986); Rädler (1992), at 378; Loukota (1998), at 88-92; Mattsson (1999); Pistone (2002), at 266; Pistone (2011); Gutmann (2013), at 68; Schuch (1998b). The OECD has also recognized that a multilateral treaty could be a possible alternative for a group of states. *See* para. 37 of the Introduction to the Commentary on the *OECD Model*.
14. *See also* Pistone (2002), at 210; Lang (1998), at 195; Remacle and Nonnenkamp (2011), at 44-46; Kemmeren (1997), at 147. Before the Lisbon Treaty when article 293 of the EC Treaty (or its precedents) was still in force, many authors were of the opinion that because of article 293, multilateral treaty negotiations may be necessary. *See* Urtz (1998), at 108.
15. Already in 1968 the European Economic Community established a preliminary draft for a multilateral tax treaty (doc.11.414/XIV/68-F, 1.7.1968). However, at that moment the circumstances were not yet ripe for a multilateral treaty. *See* e.g. Loukota (1998), at 86 for other unsuccessful attempts at a multilateral treaty.
16. *See* e.g. Helminen (2013b), section 5.4 (discussing the Arbitration Convention).

EU tax treaty. A multilateral treaty would be desirable even if only certain EU Member States would participate in it, but the best results would, of course, be obtained if all Member States were to become parties to the treaty – if not immediately, at least in the future.[17]

Allocation of taxing powers

A multilateral treaty would provide for the allocation of taxing powers as regards cross-border flows of income and capital within the European Union. Such a multilateral tax treaty would eliminate many of the problems associated with bilateral treaties, which function only if there are only two states involved. A multilateral treaty would function in eliminating international double taxation and eliminating EU law infringements not only in bilateral relations but also where more than just two countries have a taxing interest in the same situation.[18] Such a treaty would ensure that the tax treaty impact on all intra-EU, cross-border situations is sufficiently similar and does not rely on the Member States concerned. A multilateral EU tax treaty would abolish intra-EU treaty-shopping and would eliminate the competitive advantages and disadvantages that bilateral treaties create in different bilateral situations.[19]

1.3. The multilateral Nordic Treaty as a model for the EU

History of the Treaty

The Nordic countries (Denmark, the Faroe Islands,[20] Finland, Iceland, Norway and Sweden) concluded a multilateral convention for the avoidance of double taxation with respect to taxes on income and on capital (the Nordic Treaty) in Helsinki on 23 September 1996. It entered into force on 11 May 1997 and became effective on 1 January 1998. A protocol was signed on 6 October 1997, which entered into force on 31 December 1997

17. For the possibility of only a group of EU Member States to conclude a multilateral tax treaty, *see also* Lang (1998), at 196; Commission (2005), at 15. Also, the OECD Committee on Fiscal Affairs has considered that it might be possible for certain groups of countries to study the possibility of concluding a multilateral tax treaty on the basis of the OECD Model. *See* para. 37 of the Introduction to the Commentary on the OECD Model.
18. For tax treaty problems involving triangular situations, *see* OECD (1992); Loukota (1998), at 91-92.
19. For this effect, *see also* Loukota (1998), at 88-89; Andersson et al. (1991), at 18.
20. Pursuant to the "Home Rule Act" of 1948, the Faroe Islands is a self-governing region of the Kingdom of Denmark. The Faroe Islands has its own tax legislation and is one of the parties to the Nordic Treaty.

and became effective on 1 January 1998. A second Protocol was signed on 4 April 2008, which entered into force on 31 December 2008 and became effective on 1 January 2009.

The first multilateral income and capital tax treaty between the Nordic countries was concluded on 22 March 1983 in Helsinki;[21] it was replaced by the treaty concluded on 18 February 1987. The 1987 treaty was replaced by the income and capital tax treaty of 12 September 1989. The 1996 Nordic Treaty replaced the 1989 treaty.

Success of the Nordic Treaty

The Nordic Treaty is a multilateral income and capital tax treaty among the five Nordic countries. The Nordic Treaty is one of the few multilateral income tax treaties existing worldwide,[22] and it has functioned fairly well. The Nordic Treaty is based on the OECD Model but has been modified to meet the needs of a multilateral treaty.

