

Hybrid Financial Instruments Double Non Taxation

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Tax Treaty Residence of Entities - Jan Gooijer 2019-09-13

It is of great importance to be able to determine who or what is considered 'resident' within the meaning of tax treaty provisions. However, the concept of residence has never been fundamentally adjusted to current circumstances in which technological developments make it possible for corporations to explore the wide gap between their actual business operations and the 'legalistic' requirements for corporate residence. In this study of the OECD Model Tax Convention - the basis for most tax treaties - the author develops a clear understanding of the content of the residence concept as regards entities and proposes solutions to current problems, finishing with his own thoroughgoing definition. In seeking a definition of the term 'resident' that covers all uses in treaties, the analysis draws on, in addition to the current and earlier iterations of the OECD Model Law itself, such elements as the following: domestic law meaning of residence in the tax law of France, Germany, the Netherlands, the United Kingdom and the United States; Articles 31 and 32 of the Vienna Convention on the Law of Treaties; historical documents that uncover the ordinary meaning of treaty terms; tax treaty case law and court decisions; and fiscal, tax and legal scholarship surrounding the concept of residence for taxation purposes. The analysis includes a comprehensive description of tiebreaker rules, various perspectives on 'place of effective management' and policy considerations as to the further development of the treatment of entities under double tax conventions. Given the inordinate importance of the definition of 'resident', the differences in interpretation to which the current definition gives rise and the economic developments that call for an evaluation of the provision, this thorough examination of the treaty rules on residence of entities will be welcomed by tax lawyers, corporate counsel and policymakers and academics concerned with tax law. The author's guidance on the concept of residence for tax purposes and his original proposals for reform will prove of great practical value for tax practitioners.

Limiting Base Erosion - Erik Pinetz 2017-08-30

Limiting base erosion from different viewpoints Hybrid mismatch arrangements, CFC rules, transfer pricing rules: "Limiting Base Erosion", the general topic for the master theses of the part-time LL.M. program 2015-2017, has been one of the most controversial topics in international tax law ever since the initiation of the OECD BEPS Project in 2013. Even though the final reports of the 15 BEPS Actions were released by the OECD in as early as October 2015, the question how to effectively target base erosion practices still has not lost any of its topicality. Following the efforts of the OECD in developing a new international tax environment, the focus of attention has now partly shifted to the OECD Member countries that have to properly implement the OECD recommendations in their domestic laws as well as in their tax treaty practice. In this respect, a comprehensive analysis in the literature of all the issues related to base erosion proves to be of the utmost importance in order to provide practical guidance to the Member countries during that the process of implementation. This book deals especially with four key areas of interest: Limiting base erosion by neutralizing the effects of hybrid mismatch arrangements Limiting base erosion by strengthening CFC rules Measures against base erosion via interest deductions and other financial payments Limiting base erosion by improving transfer pricing rules. On that basis, 27 concrete topics were chosen in order to address the four key areas of interest from different viewpoints. Base erosion and the challenges they present: read more in "Limiting Base Erosion".

International Tax Policy and Double Tax Treaties - Kevin Holmes 2007

"The purpose of this book, then, is to give you an understanding of the concepts that underlie international

tax law and double tax treaties by providing an insight into how international tax policy, law and practice operate to ultimately impose tax on international business and investment."--Preface.

Double Non-taxation and the Use of Hybrid Entities - Leopoldo Parada 2018-04-18

The topics of double non-taxation and hybrid entities have acquired a particular importance in a context where transformations within the tax world seem to be leading to an international commitment most materially manifested in the OECD Base Erosion and Profit Shifting (BEPS) project. In what is the first systematic in-depth critique of the BEPS Action Plan 2 with regard to hybrid entities, this timely book provides a critical review of the OECD's approach and proposes a deeply informed alternative method based on the tax policy aims of simplicity, coherence and ease of administration. The author analyses the interaction between the double non-taxation outcome and the use of hybrid entities in an approach not strictly linked to any specific tax jurisdiction. To this end, the analysis includes case studies and examples from a range of jurisdictions emphasizing the international tax context, including the application of tax treaties. Among the seminal matters covered are the following: - foundations of the concepts of double non-taxation and hybrid entities, absent of the specific limitations of domestic tax legislation; - extensive analysis based on the rules of characterization of foreign entities for tax purposes in the United States, Spain, Denmark and Germany, as well as on the Poland/United States and Canada/United States tax treaties; - detailed analysis on the implications of Article 1(2) OECD Model Tax Convention and Article 3(1) Multilateral Instrument, especially having in mind the position of developing (source) countries; and - EU tax law as part of the international context, including an extensive analysis on the EU Anti-Tax Avoidance Directive (ATAD) I and ATAD II. Detailed comparisons between the author's proposal and other existing rules elucidate common points and deviations. If merely for its unparalleled clarification of the issues, this book will prove of immeasurable value to practitioners, tax authorities, policymakers and academics concerned with international tax law. Beyond that, as an authoritative guide that promises to reorient the discussion to what really matters in the debate regarding double non-taxation and hybrid entities, this analysis elaborates solutions applicable to a generality of cases worldwide, and thus hugely promotes the urgent quest for alternative solutions.

