

The solutions envisaged

- Case law (ECJ)
- Gradual coordination
- Multilateral tax treaty
- EU Model tax treaty

Horizontal Harmonization vs. Vertical Coordination

- Treaties among Member States (Horizontal harmonization)

or

- Treaties between Member States and non-Member States (Vertical coordination)

PART 1: Double Taxation Conventions between Member States – Horizontal Harmonisation

Guglielmo Maisto

Horizontal harmonization - Issues

- Business income determination outside the scope of treaties
- Few treaty rules regard companies
- Most issues covered by EU Tax Legislation

Horizontal harmonization - Solutions

- Case law (ECJ)
- Gradual coordination
 - **Directive on capital gain exemption (completion of the EU Holding regime)**
 - **Strength of Arbitration Convention (JTPF)**
 - **Communication on PE Concept**

PART 1: Double Taxation Conventions between Member States – Horizontal Harmonisation

Philip Baker

ISSUES

- Increasing divergence between established rules of International Tax Law and EC Tax Law
- Growing corpus of legislation governing direct taxation

Direct Tax Legislation

- The Parent-Subsidiary Directive
- The Mergers Directive
- The Arbitration Convention
- The Interest and Royalties Directive
- The Savings Income Directive
- The Mutual Administrative Assistance Directive
- The Mutual Assistance in Recovery Directive

Direct Tax Legislation

- Parts of Article 10
- Article 9; parts of Article 25
- Parts of Articles 11 and 12
- Further parts of Article 11
- Article 26
- New Article 27

Solutions

- The gradual replacement of bilateral tax treaties between MSs by Directives
 - “The withering away of the tax treaties between MSs”
 - “The Community is building a multilateral tax treaty, but it is doing so Article by Article”
- Further Articles on the agenda:

Solutions – a new agenda

- Triangular situations;
- Deduction of pension contributions;
- Treatment of stock options;
- Relationship with anti-deferral and anti-abuse provisions;
- Cross-border loss compensation

Solutions – a new agenda

- Double estate duty
- Taxpayer protection
- Attribution of profits to Pes
- Resolution of dual resident issues (Art. 4)
- Common definition of a permanent establishment (Art. 5)
- Shipping profits (Art. 6)
- Etc, etc.

PART 1: Double Taxation Conventions between Member States – Horizontal Harmonisation

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PART 2: Double Taxation Conventions between Member States and Third States – Vertical Coordination

Philip Baker

ISSUES

- External competence
 - Has the Community acquired external competence with respect to DTCs?
 - Is that competence exclusive or joint?
 - Subsidiarity

ISSUES (CONTINUED)

- The compatibility of existing DTC provisions with Community Law
 - E.g. Limitation of benefit provisions – Open Skies
- Application of most favoured nation treatment
- Application of the state aid provisions

Solutions

- A multilateral convention (???)
- An EU Model
 - Relationship to OECD Model
- Coordination of specific DTC issues
 - Role of the OECD

PART 2: Double Taxation Conventions between Member States and Third States – Vertical Coordination

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PART 2: Double Taxation Conventions between Member States and Third States – Vertical Coordination

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Vertical harmonization - Issues

- No coverage of EU Tax Legislation
- The Domestic Law Issue (e.g. taxation of outbound dividends)
- Unresolved Treaty issues (e.g. LOB)

Vertical harmonization - Solutions

- Gradual coordination

- **Directive on a common tax regime on outbound dividends?**

- **Negotiations at the EU level with non-Member States on a common tax regime for outbound dividends?**