

Vienna LL.M. News



The Institute of Prof. Lang at WU



The lecture



The pizza afterwards

A TAX LUNCH TALK

Recent Relevant Developments and Issues Concerning Mexican International Tax Regulations

Since 2009, Prof. Lang's Institute and the LL.M. students have participated in a "tax lunch talk" where we, the students, have the opportunity to present current tax issues in our home countries, followed by an exciting discussion, served with a tasty pizza.

We decided to contribute to these tax lunches by talking about some of the recent international legal and tax developments in Mexico by the end of 2018, as well as a relevant case study about the interpretation of the term "interest" under the Mexico-France tax treaty.

Mexico is a highly active country in the international landscape. In the tax area, the most recent tax developments in Mexico have been the proposal for the introduction of an inheritance, estate and gift tax, and a digital services tax, mainly based on the EU Commission initiative, as part of the trends in the international tax context.

In connection with the tax area, we decided to share another relevant development in Mexico. Derived from the Declaration of Lima, which created the "Pacific Alliance" in 2012, Mexico concluded the Convention for the Harmonization of the Tax Treatment Framework of the Pacific Alliance, which harmonized the tax treatment of pension funds concerning interest, capital gains and other income, among the signatory countries.

In the trade area, since 2017, Mexico, Canada and the US, began renegotiations of the North American Free Trade

Agreement ("NAFTA") concluded in 1994. Finally, in November 2018, Mexico, the US and Canada signed the new NAFTA under the name "United States-Mexico-Canada Agreement" or "USMCA". Also in the trade area, in 2015, Mexico and a number of jurisdictions committed to concluding a trade agreement named the "Trans-Pacific Partnership" or "TPP" for the elimination or reduction of tariff and non-tariff barriers in goods and services, mainly focusing on the Asia-Pacific region. The final TPP was formally concluded by the signatories in March 2018 under the "Comprehensive and Progressive Agreement for Trans-Pacific Partnership" or "CPTPP".

Finally, we included a recent case study for discussion. In October 2018, the Superior Chamber of the Mexican Federal Court of Administrative Justice ("FCAJ") issued a resolution, regarding the following controversy:

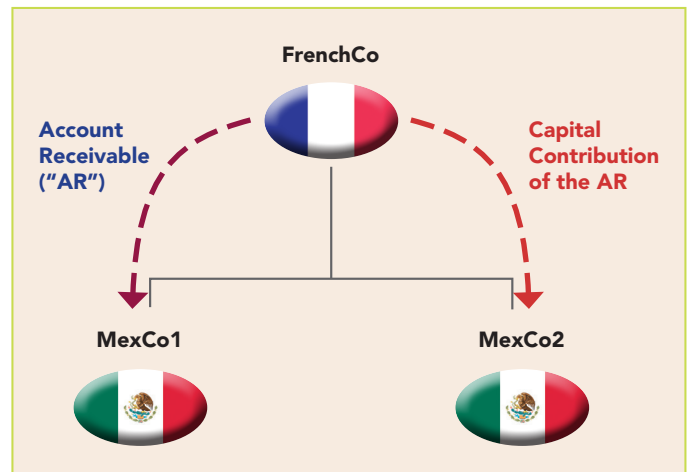
- › A company resident in France for tax purposes ("French-Co") had a right to collect interest (i.e. account receivable) from a Mexican Company ("MexCo1").
- › FrenchCo made a capital contribution of the account receivable to a Mexican related party ("MexCo2") in 2007. The interest was then capitalized in the Mexican company.
- › The Mexican Income Tax Law in 2007 ("IT Law") established that a gain obtained by a foreign resident from the transfer of credits in charge of a Mexican resident, when they are acquired by another Mexican resident is considered as "interest" for income tax purposes.

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In class / Miscellaneous

- › In such case, a withholding tax ("WHT") applies to the difference between the amount obtained by the foreign resident on the transfer of the credits and the amount received by the original debtor for such credits (tax base).
- › Mexican tax authorities issued a tax assessment determining that FrenchCo obtained an income from the capital contribution of the account receivable, which qualifies as "interest" under the IT Law, subject to a WHT of 28% (applicable in 2007) in Mexico.
- › Article 11 of Mexico-France tax treaty established that the term "interest" under the Mexico-France tax treaty means income from debt-claims of every kind. In this regard, the Mexican tax authorities argued that the income obtained by the foreign resident qualified as "interest" (i.e. income from debt-claims of every kind) in terms of Article 11 of the Mexico-France tax treaty. However, that the treaty does not provide what it should be understood as "debt-claims of every kind". Consequently, that it was necessary to refer to the definition provided under the domestic tax law (broader definition of interest) according to Article 3 (2) of such treaty.
- › The taxpayer challenged the tax assessment before the FCAJ, as it considered that under the Mexico-France tax treaty, the gain obtained by the taxpayer did not qualify as "interest" under Article 11 of the Mexico-France treaty, but as "business profits" under Article 7 of the referred treaty. Therefore, the transaction was not subject to WHT in Mexico.

