

Vienna LL.M. News



Reuven Avi-Yonah



Stewart Brant



Panel discussion

KLAUS VOGEL LECTURE 2023 – THE ORIGINS OF DESTINATION BASED INCOME TAXATION: UNITED STATES AND INTERNATIONAL TAX PERSPECTIVES

Reuven Avi-Yonah, Irwin I. Cohn Professor of Law at the University of Michigan, United States, delivered the 2023 Klaus Vogel Lecture on “The Origins of Destination Based Income Taxation: US and International Tax Perspectives”. Prof. Avi-Yonah discussed the concept of source taxation in international tax law, expanding it beyond the location of goods production to encompass the place where goods are marketed and consumers are located in the context of the digital economy. He emphasized the League of Nations 1923 Report’s centenary, underscoring its ongoing influence on current international tax reforms. The report suggested a formulary allocation of income that reflects the US formulary model adopted by most states for taxing corporate income that predominantly uses a sales factor. He linked these historical underpinnings to BEPS 2.0 Pillar One that applies a formulary method to allocate portions of large multinationals’ residual profits to market jurisdictions. Its catalyst was countries unilaterally enacting digital services taxes (DSTs) in order to mitigate the limitations on source taxation of income from businesses operating without a physical presence. This challenge is notably due to constraints within tax treaties such as the permanent establishment (PE) threshold and arm’s length standard (ALS) that both rely on physical presence. Prof. Avi-Yonah highlighted the need for US support for Pillar One’s success and warned that, without it, countries might resort to the enactment of DSTs or the unilateral adoption of Pillar One. While these actions can potentially override established tax treaty principles like the PE threshold and the ALS, he argued that justifying taxation within the market jurisdiction remains fundamentally crucial.

Comments

In response to the lecture, comments were presented by Stewart Brant, Global Tax Policy Director at PwC. He remarked that Pillar One represents a pioneering, globally coordinated attempt to create a supplementary taxation system based on destination as a nexus for taxing rights. He cautioned against unilateral actions, advocating a consensus-based international approach for stability, global trade support as well as optimized tax design and revenue collection.

Discussion

Following the presentations, a panel discussion featuring Dr. Arne Schnitger who is a partner at PwC Germany, Prof. Avi-Yonah, and Mr. Brant focused on the future of tax treaties considering recent international tax developments, the potential US adoption of Pillar One, and the UN’s leadership in global tax policy.

Belisa Ferreira Liotti

Teaching and Research Associate

Institute for Austrian and International Tax law WU

The next Klaus Vogel lecture is scheduled for October 21, 2024. Please save the date.

In Class, Alumni

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. Among others, they covered recent tax developments in Belgium and Japan.

THE DUVEL JUDGMENT: THE DEVIL IS IN THE DETAILS

The family shareholders behind Duvel Moortgat decided to withdraw the company from Euronext. To fund the delisting, they secured numerous short-term bridging loans that they repaid with dividends paid out by the company. Given that it lacked the liquidity to pay out those dividends, it concluded loans to finance the dividend payments. Consequently, the shareholders' debt was "pushed down" to the company level. The tax authorities rejected the deductibility for the incurred interest and bank charges and asserted that the costs were not linked to taxable income. Both the court of first instance and the court of appeals supported this approach after which a petition was submitted to the supreme court. The latter confirmed the approach of the former courts and thus the tax administration. This view can be criticized on multiple grounds. First, the link with previous case law is ambiguous. Even though the taxpayer fulfilled the conditions of previous case law (Nyrstar), the deduction was denied. Furthermore, the court mixes up a juridical and economical double step approach. The former solely looks at the loan and its subsequent use whereas the latter examines the business motives

and their desired effects. Instead of looking at the logical consequence of each approach and applying them side by side, the court begins with the juridical one (i.e. the loan) and ends with the first step of the economical one (i.e. the dividend payment).

In the future, this problem could be resolved by looking at cost deductions through a "corporate interest" perspective. This approach offers a comprehensive test on "finality" and "intentionality" of a certain cost. More is still to come, however, as case law is not settled on this issue and the supreme court itself seems unsure as to which avenue to take.



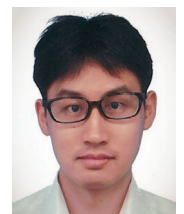
Robbe Basteleurs, Julien Sips, Tim Wirix, Belgium, Full-time 2023/24

RECENT VAT CASE IN JAPAN: PROPORTIONAL OR FULL DEDUCTION? IDENTIFYING THE LINK BETWEEN INPUTS AND OUTPUTS

Generally, the right to deduct input VAT is limited to the extent that the inputs are used for taxable outputs. The input VAT will be fully deductible if the taxpayer uses the inputs exclusively for taxable outputs. What if the taxpayer uses the inputs for both taxable and non-taxable (VAT-exempt) outputs? The deductible amount will be proportional to taxable output turnover relative to total turnover. For example, Articles 168, 173, and 174 of the EU VAT Directive establish such rules. The Japanese VAT also has a similar regime. Accordingly, the following disputes would arise for which a taxpayer claims the full deduction as its inputs are used only for taxable outputs. On the other hand, the tax authority applies the proportional deduction assuming inputs are to be used for both taxable and non-taxable outputs. This type of dispute requires identifying whether a "link" exists between the inputs and the (non-)taxable outputs. In particular, in cases in which inputs are still unused when determining the right to deduct, the issue is the notional "link" to potential future outputs where the taxpayer may use those inputs. The Japanese Supreme Court rendered a landmark decision

this past March. When identifying the "link," the court generally focused on the causal connection and declined to consider the taxpayer's intent. This Japanese approach may seem somewhat unique to European VAT experts. If the ECJ heard a similar case, it would apply what is known as the "direct and immediate link" test and consider the taxpayer's intent in addition to the causal connection. What are the implications of these different approaches?

