

# Vienna LL.M. News



Prof. Tsilly Dagan



Panel discussion



Mr. William Morris

## KLAUS VOGEL LECTURE 2021 – UNBUNDLED TAX SOVEREIGNTY

Tsilly Dagan, Professor of Taxation Law at University of Oxford Faculty of Law, delivered the Klaus Vogel Lecture 2021 titled “Unbundled Tax Sovereignty”. In her lecture, Prof. Dagan honored the legacy of Prof. Klaus Vogel by reexamining the effects of globalization on the interaction between states and their subjects. Traditionally, tax sovereignty serves the efficient supply with public goods by collecting payment for the use of such goods.

Globalization enables the transformation of tax sovereignty through a renewed competitive and fragmented reality. Fragmentation gives some taxpayers the ability to pick and choose between a range of public goods and services. For example, fragmentation allows taxpayers to benefit from a foreign legal system or a foreign corporate governance regime to lower their contribution to the financing of public goods. At the same time, states enter into competition for members since the higher mobility allows many taxpayers to relocate to the most beneficial location. Thus, states can gain a competitive advantage if they can offer an appealing deal of public goods and services in exchange for an attractive tax rate. When it comes to resolving these issues, states face the challenge of balancing the need for a secure supply of public goods with the taxpayers’ need to shape their life in accordance with their own visions. As a conclusion, Prof. Dagan suggests that states should offer a bundle of basic public goods and services in exchange for taxes that should not be based on the use of these goods but on the taxpayer’s ability to contribute.

### Comments

As a follow-up to the lecture, comments were presented by William Morris, Deputy Global Tax Policy Leader at PwC. He particularly focused on the concept of the social contract that serves to regulate the balance between the state’s right to coerce and the independence of the state’s subjects. In this regard, he discussed some options of how the social contract can be renegotiated and which side-effects such a renegotiation could have.

### Discussion

The presentations were followed by a panel discussion with speakers Dr. Arne Schnitger, partner at PwC Germany; Prof. Michael Lang along with Prof. Tsilly Dagan and William Morris. The panel elaborated on the future impact of tax sovereignty on the distribution of public goods.

### Vera Hellebrandt, Austria

**PwC Research Project Associate,  
Institute for Austrian and International Tax Law WU**

The next Klaus Vogel lecture is scheduled for  
9 December 2022. Please save the date.

# In Class

## 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 In-

stitute for Austrian and International Tax Law. They covered recent tax developments in Belgium and Austria.