International Taxation of Manufacturing and Distribution - John Abrahamson 2016-02-18

The most thorough treatment of its subject available, this book introduces and analyses the international tax issues relating to international manufacturing and distribution activities, extending from the tax regime in the country where the manufacturing activities are located, through to regional purchase and sales companies, to the taxation of local country sales companies. The analysis includes the domestic tax laws relating to manufacturing and distribution company profits as well as international tax issues relating to income flows and the payment of dividends. Among the topics and issues analysed in depth are the following: - foreign tax credits; - taxation in the digital economy; - tax incentives; - intellectual property; - group treasury companies; - mergers and acquisitions; - leasing; - derivatives; - controlled foreign corporation provisions; - VAT and customs tariffs; - free trade agreements and customs unions; - transfer pricing; - role of tax treaties; - hedging; - related accounting issues; - deferred tax assets and liabilities; - tax risk management; - supply chain management; - depreciation allowances; and - carry-forward tax losses. The book includes descriptions of 21 country tax systems and ten detailed case studies applying the analysis to specific examples. Detailed up-to-date attention is paid to the OECD Action Plan on Base Erosion

and Profit Shifting (BEPS) and other measures against tax avoidance. As a full-scale commentary and analysis of international taxation issues for multinational manufacturing groups – including in-depth consideration of corporate structures, tax treaties, transfer pricing, and current developments – this book is without peer. It will prove of inestimable value to all accountants, lawyers, economists, financial managers, and government officials working in international trade environments.

Addressing hybrid mismatch arrangements - Policy and Strategy, Inland Revenue, New Zealand 2016-09-06
Hybrid mismatch arrangements are one of the main base erosion and profit shifting (BEPS) strategies used by some large international companies to pay little or no tax anywhere in the world. The OECD developed recommendations for anti-hybrid measures in its 15 point Base Erosion and Profit Shifting (BEPS) Action Plan. This Government discussion document seeks comments on how the OECD recommendations could be implemented in New Zealand. Part I of the document describes the problem of hybrid mismatch arrangements, the case for responding to the problem, and a summary of the OECD recommendations. Part II of the document explains the OECD recommendations in greater depth and discusses how they could be incorporated into New Zealand law.

Principles of International Taxation - Angharad Miller 2012-01-01

This superb book will guide the reader through the key issues and practical aspects of international tax practice. It demonstrates how different global tax systems interact and how to prevent paying more tax than necessary. The basic principles of each aspect of international taxation are outlined and then examined in greater depth and detail. This updated third edition includes coverage of both UK and EU legislation and regulation, as well as the key cases and rulings. Complicated double taxation concepts are clearly illustrated with examples and diagrams to help the reader quickly understand how they'll apply in practice. Examples of policies adopted in other countries are included, along with specialist commentary and guidance.

Addressing Tax Arbitrage with Hybrid Financial Instruments - Moritz Scherleitner 2020

Corporate Loss Utilisation through Aggressive Tax Planning - OECD 2011-08-03

After describing the size of corporate tax losses and the policy issues related to their tax treatment, this report identifies three key risk areas in relation to use of losses for tax purposes: corporate reorganisations, financial instruments and non-arm's length transfer pricing.

Encyclopedia Of International Economics And Global Trade (In 3 Volumes) - 2020-03-23

In an era when trade and currency wars threaten to end a long-standing period of growing trade and capital flows, the economics of international trade, investment and finance have become more important than ever. This three-volume Encyclopedia provides a comprehensive and up-to-date overview of the theory and evidence on the causes and consequences of global trade, and the theory and evidence on the economics of international trade, financial and monetary transactions. It provides, first of all, a comprehensive set of entries explaining the key theoretical concepts in international economics as well as the latest empirical and simulation techniques used in the academic literature. In addition, various entries present the history behind – and the controversies surrounding – the core current global trade and monetary institutions, from the World Trade Organization to the European Monetary Union. The three volumes also provide a serious discussion of today's central policy debates, including the impact of globalization on employment, wages and income distribution, the imposition of controls on international financial flows, the effects of tariffs and protectionist policies, fixed versus flexible exchange rate regimes, and the role of the multinational enterprise on global growth, technical change and income distribution, among many others.