There is another discussion question. The court noted that the taxpayer still had a way to avoid the adverse consequences of the proportional deduction. Specifically, the taxpayer could have applied for the exception for which, if approved by the Japanese tax authority, taxpayers may calculate their deductible amount in whatever way seems reasonable instead of making it proportional to the taxable output turnover. However, it might be argued that this does not justify the court's failure to consider the taxpayer's intent.



Takato Masuda, Japan, Full-time 2023/24

In Class, Alumni

IFA PANEL SESSION



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Left to right: Lang, Grinberg, Szudoczky, Ring, Rust, Kofler

In October 2023, the 75th IFA congress was held in Cancun, Mexico, that brought together academics and practitioners from all over the world. As in previous years, the Institute for Austrian and International Tax Law organized a Tax Talk during the congress. It was entitled "What's next? Inter-

national Tax Law beyond BEPS and Pillars" with renowned experts on the panel: Itai Grinberg (Professor, Georgetown University), Diane Ring (Professor, Boston College Law School), Georg Kofler (Professor at the Institute for Austrian and International Tax Law, WU), Michael Lang (Professor at and Head of the Institute for Austrian and International Tax Law, WU), Alexander Rust (Professor at the Institute for Austrian and International Tax Law, WU), and Rita Szudoczky (Associate Professor at the Institute for Austrian and International Tax Law, WU).

A few current students, many graduates of the LL.M. Program in International Tax Law, and international tax experts engaged in the Tax Talk and contributed to the heated debate. Immediately following the session, they had the opportunity to meet and exchange views with the panellists at the LL.M. reception.

The next IFA Congress is scheduled for 27-31 October 2024 in Cape Town, South Africa, with another Tax Talk and LL.M. reception. We are looking forward to seeing you there!

GRADUATION CEREMONY

Hosted by the ERSTE Group, an academic ceremony was held together with family members and friends to celebrate both the full-time 2022/23 and part-time 2021/2023 class as



Full-time 2022/23 graduates

they achieved this milestone. This brings the total number of alumni to 900 from 76 different countries.



Part-time 2021/23 graduates

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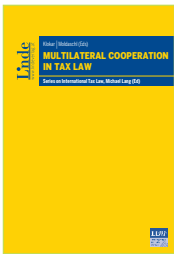
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Alumni

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 they also write their master's theses. These 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 PART-TIME 2021/23 – MULTILATERAL COOPERATION IN TAX LAW



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Tax evasion and aggressive tax planning causing base erosion and profit shifting (BEPS) has been a widely discussed topic among academics and tax policy makers over the past decades. Increasing globalization and digitalization have contributed to the intensification of this issue in recent years. At the same time, states continue to largely insist on their sovereignty in the

area of tax law. However, due to their cross-border nature, issues related to BEPS are shared problems among the states and can typically not be resolved by a single nation. Therefore, multilateral cooperation represents an option to build a bridge between the states' demand for sovereignty and the problems caused by BEPS. In this regard, the OECD, the UN, and the EU play an important role in introducing international tax standards in an attempt to effectively address tax evasion and aggressive tax planning in many ways. The interaction and cooperation between different international, supranational (EU), and regional organizations is an ongoing process.

This volume aims to develop academic insights, provide practical guidance, and enable an in-depth analysis of various aspects of this topic. The book is divided into four parts. The first deals with a general overview of the understanding of multilateral cooperation, the background that led to the need for multilateral cooperation, and the different stakeholders that play a relevant role in it. While the chapters included in the second part focus on the most important developments on an international level (OECD and UN), the chapters encompassed in the third part analyse the multilateral cooperation initiatives of the EU. Finally, the chapters included in part four deal with selected issues related to multilateral cooperation in tax law including mutual assistance and exchange of information, dispute resolution mechanisms, and measures in digitalized businesses.

MASTER THESES FULL-TIME 2022/23 – TAX AND TECHNOLOGY



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Technological developments induced major reforms in the regulatory international and domestic tax landscapes as well as in the developments in the use of technology by tax administrations and taxpayers. New technology, especially the innovations in virtual asset-light cross-border business organizations, data analytics, service and process automation, on one hand, disrupted the well-established legal tax principles and rules and, on the other, stimulated informed data-driven and structured solutions in tax compliance. Technological advances affected nearly every area and each aspect of taxation: Direct tax regulations, indirect tax law, and tax procedures including tax compliance, and tax control functions.

International organizations such as the Organization for Economic Co-operation and Development (OECD), the United Nations (UN), and the European Commission as a supranational organization fostered critical legislative reforms and proposals among which are the OECD Two-Pillar Solution to Address the Tax Challenges Arising from Digitalisation of the Economy, Article 12B of the UN Model Tax Convention to tax automated digital services, new rules for tracing transfers of crypto-assets in the EU, as well as the EU's VAT e-commerce package and "VAT in the Digital Age" package. While these proposals aim to address a wide range of the benefits and challenges of Economy 4.0, certain questions arise concerning the consistency of the legislative developments with their initial objectives, the appropriateness of the legal form for the economic substance of the regulated relations for the effectiveness of the regulations as well as their coherence.

This volume is divided into three parts that contain the contributions dealing with the impact of the technology on international tax law, indirect tax law, and procedural law. Each chapter provides an in-depth analysis of a unique research question aiming to innovatively contribute to the current debate and develop a practical approach for implementing the findings.

We wish you a wonderful Christmas
and a Happy New Year!

