

Vienna LL.M. News

LL.M.

INTERNATIONAL
TAX LAW
VIENNA



Dr. Arno Gildemeister



Panel discussion



Prof. Stef van Weeghel

KLAUS VOGEL LECTURE 2020 – A WORLD TO EXPLORE!

Stef van Weeghel, Professor of International Tax Law at the University of Amsterdam, delivered the Klaus Vogel Lecture 2020 titled "Tax and Investment Treaties: A World to Explore!". Prof. van Weeghel opened the lecture by evoking his personal experience as an expert witness in the landmark *Yukos* case to emphasize the long-standing importance of the relationship between tax and investment treaties. In fact, the high standard of protection BITs award to investors, with MFN, NT, FET, expropriation, and umbrella clauses, might extend to taxpayers as well. Furthermore, the stronger dispute resolution mechanisms BITs award, compared to DTTs, might attract taxpayers. Even though Prof. van Weeghel did acknowledge that usually, BITs set forth carve-out clauses, namely clauses that exclude tax measures from the BIT's scope, nonetheless, it might not always be the case. Therefore, BITs might prove to be crucial.

Another important aspect emphasized by the expert in tax treaty shopping is that, although BITs and DTTs have similar potential for treaty shopping, they have different standards for countering abuse. In BITs, it seems that the approach to abuse is more formalistic, while in the tax field the substance doctrine leads. Subsequently, van Weeghel also addressed the European legal framework. Referring to the landmark *Achmea* case, he highlighted that acknowledging the dispute resolution mechanisms of BITs might undermine the uniform interpretation of EU law. Moreover, referring to the *Micula* case, he mentioned the risk for conflict between advance pricing agreements, arbitral awards, and unlawful state aid. As a conclusion, foreseeing a spread in investment treaty cases where tax will be at the core in the near future, Prof. van Weeghel called for more studies on the interplay/interaction between these two fields.

Comments

As a follow-up to the lecture, comments were presented by Dr. Arno Gildemeister, D.E.A., Adjunct Professor at Sciences Po, Paris. He particularly focused on the effectiveness of tax carve-out clauses and prevalence clauses. With regard to the former, he underlined how they might fail to shield tax measures since the very definition of what a tax measure is might vary. Concerning the latter, Dr. Gildemeister noted that, in practice, it might be difficult to prevent an investment tribunal from taking into account tax considerations. Thus, in an indirect way, investment panels might decide on tax matters regardless of prevalence clauses.

Discussion

The presentations were followed by a panel discussion with speakers Dr. Arne Schnitger, Partner, PwC Germany, and Prof. Claus Staringer along with Prof. van Weeghel and Dr. Gildemeister. The Panel elaborated mainly on the abuse question and that of compatibility with EU law as the ones that might exert more appeal for further research. Nonetheless, they were unanimous in acknowledging that this is truly "a world to explore!"

Sergio Messina, Italy

DIBT student,

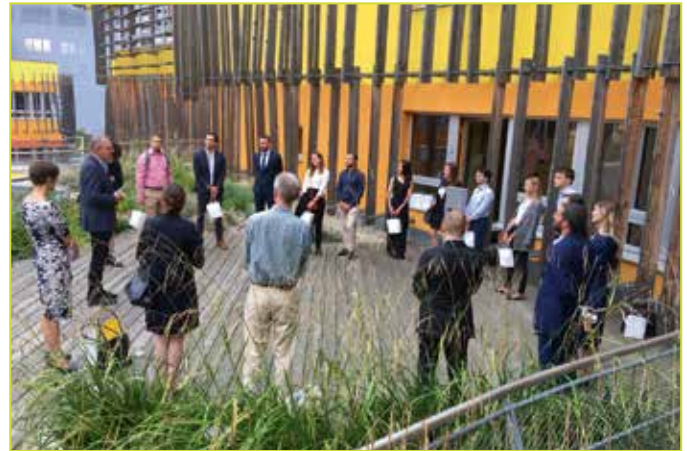
Institute for Austrian and International Tax Law WU

The next Klaus Vogel Lecture is scheduled on
October 1, 2021. Please save the date.

In Class and Alumni

WELCOME COCKTAIL

In early September, 19 students from 14 different countries gathered at the Welcome Reception on the sunny terrace of the Institute for Austrian and International Tax Law at WU. It was a meet and greet with other fellow students, graduates of the program, the academic director Prof. Michael Lang and partners of the program. In line with Corona measures, all guests enjoyed refreshments and took this first chance to network.



Welcome cocktail in September 2020

ACADEMIC CEREMONY

Hosted by the Federal Ministry for Digital and Economic Affairs and in line with the coronavirus measures, an academic ceremony was held to celebrate the full-time 2019/2020 class

as they achieved this milestone. This brings the total number of alumni to almost 800 from 70 different countries.



Prof. Michael Lang and the 2020 graduates ...



... in line with Corona measures



ALUMNI ONLINE DATABASE

We wish to provide an essential aid in maintaining and strengthening relationships among former students of the LL.M. International Tax Law programme. Please access the Alumni section of the LL.M. website and update your personal data. It will help you to keep in touch and will offer great opportunities to network with other graduates – from 70 different countries.

