

WU Institute for Austrian
and International Tax Law

Series Editor: Michael Lang

Editors: Georg Kofler, Michael Lang, Pasquale Pistone,
Alexander Rust, Josef Schuch, Karoline Spies, Claus Staringer

Tax Treaties and Procedural Law

18

European and International
Tax Law and Policy Series

IBFD

Tax Treaties and Procedural Law

Why this book?

The application of tax treaties relies, to a large extent, on procedural law. While procedural provisions in tax treaties exist, the implementation of tax treaty law generally lies within the procedural autonomy of the contracting states. Domestic procedural law, therefore, is imperative for the implementation of tax treaty benefits.

This book analyses several crucial areas concerning the procedural aspects of tax treaty law. The topics covered include:

- domestic procedural law and EU law;
- domestic procedural law and tax treaty law;
- domestic procedural law and non-discrimination;
- the implementation of the methods to avoid double taxation in domestic law;
- the implementation of mutual agreements in domestic law;
- the implementation of arbitration awards in domestic law;
- mutual assistance procedures and domestic law;
- the role of the competent authorities under the new tiebreaker rule (article 4(3) of the OECD Model Tax Convention);
- the “mode of application” for withholding tax limitations (articles 10(2) and 11(2) of the OECD Model Tax Convention);
- procedural aspects of the grace clause for potentially abusive triangular structures (article 29(8) (c) of the OECD Model Tax Convention); and
- procedural aspects of the principal purpose test (article 29(9) of the OECD Model Tax Convention).

Title:	Tax Treaties and Procedural Law
Editor(s):	Georg Kofler et al.
Date of publication:	October 2020
ISBN:	978-90-8722-647-3 (print/online), 978-90-8722-648-0 (ePub), 978-90-8722-649-7 (PDF)
Type of publication:	Book
Number of pages:	312
Terms:	Shipping fees apply. Shipping information is available on our website
Price (print/online):	EUR 105 / USD 125 (VAT excl.)
Price (eBook: ePub or PDF):	EUR 84 / USD 100 (VAT excl.)

Order information

To order the book, please visit www.ibfd.org/IBFD-Products/shop. You can purchase a copy of the book by means of your credit card, or on the basis of an invoice. Our books encompass a wide variety of topics, and are available in one or more of the following formats:

- IBFD Print books
- IBFD eBooks – downloadable on a variety of electronic devices
- IBFD Online books – accessible online through the IBFD Tax Research Platform



IBFD, Your Portal to Cross-Border Tax Expertise

IBFD

Visitors' address:
Rietlandpark 301
1019 DW Amsterdam
The Netherlands

Postal address:
P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Telephone: 31-20-554 0100
Email: info@ibfd.org
www.ibfd.org

© 2020 IBFD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written prior permission of the publisher. Applications for permission to reproduce all or part of this publication should be directed to: permissions@ibfd.org.

Disclaimer

This publication has been carefully compiled by IBFD and/or its author, but no representation is made or warranty given (either express or implied) as to the completeness or accuracy of the information it contains. IBFD and/or the author are not liable for the information in this publication or any decision or consequence based on the use of it. IBFD and/or the author will not be liable for any direct or consequential damages arising from the use of the information contained in this publication. However, IBFD will be liable for damages that are the result of an intentional act (*opzet*) or gross negligence (*grove schuld*) on IBFD's part. In no event shall IBFD's total liability exceed the price of the ordered product. The information contained in this publication is not intended to be an advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without considering appropriate professional advice.

Where photocopying of parts of this publication is permitted under article 16B of the 1912 Copyright Act jo. the Decree of 20 June 1974, Stb. 351, as amended by the Decree of 23 August 1985, Stb. 471, and article 17 of the 1912 Copyright Act, legally due fees must be paid to Stichting Reprorecht (P.O. Box 882, 1180 AW Amstelveen). Where the use of parts of this publication for the purpose of anthologies, readers and other compilations (article 16 of the 1912 Copyright Act) is concerned, one should address the publisher.