International Taxation of Banking - John Abrahamson 2020-02-20

Banking is an increasingly global business, with a complex network of international transactions within multinational groups and with international customers. This book provides a thorough, practical analysis of international taxation issues as they affect the banking industry. Thoroughly explaining banking's significant benefits and risks and its taxable activities, the book's broad scope examines such issues as the following: taxation of dividends and branch profits derived from other countries; transfer pricing and branch profit attribution; taxation of global trading activities; tax risk management; provision of services

and intangible property within multinational groups; taxation treatment of research and development expenses; availability of tax incentives such as patent box tax regimes; swaps and other derivatives; loan provisions and debt restructuring; financial technology (FinTech); group treasury, interest flows, and thin capitalisation; tax havens and controlled foreign companies; and taxation policy developments and trends. Case studies show how international tax analysis can be applied to specific examples. The Organisation for Economic Co-operation and Development Base Erosion and Profit Shifting (OECD BEPS) measures and how they apply to banking taxation are discussed. The related provisions of the OECD Model Tax Convention are analysed in detail. The banking industry is characterised by rapid change, including increased diversification with new banking products and services, and the increasing significance of activities such as shadow banking outside current regulatory regimes. For all these reasons and more, this book will prove to be an invaluable springboard for problem solving and mastering international taxation issues arising from banking. The book will be welcomed by corporate counsel, banking law practitioners, and all professionals, officials, and academics concerned with finance and its tax ramifications.

Corporate Taxation, Group Debt Funding and Base Erosion - Gianluigi Bizioli 2020-02-07

The EU's Anti-Tax Avoidance Directive (ATAD), implemented in January 2019, confronts Member States with complex challenges, particularly via the introduction of an interest limitation rule. This timely book, the first in-depth analysis of the features and implications of the directive, provides insightful and practical discussions by experts from around Europe on the crucial interactions of the ATAD with other existing anti-tax avoidance measures, the European financial sector and the fundamental freedoms. Specific issues and topics covered include the following: relation with the OECD's Base Erosion and Profit Sharing project (BEPS) and the EU's Common Corporate Tax Base initiative; technical subjects relating to corporate taxation and debt funding; problems caused by the diametrically opposite tax treatment of debt and equity within a group of companies; exclusion clauses for interest expenses; and interplay between interest limitation rules and anti-hybrid rules. A comparative analysis of implementation issues in four leading Member States—Germany, Italy, Spain and The Netherlands—as well as a global general survey with regard to interest limitation rules allow readers to assess the particular complexities associated to the implementation of the ATAD. This matchless commentary by leading European tax law academics and practitioners on an important and much-debated item of EU legislation gives practitioners, enterprises and tax authorities an early opportunity to understand the practical effects of the directive in the various Member States.

Fundamental Issues and Practical Problems in Tax Treaty Interpretation - Michael Schilcher 2008

This volume deals in Part I with general principles of tax treaty interpretation, including many general issues of international law and especially treaty law. Part II is dedicated to specific tax treaty provisions that trigger particularly interesting interpretation questions. Part III is concerned with situations in which states disagree on the interpretation of tax treaties.

Taxation of Hybrid Financial Instruments and the Remuneration Derived Therefrom in an International and Cross-border Context - Sven-Eric Bärsch 2012-12-13

Despite the enormous diversity and complexity of financial instruments, the current taxation of hybrid financial instruments and the remuneration derived therefrom are characterized by a neat division into dividend-generating equity and interest-generating debt as well as by a coexistence of source- and residence-based taxation. This book provides a comparative analysis of the classification of hybrid financial instruments in the national tax rules currently applied by Australia, Germany, Italy and the Netherlands as well as in the relevant tax treaties and EU Directives. Moreover, based on selected hybrid financial instruments, mismatches in these tax classifications, which lead to tax planning opportunities and risks and thus are in conflict with the single tax principle, are identified. To address these issues, the author provides reform options that are in line with the dichotomous debt-equity framework, as he/she suggests the coordination of either tax classifications or tax treatments.

Philosophical Foundations of Tax Law - Monica Bhandari 2017-02-23

Tax law changes at a startling rate - not only does societal change bring with it demands for change in the tax system, but changes in the political climate will force change, as will many other competing pressures. With this pace of change, it is easy to focus on the practical and forget the core underpinnings of the tax

system and their philosophical justifications. Taking a pause to remind ourselves of those principles and how they can operate in the modern tax system is crucial to ensuring that the tax system does not diverge too far from what it should be or could be. It is essential to understand the answers to some of the seemingly basic questions that surround tax before we can even begin to think about what a tax system should look like. This collection brings together major themes and difficult questions in the philosophical foundations of tax law. The chapters consider practical issues such as justification, enforcement, design, and mechanics, and provide a full and coherent analysis of the basis for tax law. Philosophical Foundations of Tax Law allows the reader to consider how tax systems should move forward in the modern world, with a sound philosophical basis, to provide the practical tax system that the state requires and citizens deserve.

