

TABLE OF CONTENTS

Acknowledgements	vii
Abstract	ix
Abbreviations and Glossary	xix
Chapter 1: Introduction	1
1.1. Background	1
1.2. Purpose and Approach	2
1.3. Delimitation and Focus	6
1.4. Other Research and Materials	9
1.5. Terminological Issues	12
1.6. Methodology and Some Related Issues	14
1.6.1. General	14
1.6.2. Comparative research	16
1.6.3. Interpretation of Swedish tax law	18
1.7. Interpretation of Double Tax Conventions	23
1.7.1. General	23
1.7.2. Interpretation under the Vienna Convention	24
1.7.2.1. General	24
1.7.2.2. Article 31 - General rules of interpretation	24
1.7.2.3. Article 32 - Supplementary means of interpretation	29
1.7.2.4. Article 33 - Interpretation of treaties authenticated in two or more languages	30
1.7.2.5. Literal interpretation in relation to the intention of the parties	30
1.7.2.6. The relation between the state and the taxpayer	34
1.7.2.7. Conclusions	35
1.7.3. The OECD MTC and its commentaries	35
1.7.3.1. General	35
1.7.3.2. Practical impact of the OECD MTC and its commentaries	36
1.7.3.3. The status of the OECD commentaries in the light of the VCLT	38
1.7.3.4. The OECD commentaries - the intention of the parties?	44
1.7.3.5. The OECD commentaries in Swedish case law	49
1.7.3.6. Conclusions	51
1.8. Outline	51
Chapter 2: The Legal Nature of Partnerships	55
2.1. General	55
2.2. The Partnership - Fundamental Characteristics	56
2.2.1. General	56
2.2.2. Early forms of associations	56
2.2.3. The development of limited liability corporations	57
2.2.4. Legislation and liberalization	58
2.2.5. Capital-oriented vs. partner-oriented entities	60
2.2.6. Partnership - a partner- oriented business vehicle	62
2.2.7. Partnerships in relation to other legal phenomena	63
2.2.8. Conclusions and final remarks	66
2.3. Partnership -a Heterogeneous Vehicle	67
2.3.1. General	67
2.3.2. General partnerships	68

2.3.2.1. Non-tax law features	68
2.3.2.2. Tax law features	72
2.3.3. Limited partnerships	75
2.3.3.1. Non-tax law features	75
2.3.3.2. Tax law features	76
2.3.4. Silent partnerships	78
2.3.4.1. Non-tax law features	78
2.3.4.2. Tax law features	80
2.3.5. Conclusions	79
Chapter 3: Taxation of Cross-Border Business Structures	83
3.1. General	83
3.2. The Concepts of Double Taxation	84
3.3. Principles on Double Tax Relief	86
3.3.1. General	86
3.3.2. Unilateral rules for double tax relief	88
3.3.3. Double tax conventions	90
3.4. Principles of Business Taxation	93
3.4.1. General	93
3.4.2. Double-tax patterns	93
3.4.2.1. Structural features and approaches	93
3.4.2.2. Cross-border integration	95
3.4.3. Single-tax patterns	98
3.4.4. The relation between single-tax and double-tax patterns in cross-border structures	101
3.4.5. Conclusions	102

3.5.	Classification of Business Vehicles for Tax Purposes	103
3.5.1.	General	103
3.5.2.	Effect of the classification	103
3.5.3.	General issues in the classification of foreign business vehicles	107
3.5.3.1.	Importance of foreign entity classification	107
3.5.3.2.	Development of legislation	108
3.5.4.	Methods for classification of foreign business vehicles	111
3.5.4.1.	General	111
3.5.4.2.	Similarity approach	112
3.5.4.3.	Comments on the similarity approach	116
3.5.4.4.	Elective approach	119
3.5.4.5.	Comments on the elective approach	120
3.5.4.6.	Fixed approach	123
3.5.4.7.	Comments on the fixed approach	124
3.5.5.	Symmetrical classification - a basic principle of international law?	125
3.5.6.	Conclusions	126
Chapter 4: Asymmetrical Taxation		129
4.1.	General	129
4.2.	Asymmetrical Taxation - Concept and Origin	130
4.3.	Double Taxation in Asymmetrical Situations	133
4.3.1.	General	133
4.3.2.	Scenario one - hybrids	136
4.3.2.1.	Taxation in country P	137
4.3.2.2.	Taxation in country R	137
4.3.2.3.	Double taxation in hybrid situations	138
4.3.3.	Scenario two - reverse hybrids	141
4.3.3.1.	Taxation in country P	141
4.3.3.2.	Taxation in country R	142
4.3.3.3.	Double taxation in reverse hybrid situations	142
4.3.4.	Conclusion	143
4.4.	Double Tax Relief in Asymmetrical Situations	144
Chapter 5: The Applicability of the OECU Model Tax Convention in Asymmetrical Situations		147
5.1.	General	147
5.2.	Entitlement to Convention Benefits	150
5.2.1.	Article 1- persons covered	150

