

Vienna LL.M. News

TAX LUNCH TALKS – A SERIES TO BE CONTINUED

A series of Tax Lunch Talks were held in the previous months bringing together LL.M. students and researchers of the Institute for Austrian and International Tax Law. Among others, they covered recent tax and tax policy developments in Malta, Mexico, and Portugal.

BEYOND TAX TREATIES: DOUBLE TAX RELIEF IN MALTA

Bilateral tax treaties are the primary mechanism for relieving double taxation, but they do not eliminate it in all cases. When treaty relief is unavailable or insufficient, Maltese taxpayers may rely on domestic law which provides three additional forms of relief: unilateral relief, relief for Commonwealth income tax, and a flat-rate foreign tax credit (FRFTC).

Article 75 of the Maltese Income Tax Act governs the interaction of these forms of relief and establishes a hierarchy in which treaty relief takes precedence, and unilateral relief applies only when that is unavailable or insufficient. The FRFTC is used when neither treaty nor unilateral relief is available, while Commonwealth tax relief is primarily a vestige of Malta's colonial past.

Under the unilateral relief regime, a Maltese taxpayer may claim a credit for foreign taxes paid that is subject to a cap ensuring it does not exceed the Maltese tax liability on the relevant income. The scope of unilateral relief also encompasses underlying tax on dividends distributed by foreign entities. Both corporate and individual taxpayers may obtain relief not only for tax levied directly on dividends received but also for tax borne by the distributing company on the profits from which those dividends are paid.

This reflects Malta's recognition of the economic burden of corporate taxation and ensures the same income is not taxed twice. The FRFTC is a deemed tax credit available to Maltese companies on passive foreign-source income such as dividends, interest, and royalties. Such income must be attributed to the Foreign Income Account which is one of the five accounts used in Malta for allocating distributable profits. It is calculated at 25% of net income received there after deducting foreign taxes but before deductible expenses. The credit is capped at the lower of the FRFTC itself or 85% of Maltese tax payable on profits allocated to the FIA after foreign tax setoffs. The FRFTC is grossed up with the resulting income taxed at 35% and is then deducted from the liability to ensure relief for the deemed foreign tax paid.

Malta enjoys a broad treaty network with over eighty countries, and its additional options for double tax relief, including unilateral relief and the FRFTC, offer added flexibility that ensures taxpayers can mitigate double taxation when the treaty network falls short.

**Damian Cassar,
Maria Anne Fsadni,
both Malta, Full-time 2025/26**



FROM BUSINESS PROFITS TO WITHHOLDING TAX: MEXICO'S HIDDEN BATTLE OVER CROSS-BORDER PAYMENTS

The Federal Court of Administrative Justice (TFJA) established jurisprudence IX-J-SS-70 in June 2023 that is a relevant precedent for cross-border service payments in Mexico. The case centered on technical assistance payments made to a Netherlands resident without a permanent establishment in Mexico. The taxpayer applied Article 7 of the Mexico-Netherlands Double Tax Treaty (DTT) to support the absence of Mexican withholding tax, however, the TFJA determined such income is not protected. It is stated in Article 3(2) of the DTT that the court remitted the interpretation of the undefined term ("technical assistance") to domestic law.

It turned to Article 15-B of the Federal Tax Code (FTC) to characterize technical assistance as providing "independent personal services" involving non-patentable knowledge when the provider intervenes in its application. The TFJA concluded that technical assistance is not a business profit because Article 16 of the FTC restricts "business activities" to specific commercial acts. This reasoning raises questions on the limits of domestic law in treaty interpretation and appears to depart from OECD Commentaries that typically include technical assistance under Article 7. The TFJA viewed treaty protection as "exhausted" once a service fails the domestic business profit test which leaves mini-

In Class

mal latitude for Article 21 (Other Income) as a fallback. This creates a spillover risk for other treaties with similar wording. Practical consequences include a 25% domestic withholding rate, joint and several liability for the withholding agent, and the strict non-deductibility of the expense. Such recharacterization creates an uncertain environment in which a double taxation risk arises if the residence state denies the foreign tax credit by arguing that Mexico had no taxing right under Article 7.