[A Guide to the Anti-Tax Avoidance Directive](#) - Werner Haslehner 2020-06-26

This book provides a concise, practical guide to the European Union's Anti-Tax Avoidance Directive (ATAD). Presenting unique insights into the ATAD's five specific anti-avoidance rules, its chapters explain the background of those rules, the directive's interactions with relevant jurisprudence, and the challenges posed to the ATAD's interpretation and implementation in domestic law.

[Neutralising the Effects of Hybrid Mismatch Arrangements](#) - Oecd 2014-09-16

This report sets out recommendations for domestic rules to neutralise the effect of hybrid mismatch arrangements and includes changes to the OECD Model Tax Convention to address such arrangements. Once translated into domestic law, the recommendations in Part 1 of the report will neutralise the effect of cross-border hybrid mismatch arrangements that produce multiple deductions for a single expense or a deduction in one jurisdiction with no corresponding taxation in the other jurisdiction. Part 1 of the report will be supplemented by a commentary, which will explain the recommended rules and illustrate their application with practical examples. Part 2 of the report sets out proposed changes to the Model Convention that will ensure the benefits of tax treaties are only granted to hybrid entities (including dual resident entities) in appropriate cases. Part 2 also considers the interaction between the OECD Model Convention and the domestic law recommendations in Part 1.

[Hybrid mismatch rules in Luxembourg](#) - Legitech 2020-07-07

Advanced Issues in International and European Tax Law - Christiana HJI Panayi 2015-12-03

This book examines recent developments and high-profile debates that have arisen in the field of international tax law and European tax law. Topics such as international tax avoidance, corporate social responsibility, good governance in tax matters, harmful tax competition, state aid, tax treaty abuse and the financial transaction tax are considered. The OECD/G20 project on Base Erosion and Profit Shifting (BEPS) features prominently in the book. The interaction with the European Union's Action Plan to strengthen the fight against tax fraud and tax evasion is also considered. Particular attention is paid to specific BEPS deliverables, exploring them through the prism of European Union law. Can the two approaches be aligned or are there inherent conflicts between them? The book also explores whether, when it comes to aggressive tax planning, there are internal conflicts between the established case law of the Court of Justice and the emerging policy of the European institutions. By so doing it offers a review of issues which are of constitutional importance to the European Union. Finally, the book reflects on the future of international and European tax law in the post-BEPS world.

Non-Discrimination in European and Tax Treaty Law - Kasper Dziurdz 2015-09-16

Selected issues of the various non-discrimination concepts Non-discrimination plays an important, if not crucial, role in many areas of law, such as constitutional law, human rights law, world trade law, EU law and tax treaty law. Both direct and indirect taxation are affected by the various types of non-discrimination provisions. From a practical point of view, the non-discrimination provisions within the EU legal framework and the non-discrimination concept under Article 24 of the OECD Model are important examples in this respect. In both areas of non-discrimination law, there are many open issues which have been debated for a long time and have evolved as evergreens of non-discrimination in the area of taxation; examples are the meaning of the ECJ's case law on the "finality" of losses or the compatibility of group regimes with Article 24 of the OECD Model. Other problems have emerged only recently, because of current developments at the OECD level, notably the BEPS project. Therefore, non-discrimination suggested itself as a general topic

for the master theses of the full-time LL.M. program in 2014/2015. This book takes up and deals with selected issues in depth. Although the relevant non-discrimination provisions are different in wording and context, often the same issues can be analyzed under both the EU fundamental freedoms and Article 24 of the OECD Model. The results under these non-discrimination provisions may differ. However, similar policy considerations and arguments often influence the final decisions. With this book, the authors and editors contribute to the discussion on selected issues of the various non-discrimination concepts and the challenges they present.

Limiting Base Erosion - Erik Pinetz 2017-08-30

Limiting base erosion from different viewpoints Hybrid mismatch arrangements, CFC rules, transfer pricing rules: "Limiting Base Erosion", the general topic for the master theses of the part-time LL.M. program 2015-2017, has been one of the most controversial topics in international tax law ever since the initiation of the OECD BEPS Project in 2013. Even though the final reports of the 15 BEPS Actions were released by the OECD in as early as October 2015, the question how to effectively target base erosion practices still has not lost any of its topicality. Following the efforts of the OECD in developing a new international tax environment, the focus of attention has now partly shifted to the OECD Member countries that have to properly implement the OECD recommendations in their domestic laws as well as in their tax treaty practice. In this respect, a comprehensive analysis in the literature of all the issues related to base erosion proves to be of the utmost importance in order to provide practical guidance to the Member countries during that the process of implementation. This book deals especially with four key areas of interest: Limiting base erosion by neutralizing the effects of hybrid mismatch arrangements Limiting base erosion by strengthening CFC rules Measures against base erosion via interest deductions and other financial payments Limiting base erosion by improving transfer pricing rules. On that basis, 27 concrete topics were chosen in order to address the four key areas of interest from different viewpoints. Base erosion and the challenges they present: read more in "Limiting Base Erosion".