5.2.2.	Article 3- person	150
5.2.3.	Article 4- resident	152
5.2.4.	Convention benefits outside Art. I	158
5.2.5.	Convention benefits in asymmetrical situations	162
5.2.5.1.	The issues	162
5.2.5.2.	Allocation of treaty benefits	165
5.2.5.3.	The 'flow-through' dilemma	173
5.2.6.	Conclusions	175
5.3.	Double Tax Relief in Hybrid Situations	177
5.3.1.	General	177
5.3.2.	Relevant facts	178
5.3.2.1.	General	178
5.3.2.2.	Type of income	179
5.3.3.	Taxation of the income year one	186
5.3.3.1.	Per se exemption by the country of residence	187
5.3.3.2.	Per se exemption by the country of source	190
5.3.3.3.	Double tax relief under Art. 23	195
5.3.4.	Taxation of the distribution in year two	199
5.3.5.	Conclusions	205
5.4.	Double Tax Relief in Reverse Hybrid Situations	207
5.4.1.	Relevant facts	207
5.4.2.	Relief under Articles 10(I) and 10(2)	209
5.4.3.	Relief under Art. 10(4)	215
5.4.4.	Conclusions	216
5.5.	Final Remarks	217
Chapter 6: Swedish Approach to Double Tax Relief in Asymmetrical Situations		221
6.1.	General	221
6.2.	The Relation between the Swedish Interpretation Approach and Double Tax Relief in Asymmetrical Situations	223
6.3.	The Applicability of Swedish Rules for Double Tax Relief in Asymmetrical Situations - the Alecta Case	224
6.3.1.	General	224
6.3.2.	Background	225
6.3.3.	The ruling	226
6.3.4.	Analysis of the case	229
6.3.5.	The ruling in comparison with the OECD MTC	237
6.3.6.	Implications for exempt conventions	238
6.3.7.	Implications for asymmetrical situations	239

6.3.7.1. General	239
6.3.7.2. Identity between the taxpayers	239
6.3.7.3. Identity between the timing tax of the taxation, income and tax	241
6.4. Recognition of Partnerships in Swedish Double Tax Conventions – a Deviation from the OECD MTC	243
6.5. Conclusions and Final Remarks	247
Chapter 7: Approaches to Preventing Double Taxation in Asymmetrical Situations	251
7.1. General	251
7.2. Four Approaches	252
7.2.1. General	252
7.2.2. Elimination of residence taxation	252
7.2.3. Harmonization of partnerships and other entities	253
7.2.4. Development of classification rules that ensure Symmetry	253
7.2.5. Development of rules ensuring double tax relief in asymmetrical situations	254
7.2.6. Conclusions	255
7.3. Approaches to the Characterization of Foreign Entities	255
7.3.1. General	255
7.3.2. Who should ensure the symmetry?	256
7.3.3. The Fixed Approach	258
7.3.4. The Elective Approach	258
7.3.5. The Similarity Approach	260
7.3.6. Conclusions	262
Chapter 8: The Swedish Similarity Approach	265
8.1. General	265
8.2. Some Issues on the Taxation of Foreign Income and Persons	267
8.3. General Remarks on the Swedish Rules for Foreign Entity Classification	270
8.3.1. Background	270
8.3.2. Different Types of Foreign Entities	271
8.4. Foreign Legal Entities	272
8.4.1. General	272
8.4.2. Prerequisites	273
8.4.2.1. General	273