Multinational corporations must now navigate a landscape where the absence of explicit treaty definitions allows aggressive domestic recharacterization.

The case therefore shows the tension between tax autonomy and international legal certainty thereby underscoring the need for careful documentation and treaty analysis for cross-border service agreements.



Diego Fernando Benítez Hernández, Mexico, Full-time 2025/26

PORTUGAL'S PREFERENTIAL PERSONAL INCOME TAX REGIME – FROM DESIGN TO TREATY ENTITLEMENT

Portugal's Non-Habitual Resident (NHR) regime was introduced in 2009 and offered incoming residents a flat 20% rate on qualifying Portuguese-source income and a broad exemption on foreign-source income. It served as one of the most prominent examples of preferential personal income tax regimes within the European Union for over a decade.

The NHR was replaced in 2024 with the Tax Incentive for Scientific Research and Innovation (IFICI) that narrowed eligibility to specific professional activities. Now, to qualify, an individual must not have been a tax resident in Portugal in any of the previous five years and must carry out one of a defined list of eligible professional activities including higher education and scientific research, qualified positions in companies benefiting from investment incentive regimes, and roles in certified startups. The regime applies for a period of ten years and offers a 20% flat rate on qualifying Portuguese-source employment and self-employment income together with an exemption on most foreign-source income which excludes that from pensions and that which is derived from tax havens.

The central question from a treaty law perspective is whether IFICI beneficiaries qualify as residents of Portugal under Article 4(1) of the OECD Model.

It is critical to note that the broad exemption of foreign-source income that the regime provides raises the question of whether beneficiaries fall within the second sentence exclusion of Article 4(1) that denies treaty residence to those liable to tax only on domestic-source income – a position already contested by the Spanish tax authorities. There are, however, strong arguments against such denial: (i) beneficiaries are liable to tax on a worldwide basis; (ii) pension and tax haven income remain effectively taxed; and (iii) the exemption operates as a double taxation relief mechanism rather than a substantive carve-out from the tax base with exempt income being taken into account for determining the progressive rate on domestic income.

Nevertheless, though the IFICI is arguably the least distortive iteration of this class of regimes, the tension between preferential domestic PIT rules and treaty law remains unresolved and, as the Spain dispute illustrates, far from theoretical.



Maria Beatriz Garces Ferreira, Portugal, Full-time 2025/26

WINE HIKE IN VIENNA

To kick off our LL.M. year, we participated in the Viennese tradition of an autumn wine hike through some of Vienna's 600 hectares of vineyards. On the edge of the Viennese woods, the vineyards offer sweeping views of the city and the Danube, and the hike perfectly blended nature, culture, and history. Each Heuriger stop revealed glimpses into both Vienna's evolution as an economic and social hub and Viennese culture today. This experience was a wonderful introduction to the city and, though the forecast promised rain, we stayed dry and were treated with a breathtaking rainbow over the city, a fitting welcome to our new home.



Rachael E. Reeves, USA, Full-time 2025/26

In Class

HEURIGER

Few things capture the spirit that lives here in the LL.M. quite like an evening at Heuriger 10er Marie. Around the table, the program shows another of its faces, the one made of long conversations, easy laughter, and the kind of cross-cultural exchange that the classroom alone cannot quite produce. With Professor Michael Lang at our table, the night felt less like a scheduled program event and more like an evening among friends, the kind of gathering one carries forward long after the year in Vienna ends. We came away grateful for one more night to add to the collection of moments that will define this year for us.



Far left: Fernando Ayres Barreto Filho, Brazil, Full-time 2025/26

MUSIKVEREIN CONCERT



Several students of the 2025/26 Full-time class attended a Gospel and Spirituals concert at the Musikverein in Vienna on 15 December 2025. The performance took place in the Golden Hall which is one of the city's most iconic concert venues. Vienna is a city where music is part of everyday life, and the evening became more than a concert: it was a shared memory of friendship, culture, and community. Moments like this show that the LL.M. experience extends far beyond academic life and becomes part of a truly unforgettable year in Vienna.

