

Tax Treaties Between Member States

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Workshop on EC Law and Tax Treaties
5 July 2005 Brussels

Tax Treatment of Intra-EU Cross-border Situations

- more burdensome treatment**
- the biggest problem is international double taxation**
- conflict with EC Treaty**
- double taxation means a restriction**
 - => international double taxation
between the Member States
must be removed**

Allocating v. Exercising of Taxing Powers

- **allocation of taxing powers in tax treaties acceptable**
- **exercising of the taxing powers must not lead to discrimination or restriction**

The Existing Tax Treaties

- do not remove all double taxation

1. many cases are not touched

**2. many provisions are questionable
from the perspective of EC law**

- double taxation must be removed

=> something has do be done

Unsolved Double Taxation Situations

- income classification conflicts

- timing issues

- dual residence conflicts

- entity classification conflicts

- triangular situations

- permanent establishments

**=> harmonization necessary?
compulsory arbitration?**

Availability of Treaty Benefits

- residents v. non-residents?

- PEs v. residents?

Most Favoured Nation Treatment (MFN)?

- 1. Should the benefits of any bilateral tax treaty of the state of residence be available to a resident of that state?**

Free movement of capital?

- 2. Should the benefits of any tax treaty of the source state be available to the residents of any EU Member State with income from the source state?**

Discrimination between non-resident taxpayers?

Most favoured nation treatment (MFN)?

- No general MFN principle under EC law**
- In many cases MFN treatment has to be applied**
- indirect discrimination based on nationality**
- a restriction of the basic freedoms**

- Art.12 EC prohibits any discrimination
based on nationality**

Discrimination between two nationals of two different EU Member States other than the state concerned?

D-case (C-376/03)

- German resident national D**
 - most property in Germany**
 - less than 90 % in NL**
 - wealth tax on the NL property
without personal deduction in NL**
 - personal deduction would be available
under the NL-Belgium tax treaty**
- => NL gives a benefit
only to the residents of Belgium**
- => Indirect discrimination based on nationality?**

Anti-avoidance provisions?

**- should cover only
clearly artificial arrangements**

=> bona fide cases must be excluded!

Concluding Remarks

- tax treaties necessary at the moment**
- the problems must be solved**

**Re-negotiation of the bilateral treaties?
EU Model Tax Treaty?**

Compulsory arbitration?

**Prevention of double taxation?
=> Positive harmonization?**

Multilateral EU tax treaty?

Directive?