

# Vienna LL.M. News

LL.M.

INTERNATIONAL  
TAX LAW  
VIENNA



Beautiful Rio de Janeiro



## IFA CONGRESS RIO DE JANEIRO

### Taxation in a Digitalized World: Challenges for Current Tax Systems

In August 2017, the 71st IFA congress was held in the world-renowned city of Rio de Janeiro, bringing together academics and practitioners from all over the world. As in previous years, the Institute for Austrian and International Tax Law hosted a Tax Talk during the congress, which was devoted to recent challenges in the area of international taxation.

In particular, the Tax Talk focused on "Taxation in a Digitalized World". Undisputedly, globalization and digitalization have brought enormous economic benefits, while at the same time giving rise to various challenges in the field of international taxation. In the past years, business structures have changed significantly while tax systems have only just begun to adapt to economic and technological developments in the digital age. During the Tax Talk, Mrs. Rita de la Feria (University of Leeds), Mr. Xavier Oberson (University of Geneva), Mr. David Rosenbloom (NYU), Mr. Alexander Rust (Institute for Austrian and International Tax Law, WU), Mr. Bob Stack (former Deputy Assistant Secretary to the US Treasury) and Mr. Jefferson Vander Wolk (OECD) presented and discussed selected issues arising under tax treaties. They particularly analyzed whether the current tax treaty rules are capable of dealing with recent economic and technological changes. One prominent example that the panelists discussed was the concept of permanent establishments. Under current tax treaties, the primary right to tax income that is attributed to a permanent establishment is allocated to the state where the permanent establishment is situated, i.e. the source state.

A growing number of businesses are operating solely through the internet and thus require only little or even no physical presence in the state where the business activities actually take place. As a consequence, the source state will have no right to tax these profits. Furthermore, such businesses may easily move their residence to a low-tax country. In response to those developments, one concept that is widely debated is that of the "digital permanent establishment". Under this concept, a significant digital presence would give rise to taxation in the source state. The participants of the Tax Talk intensively discussed the advantages and disadvantages of such a concept, including the risk of increased administrative burdens and possible definitions of a "digital permanent establishment".

Many alumni 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 after the seminar, they had the opportunity to meet and to exchange views with the panelists at the LL.M. reception.

The next IFA Congress is scheduled for September 2–6, 2018 in Seoul with another Tax Talk and LL.M. reception on September 5, 2018. Please save the date!

**Stephanie Zolles, research and teaching associate,  
Institute for Austrian and International Tax Law, WU**

# In class



Atsushi and the X Co.

In 2009, the Institute started holding lunchtime “Tax Talks” during which LL.M. students can present current tax issues in their countries to other students and researchers.

## RECENT CASE LAW REGARDING TAX AVOIDANCE THAT THE JAPANESE TAX AUTHORITIES LOST

**Over the last 10 years, the percentage of cases that the Japanese tax authorities (the NTA) win has been around 90%. Nevertheless, they lost the two cases mentioned below.**

In the first case, X Co., a resident of Japan for tax purposes, was bought by A Co., located in the US. Next, X Co. was lent money by A Co., purchased all of the shares of its Japanese subsidiary, B Co., from A Co. and sold the shares back to B Co.. The majority of the consideration was deemed to be dividends, so the dividends were taxed in Japan, but X Co. was refunded the tax by the tax authorities because it had no income other than the dividends. Moreover, X Co. paid all of its income to A Co. as liquidation of the debt and interests. Also, parts of the consideration were treated as dividends and were not included in the sales value; thus, because the sale price was the same as the book value, a capital loss was generated. The NTA denied the right to take into account the losses.



The pizza afterwards

The court disagreed and concluded that the above-mentioned transactions should not be treated as a step transaction and that X Co.’s decision to sell all of the shares of B Co. back to B Co. was not “unreasonable”. The NTA lost the case.

Turning to a treaty shopping case, Irish subsidiary, A Co., was established by B limited partnership (LPS) in Bermuda and invested in a Japanese company (X Co.) using Tokumei kumiai. The subsequent distribution of profits from X Co. to A Co. were exempted from tax in Japan because of the Japan-Ireland DTC. In addition, A Co. and B LPS swapped 99% of the profits distributed. As a result, only 1% of the profits derived from Japan were taxed in Ireland and nothing was taxed in Bermuda. The NTA denied the tax exemption, despite the fact that there are no anti-avoidance rules in the DTC. The court disagreed with the NTA’s arguments regarding the application of the Commentary to the case as well as a general (and unwritten) anti-avoidance principle and, instead, agreed with X Co.’s claims.

The NTA may rethink the importance of a timely tax reform and the collection of information and evidence whilst time, money and human resource are limited.

**Atsushi Onishi, Japan, Full-time 2017/18**



Discussing job opportunities

## JOB FAIR

Hosted by Prof. Michael Lang, the annual Career Fair took place at the Institute of Austrian and International Tax Law. This Fair is held exclusively for the current students who will finish the LL.M. Program in June. It offered the chance to meet with a variety of employers in one location, in one day. The representatives provided details about their organizations and the kinds of jobs generally available.

