

Series Editor's Preface

The postgraduate program in International Tax Law at the Vienna University of Economics and Business (WU) is available either as a one-year full-time or a two-year part-time program. Students attend not only a vast number of courses, for which they prepare papers and case studies, and sit numerous examinations; they also write their Masters' theses. These theses are a prerequisite for the academic degree "Master of Laws (LL.M.)".

The program follows a scheme under which the Masters' theses of one particular program all discuss various aspects of the same general topic. The previous general topics were "Electronic commerce and taxation" (1999/2000 full-time program), "Partnerships in International Tax Law" (2000/2001 full-time program), "Transfer pricing" (1999/2001 part-time program), "Exemption and credit methods in tax treaties" (2001/2002 full-time program), "Permanent Establishments in International Tax Law" (2002/2003 full-time program), "Non-discrimination provisions in tax treaties" (2001/2003 part-time program), "Triangular Cases" (2003/2004 full-time program), "Tax Treaty Policy and Development" (2004/2005 full-time program), "Source versus Residence in International Tax Law" (2003/2005 part-time program), "The Relevance of WTO Law for Tax Matters" (2005/2006 full-time program), "Conflicts of Qualification in Tax Treaty Law" (2006/2007 full-time program), "Taxation of Artistes and Sportsmen in International Tax Law" (2005/2007 part-time program), "Fundamental Issues and Practical Problems in Tax Treaty Interpretation" (2007/2008 full-time program), "Dual residence in tax treaty law and EC law" (2008/2009 full-time program), "Taxation of employment income in international tax law" (2007/2009 part-time program). The respective Master's theses were published in edited volumes.

The general topic for the 2009/2010 full-time program was "The EU's external dimension in direct tax matters". A common subject does not only encourage students to discuss their theses with each other, it also permits looking after the students in accompanying courses. *Prof. Dr. Pasquale Pistone* introduced the students to the subject matter at the beginning of the program. *Sabine Heidenbauer, LL.M.* and *Birgit Stürzlinger* held seminars in which the structure of the papers and the intermediary results were critically analyzed. It was with great commitment that they supported the students who prepared their Masters' theses. Their numerous suggestions helped to improve the quality of the Masters' theses and, as a consequence, the quality of the present volume. In both of my functions as the scientific director of the postgraduate program and the editor of this series I wish to express my gratitude to the two colleagues.

I am also grateful to the students themselves. They pursued the program with great enthusiasm. This postgraduate program did not only give them the opportunity to talk to academics and scientifically qualified interns from all over the world and to acquire a wealth of knowledge, they also learnt to tackle and solve

complex issues using a structured approach. The Masters' theses now available bear witness to this. I hope that the results of these papers will both influence the scientific discussion and be of use to tax practitioners.

Michael Lang

Editor's Preface

The present volume comprises the masters' theses of the full-time class of 2009/10 of the postgraduate LLM program "International Tax Law" at the WU Vienna. The topics of all individual theses have their roots in one common topic: The EU's external dimension in direct tax matters.

The free movement of capital, as enshrined in Articles 63 et seq. of the Treaty on the Functioning of the European Union, is central to a number of chapters in this book. The fact that this freedom not only covers intra-EU relationships but also extends to third-country settings gives rise to a number of questions, some of which have already been dealt with by the European Court of Justice and some of which are still pending. Due to a number of derogations from the full freedom provided for in the Treaty and specific judicial interpretation, the ambit of the free movement of capital's external scope requires special attention. Moreover, discriminatory measures maintained by the Member States may possibly be justified. The high practical relevance of these issues is demonstrated in particular in the chapters on dividends, interest payments, and permanent establishments.

A number of topics are highly related to the third-country aspects of the free movement of capital and are key to the broader topic of the EU's external dimension. These include the competence to conclude tax treaties with third countries as well as the content of such treaties, agreements concluded between the European Union and Switzerland, tax-related transition issues affecting accession countries and a number of issues arising in the sphere of Association and Partnership Agreements.

The students have done a great job in identifying the core issues of their individual topics. The papers included in this book impressively reflect the great variety of the students' personal, cultural and professional backgrounds.

It was our task and pleasure to provide the students with critical support at all stages of their research. Motivating them to develop their own ideas, to go the extra mile in their research and eventually being presented with their achievements was certainly very rewarding. We would like to thank the students for their commitment and congratulate them on the successful completion of their studies.

Readers familiar with the Series on International Tax Law will immediately notice one novelty in this volume: The students' theses are complemented by a general report prepared by Professor Pasquale Pistone who gave this year's lecture on the fundamentals of the free movement of capital in a direct taxation context. We are very honoured to be able to offer a book drawn together by Professor Pistone's general report linking 20 individual topics and thereby adding an overall picture to the issue of third-country scenarios in matters of direct taxation.

Additionally, we would like to express our sincere thanks to the Linde publishing house for the opportunity to publish this volume. Sincere thanks are also

given to Ms Margaret Nettinga who contributed to the completion of this book by revising the theses from a linguistic point of view.

*Sabine Heidenbauer
Birgit Stürzlinger*