ISBN 978-90-8722-647-3 (print)
ISBN 978-90-8722-648-0 (eBook, ePub); 978-90-8722-649-7 (eBook, PDF)
ISSN 2451-8360 (print); 2589-9694 (electronic)
NUR 826

Table of Contents

Preface		xv
List of Abbreviations		xvii
Chapter 1: Domestic Procedural Law and EU Law		1
	<i>Christina Pollak</i>	
1.1.	The principle of procedural autonomy and its limitations	1
1.2.	The principles developed by the ECJ	4
1.2.1.	The principle of equivalence	4
1.2.1.1.	Content and development	4
1.2.1.2.	The comparability requirement	5
1.2.1.3.	Less favourable treatment of EU claims	6
1.2.1.4.	Possible justifications and the proportionality test	7
1.2.2.	The principle of effectiveness	8
1.2.2.1.	Content and development	8
1.2.2.2.	The challenge of national time limits	9
1.2.2.3.	Ex officio application of EU law by national courts and tax authorities	12
1.2.3.	The common denominator of the decisions	15
1.3.	The challenging of final decisions	16
1.3.1.	Setting the scene	16
1.3.2.	The challenging of final administrative decisions	16
1.3.3.	The challenging of final judicial decisions	21
1.4.	Conclusion	23
Chapter 2: Domestic Procedural Law and Tax Treaty Law		25
	<i>Karol Dziwiński</i>	
2.1.	Interplay between tax treaty law and domestic procedural law	25
2.1.1.	Construction of tax treaties	25
2.1.2.	Domestic law provisions and tax treaties	26
2.1.3.	Substantial versus procedural law	26
2.1.4.	EU law and tax treaty law: Similarities and potential relevance for practice	27

2.2.	Specific issues of procedural aspects in tax treaty law in view of the principles of equivalence and effectiveness	36
2.2.1.	Introductory remarks	36
2.2.2.	Burden of proof	37
2.2.3.	Documentation requirements	40
2.2.4.	Time limits	42
2.2.5.	Types of tax assessment	45
2.3.	Conclusions	47
Chapter 3:	Domestic Procedural Rules and Non-Discrimination	49
	<i>Christina Dimitropoulou</i>	
3.1.	Introduction	49
3.2.	Tax procedural rules versus substantive rules	50
3.3.	The non-discrimination clauses in article 24 of the OECD Model	53
3.3.1.	Overview	53
3.3.2.	The purpose of article 24 of the OECD Model	56
3.4.	Legislative developments of the “procedural elements” of the non-discrimination provision of the OECD Model	58
3.5.	The interpretation of the “procedural elements” of the non-discrimination clauses of article 24 of the OECD Model	65
3.5.1.	The meaning of the phrase “any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements”	65
3.5.1.1.	“Other or more burdensome”	65
3.5.1.2.	“Connected requirements”	71
3.5.2.	The meaning of the phrase “taxation not less favourably levied”	73
3.5.3.	The meaning of the phrase “under the same conditions”	78
3.6.	Conclusion	85

Chapter 4:	The Role of Competent Authorities under Article 4(3) of the OECD Model Tax Convention	87
	<i>Claus Staringer and Katharina Moldaschl</i>	
4.1.	Introduction	87
4.2.	Policy considerations	90
4.2.1.	BEPS Action 6	90
4.2.2.	The relationship between tax treaties and the MLI	91
4.2.3.	Analysis of arguments brought forward for the amendment of the tiebreaker rule	92
4.2.3.1.	Reduction of complexity	92
4.2.3.2.	Tax avoidance arrangements	94
4.3.	Procedural considerations regarding the determination of residence by mutual agreement	95
4.3.1.	Is the MAP suitable for determining treaty residence?	95
4.3.1.1.	Initiation of the MAP	95
4.3.1.2.	Timing issues	97
4.3.2.	Vague concept of criteria	99
4.3.2.1.	The factors relevant for determining residence	99
4.3.2.2.	Risk of violation of the rule of law	100
4.3.3.	The absence of transitional measures	102
4.3.4.	No obligation for competent authorities to reach an agreement in the MAP	103
4.3.5.	What if the taxpayer does not like the outcome of the MAP?	104
4.4.	Concluding remarks	105
Chapter 5:	Articles 10(2) and 11(2) of the OECD Model Tax Convention: Direct Applicability, Refund and the Competence of Competent Authorities to Settle the Mode of Application	107
	<i>Ioana-Felicia Rosca and Alexander Rust</i>	
5.1.	Introduction	107
5.2.	Substantive rules provided by articles 10 and 11 of the OECD Model	109
5.2.1.	Allocation rule for dividends	109
5.2.2.	Allocation rule for interest	110