Preventing Treaty Abuse - Daniel Blum 2016-09-19

Analysis of notion, roots und measures of treaty abuse The OECD initiative on Base Erosion and Profit Shifting has put the issue of treaty abuse and the means to counter it on top of the global political agenda. Preventing treaty abuse is therefore currently one of the most debated topics in international tax law. Diverging national legal traditions in combatting abuse both under domestic and tax treaty law have led to a globally diversified legal framework in this respect and make the OECD's agenda to harmonize these attempts even more challenging. The aim of this book is to analyze the notion of treaty abuse, its historical roots and the measures to counter it. The book's topics cover a wide range of both policy and legal issues. The contributions' main focus lies on analyzing the proposals put forward by the OECD in BEPS action items 6 and 7. In addition, this book analyzes the lessons which can be learnt from the US tax treaty policy and elaborates on the effects the intensified fight against treaty abuse will have from a Non-OECD member state perspective. Also EU law is taken into account and the question raised which impact the fundamental freedoms might have on the development of new anti-avoidance rules. Finally the relation between domestic and treaty based anti-avoidance is analyzed in great detail, identifying the methodical problems of ensuring a sound and abuse safe legal framework. With this book, the authors and editors hope to contribute to the discussion on selected issues of preventing treaty abuse and the challenges they present to policy makers, judges, tax administrations and tax advisers.

Hybrid Financial Instruments, Double Non-Taxation and Linking Rules - Félix Daniel Martínez Laguna 2019-06-12

Double non-taxation stemming from hybrid financial instruments and the solutions provided by the OECD and the European Union for tackling such an outcome are the target of this publication. It focuses on the economic and legal features of debt and equity instruments as well as hybrid financial instruments from an interdisciplinary perspective where economics, corporate law, financial accounting law, regulatory law and tax law are present. The different qualification of hybrid financial instruments within and without jurisdictions may lead to double non-taxation across borders, which is one of the main issues of concern to the international tax community.

Hybrid Financial Instruments in International Tax Law - Jakob Bundgaard 2016-11-15

Financial innovation allows companies and other entities that wish to raise capital to choose from a myriad of possible instruments that can be tailored to meet the specific business needs of the issuer and investor. However, such instruments put increasing pressure on a question that is fundamental to the tax and financial systems of a country – the distinction between debt and equity. Focusing on hybrid financial instruments (HFIs) – which lie somewhere along the debt-equity continuum, but where exactly depends on the terms of the instrument as well as on applicable laws – this book analyses their treatment under both domestic law and tax treaties. Key jurisdictions, including the EU, some of its Member States, and the United States, are covered. Advocating for a broader scope of application of HFIs as part of the financing of companies in Europe alongside traditional sources of debt and equity financing, the book addresses such issues and topics as the following: • problems associated with the debt-equity distinction in international tax law; • cross-border tax arbitrage and linking rules; • drivers behind the use and design of HFIs; • tax law impact of perpetual and super maturity debt instruments, profit participating loans, convertible bonds, mandatory convertible bonds, contingent convertibles, preference shares and warrant loans on HFIs; • financial accounting treatment; • administrative guidance; • influence of the TFEU on Member States' approaches to classification of HFIs; • interpretation of the Parent-Subsidiary Directive by the European Court of Justice; • applicability of the OECD Model Tax Convention; and • implications of the OECD Base Erosion and Profit Shifting (BEPS) project. Throughout this book, the analysis draws upon preparatory works, case law, and legal theory in English, German, and the Scandinavian languages. In conclusion, the author considers tax policy issues, and identifies and outlines possible high-level solutions. Actual or potential users of HFIs will greatly appreciate the clarity and insight offered here into the capacity and tax implications of HFIs. The book not only examines whether existing legislation is sufficient to handle the issues raised by international HFIs, but also provides an in-depth analysis of the interaction between corporate financing and tax law in the light of today's financial innovation. Corporate executives and their counsel will find it indispensable in the international taxation landscape that is currently coming into view, and academics and policymakers will hugely augment their understanding of a complex and constantly changing area of tax law.

National Tax Policy in Europe - Krister Andersson 2007-09-04

The book is dedicated to the question of how much room for national tax policy Member States of the European Union will be able to maintain in the future. It focuses on the possibilities Member States have and the limits they face, such as the need to finance the welfare state or limits of European and International Law. The research question is looked at from different angles. Economic as well as legal aspects are included.

