

Vienna LL.M. News

LL.M.

INTERNATIONAL
TAX LAW
VIENNA



Michael Devereux



Krister Andersson



Panel with Arne Schnitger

© Foto Weinwurm

KLAUS VOGEL LECTURE 2018

Michael Devereux on Should we use Value Creation or Destination as a Basis for Taxing Digital Business?

Professor Michael Devereux, Director of the Oxford University Centre for Business Taxation, Associate Dean for Faculty, Saïd Business School, delivered the Klaus Vogel Lecture 2018 concerning the application of value creation or destination as a basis for the taxation of digital business. Prof. Devereux opened the lecture with the description of existing problems in taxing profits. He mentioned that countries miss their opportunity to tax – by not taxing where the value was created. Further, Prof. Devereux questioned whether the existing system is actually based on value creation. In one example that he presented, the price of a product increases as a direct result of increased demand in the market country. He then asked the audience to consider where the factual place of value creation is. The market, it would seem, is one factor that contributes to the increased value of the product in such a case. Usually, profits are taxed exclusively where the factors producing the income are located. Prof. Devereux suggested that there are not only the factors owned and used by a company, but also non-controlled other factors that affect value creation, such as users, infrastructure etc. In connection with the digital economy, he noted that value can be created from any personal information provided by users on social networks, search platforms and online marketplaces (Facebook, Google, EBay etc.). Additionally, there are non-digital examples, such as production in low-cost territories, which demonstrate how other factors can influence value creation. Yet, these factors are not fully taken into account for taxation. As a conclusion, Prof. Devereux emphasized that the problem in taxing profits is not yet resolved. The concept of value creation has to be changed due to its instability and complexity. Regarding any potential replacement of the current system, a simpler system should be implemented,

based on tax being allocated to the place of the consumer – an observable and relatively immobile factor.

Comments

As a follow-up to the lecture, comments were presented by Associate Professor Krister Andersson, Member of the European Economic and Social Committee (EESC). Prof. Andersson presented the opinion of the EESC on "Taxation of profits of multinationals in the digital economy" (available in the Official Journal of the European Union C 367/73). He mentioned that Devereux's proposed change to the concept of value creation would affect small export-oriented economies. Moreover, if the destination principle is adopted, how will the taxes be levied: on a net or gross tax base? Can the method of formulary apportionment be applicable (for costs in a producing country and sales in a market country)?

Discussion

The presentations were followed by a panel discussion with the speakers and Mr. Arne Schnitger (PwC Germany). The panel indicated that the presentations put forward different views and reasonable arguments as to how best to approach the existing problem. The solution has to be further researched and developed with respect to all possible risks, taxpayers' rights and current principles of taxation.

The next Klaus Vogel Lecture is scheduled for October 4, 2019. Please save the date.

**Angelina Papulova, Russia, Full-time 2017/18
Research associate, Institute for Austrian
and International Tax Law, WU**

Alumni



The top-class panel



The audience follows with great interest



Michael Lang's Institute staff in Korea

THE FUTURE OF TAX TREATIES – DID THE MLI ACCOMPLISH ITS BEPS MISSION?

In September 2018, the 72nd IFA congress was held in the world-renowned city of Seoul, bringing together academics and practitioners from all over the world. As in previous years, the Institute for Austrian and International Tax Law hosted a panel session during the congress, which was devoted to recent challenges in the area of international taxation.

In particular, the speakers focused on "The future of tax treaties – Did the MLI accomplish its BEPS mission?". It was predicted that the world of tax treaties would experience disruptive change as a result of the OECD's BEPS project and the subsequent Multilateral Instrument (MLI). Now, in the post-BEPS era, it is worthwhile to take stock of whether such changes did actually happen and, if so, how they affect taxpayers and governments. During the session, Ms. Sophie Chatel (OECD), Mr. Martin Kreienbaum (OECD) and the professors of the Institute for Austrian and International Tax Law, WU, Mr. Jeffrey Owens, Mr. Alexander Rust, Mr. Claus Staringer and Mr. Stef van Weeghel (University of Amsterdam and PwC) presented and discussed selected issues arising under tax treaties. They particularly analysed whether the MLI was a milestone or an episode for the law of tax treaties. The MLI was adopted to provide concrete solutions for governments to close the gaps in existing international tax rules by transposing the solutions

resulting from the OECD/G20 BEPS Project into bilateral tax treaties worldwide and modifying the application of thousands of bilateral tax treaties concluded to eliminate double taxation. In this context, the panelists addressed the issues of whether tax treaties will continue to be seen as a bilateral or multilateral instrument in the future and whether the focus of tax treaties will be on the avoidance of double taxation or on the fight against tax avoidance. The discussion also concentrated on the future of the resolution of international tax disputes. The panel speakers intensively discussed the achievements of the MLI and the future challenges for tax treaties.

Many alumni of the LL.M. Program in International Tax Law and international tax experts engaged in the discussion and contributed to the heated debate. Afterwards they had the opportunity to meet and to exchange views with the panellists at the LL.M. reception.

The next IFA Congress is scheduled for September 8–12, 2019 in London with another LL.M. session and reception on September 11, 2019. Please save the date.

**Svitlana Buriak, research and teaching associate,
Institute for Austrian and International Tax Law, WU**



Cheers!

LL.M. COCKTAILS IN SEOUL

With a stunning view of Seoul from the Sky Lounge of the InterContinental hotel, several alumni gathered together to touch glasses with Prof. Michael Lang, the academic director of the LL.M. Program. It was an opportunity for both LL.M. students and graduates to mingle over drinks.