5.3.	Procedural rules: Direct applicability and refund procedures	111
5.3.1.	Mechanism for taxation of non-residents at the level of the source state	111
5.3.2.	Direct applicability/relief at source procedure	113
5.3.3.	Refund procedure	115
5.3.4.	Differences from other exemption systems	118
5.3.5.	Legal basis to levy tax and issue refunds	120
5.4.	Meaning of article 10(2) and article 11(2) of the OECD Model	121
5.4.1.	The competent authorities	121
5.4.2.	Duty to settle the mode of application?	122
5.4.3.	Substantive scope of paragraph 2	124
5.4.4.	Absence of paragraph in article 12 of the OECD Model	125
5.4.5.	Comparison of the model conventions	126
5.5.	The mode of application	127
5.5.1.	The meaning of “mode of application” under paragraph 2	126
5.5.2.	Procedural aspects	128
5.6.	Legal relevance of the mutual agreement	128
5.6.1.	The meaning of “mutual agreement”	128
5.6.2.	Legal basis of the mutual agreement under article 10(2) and article 11(2)	129
5.6.3.	Application of article 10 and article 11 in the absence of a mutual agreement	130
5.7.	The competence of competent authorities to settle the mode of application	131
5.7.1.	Competence of competent authorities to conclude a mutual agreement in respect of the application of article 10 and article 11	131
5.7.2.	Limitations of the competence of competent authorities	132
5.8.	Conclusion	133

Chapter 6:	The Methods to Avoid Double Taxation and Their Implementation in Domestic Law	135
	<i>Florian Fiala</i>	
6.1.	The limits to procedural autonomy	135
6.1.1.	Restrictions on procedural autonomy in tax treaty law	135
6.1.2.	Restrictions on procedural autonomy with regard to the method articles	138
6.2.	The significance of evidence for the application of the method articles	140
6.2.1.	Evidentiary proceedings and differences between the relief methods	140
6.2.2.	Evidence of assessment and payment of foreign taxes	141
6.2.3.	Evidence in the case of a disputed amount of foreign taxes	144
6.3.	Timing issues in the implementation of the credit method	147
6.3.1.	Timing of the payment of foreign taxes	147
6.3.2.	Subsequent adjustment of the creditable tax	149
6.4.	Conclusion	150
Chapter 7:	Mutual Agreement Procedures and the Implementation of Mutual Agreements in Domestic Law	153
	<i>Heinz Jirousek and Annika Streicher</i>	
7.1.	Introduction	153
7.2.	Types of MAPs	154
7.2.1.	Specific-case MAP in article 25(1) and (2) of the OECD Model (2017)	154
7.2.1.1.	Scope of application	155
7.2.1.2.	Presentation of cases	156
7.2.1.3.	Three stages of the specific-case MAP	157
7.2.1.4.	Taxpayer rights in the specific-case MAP	158