The Nordic Treaty is a multilateral treaty among five fairly similar countries that have fairly similar tax systems and administrative culture, as well as fairly similar economic and political interests. The similarity of the countries and the limited number of signatories have contributed to make this multilateral treaty a success. Three of the contracting states are EU Member States (Denmark, Finland and Sweden) and two of the countries are EFTA states (Iceland and Norway). Only one of the states is a euro country (Finland). All of the five countries, however, are bound by the basic EU law principles, on the basis of either the EU founding treaties[23] or the EEA Agreement.[24]

Multilateral EU tax treaty

If the Nordic multilateral treaty were to be modified to better comply with the aims and basic principles of EU law, it could provide a sound model for a multilateral EU tax treaty. Despite the fact that the number of the EU Member States is much bigger (28) than the number of Nordic countries,

21. The idea of a multilateral Nordic treaty first originated in the 1960s. For the history of the Nordic Treaty, *see also* e.g. Andersson et al. (1991); Mattsson (1999), at 245-246.
22. For the other few existing multilateral tax treaties, *see* e.g. Loukota (1998), at 86-88; Pistone (2002), at 223-235; Rohatgi (2005), at 75-77.
23. The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
24. The Agreement on the European Economic Area (EEA) was signed in 1992 and entered into force on 1 January 1994. The purpose of the Agreement was to extend the internal market of the European Union to cover the non-member countries belonging to the European Free Trade Area (EFTA).

and that EU Member States are not as homogenous as the Nordic countries, the Nordic Treaty could nevertheless be used as a model for a multilateral EU tax treaty.

Most EU Member States are OECD Countries and most of them have concluded bilateral tax treaties with each other that are based on the OECD Model. The Nordic Treaty, which is a treaty based on the OECD Model but modified for the purposes of a multilateral treaty among five EU or EEA Countries, should work well also in relations among the 28 EU Member States. However, in some regards, a different approach compared to the Nordic Treaty may have to be adopted. It is more difficult to take into account the particularities of 28 contracting states than those of five contracting states under a multilateral tax treaty, even though they all must comply with EU law and the objectives of the EU internal market.

A well-functioning multilateral EU tax treaty should be in the interest of all of the EU Member States and in the interests of the EU internal market. A multilateral EU tax treaty would abolish many of the obstacles caused by the unintegrated direct tax systems of the Member States to the functioning of the internal market.

1.4. Specific purpose, methods and materials

Nordic Treaty

The purpose of this research project has been to study whether the multilateral Nordic Treaty could provide a model for a multilateral EU income tax treaty. The Nordic Treaty will be studied from the perspective of the prerequisites that EU law sets for a multilateral treaty. It will be studied whether and which modifications the Nordic Treaty would require in order for it to function as a multilateral EU tax treaty.

The functioning of a multilateral treaty based on the multilateral Nordic Treaty as an EU tax treaty, will be examined in light of the basic principles of EU law; the non-discrimination principle and the basic freedoms of the Treaty on the Functioning of the European Union (TFEU); the prohibition of state aid under the TFEU; the four existing direct tax directives; the EU

Arbitration Convention and the EU provisions on transfer pricing; the EU Mutual Assistance Directive;[25] and the EU Recovery Directive.[26] Also, the European Convention on Human Rights will be taken into account.

The study will not merely analyse the solutions provided by the Nordic Treaty, but rather will go beyond that Treaty in an attempt to find new solutions to the problems that would be faced under a multilateral EU tax treaty based solely on the Nordic Treaty.

OECD Model Tax Convention

A comparison will be made to the OECD Model. Ultimately, both the Nordic Treaty and the treaty practices in the EU Member States are based on the OECD Model. However, many of the solutions of the OECD Model would not work for a multilateral EU tax treaty. The OECD Model is a model for bilateral tax conventions, and as such fails to address many problems concerning triangular situations involving more than just the two states. A multilateral treaty must cover not only residents of two contracting states, but residents of more than two states. The OECD Model also does not in any way guarantee EU law compatibility. New solutions are needed for a multilateral EU tax treaty. The OECD Model and the observations and reservations entered by the EU Member States on the OECD Model are especially interesting in indicating which solutions the EU Member States may be prepared to accept and which they may not be willing to accept in a multilateral EU treaty.

Multilateral EU tax treaty

The project will ultimately aim at introducing solutions to the international double taxation problems and other international direct taxation problems that constitute an obstacle to the functioning of the EU internal market. A multilateral EU tax treaty should provide clear rules for purposes of the equitable allocation of taxing rights among the Member States in cross-border situations as regards income concerning two or more Member States. The treaty should ensure that international double taxation is eliminated in all cross-borders situations as regards income involving two or more Member States. The treaty should effectively limit possibilities for double non-taxation which is not intended by the Member States, and it should

25. Council Directive 2011/16/EU of 15 February 2011 on Administrative Cooperation in the Field of Taxation and Repealing Directive 77/799/EEC.
26. Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (16 March 2010).

limit the possibilities for tax avoidance and tax evasion. Another important objective of the treaty would be to forbid any discrimination or restrictions in conflict with EU law.

Materials and earlier studies

In addition to the case law of the EU Court on direct tax law issues, the huge amount of literature (books as well as articles in tax and legal journals) written on EU tax law and tax treaties is relevant for this study.

