

# Vienna LL.M. News

LL.M.

INTERNATIONAL  
TAX LAW  
VIENNA

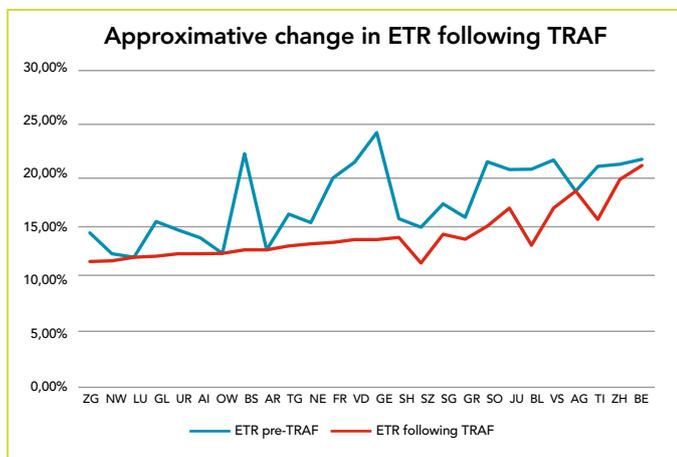
## TAX LUNCH TALKS – A SERIES TO BE CONTINUED

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. They covered recent tax developments in Switzerland, Russia, Brazil and China.

### Corporate Tax Reform in Switzerland

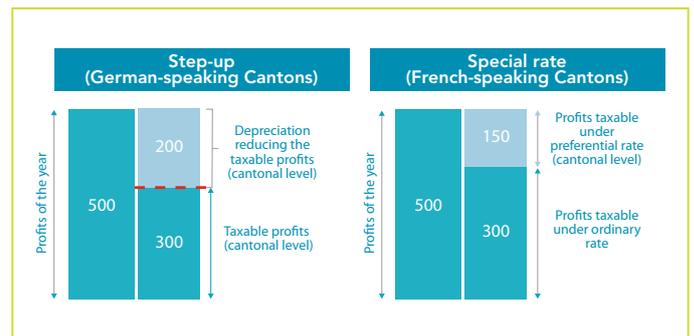
Switzerland enacted the Tax Reform and AHV<sup>1</sup> Financing Act (TRAF) as per January 1<sup>st</sup>, 2020.

TRAF abolished the cantonal preferential tax regimes<sup>2</sup> that were no longer aligned with international standards. Following this reform, almost all Cantons have reduced the cantonal corporate income tax rate to various extents to mitigate the effects of TRAF.



Following TRAF, most Cantons also introduced an additional deduction for R&D expenses amounting to maximum 50% of the total of the "own"<sup>3</sup> and "contractual"<sup>4</sup> R&D expenses incurred in Switzerland. TRAF allows high-tax Cantons to introduce a notional interest deduction (NID) on surplus equity. Under the patent box regime, income derived from qualifying assets (patents and similar rights) may be taxed at cantonal level with a reduction of up to 90% (depending on the Canton). The overall tax relief obtained thanks to these alternative measures may not exceed 70% (or less, depending on the Canton) of the taxable profit.

In addition, temporary measures offering a short-term privileged cantonal taxation of an amount corresponding to the unrealized gain (incl. goodwill) generated prior to TRAF were available to companies that previously benefitted from the preferential regimes. In German-speaking Cantons, this takes the form of a depreciation reducing the taxable profits ("step-up"), and in the French-speaking Cantons, usually a specific carve-out of the yearly profits is taxed under a preferential rate ("special rate").



Overall, Switzerland appears to have efficiently addressed the challenge of aligning its tax system with international standards while remaining an attractive business location. However, it remains to be seen how current discussions on the introduction of a global minimum tax may affect the reduction of the CIT rates implemented in most Cantons to mitigate the adverse effects of the reform.

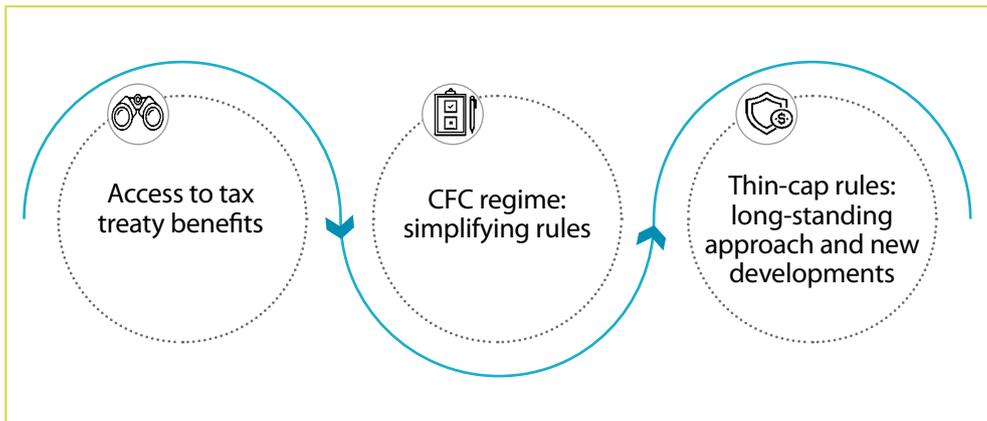
### Emilia Rebetez, Switzerland

#### Full-time 2020/21

1. Alters- und Hinterlassenenvorsorge (Old age and survivors' insurance).
2. Such as the holding company or the domiciliary and mixed company regimes. The Principal company and Swiss finance branch regimes (federal privileges) were already abolished with effect January 1st, 2019.
3. Calculated by applying a 35% mark-up on the domestic personnel costs directly linked to R&D.
4. Representing 80% of the R&D costs invoiced by third parties located in Switzerland.