Alumni



Welcome cocktail in September 2019

In 2018, when I started to look for universities where I could pursue a master in international taxation, it became clear that the WU was an excellent opportunity to achieve my aims. I had heard about Vienna so many times, because of its importance for European history and its beauty, especially its buildings such as the Schönbrunn, Hofburg, Belvedere, Stephansdom, etc.

One of the more important factors to choose the WU is the extraordinary professors who lecture in the program throughout the year, giving students the appropriate tools

MASTER THESES 2019/2020

This volume in the "Series on International Tax Law" includes the master's theses of the full-time students attending the 2019/20 class of the postgraduate LL.M. programme in International Tax Law at WU (Vienna University of Economics and Business). The general topic for this year was "Hybrid entities in tax treaty law". Just as tax avoidance has been a topic in vogue for the past few decades, aggressive tax planning involving exploitation of differences in the tax treatment of entities in two or more jurisdictions leading to the erosion of the tax base of jurisdictions has also been gaining significance in academic and tax policy related discussions. This is particularly relevant in the case of hybrid entities that are classified differently for tax purposes in different jurisdictions.

Tackling hybrid mismatch arrangements

Against this background, given the importance of a comprehensive analysis of the treatment of hybrid entities in tax treaty law, this volume aims to develop academic insights, provide practical guidance, and enable an in-depth analysis

for working in a highly globalised world. Thanks to the WU's curriculum, students, upon graduating, will have the choice to pursue careers with tax authorities, law firms, consultancy firms, or multinational companies. The LL.M. offers an education with a global perspective, which is fundamental for working in the current globalised world, and all professors and lectures prepare the students in this way, by including the study of various national tax systems and focusing on teamwork with colleagues from around the world, which is very important for the WU.

The fact that students come from all over the world is also a very valuable feature of the program: it promotes sharing our cultures to grow as persons and professionals and learning our similarities and differences in this world. You will have a lot of time together, not only academically but also socially. Opportunities to have fun abound, so after the LL.M. studies, each student will have made a lot of new friends.

The LL.M. program is academically demanding and the work increases as the program progresses over the year, but commitment to the studies will result in an invaluable and in globally relevant knowledge and skills for the next steps of your professional career

José Martin Nombera Mujica, Peru, Full-time 2019/20

of the specific aspects of this topic as well as to generate new and innovative approaches to tackling hybrid mismatch arrangements leading to base erosion and profit shifting. Specifically, Part I of this volume, titled "Hybrid Entities and Tax Treaty Law" contains contributions that deal with how tax treaty benefits are granted to hybrid entities and how tax treaty policy is gearing toward preventing aggressive tax planning involving such entities. However, there are regional developments, particularly at the European Union (EU) level, that obligate EU Member States to coordinate the way that they treat hybrid entities for direct tax purposes. Part II of this volume, titled "Hybrid Entities and EU Law", contains contributions that deal with these developments.

Alumni

Hybrid entities under tax treaty law

First, the reader is provided a background on the issues related to hybrid entities in tax treaty law with several chapters geared towards discussing how hybrid entities were treated under treaties prior the BEPS Project, how domestic courts have developed different approaches towards tackling this issue, and how different model conventions such as the OECD Model, the UN Model, and the US Model or specific countries such as the United States have been dealing with the question.

The reader is then taken through the developments in respect of the tax treaty treatment of hybrid entities that have come about as a result of the BEPS Project with chapters geared towards exploring the implications of Action Plan 2, the newly added Articles 1(2) and 1(3) of the OECD Model Convention, the newly proposed domestic or treaty based anti-abuse rules such as limitation on benefits provisions and domestic controlled foreign corporation (CFC) rules or the OECD Multilateral Instrument.

Moving ahead, the reader is presented several chapters on how hybrid entities are treated under tax treaty law in specific situations such as collective investment vehicles (CIVs) or trusts and foundations and the interaction of hybrid entities with the non-discrimination provision in tax treaties, domestic group taxation regimes, or the newly proposed measures under Pillar 2 of the Inclusive Framework's work on taxing the digitalized economy from a tax treaty perspective. In addition, the reader is also presented with specific chapters geared towards tax treaty issues surrounding reverse hybrid entities and hybrid permanent establishment structures. This comprises Part I of this volume.

Hybrid entities under EU law

Part 2 of this volume consists of several chapters that discuss how hybrid entities are treated under EU law in the area of direct taxation. First, the reader is presented an overview of how primary law could have an impact on hybrid entities, especially in light of the jurisprudence of the Court of Justice of the European Union (CJEU) on this topic. Then, the reader is taken through chapters that deal with how hybrid entities are considered under specific direct tax directives such as the Parent Subsidiary Directive, the Interest and Royalty Directive, the Merger Directive, and the Anti-Tax Avoidance



Sriram Govind



Jean-Philippe Van West

Directive (ATAD) with specific focus on the provisions of the ATAD that are specifically tailored to deal with such arrangements. Finally, this part is concluded with an analysis of a solution that has been proposed for the treatment of hybrid entities under EU law that allows for uniform classification.



www.lindeverlag.at

Sriram Govind and Jean-Philippe Van West, Editors and graduates of the LL.M. Program

Both the next Full-time course (2021/22) and Part-time course (2021/23) will start in September 2021, with the deadline for applications on February 15, 2021.

All details including online application are available on our website, www.international-tax-law.at

IMPRINT

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