Transfer Pricing and Intra-group Financing - Anuschka Bakker 2012

This book explores transfer pricing issues related to intra-group financing transactions. It is an invaluable resource for tax practitioners, tax lawyers, tax managers, tax directors of corporations, treasurers and tax authorities, in all facets of transfer pricing and intra-group financing.

Tax Sovereignty in the BEPS Era - Sergio André Rocha 2016-04-24

The power of a country to freely design its tax system is generally understood to be an integral feature of sovereignty. However, as an inevitable result of globalization and income mobility, one country's exercise of tax sovereignty often overlaps, interferes with, or even impedes that of another. In this collection of essays, internationally respected practitioners and academics reveal how the OECD's Base Erosion and Profit Shifting (BEPS) initiative, although a major step in the right direction, is insufficient to resolve the tax sovereignty paradox. Each contribution deals with different facets of a single topic: How tax sovereignty is shaped in a post-BEPS world. The contributors provide in-depth analysis of such relevant issues as the following: • multilateral cooperation and soft law consensus are the preferred solutions to a loss of autonomy over national tax policy; • how digital commerce has upended traditional notions of source and residence; • why residence and source continue to be the two essential building blocks of tax sovereignty and the backbone of the international tax system; • how developing countries can take advantage of the new international tax architecture to ensure that their voices are truly shaping the standards; and • transfer pricing reform. Collectively, the authors provide an authoritative commentary on the necessary preconditions for exercising the power to tax in today's world. Their perspectives and recommendations

will prove of great value to all policymakers, legislators, practitioners, and academics in the international taxation arena.

OECD/G20 Base Erosion and Profit Shifting Project Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 - 2015 Final Report - OECD 2015-10-05

Addressing base erosion and profit shifting (BEPS) is a key priority of governments. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. This publication is the final report for Action 2.

Hybrid Entities in Tax Treaty Law - Sriram Govind 2020-09-03

Tax treaty law and EU tax law in connection with hybrid entities Hybrid entities have traditionally been used as an avenue for international tax planning, and extending benefits under tax treaties to such entities has been a source of controversy for many years now. Although the OECD Partnership Report provided solid policy footing on this issue, there was still no common legal basis that countries could rely on for such positions. The increasing focus of countries towards the curbing of tax avoidance and abuse involving hybrid mismatch arrangements culminated in a specific action plan in the BEPS Project being dedicated to the design of domestic rules and the development of treaty provisions that would neutralize the tax effects of such arrangements. This volume provides an in-depth analysis of various aspects of this topic. It is divided into two parts – the first dealing exclusively with tax treaty issues arising in connection with hybrid entities and the second dealing with EU tax law issues surrounding hybrid entities. The former part comprises chapters analysing how tax treaties have historically dealt with this issue with a focus on domestic court jurisprudence, the positions in the OECD and the UN Model Conventions, the developments that have come about owing to the BEPS Project, and the impact of several existing measures, regimes, and vehicles on these tax treaty provisions. The latter part comprises chapters on how hybrid entities are dealt with under primary EU law, under various secondary law directives including the newly enacted Anti-Tax Avoidance Directives, and an analysis of policy solutions offered in this direction.

Bulletin for International Taxation - 2009

A Multilateral Convention for Tax - Sergio André Rocha 2021-11-29

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) is the most forceful multilateral initiative to coordinate tax regimes on a worldwide basis since the dawn of modern income taxation over a century ago. This book evaluates two radically opposed viewpoints on the convention—a momentous and revolutionary paradigm shift versus a mechanism that merely continues an ongoing flow of limited policy coordination—with detailed investigations that bring to life the hopes and the realities of the current era of multilateral tax cooperation. Bringing together authors from national jurisdictions across the globe to scrutinize the MLI and its likely future ramifications, the book provides in-depth commentary and analysis in the following sequence: first, a comprehensive discussion of the design and goals of the MLI as a treaty and an institutional framework; second, an overview of the structure of the convention and its take-up across the globe to date; and third, the substantive implementation of the MLI with a wide range of country reports. Practice areas covered include tax law, international law, and international relations. The legal workings and implications of the MLI might still seem mysterious to those whose daily work is impacted by it, and there is as yet little jurisprudence regarding its legal nature or ultimate effect on the bilateral treaties coming within its scope. For these reasons, this pathbreaking book will be warmly welcomed by in-house counsel and law firms advising cross-border investors and firms; nongovernmental organizations involved in policy analysis and issue advocacy; researchers working on technical areas of international tax law; and lawyers interested in international policymaking, including the creation and diffusion of consensus-based fiscal and related regulatory norms across jurisdictions of differing development levels.

Research Handbook on European Union Taxation Law - Christiana HJI Panayi 2020-01-31

Offering a comprehensive exploration of EU taxation law, this engaging Research Handbook investigates the associated legal principles in the context of both direct and indirect taxation. The important issues and debates arising from these general principles are expertly unpicked, with leading scholars examining the status quo as well as setting out a clear agenda for future research.