# In Class

## Russian Anti-Tax Avoidance policy: Main Trends



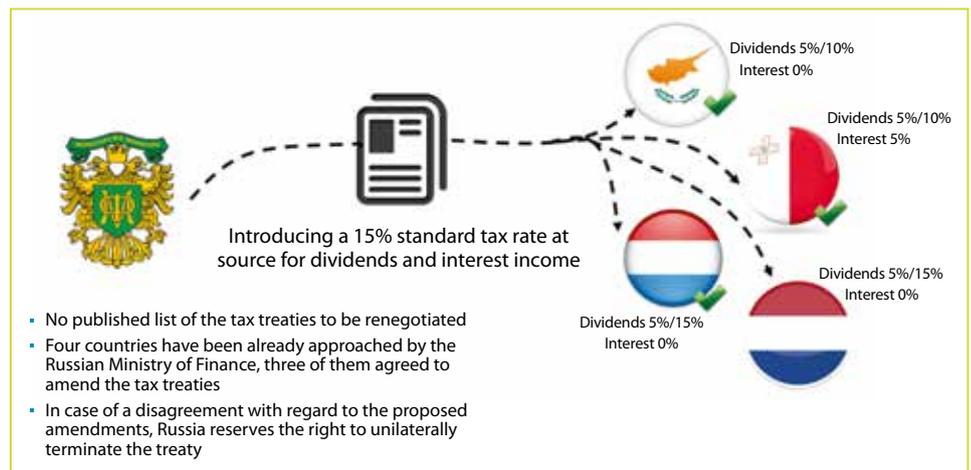
**Access to tax treaty benefits.** First, the application (more than 60 court cases) of beneficial ownership rules during the first 5 years of its existence in Russian domestic tax legislation shows that these rules could seem to be more widely applicable than the recently accepted OECD interpretation, as they combat not only tax-avoidance related to dividends, royalties, or interest payments but also all types of income including capital gains. Moreover, they apply so often that they can be considered as a universal tool, rather than a SAAR, in treaty shopping cases. It is also worth mentioning that, when the tax authorities challenge an income payment, they are not obliged to identify the actual beneficial owner. However, Russian tax law provides a so-called “look-through” approach, allowing for access to the DTT rates in relation to a person that is not a direct recipient of Russia-sourced income, but nonetheless is a beneficial owner of such an income.

Second, as part of the COVID-19 tax policy, the President of Russia announced that “all income payments that flow out of Russia to offshore jurisdictions must be taxed appropriately.”

The proposal is therefore to amend Russian DTTs with certain countries to change how dividends and interest are taxed (See below).

**CFC regime.** There were numerous complaints from taxpayers that Russia’s CFC legislation is too complex. Recently these complaints were addressed by the President by means of introducing a new simplified regime. The new regime for the taxation of CFC profits will allow a controlling person to pay tax equal to 5 million roubles (≈55,000 EUR) on all controlled foreign companies irrespective of the number of CFCs and the amount of retained profits and will free tax-

payers from the formal requirement to calculate and declare the profits of each CFC.



**Thin-cap rules.** The recent case-law demonstrates that DTT rates provided for dividends can be applicable to re-qualified interest. The Supreme Court of Russia also ruled that in case tax treaties require fulfilment of the investment criterion to apply reduced tax rate on dividends a loan can be considered as such investment.

**Alexandra Krasnobaeva, Russia**  
Full-time 2020/21

## Brazilian Tax Treaty Policy

The Federative Republic of Brazil is known to follow a distinctive treaty policy. This could be partly justified because it is a developing country and is not an OECD member. However, these motives are insufficient to explain the peculiarity of its policy choices since they still substantially differ from the ones supported by countries found in similar conditions, particularly other countries located in South America. Therefore, it is crucial to acknowledge that the Brazilian tax treaty policy is also significantly underpinned by the specificities of its tax system and the economic-oriented aims and needs of the country, which ultimately explain these differences.

Brazil commenced its process of tax treaty negotiation in the 1960s. In the beginning, the country focused on signing conventions with countries that traditionally invested in Brazil as a way to spur foreign direct investment. Since then, Brazil has diversified the criteria it uses to select its treaty partners, which, to date, resulted in tax treaties signed with 33 developed and developing countries that do not necessarily invest or hold a close relationship with it. Although Brazil started to negotiate treaties approximately 60 years ago, its treaty network is rather limited. Notably, it is possible to observe a decrease in the number of treaties concluded over time. Indeed, most of the Brazilian treaties were signed in the 1970s and 1980s.