7.2.2.	MAPs under article 25(3) of the OECD Model (2017)	159
7.2.2.1.	MAP for removing difficulties	159
7.2.2.2.	MAP for filling gaps	160
7.3.	Implementation of the specific-case MAP	160
7.3.1.	Legal nature of the specific-case MAP	162
7.3.2.	Relation to internal statutes of limitations	163
7.3.3.	Relation to domestic court decisions	166
7.4.	Implementation of MAPs under article 25(3) of the OECD Model (2017)	168
7.4.1.	Implementation of the MAP for removing difficulties	168
7.4.1.1.	The competent authorities' leeway for mutual agreement	168
7.4.1.2.	Legal nature and implementation of mutual agreements for removing difficulties	169
7.4.2.	Legal nature and implementation of the MAP for filling gaps	172
7.5.	Conclusion	175
Chapter 8:	Arbitration Procedure and the Implementation of Arbitral Awards in Domestic Law	177
	<i>Pasquale Pistone and Angelina Papulova</i>	
8.1.	Introduction	177
8.2.	Comparison of tax arbitration procedures and non-tax arbitration procedures	180
8.2.1.	Scope of and conditions for arbitration	180
8.2.1.1.	Objective scope	180
8.2.1.2.	Subjective scope	183
8.2.2.	Procedure	184
8.2.3.	Applicable law	184
8.2.4.	Binding nature of tax arbitration decisions and arbitration awards and the finality of arbitration	186
8.3.	Implementation of tax arbitration decisions and arbitration awards in domestic law	188

8.3.1.	Mechanisms of implementation of tax arbitration decisions and arbitration awards	188
8.3.2.	Validity of arbitration decisions and awards	193
8.3.3.	Limits of access to arbitration	195
8.3.4.	Possible solutions to tax arbitration implementation issues	202
8.4.	Conclusion	204
Chapter 9:	Mutual Assistance Procedure and Domestic Law	207
	<i>Josef Schuch and Marta Ołowska</i>	
9.1.	Introduction	207
9.2.	Legal framework: Measures to provide mutual assistance	208
9.2.1.	Multilateral measures	209
9.2.1.1.	Multilateral Convention on Mutual Administrative Assistance in Tax Matters	209
9.2.1.2.	EU Directive on Administrative Cooperation in the Field of Taxation	211
9.2.1.3.	Automatic Exchange of Information Standard	212
9.2.2.	Bilateral measures	214
9.2.2.1.	OECD Model	214
9.2.2.2.	UN Model Tax Convention	217
9.2.2.3.	Tax information exchange agreements	218
9.3.	Legal protection of taxpayers and domestic provisions	220
9.3.1.	Tax secrecy	221
9.3.2.	Rules on bank and trade secrets	223
9.3.3.	Domestic rules on information exchange	225
9.4.	Policy perspective on mutual assistance	227
9.4.1.	Role of mutual assistance in the fight against tax evasion	227
9.4.2.	Importance of information exchange and domestic provisions	229
9.5.	Conclusion	230

Chapter 10:	The Grace Clause of Article 29(8)(c) of the OECD Model Tax Convention and Its Procedural Aspects	233
	<i>Jean-Philippe Van West</i>	
10.1.	The grace clause of article 29(8)(c) of the OECD Model Tax Convention	233
10.1.1.	Article 29(8) of the OECD Model Tax Convention: An anti-abuse measure addressing permanent establishment triangular situations	233
10.1.2.	Article 29(8)(c) of the OECD Model (2017): Discretionary competent authority relief	236
10.1.3.	Article 29(8)(c) of the OECD Model (2017) and procedural rules: A lack of guidance	237
10.2.	Origin of article 29(8)(c) of the OECD Model (2017)	238
10.3.	Procedural aspects of article 29(8)(c) of the OECD Model (2017)	243
10.3.1.	Request by the taxpayer	243
10.3.2.	Burden of proof	245
10.3.3.	Consultation of the competent authority of the other contracting state	245
10.3.4.	Discretionary power of the competent authority	248
10.3.4.1.	Why can only the competent authority decide?	248
10.3.4.2.	Which criteria should the competent authority take into account?	248
10.3.4.3.	Can a decision of the competent authority be challenged?	253
10.4.	Final conclusions	257
Chapter 11:	The Procedural Aspects of the Principal Purpose Test (Article 29(9) of the OECD Model Tax Convention)	261
	<i>Andreas Ullmann</i>	
11.1.	The work of the OECD	261
11.2.	The PPT and its DRC	264
11.2.1.	The PPT	264