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.

Schwarz on Tax Treaties - Jonathan Schwarz 2021-09-28

Schwarz on Tax Treaties is the definitive analysis of tax treaties from United Kingdom and Irish perspectives and provides in-depth expert analysis of the interpretation and interaction of those treaty networks with the European Union and international law. The sixth edition significantly develops the earlier work with enhanced commentary and is updated to include the latest UK, Irish domestic and treaty developments, international and EU law, including: Covered Tax Agreements modified by the BEPS Multilateral Instrument; judicial decisions of Ireland, the UK and foreign courts on UK and Irish treaties; Digital Services Tax; treaty binding compulsory arbitration; Brexit and the EU-UK Trade and Cooperation Agreement; taxpayer rights in exchange of information; taxpayer rights in EU cross-border collection of taxes; attribution of profits to permanent establishments; and EU DAC 6 Disclosure of cross-border planning. Case law developments including: UK Supreme Court in *Fowler v HMRC*; Indian Supreme Court in *Engineering Analysis Centre of Excellence Private Limited and Others v CIT*; Australian Full Federal Court in *Addy v CoT*; French Supreme Administrative Court in *Valueclick*; English Court of Appeal in *Irish Bank Resolution Corporation v HMRC*; *JJ Management and others v HMRC*; United States Tax Court in *Adams Challenge v CIR*; UK Tax Tribunals in *Royal Bank of Canada v HMRC*; *Lloyd-Webber v HMRC*; *Esso Exploration and Production v HMRC*; *Glencore v HMRC*; *McCabe v HMRC*; *Padfield v HMRC*; *Davies v HMRC*; *Uddin v HMRC*; English High Court in *Minera Las Bambas v Glencore*; *Kotton v First Tier Tribunal*; and CJEU in *N Luxembourg I*, and others (the 'Danish beneficial ownership cases'); *État belge v Pantochim*; *College Pension Plan of British Columbia v Finanzamt München*; *HB v Istituto Nazionale della Previdenza Sociale*. About the Author Jonathan Schwarz BA, LLB (Witwatersrand), LL.M. (UC Berkeley), FTII is an English Barrister at Temple Tax Chambers in London and is also a South African Advocate and a Canadian and Irish Barrister. His practice focuses on international tax disputes as counsel and as an expert and advises on solving cross-border tax problems. He is a Visiting Professor at the Faculty of Law, King's College London University. He has been listed as a leading tax Barrister in both the Legal 500, for international corporate tax, and Chambers' Guide to the Legal Profession, for international transactions and particular expertise in transfer pricing. He has been lauded in Who's Who Legal, UK Bar for his 'brilliant' handling of cross-border tax problems. In Chambers Guide, he is identified as 'the double tax guru' with 'extraordinary depth of knowledge and experience when it comes to tax treaty issues and is a creative thinker and a clear and meticulous writer'.

Non-Discrimination in European and Tax Treaty Law - Kasper Dziurdz 2015-09-16

Selected issues of the various non-discrimination concepts Non-discrimination plays an important, if not crucial, role in many areas of law, such as constitutional law, human rights law, world trade law, EU law and tax treaty law. Both direct and indirect taxation are affected by the various types of non-discrimination provisions. From a practical point of view, the non-discrimination provisions within the EU legal framework and the non-discrimination concept under Article 24 of the OECD Model are important examples in this respect. In both areas of non-discrimination law, there are many open issues which have been debated for a long time and have evolved as evergreens of non-discrimination in the area of taxation; examples are the meaning of the ECJ's case law on the "finality" of losses or the compatibility of group regimes with Article 24 of the OECD Model. Other problems have emerged only recently, because of current developments at the OECD level, notably the BEPS project. Therefore, non-discrimination suggested itself as a general topic for the master theses of the full-time LL.M. program in 2014/2015. This book takes up and deals with selected issues in depth. Although the relevant non-discrimination provisions are different in wording and context, often the same issues can be analyzed under both the EU fundamental freedoms and Article 24 of the OECD Model. The results under these non-discrimination provisions may differ. However, similar policy considerations and arguments often influence the final decisions. With this book, the authors and editors contribute to the discussion on selected issues of the various non-discrimination concepts and the challenges they present.

Financial Instruments and Institutions - Stephen G. Ryan 2007-04-20

This book is an authoritative guide to the accounting and disclosure rules for financial institutions and instruments. It provides guidance from a "fair value" perspective and demonstrates the simplest and most natural measurement basis for reporting financial instruments, as is relevant for thrifts, mortgage banks, commercial banks, and property-casualty and life insurers.