8.4.2.2.	According to the legislation of the state in which the association is situated	273
8.4.2.3.	Foreign association	276
8.4.2.4.	Legal capacity	279
8.4.2.5.	Assets not at the individual members' free disposal	282
8.4.2.6.	Conclusions	286
8.4.3.	Tax treatment	287
8.4.3.1.	General	287
8.4.3.2.	Taxation of Swedish owners	288
8.4.3.3.	Taxation of Swedish Sources	289
8.4.3.4.	Conclusions	290
8.5.	Foreign Corporations	290
8.5.1.	General	290
8.5.2.	Prerequisites	291
8.5.2.1.	General	291
8.5.2.2.	Case one - similar taxation	292
8.5.2.3.	Case two - tax treaty country	294
8.5.2.4.	Classification of partnerships	295
8.5.2.5.	Conclusions	298
8.5.3.	Tax treatment	299
8.5.3.1.	General	299
8.5.3.	Taxation of Swedish owners	300
8.5.3.3.	Taxation of Swedish Sources	301
8.5.3.4.	Conclusions	301
8.6.	Foreign Transparent Legal Entities	301
8.6.1.	General	301
8.6.2.	Prerequisites	302
8.6.2.1.	Definition	302
8.6.2.2.	Classification of partnerships	303
8.6.3.	Tax treatment	304
8.6.3.1.	General	304
8.6.3.2.	Taxation of Swedish owners	304
8.6.3.3.	Taxation of Swedish Sources	305
8.6.3.4.	Conclusions	307
8.7.	Foreign Disregarded Entities	308
8.7.1.	General	308
8.7.1.1.	Prerequisites	308
8.7.1.2.	Classification of partnerships	308
8.7.2.	Tax treatment	309
8.7.2.1.	General	309
8.7.2.2.	Taxation of Swedish owners	309

8.7.2.3.	Taxation of Swedish sources	310
8.7.2.4.	Conclusions	310
8.8.	Comments on the Swedish Similarity Approach	310
8.8.1.	General	310
8.8.2.	Initial remarks	111
8.8.3.	Problems regarding applicability	313
8.8.3.1.	Association	313
8.8.3.2.	Situs	316
8.8.3.3.	Free disposal of the entity's assets	319
8.8.3.4.	Quasi-transparency	320
8.8.4.	Structural problems	321
8.8.4.1.	Hybrid situations under the Swedish approach	321
8.8.4.2.	Reverse hybrid situations under the Swedish approach	324
8.8.5.	Conclusions	327
Chapter 9:	Final Analysis	331
9.1.	General	331
9.2.	Tax-Oriented Similarity Approach	332
9.2.1.	General	332
9.2.2.	Non-discrimination Under the OECD MTC	334
9.2.2.1.	General remarks	334
9.2.2.2.	Range of applicability	335
9.2.2.3.	Article 24(1)- Nationality	338
9.2.2.4.	Article 24(3-5) - Permanent establishments, etc.	339
9.2.2.5.	Additional remarks	343
9.2.2.6.	Conclusions	343
9.2.3.	Distinction between source and residence taxation?	344
9.2.4.	Tax collection	346
9.2.5.	Establishing the tax treatment	349
9.2.6.	Internal law vs. double tax treaties	351
9.2.7.	Other issues	353
9.3.	Rules for Double Tax Relief	354
9.3.1.	General	354
9.3.2.	Symmetry for the purpose of double tax relief	356
9.3.3.	Recognition of lack of identity between the persons experiencing double taxation	363
9.3.4.	Recognition of lack of identity between the types of income and tax	367
9.3.5.	Recognition of timing mismatches	370

9.3.6. Allocation of treaty benefits	372
9.4. Final Remarks	374
References	377
Bibliography	377
Case Law	398
Australia	398
Germany	399
The Netherlands	399
Sweden	399
The United Kingdom	400
European Union	400
Official Documents and Publications	400
Germany	400
Sweden	401
The United Kingdom	402
European Union	402
OECD	402
Other	403
Statutory Legislation	403
Australia	403
Germany	403
United States of America	403
The United Kingdom	403
Sweden	404
Webpages	404
Interviews and Lectures	404