11.2.2.	The DRC	265
11.2.3.	Relevance of the DRC for the interpretation of the PPT	266
11.2.4.	The PPT as an interpretational guideline	269
11.3.	Domestic procedural law	270
11.3.1.	Tax treaties and procedural law	270
11.3.2.	Limitless competence of the contracting state to determine procedural rules?	271
11.3.3.	Consequences for the application of the PPT	272
11.4.	Reasonable to conclude	273
11.4.1.	Origin	273
11.4.2.	Relationship to the purpose test	276
11.4.3.	Assessment of facts under the reasonableness test	277
11.5.	Established	279
11.5.1.	Meaning of the term “established”	279
11.5.2.	Standard of proof under the objective element	280
11.5.3.	Standards of proof in domestic procedural law	281
11.6.	Concluding remarks	282
List of Contributors		285

Preface

Whereas tax treaties consist mainly of substantive provisions, the implementation of tax treaty benefits is generally a matter of domestic procedural law. Lacking or very restrictive procedural provisions in domestic law can result in the ineffective application of tax treaties. Domestic procedural law, therefore, has a decisive impact on the avoidance of double taxation. At the same time, an increasing number of treaty provisions contain specific rules of procedural law. The interaction of these rules with domestic law raises various questions regarding their interpretation and application.

In order to analyse important issues concerning procedural law in the area of tax treaties, the 26th Viennese Symposium on International Tax Law was held on 17 June 2019 at the WU (Vienna University of Economics and Business). Renowned professors and tax researchers from the WU participated in the Symposium. The speakers offered their findings in the presence of a broad audience consisting of tax law scholars and practitioners, as well as domestic and international policymakers. They have since completed papers using input received during the Symposium, and these papers have become the chapters of this book. Each author offers an in-depth analysis, along with the most recent scientific research on their topic.

The editors would like to thank Renée Pestuka and Florian Fiala, who were the main persons responsible for the organization of the Symposium and made essential contributions to the preparation and publication of this book. The editors would also like to thank all of the authors who have patiently revised their contributions in order to enhance the quality of the book.

Above all, sincere thanks to the publishing house, IBFD, for agreeing to include this publication in its catalogue.

Georg Kofler
Michael Lang
Pasquale Pistone
Alexander Rust
Josef Schuch
Karoline Spies
Claus Staringer
Vienna, July 2020

Chapter 1

Domestic Procedural Law and EU Law

Christina Pollak*

1.1. The principle of procedural autonomy and its limitations

The law of the European Union has come to have an influence in most areas of national law of the Member States throughout its development in recent years, and taxation is no exception. Whereas indirect taxation has been widely harmonized within the European Union due to the VAT Directive,¹ direct taxation is lacking such broad harmonization and can be found in only certain specific areas.² Both sets of harmonization – and this statement concerns not only tax law, but EU law in general – have in common that they mainly cover material law.³ Within the material set of rules, certain rights are granted to individuals. It is the obligation of the Member States to ensure the fulfilment of these EU rights, although EU law often does not provide the Member States with procedural provisions. Where there are no procedural provisions provided by EU law, it is within the responsibility of the Member States to ascertain that the protection of the rights granted to individuals is safeguarded. The Court of Justice of the European Union

* The author would like to thank Prof. Lang and Prof. Rust for their valuable input and feedback on this chapter.

1. Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, OJ L 347 (2006), Primary Sources IBFD.