# Alumni

## MODERN, INNOVATIVE AND INTERNATIONAL

The LL.M. Program in International Tax Law at WU was one of the best periods of my life. After earning my degree from the Law School of the Babes-Bolyai University in Cluj-Napoca, Romania, I wanted to specialize in a modern, innovative and leading international branch of law – international taxation – and, in the LL.M. Program, we gained in-depth knowledge in international tax law, from theoretical subjects to analytical courses. There are many things to say about this LL.M. Program's direct impact on my professional career, starting with my experience at PricewaterhouseCoopers Moldova, where I was promoted to the position of Country Manager, and continuing with becoming the Deputy Prime-minister and Minister of Economy of the Republic of Moldova.

In 2014, I entered into politics as a Member of Parliament and I'm currently serving as the Speaker of the Moldovan Parliament. In this role, I have the best instruments to apply my knowledge of international taxation for the good of my country and for the entire world.



Andrian and his family



Andrian Candu

In addition to a career I am proud of, I have succeeded in my personal life. Together with my wife, Zuzana, we have three children that make me feel fulfilled: two boys, Daniel and Adam, and a girl, Vera. I am a happy father, a loved husband and a grateful man.

**Andrian Candu, Romania, Full-time 2007/08**

## IT'S UP TO YOU



Jiří Kostohryz

Attending the LL.M. Program was definitely a turning point in my career and a kick-off for my current position within the International Taxation Unit of the Czech Ministry of Finance. The outstanding faculty, the very interactive courses, classmates from all over the world and of course an enriching student life made my studies one of the most intense phases of my life. I use and build upon the knowledge acquired during the program on a daily basis.

The program opens plenty of possibilities and gives you the chance to meet many outstanding people in a very international environment. The rest is up to you. My personal experience of a five-month traineeship at the European Commission in Brussels serves as a nice example of the opportunities it opens up for students. I am always happy whenever I go back to Vienna and see how the whole team is making a great effort in order to keep the LL.M. Program on top and to develop it further. They are doing an excellent job!

**Jiří Kostohryz, Czech Republic, Full-time 2014/15**

## THINK OUT OF THE BOX



Katharina Deutsch

I currently serve as a Judge at the Austrian Tax Court, which decides on appeals against notices issued from the Tax Office. After my law studies at the University of Vienna and work experience as a legal counsel in the private sector, I worked at the Large Taxpayer's Audit Unit specialized in International Tax Law, Transfer Pricing of Multinational Enterprises and Tax Litigation. During my LL.M. studies, I gained

knowledge in various international topics, such as the US reorganization law, Australian tax law and Canadian case law and I wrote my thesis about "The business-activity-clause in Art.19 para. 3 OECD MC", i.e. the taxation of public employees.

I would like to express my gratitude to Prof. Lang for organizing this program, which improved my skills to tackle complex tax issues and – on occasion – to think out of the box.

**Katharina Deutsch, Austria, Part-time 2007/09**

# Alumni

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Tomas in 2005



.. in 2010



.. and today

## THE LAUNCH PAD TO AN INTERNATIONAL TAX POLICY CAREER

I graduated from the Faculty of Law at Masaryk University in Brno and started my career in the Czech Republic, where I joined Deloitte in 1999 and where I also qualified as a Chartered Certified Accountant (Fellow of ACCA). The studies at the Vienna LL.M. Program prepared me for an international tax career both in the private and public sector as well as in academia.

I continued my career with an internship at the European Commission in Brussels (DG Taxud) and continued with another short-term contract at the Ministry of Finance of Chile (SII) in Santiago, where I worked at the International Tax Department lead by Liselott Kana (one of the lecturers in the LL.M. Program). From there I joined the International Tax Department at Ministry of Finance in the Czech Republic. My next steps have taken me to the Knowledge Center of the IBFD in Amsterdam, where I worked as a Senior Associate responsible both for research and also for teaching at the International Tax Academy. From there I moved to Kazakhstan, where I joined PricewaterhouseCoopers as a Senior Manager responsible for International Taxation. During my work at PwC, I was teaching as adjunct faculty at the KIMEP University in Almaty, which I joined as a full time Associate Professor in the period 2010-2014. During this period of time, I established a new tax specialization at KIMEP University and also established the Central Asian Tax Research Center.

My efforts allowed several hundred students from Kazakhstan and other Central Asian countries to pursue professional careers in taxation. Some of my students also came to study at the LL.M. Program or visited the Institute and its conferences and educational programs. Subsequently, I moved to Slovakia, where I joined the Ministry of Finance and was in charge of transfer pricing legislation and dispute resolution (MAP) as well as the bilateral APA program. During this period of time, I was also in charge of the Slovak Presidency of the EU Council (SK PRES 2016), during which time I was involved in the negotiation of the EU Anti-Tax Avoidance Directive (ATAD) as well as the EU blacklisting criteria. My responsibilities have gradually broadened and eventually I assumed the role of Head of the International Tax Department at the Ministry and was in charge of all the international tax agenda, including the Slovak accession to the MLI, tax treaty negotiation policy, EU tax policy and transfer pricing. Eventually, in September 2017, I joined the OECD.

The LL.M. program has provided me with the foundations for my professional career both in private and public sector as well as tax policy work. Since I graduated I have been regularly returning to Vienna – both to attend the Alumni meetings, but also the academic events organized by the Institute.

**Tomas Balco, Czech Republic, Full-time 2002/2003**

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## IMPRINT

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