

**Workshop on
Tax Treaties and European Law
European Commission, Brussels 5.7.2005**

Panel 3 – Possible Solutions

Prof. Dr. Pasquale Pistone
University of Salerno, Italy

Negative and positive integration

AS IT IS NOW

- Negative integration: the almost exclusive engine of integration of European direct taxes

AS IT SHOULD BE

- Negative integration of direct taxes should supplement positive integration of European direct taxes

Coordinating Direct Taxes in Europe

- Coordinating direct taxes does not imply surrendering national powers, but exercising them consistently with all other EU Member States in a way to comply with fundamental freedoms without harming the respective tax revenues

How to Coordinate Tax Treaties?

Multilateral Treaty

- One single treaty
- One single set of rules

Model Tax Convention

- More treaties (Model + bilateral treaties)
- Only some treaty rules (Model) are made uniform
- Other clauses of bilateral treaties may remain different

The EU Model Tax Convention

A second-best pragmatic solution that moves towards tax coordination, while allowing Member States to keep their bilateral treaties

The EU Model Tax Convention

- neither matching the OECD Model, nor a Model Convention in the sense commonly used by the OECD: it's not a proxy for soft law, but rather a set of rules with its own normative value
- a two-tier set of rules, based on a multilateral framework treaty and on bilateral treaties, amending the existing tax treaties through coordinated protocols based on Article 293 EC Treaty

Content of the EU Model

- Compatible with ECJ case-law
- Monitored by the European Court of Justice
- Autonomous characterization according to European law
- Amending entitlement to treaty benefits, limitations and anti-abuse, withholding tax regimes, definitions, MAPs, etc.

Moving Towards an EU Model?

A Draft Framework Treaty should be prepared by a working group, composed by

- Tax experts
- Tax authorities from the Member States

With OECD observers and under the coordination of the EU Commission

Relations with Third Countries

- EU Treaties on the taxation of savings in force since 1.7.2005
- Model Treaty vs. Single EU Treaty
- Impact of *open skies*