



Impact EC Law on Tax Treaties between Member States

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Comment on two statements in Working document

- **Relationship international tax ↔ EC Law**
Working document: different objectives
My own conviction: same objective
- **Community legislation in the field of international tax**
Working document: almost none
However, several directives + Arbitration convention

I. Impact EC freedoms on international tax

Distinction:

1. Exercise of powers of taxation by Member States
2. Allocation of powers of taxation by Member States

Ad 1. Exercise of powers of taxation in conformity with EC law

Two examples:

- Source state taxation on dividends, interest and royalties
 - Residence state taxation on foreign profits
- Elimination of economic double taxation required unilaterally by the principle of mutual recognition?

Commission communication on the principle of mutual recognition for direct taxation



I. Impact EC freedoms on international tax

Ad 2. Allocation of powers of taxation

Several conditions governing treaty access

These conditions mean that:

1. a p.e. has no treaty access (triangular cases)
2. a resident has no treaty access, e.g. because of its foreign resident shareholders (e.g. LOB)
3. no access to most favourable treaty (MFN)

I. Impact EC freedoms on international tax

- No urgent need to present a solution for *triangular cases*. Proposal for specific provisions (Commission)
- In treaties between member states there are virtually no *anti treaty shopping* provisions included. However trend. Proposal for an acceptable anti treaty shopping provision (Commission)
- Entitlement to *MFN* leads to economic disintegration

II. Action by Commission in the field of international tax

Suggestions how to avoid double taxation:

- **on certain other types of payments (interest, pension contributions, social security contributions and maintenance)**
- **on transfer of capital assets within a company**
- **on items of income caused by different interpretation of terms or taxable events in tax treaties**

Conclusion

- **Ideal, comprehensive way: European income tax and European corporation tax or CCTB**
- **However, unlikely in the short or medium term**
- **Therefore, EU should continue to adopt directives to eliminate double taxation + Commission should make proposals how member states can meet their EU obligations**
- **There is no need for an European Model or EU tax convention**



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