Alumni

THERE IS NO BETTER PLACE

The LL.M. in International Tax Law was the best decision for our professional development, personal growth and family time in Vienna with my wife Sofia. The variety of lectures and the interactive approach of the Program provided deep knowledge about international taxation and gave us the necessary tools to understand the trending topics in the field and to examine with a critical eye the new tax policies of the different domestic tax systems. Likewise, interaction with colleagues from all over the world who are high-level professionals in their own countries makes this Program the perfect source for networking. Furthermore, the master thesis was the most challenging task, but using the Institute's resources – infrastructure, the tax law library and the easy access to the staff members and professors – was a good opportunity to test and improve our academic skills, in order to achieve a high-quality publication. Those unique resources were crucial in deciding to continue my academic career at WU by taking part in the Doctorate in International Business Taxation (DIBT Program). I am sure that there is no better place to study an LL.M. and do a Ph.D. because WU is the world's leading center for discussion in international tax developments.

Cristobal Pérez Jarpa, Chile, Full-time 2017/18



Congratulations to Cristobal



Tomáš Urbášek, Gabriela Hrachovinová, Thomas Linse



Pilsner Urquell brewery

A GERMAN-CZECH WORKSHOP

In Pilsen (Czech Republic) a German-Czech tax workshop took place, organized by the Chamber of Tax Consultants of the Czech Republic and the Chamber of Tax Consultants of Nuremberg. The presentations and discussions focused on practice-related questions of the cross-border advisory activities of tax consultants in Germany and the Czech Republic. Among the speakers, there were three graduates, all of them from the part-time 2007/09 class. Ms Gabriela Hrachovinová (tax consultant, self-employed, Brno, CZ) presented the workshop, Mr Tomáš Urbášek (tax consultant, PwC, Brno, CZ) gave a review of corporate tax (co-speaker for Germany: Professor Christian Schmidt, PwC, Nuremberg) and myself (lawyer and tax consultant, self-employed, Coburg, Germany) gave a review of the tax consultants' professional situation and organisation in Germany (co-speaker for the Czech Republic: Mr Radek Neužil). The premises of Pilsner Urquell brewery and the delicious catering made the event a perfect one.

Thomas Linse, Germany, Part-time 2007/09

Alumni



The Full-time 2017/18 class

MASTER THESES 2017/2018

Given the current importance of the topic, "Arbitration in Tax Treaty Law" was chosen as a general topic for the master theses of the full-time 2017/2018 program. The increasing integration of the world economy and the lack of a globally accepted set of rules to govern the taxation of multinational enterprises have led to significant increases in the frequency and significance of cross-border tax disputes. This has prompted both taxpayers and governments to search for the most effective and efficient means to resolve such disputes. International organizations such as the EU, the OECD and the UN have also become engaged in the debate and have come up with various proposals on how to tackle the rising tide of disputes. Currently, international tax disputes are primarily resolved by means of mutual agreement procedures (MAPs), which are administrative procedures found in tax treaties. However, the MAP has several well-known deficiencies and does not always lead to a satisfactory

or efficient resolution. One potential solution to the deficiencies of the MAP, which was also taken up by the OECD and UN proposals, is arbitration.

Arbitration is not a new development in the international tax arena. It was implemented in the OECD Model in 2008, but has not yet been widely implemented in practice, due to both novelty and a series of criticisms it has received. In the last few years, the concept of arbitration in tax matters was revived, mainly following the OECD/G20 BEPS Project, as well as the EU Action Plan on Corporate Taxation. Thanks to recent developments such as the Multilateral Instrument of the OECD and the EU Council Directive on Tax Dispute Resolution Mechanisms in the European Union, arbitration is expected to play a more significant role and enhance the existing framework of cross-border tax dispute resolution. The aim of this book is to paint the horizon of opportunities and challenges that the current framework of cross-border tax dispute resolution opens to taxpayers and tax administrations.

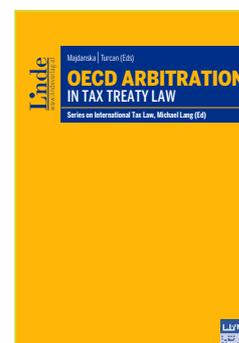


Federal Ministry for Digital and Economic Affairs

ACADEMIC CEREMONY

Hosted by the Federal Ministry for Digital and Economic Affairs, an academic ceremony was held, together with family members and friends, to celebrate the full-time 2017/18 class as they achieved this milestone. This brings the total number of alumni to over 700 from 62 different countries.

This book constitutes a comprehensive compendium on international tax arbitration and provides in-depth analysis of all relevant aspects of the topic. The introductory chapters provide background information on tax arbitration and comparisons with other areas of law. The book also takes stock of the recent developments in this area within the OECD, the EU, the UN and the United States. It addresses the main concerns that have been raised with regard to arbitration, and compares and contrasts the design of various arbitration clauses. It also considers potential future developments.



www.lindeverlag.at

IMPRINT

Copyright: LL.M. Program in International Tax Law WU / Institute for Austrian and International Tax Law

c/o Akademie der Steuerberater und Wirtschaftsprüfer GmbH · Schönbrunner Straße 222-228/1/6/3 · 1120 Vienna · Austria

Editorial staff: Prof. Michael Lang, Barbara Ender-Rochowansky

Partners: Die Presse / Medienpartner, iStR Verlag Beck, Linde Verlag, WU Executive Academy