Far right: Diego Fernando Benítez Hernández, Mexico, Full-time 2025/26

JOB FAIR

The 2026 job fair provided a helpful platform for meaningful engagement between students and leading consulting firms. A number of renewed advisory companies were in attendance with each being represented by either an experienced professional and/or recruitment specialist. Students were afforded the opportunity throughout the event to engage in in-depth discussions regarding diverse career pathways, recruitment expectations, and the evolving demands of the consulting sector. These interactions enabled participants to gain valuable insights into professional development and to gain a better understanding of the competencies and qualifications sought by top-tier firms.



Alumni

FROM VIENNA TO NEW YORK

When we came to Vienna for the LL.M. in International Tax Law at WU, we had already begun building our careers in tax in Peru following different paths but sharing a strong interest in international tax. We saw the programme as an opportunity to deepen our understanding of the field, but our time at WU would become much more than that.

After the LL.M., Eduardo started a new role with the United Nations and moved to New York. He first supported the work of the Committee of Experts on International Cooperation in Tax Matters. Since 2025, he has been one of the focal points in the UN team supporting the negotiations of the United Nations Framework Convention on International Tax Cooperation and its two early protocols.

Susana's path after Vienna also became increasingly international. She joined the international tax team of a Big Four firm in Malta. She then moved back to Vienna to work in-house at a multinational enterprise focusing mainly on implementing Pillar Two. She is now based in New York and is shaping the next stage of her career around international tax advisory work connected to Europe, Latin America, and the United States.

The LL.M. was an important turning point for both of us. It gave us a more comprehensive technical foundation and, just as importantly, the ability to understand tax issues from different jurisdictions, legal traditions, and policy perspectives. Discussions with professors and classmates from around the world made international tax feel truly international, and that experience remains useful in our work. Above all, we remember the friendships we built with classmates from many countries. Along the way, we married in 2024 and, for some time, kept our life between the United States, Peru, and Europe before settling in New York. Looking back, the LL.M. was one of those experiences that quietly changed the direction of our lives. It opened professional doors, broadened our perspective, and gave us memories and friendships that remain with us wherever we go.



Susana Vilquiniche and Eduardo Diaz
Peru, Full-time 2021/22

FROM GLOBAL CLASSROOM TO GLOBAL PRACTICE

Completing the LL.M. in International Taxation at the Institute for Austrian and International Tax Law marked a decisive turning point in my professional journey. What distinguished the programme was not only its technical depth in transfer pricing and treaty law but its comparative lens. Every discussion was shaped by multiple jurisdictions, administrative perspectives, and policy realities. That intellectual diversity later became the foundation of my practice.

After graduating, I worked extensively on cross-border transfer pricing and international tax advisory matters across multiple jurisdictions. Over time, the professional relationships formed during the LL.M. evolved into structured collaboration. Today, I lead the Global Transfer Pricing Network (GTPN) which is a boutique cross-border advisory platform headquartered in the UAE with a coordinated presence across several regions.

What is particularly meaningful is that three of our network firms in Mexico, Chile, and Cyprus are led by fellow WU LL.M. alumni. The trust developed in Vienna's classrooms has translated into long-term professional cooperation across continents. The programme's emphasis on analytical rigour, economic substance, and multi-jurisdictional defensibility continues to shape our approach to complex international tax matters including transfer pricing structuring, compliance, and dispute strategy.

Looking back, the LL.M. did more than refine technical expertise. It created a global professional community grounded in shared intellectual discipline. The international classroom in Vienna continues to influence not only how I analyse tax problems but how I build cross-border partnerships.



From left to right:

- Rishabh Agarwal, India, Full-time 2021/22
- Leonardo Brum Ramirez, Mexico, Full-time 2021/22
- David Fischer Tabak, Chile, Full-time 2021/22
- Olegs Kuznecovs, Latvia, Part-time 2021/23

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Editorial staff: Prof. Michael Lang, Barbara Ender-Rochowansky