There are some earlier proposals for a multilateral EU tax treaty. In 1997, Michael Lang, Josef Schuch, Christoph Urtz and Mario Züger presented a proposal for a multilateral tax treaty in the book *Multilateral Tax Treaties*,[27] and in 2002 Pasquale Pistone presented a proposal for a model EU tax treaty in his book *The Impact of Community Law on Tax Treaties*.[28] Since then, EU tax law has developed at an accelerating pace. In addition to the constantly increasing number of direct tax cases decided each year by the EU Court, there are two completely new direct tax directives issued after 2002, namely the Interest and Royalties Directive and the Savings Directive. There is also new soft law on transfer pricing, and the Mutual Assistance Directive and the Recovery Directive have been developed further. The relevance of the European Convention on Human Rights and of the state aid rules under the TFEU are only recently addressed in relation to direct taxes.

The suitability of the Nordic Treaty as the basis for a multilateral EU tax treaty has not been analysed in any earlier study. Although there is a commentary published on the 1989 version of the multilateral Nordic treaty,[29] only articles in academic and professional journals have been written on the most recent version of the Nordic Treaty.[30]

1.5. Outline of the book

Chapter 1 of the book presents an introduction to the research topic, its relevance and the research methods used. It explains the reasons why a

27 Lang et al. (1997) at 197-245. *See also* Lang and Such (2000) at 39-43.
28 Pistone (2002).
29. Andersson et al. *Det nordiska skatteavtalet med kommentarer* (andra upplagan, Jurist- og Økonomiforbund, Juristförbundets Förlag, TANO, Norstedts 1991).
30. *See* e.g. Helminen (2007); Helminen (2007a); Helminen (2007b).

multilateral EU tax treaty is needed and why it is the best alternative to cope with the tax obstacles in the internal market. The Nordic Treaty is introduced as a possible model for a multilateral EU tax treaty.

Chapter 2 discusses the EU law framework for a multilateral EU tax treaty and thus is the most important chapter of the book. Before an EU income tax treaty can be drafted, one must considered what requirements EU law sets for the treaty and which solution would best guarantee compatibility with EU law. For example the non-discrimination article and the basic freedoms under the TFEU must be respected; double taxation must be eliminated satisfactorily; and tax avoidance must be prevented. The suitability of the Nordic Treaty as a model for a multilateral EU tax treaty is examined from the perspective of the requirements under EU law.

Chapter 3 addresses the subjects (taxpayers) that should be covered by a multilateral EU tax treaty, and discusses the relevance of the residence of the taxpayer for treaty purposes. In addition, some other basic concepts that are relevant in determining the division of taxing rights among the contracting states are discussed. The personal scope of a multilateral treaty is discussed in light of the non-discrimination requirements under EU law.

Chapter 4 deals with the division of taxing rights with regard to cross-border business profits. The permanent establishment concept, the business profits article, the independent personal services article and the shipping and air transport article of the Nordic Treaty are evaluated from the perspective of their suitability as a model for a multilateral EU tax treaty. Chapter 4 further addresses issues relating to international transfer pricing and the right to adjust profits of associated enterprises for tax purposes in the European Union. The chapter discusses the relevance and formulation of a profit adjustment article under a multilateral EU tax treaty.

Chapter 5 discusses the division of taxing rights with regard to cross-border dividends, interest and royalties. The construction of the dividend, interest and royalties article for a multilateral EU tax treaty is discussed. The relevance of the EU Parent-Subsidiary Directive, the Interest and Royalties Directive and the Savings Directive, together with the TFEU principles of freedom of establishment and free movement of capital will also be considered here.

Chapter 6 considers the formulation of articles under a multilateral EU tax treaty concerning the division of taxing rights with regard to cross-border

capital gains and current income from property. The free movement of capital principle and the freedom of establishment principle under the TFEU are of great relevance in this chapter.

Chapter 7 examines the relevance and approach of an article in a multilateral EU tax treaty concerning the division of taxing rights with regard to employment income and pensions. The free movement of workers principle and the free movement of citizens principle under the TFEU are of special interest here.

Chapter 8 contemplates the relevance of an article under a multilateral EU tax treaty concerning the division of taxing rights with regard to any other income not covered by the explicit articles of the treaty. This chapter examines the division of taxing rights between the source country and the residence country in light of EU law requirements and the internal market.

Chapter 9 discusses the EU Mutual Assistance Directive and the Recovery Directive, as well as the need for a separate article concerning administrative assistance in tax matters and recovery of tax claims in a multilateral EU tax treaty.

The last chapter of the book further discusses the problems that would be resolved by a multilateral EU tax treaty and the problems which would still remain and which would have to be resolved by other means. This chapter synthesizes the findings of the study and concludes with the main questions concerning the content and formulation of a possible multilateral EU tax treaty. The main points with regard to which the Nordic Treaty provides a proper model for a multilateral EU tax treaty are considered, along with the points with regard to which other solutions are called for.

Notes

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