## THE USAGE OF THE OECD TRANSFER PRICING GUIDELINES IN AUDITS BY THE BELGIAN ADMINISTRATION

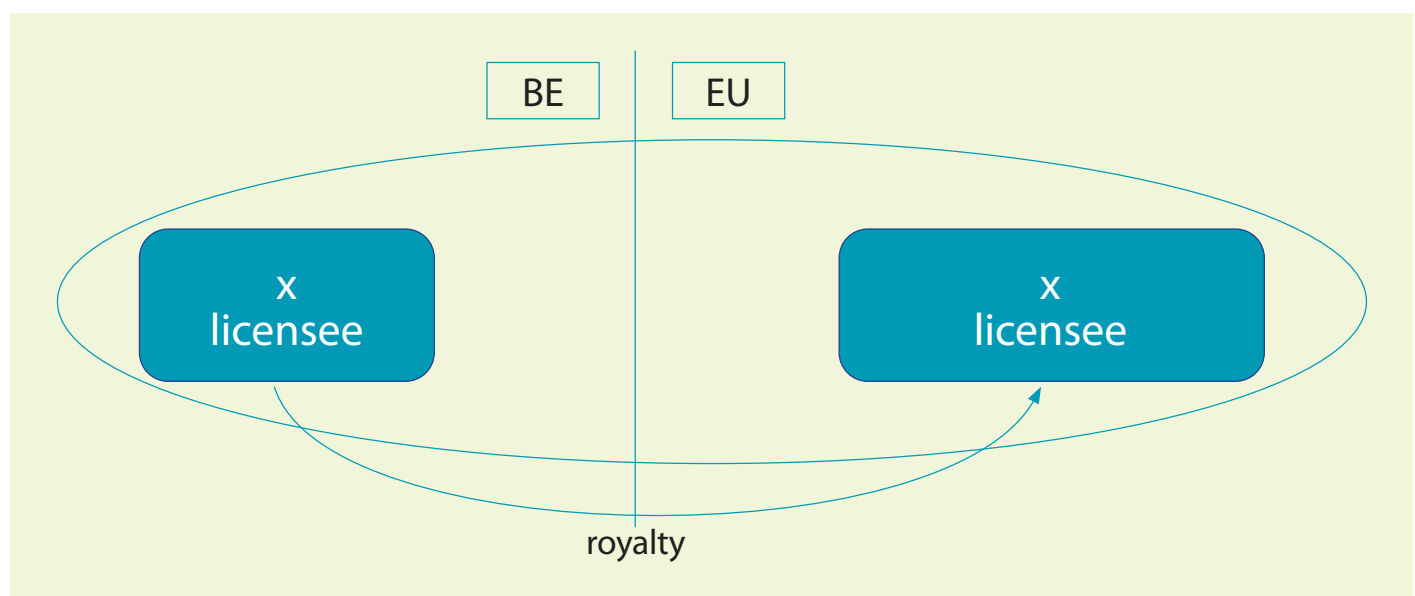
With a judgement on 8 June 2021, the Ghent Court of Appeals waded into the question of the applicability and the temporal effect of the OECD TP Guidelines (TPG). The facts of the case were as follows. A Belgian company was the licensee of technology licensed by a Luxembourg company. Previously, the licence had been owned by a Dutch company that sold it to an Irish company who finally moved to Luxembourg. The Belgian tax administration held the view that the Belgian company had performed all of the DEMPE functions for the licensed technology. An adjustment of the tax returns was made for the tax year 2010 (income year 2009).

This created interesting questions concerning the applicability of the OECD TPG. In relying on the DEMPE functions, the tax administration had clearly made extensive use of the 2017 OECD TPG. The tax administration had also relied on the ex-post valuation of hard-to-value intangibles. Both concepts are a new addition to the 2017 OECD TPG. The court thus needed to rule on which, if any, OECD TPG was to be used.

The court first stipulated that the OECD TPG are not, in any way, directly applicable but can be used as a point of reference in the field of transfer pricing.