Unlike other countries, Brazil does not have its own model convention. Instead, Brazilian tax treaties generally follow the OECD and the UN models. The latter plays an important role in its treaty policy, as it argues for more taxing powers for source states. Moreover, Brazil usually upholds a broader

## The Recent Tax Policies for Foreign Investment and the International Movement of Goods and Talents in China

With increasing globalization, China has become one of world's biggest markets and top destinations for foreign investment. To create an attractive business environment, China has introduced a series of tax policies for foreign investment, as well as tax incentives to promote international movement of goods and talents in China. In this lunch talk, a brief introduction was given of the key elements of the newly enacted foreign investment law, and three main ongoing regional projects that reflect China's long-term opening up policy, including in particular, the Greater Bay area, Hainan Free Trade Port (FTP) and Shanghai Pilot Free Trade Zone (FTZ). The new Foreign Investment Law, which came into effect in 2020, has integrated the three previous laws that governed three main foreign investment enterprises (FIE). There are four highlights of this law, including easier market entry and registration, fewer formal and currency restrictions, stronger IP and technology protection, as well as reporting obligations for FIEs.

## Brazil in a Nutshell

### General overview

- Population: 212 million (2021).
- GDP: \$ 1,4 trillion (2020).
- Brazilian Federalism – 3 Levels:
  - Federal Union
  - States; and
  - Municipalities.

### Statutory framework

- Constitutional Tax System
    - Taxing rights divided among the (i) **Federal**, (ii) **State**, and (iii) **Municipal** governments.
    - Articles 145 to 162 of the Federal Constitution.
  - National Tax Code and other laws.
  - Dividend Exemption System.
- Non-OECD member; non-MLI signatory; G20.



concept of royalties in a way that it encompasses technical assistance and technical services. In some of its recent treaties, a special provision for fees for technical services has even been included. Finally, the country has often sought to incorporate tax sparing or matching credit clauses in its tax treaties, especially when negotiating with developed countries. Although many other particularities could be herein highlighted, the aforementioned examples are sufficient to demonstrate the reputation that Brazil has earned for its unique policy choices. If Brazil becomes an OECD member such different policy choices may be reduced. Whether this will ever happen, however, is a question left for the future.

## Caroline Guimarães, Brazil

Full-time 2020/21

Additionally, to deepen the development of the Greater Bay Area, Circular No.31 was issued by the Minister of Finance and State Taxation Administration in March 2019, which grants preferential tax treatments to eligible overseas talents working in this area, including tax-free subsidies.

Furthermore, policies supporting the construction of the Hainan FTP were announced in 2019. These policies comprise a long-term zero-tariff regimes, a special import processing policy to optimize global value chains, a reduced corporate tax rate for enterprises within the FTP, a tax exemption for foreign dividends, and subsidies for foreign talents similar to those granted in the Greater Bay Area. In the same year, the New Lingang area was established as a special area of the Shanghai Pilot FTZ, focusing on four key industries: integrated circuits, life science, large aircraft and information technology. Tax incentives similar to those in the Hainan FTP are also provided in this new area.

## Shuangshuang Lu, China

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# Miscellaneous

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## Conference Tax Treaty Case Law around the Globe

This conference is a joint initiative between the Institute for Austrian and International Tax Law of WU and the European Tax College of Tilburg University. It is a unique event involving leading tax treaty experts from all over the globe presenting the most recent judgments. Panelists provide an in-depth analysis of these decisions and their practical impact on the interpretation and application of other tax treaties. This year the conference was organized by WU. Due to Covid-19, the conference was held in a fully online format. Professor Michael Lang, Head of the Institute for Austrian and International Tax Law at WU, and Professor Ton Stevens from the Tilburg School of Economics and Management, were the chairs of the first session. They welcomed more than 100 participants from about 40 different countries and introduced the two-day program with cases from 23 different jurisdictions.

Cases presented ranged broadly in tax treaty topics touching upon all the different articles of the OECD Model Convention. The picture that emerged presents, on the one hand, longstanding genuine ambiguities and, on the other, new and emerging issues.

For example, there is still an open debate between "subject to tax" and "liable to tax" requirements that emerged from the French and Italian cases. There are also cases dealing with the interaction between domestic rules and tax treaties, exemplified by the ad hoc section on anti-avoidance rules, which seem to confirm a leitmotiv of the international tax treaty legal framework.

On the other hand, examples of new issues could be identified in the unilateral adoption by countries of unilateral tax measures to tackle the digital economy, as shown by a Turkish case, and by novel interpretations of existing provisions, as seen in the French "Google-type" case. Finally, cases such as the Belgian MAP proved how taxpayers' rights are increasingly gaining momentum in the international tax framework.



Speakers at the conference, among others: Yariv Brauner and Michael Lang



Pasquale Pistone and Alexander Rust

Professor Alexander Rust, chair of the last session, delivered the closing remarks emphasizing the importance of the TTCL conference as crucial instrument to foster a constant dialogue among countries worldwide on tax treaty topics.

**Sergio Messina, Italy**

**DIBT student,**

**Institute for Austrian and International Tax Law WU**

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