International Taxation of Energy Production and Distribution - John Abrahamson 2018-04-20

Energy is a major global industry with rapid ongoing changes in areas such as carbon taxes, emissions trading regimes, and the development of renewable energy. The cross-border nature of the industry calls for the thorough, expert, and up-to-date analysis provided in this timely and practical book. Taking a down-to-earth, problem-solving approach to policy and practice in the field worldwide, the author focuses on the international tax framework, and the tax regimes in leading energy producing and consuming countries. The book introduces and analyses significant international tax issues related to energy production and distribution, extending from the tax regime in the country where the oil, gas, or coal exploration and production activities are located, through to cross-border transportation using pipelines, tankers, and bulk carriers, to the taxation of power stations and electricity transmission and distribution networks. The taxation issues covered include the following: - upstream oil and gas and mining taxes; - incentives for renewable energy; - carbon taxes and emission trading regimes; - dividend, interest, and royalty flows; - foreign tax credits; - permanent establishments; - mergers and acquisitions; - taxation issues for derivatives and hedging; - transfer pricing; - regional purchasing, marketing, service, and intangible property structures; - free trade agreements and customs unions; - dispute resolution; and - tax administration and risk management. Detailed updates are included on the most recent international tax developments affecting the energy industry, including the OECD Action Plan on Base Erosion and Profit Shifting (BEPS) and the 2017 OECD Transfer Pricing Guidelines. Case studies offer an opportunity to apply international tax analysis to specific examples, and gain practice in identifying and discussing relevant international taxation issues. This book will be of significant value to corporate tax managers and in-house counsel, together with accountants, lawyers, economists, government officials, and academics connected with the energy industry and related international taxation issues.

Hybrid Financial Instruments, Double Non-Taxation and Linking Rules - Félix Daniel Martínez Laguna 2019-06-12

Hybrid Financial Instruments, Double Non-taxation and Linking Rules Félix Daniel Martínez Laguna Hybrid financial instruments (HFIs) are widespread ordinary financial instruments that combine debt and equity features in their terms and design and may lead to double non-taxation across borders. This important book provides a deeply informed and critical analysis and guide to the "linking rules" developed to combat double non-taxation stemming from HFIs within the framework of the Base Erosion and Profit Shifting

project of the Organisation for Economic Co-operation and Development (OECD) and the anti-avoidance initiatives of the European Union (EU). These complex rules have now become essential in international taxation. The book deals incisively with crucial theoretical and practical issues as the following: Economic and legal reasons for financing business activity through debt instruments, equity instruments and/or HFIs. Qualification of financial instruments from different perspectives such as economics, corporate finance, corporate law, financial accounting law, regulatory law and tax law and their interrelation. The concept of double non-taxation as a mere outcome of parallel exercises of sovereignty by different states and the role it plays within the international debate. The concepts of tax planning, tax avoidance and the misleading concept of aggressive tax planning within a tax competition international scenario and their relation with HFIs. Comprehensive policy, legal and technical detail and explanation of the linking rules proposed by the OECD (i.e., BEPS Project Action 2) and the EU (e.g., Anti-Tax Avoidance Directive). The (in)compatibility of linking rules with existing tax treaty rules and EU primary law. The author refers throughout to relevant model convention provisions, EU case law and a vast number of references of official documentation and literature. With its detailed attention to the concept and legal nature of HFIs and double non-taxation, the critical and comprehensive analysis of the linking rules developed by the OECD and the EU, this provocative book allows to reconsider the legality of these linking rules and will quickly become a much-used problem-solving resource for policymakers, tax practitioners, tax authorities and tax academics. This book allows to rethink whether linking rules relate to a solution or create actual legal issues.

International Tax Coordination - Martin Zagler 2010-06-30

International taxation is a major research topic, and for a field of research at the intersection of so many disciplines there has been surprisingly little done across disciplinary boundaries. This book fills the gap by combining teams from business, economics, information science, law and political science to offer a unique and innovative approach to the issue of international tax coordination. All the chapters are written in collaboration between at least two authors from two different disciplines. This approach offers a rich and nuanced understanding of the many issues of international tax coordination. The book collects seven papers, each one a valuable contribution in itself, beginning with current problems of international taxation and finishing with potential solutions. The essays explore current EU legislation, tax avoidance and tax fraud, as well as double tax agreements, dividend repatriation and hybrid finance and tax planning. Providing methodological answers to the question of how to conduct interdisciplinary research, the book also gives an accessible introduction into research questions and answers that are important in related disciplines for scholars in various areas. This book will be of interest to postgraduates and researchers in the fields of economics, business, informational science, law and political science, as well as to professional accountants and tax lawyers.

Addressing Tax Risks Involving Bank Losses - OECD 2010-09-15

This book provides an overview of the tax treatment of banks' tax losses losses in 17 OECD countries; describes the tax risks that arise in relation to these losses; outlines the incentives that give rise to these risks, and describes how these risks can be reduced.