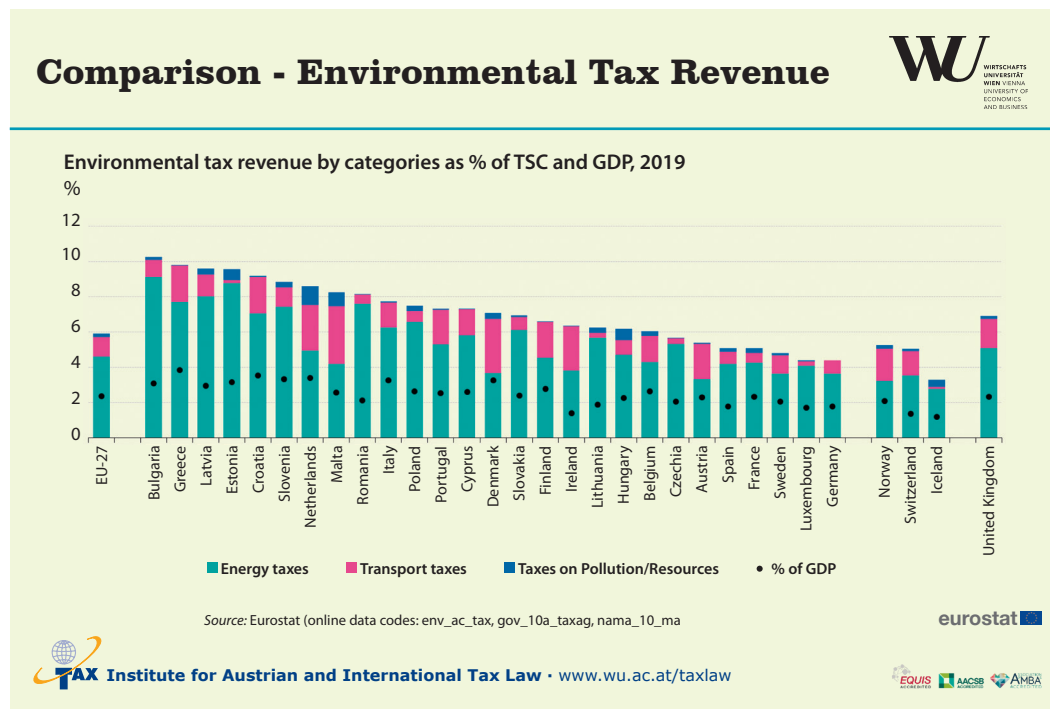
Secondly, the court noted that there are several versions of the OECD TPG (1995, 2010, and 2017) that differ on certain points. Changes between the different versions range from clarifications to newly developed parts (recommendations not yet part – even implicitly – of previous versions). According to the court, only the 1995 OECD TPG were part of the economic context and the regulatory framework at the time of the taxable events. The tax administration can base its tax adjustment on the 1995 OECD TPG. It can use subsequent OECD TPG only insofar as it includes useful clarifications. To reach this conclusion the court also refers to the European Court of Justice rulings (T-816/17 and T-318/18, Luxembourg-Ireland-Amazon v Commission, para. 146-155). The court thus rejected the use of the DEMPE functional analyses as well as the ex-post valuation of hard-to-value intangibles. The court then, ruling on the substance of the case, used the DEMPE functions itself to conclude that these functions are, in fact, performed by the Luxembourg company, making use of the OECD TPG tools it had itself ruled were inapplicable.

**Kristof Boel, Belgium**  
**Full-time 2021/22**



# In Class/Alumni

## AUSTRIA'S TAX POLICY APPROACH TO PROTECTING THE ENVIRONMENT



consumption and transaction taxes that positively impact environmental behaviour and pursue ecological control measures.

Austria's new tax reform measures include: i) tax incentives on certain goods and services, e.g. reduction of the VAT on electronic publications and e-transportation, ii) plane ticket surcharge, and iii) adjustment of the NoVA. In addition, Austria is working with the EU to commit to CO2 tariffs on imports into the European internal market from third countries that do not meet the climate and environmental protection standards. Currently, except for taxes on motor vehicles and motor

Severe environmental challenges increase the pressure on governments to find ways to reduce environmental damage while minimizing harm to economic growth. Mandatory emission reduction targets include but are not limited to lowering the total CO2 emissions of the road transport sector in Europe. The effectiveness depends on the tax design, most notably the tax amount. Austria levies 20% VAT on cars and a tax on CO2 emission called NoVA. This rate depends on CO2 emission, fuel type, and CO2 based malus. Moreover, Austria implemented environmentally related charges and taxes: energy taxes, pollution taxes, transportation taxes, and resource taxes. The Austrian tax system also contains ecologically relevant fees that are not classified as „eco-taxes“ in the narrower sense but represent significant ecological payment flows, e.g. environmental pollution charges (waste charges) or transport charges like toll charges, charges for parking vehicles, or the motorway vignette. Thus, Austria has

vehicle fuels, the rates of environmentally related taxes in OECD countries are typically low and, in most cases, below the value of the relevant damage. Environmentally related taxes account for approximately only 5% of total tax revenues in OECD countries. According to Statistics Austria, the revenue from eco-taxes in Austria amounted to EUR 9.8 billion in 201 of which 57% was the total receipts from eco-taxes accrued from energy taxes, about 35% from transport taxes, nearly 7% from resource taxes, and around 1% from pollution taxes. The European Commission's Staff Working Document, namely, the EU Environmental Implementation Review 2019 Country Report on Austria, stated that Austria's revenue from environmentally relevant taxes is close to the EU average.