The FCAJ overruled the tax assessment of the Mexican tax authorities regarding this argument. It determined that under the Mexico-France tax treaty, the gain derived from



The case

a capital contribution of the account receivable (transfer of account receivable) to a Mexican resident did not fall under the definition of "interest" provided in Article 11 of the Mexico-France tax treaty. This is as this provision does not consider as interest to the income obtained in the transfer of account receivables. Additionally, it was considered that the concept "debt-claims of every kind" under Article 11 of the tax treaty was clear and it did not require any further clarification under the domestic law (broader definition of "interest") in contrast with the definition of "interest" established in the tax treaty.

In such terms, it was concluded that the income obtained on said transaction qualified as business profits under Article 7 of the Mexico-France tax treaty. Accordingly, France had the exclusive right to tax the gain of said transaction.

José Garcia Garcia, Mexico, Full-time 2018/19

Rafael Ramirez Moreno Perez, Mexico, Full-time 2018/19

Stephanie Uribe Villamil, Mexico, Full-time 2018/19



VIENNA TOPS THE CITY RANKING

The Mercer's Quality of Living Report offers city-to-city comparisons for nearly 500 global destinations. Once again Vienna tops the ranking, closely followed by Zurich (Switzerland) and Vancouver (Canada). The following factors were evaluated: recreation, housing, economic environment, consumer goods availability, public services and transport, political and social environment, natural environment, socio-cultural environment, school and education, medical and health considerations.

In class



Full-time 2018/19 students



Siddesh Rao

EXCURSION TO BRUSSELS

From the 6th to 8th of March 2019, Prof. Josef Schuch (Deputy Academic Director) of the LL.M. Program along with a group of 27 students from the LL.M. Program visited the European Commission (EC) and the office of the German Multinational SIEMENS in Brussels, Belgium.

The visit took place as a part of the LL.M. Program organized at the EC. On this occasion, the Directorate General of the EC for communications, Ms Nicole Peil, welcomed all the students including the professor and expressed her appreciation for the long relationship between the WU and EC as a stepping stone towards building stronger ties with the future law students of the WU.

This was followed by a series of short presentations on "The European Commission: the political executive of the European Union, State Aid Tax issues, Recent legislative activity of the European Commission in the field of VAT", by the Legal Officers of the EC. Each presentation was followed by a Q&A session, which reflected the students' keen interest in the EC's areas of work, and its approach towards issues arising in the implementation of various EU Directives.

In her closing address, Ms. Peil underscored the EC's effort for the important work undertaken in the European Union, both regarding its legislative activities and its academic cooperation. She additionally noted that in order to address old and new challenges faced in Europe, integrated and well thought-out approaches, as well as international cooperation with international fora such as European Union, were more necessary now than ever.

In addition to the visit to the EC, an excursion into the factory of SIEMENS was a highlight of the trip. The visit concluded by a vin d'honneur offered by SIEMENS.

Siddesh Rao, India, Full-time 2018/19



Job and career options

JOB FAIR

Prof. Lang hosted the traditional Job Fair in February for our current LL.M. students, the full-time 2018/19 and part-time 2017/19 group. Both groups of students will finish the program in June 2019. These students were given the opportunity to meet representatives of several companies and to discuss career options. The companies on site were EY, Henkel, KPMG, LeitnerLeitner, PwC, TPA, and WTS.

Alumni / Miscellaneous



Current students at the WU ball



Atsushi and Aoi

HAD A BALL AT THE WU BALL

Set in the grandeur of the Hofburg Palace, the epitome of former imperial Austria in Vienna was the traditional WU ball that happened on the 12th of January 2019. A perfect start to the year, the WU Ball was an event showcasing Austria's age old culture of Carnival Ball. All men clad in black tuxedos or tail coats looked stunning and added charm, while women clad in floor-length evening dresses looked incredibly beautiful and added colour to the event. With the exuberance of the young college goers coupled with the class of elders, the event was filled with people of all ages. While novices like me and most of my friends tried shaking our legs, experienced dancers gave a visual treat to the spectators by dancing to the traditional tunes of the Viennese Waltz, especially the three quarter time of the Waltz in the main hall of the palace.

The event had a number of Ball rooms and also Disco rooms for visitors to enjoy different tastes of music. Each room had sumptuous food spread to hog on and a bar counter offering drinks from beer and wine to gin tonic and schnapps for us to drink and to carry on dancing. The majestic staircase of the palace was crowded with people competing to pose for pictures. The event also gave a platform for most of us to make new friendships that last a life time. All in all, the memories of the WU Ball are a great take away from our time in Vienna. I can say, we had a ball at the WU Ball!

Pradyoth Tadikonda, India, Full-time 2018/19

A DREAM WEDDING

Austria's best-known address, Palace Schönbrunn, was the dream setting for the dream wedding of Atsushi Onishi (Japan) and his wife Aoi. Aoi is a flautist and they met during Atsushi's LL.M. studies in Vienna in 2018. It was an extraordinary and memorable wedding celebration. Congratulations and best wishes!



Graduates in Dallas

ALUMNI REUNION IN DALLAS

A mini Reunion took place in Dallas, where two German graduates met on the occasion of a Conference. Imke Gerdes, Full-time 2003/04, has settled in New York and works at Baker McKenzie. Mathias Knittel, Full-time 2010/11, has settled in Dallas and works in the Global Tax department of HP Inc.

The next Alumni Reunion including Klaus Vogel Lecture is scheduled for October 4-5, 2019. Please save the date!

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