**Vivien Tomio-Onghay, Austria**  
**Graduate Full-time 2020/21**

## ACADEMIC CEREMONY

Hosted by the ERSTE Group and in line with the general Corona measures, an academic ceremony was held to celebrate the full-time 2020/21 and part-time 2019/21 class as they achieved this milestone. This brings the total number of alumni to over 800 from 73 different countries.



# Alumni

## ANOTHER TWO BOOKS PUBLISHED

Students not only attend a vast number of courses for which they prepare papers and case studies as well as sit numerous examinations but also write their master's theses. These theses are a prerequisite for the academic degree Master of Laws (LL.M.). The program follows a scheme under which the master's theses of one particular program all examine various aspects of the same general topic.

### MASTER THESES FULL-TIME 2020/2021 – ACCESS TO TREATY BENEFITS



[www.lindeverlag.at](http://www.lindeverlag.at)

This volume provides a rigorous analysis of various aspects related to treaty access. Schematically, the volume is divided into four parts. The first part deals with general interpretative issues and principles; the second and third parts cover a wide range of sub-aspects relating to the subjective and objective scope of tax treaties and the recent challenges posed to tax treaty access, while the fourth

part focuses on the knotty issues of treaty shopping and abuse. The structure of the volume reflects the necessity to approach access to treaty benefits in a holistic way and view the recent trends through a wide lens. All chapters contain a complete examination of the relevant topics, starting from a historical perspective and continuing with tax treaty law principles and tax practice analysis. When appropriate, a domestic law and domestic courts' jurisprudence perspective was added as well as a comparative analysis of several jurisdictions thus complementing the examination of each topic. Finally, special attention is given to treaty abuse and the new GAAR introduced in the 2017 OECD Model together with its interrelation with other treaty and domestic anti-abuse provisions and the impact of these provisions on tax treaty access and tax policy in general.

**Desirée Auer and Christina Dimitropoulou, editors**

### MASTER THESES PART-TIME 2019/2021 – CONCEPT AND IMPLEMENTATION OF CFC LEGISLATION



[www.lindeverlag.at](http://www.lindeverlag.at)

This volume provides an in-depth analysis of various aspects of this topic. The volume is divided into four parts. The first part comprises chapters discussing the historical background, policy considerations, and different CFC approaches that have been implemented in domestic legislation. While the chapters included in the second part focus on the recommendation for

the effective design of CFC rules found in BEPS Action 3, the chapters encompassed in the third part analyse the implementation of these criteria in Articles 7 and 8 of the ATAD and the compatibility of these provisions with EU primary law. Finally, the chapters covered in part four deal with selected issues related to CFC rules, including the compatibility of CFC legislation and tax treaties, the relationship between these rules and general anti-abuse rules, the implications of the proposed CCCTB Directive on CFC rules, alternative approaches to CFC legislation (such as the Global Anti-Base Erosion proposal of the OECD/G20), the interrelationship between CFC rules and transfer pricing legislation, and the balance between effective CFC rules and compliance burdens.

**Nathalie Bravo and Alexandra Miladinovic, editors**



The DDTC, a research, technology, and knowledge-based tax institution in Jakarta, won the **Indonesia Transfer Pricing Firm of the Year** award at the ITR (International Tax Review) Asia-Pacific Tax Awards 2021. Congratulations to Romi Irawan, partner of Transfer Pricing Services and Danny Septriadi, Senior Partner at DDTC.



Both are graduates of the Vienna LL.M. Program.

**Denisse and Francisco**, graduates of the Vienna LL.M. Program were wed in March 2021. Both attended the full-time program 2017/2018 and continued their career in their home country of Ecuador. What a happy and beautiful couple – Congratulations on your wedding!

## IMPRINT

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