2. See, e.g. Council Directive 2003/49/EC of 3 June 2003 on a Common System of Taxation Applicable to Interest and Royalty Payments made between Associated Companies of Different Member States, OJ L 157 (2003); Council Directive 2009/133/EC of 19 October 2009 on the Common System of Taxation Applicable to Mergers, Divisions, Partial Divisions, Transfers of Assets and Exchanges of Shares Concerning Companies of Different Member States and to the Transfer of the Registered Office of an SE or SCE between Member States, OJ L 310 (2009); Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States, OJ L 345 (2011), Primary Sources IBFD; and Council Directive (EU) 2016/1164 of 12 July 2016 laying down Rules against Tax Avoidance Practices that Directly Affect the Functioning of the Internal Market, OJ L 193 (2016), Primary Sources IBFD.

3. One exception to this is customs law. Since customs law has been fully harmonized with the Unions Customs Code, there has also been some harmonization in procedural law. See Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269 (2013), Primary Sources IBFD.

(ECJ) already introduced this principle of procedural autonomy in the early cases of *Comet*⁴ and *Rewe Zentralfinanz*.⁵ The ECJ held that the legal basis for the principle of procedural autonomy is today's article 4(3) of the Treaty on European Union (TEU), then article 5 of the Treaty Establishing the European Economic Community,⁶ i.e. the principle of sincere cooperation.⁷

As it is within national procedural autonomy to create procedural rules asserting claims based on EU law, Member States could implement very restrictive procedural rules governing EU law. Substantive law could become ineffective due to the procedural law of the Member States. Therefore, procedural autonomy is constrained by the principle of equivalence and the principle of effectiveness. Although in the early decisions of *Comet* and *Rewe Zentralfinanz*, the ECJ already described the content of the principles of equivalence and effectiveness,⁸ the first decision in which it specifically named them as such was *Palmisani*.⁹ Since then, the principles have been well-established ECJ case law¹⁰ and are defined as follows:

4. NL: ECJ, 16 Dec. 1976, Case C-45/76, *Comet BV v. Produktschap voor Siergewassen*, para. 11 et seq.

5. DE: ECJ, 16 Dec. 1976, Case C-33/76, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland*, para. 5.

6. Treaty Establishing the European Economic Community (25 Mar. 1957), Treaties & Models IBFD.

7. *Rewe-Zentralfinanz* (C-33/76), at para. 5.

8. *Comet* (C-45/76), at paras. 11 and 16; and *Rewe-Zentralfinanz* (C-33/76), at para. 5.

9. IT: ECJ, 10 July 1997, Case C-261/95, *Rosalba Palmisani v. Istituto nazionale della previdenza sociale (INPS)*, para. 27.

10. See, e.g. *Palmisani* (C-261/95), at para. 27; IT: ECJ, 15 Sept. 1998, Case C-231/96, *Edilizia Industriale Siderurgica Srl (Edis) v. Ministero delle Finanze*, para. 34; IT: ECJ, 17 Nov. 1998, Case C-228/96, *Aprile Srl, in liquidation, v. Amministrazione delle Finanze dello Stato*, para. 18; UK: ECJ, 1 Dec. 1998, Case C-326/96, *B.S. Levez v. T.H. Jennings (Harlow Pools) Ltd*, para. 18; IT: ECJ, 9 Feb. 1999, Case C-343/96, *Dilexport Srl v. Amministrazione delle Finanze dello Stato*, para. 25; UK: ECJ, 8 Mar. 2001, Case C-397/98, *Metallgesellschaft Ltd and Others (C-397/98), Hoechst AG and Hoechst (UK) Ltd (C-410/98) v. Commissioners of Inland Revenue and HM Attorney General*, para. 85; FR: ECJ, 21 Nov. 2002, Case C-473/00, *Cofidis SA v. Jean-Louis Fredout*, para. 28; AT: ECJ, 2 Oct. 2003, Case C-147/01, *Weber's Wine World Handels-GmbH and Others v. Abgabenberufungskommission Wien*, para. 38; AT: ECJ, 16 Mar. 2006, Case C-234/04, *Rosmarie Kapferer v. Schlank & Schick GmbH*, para. 22; NL: ECJ, 7 June 2007, Joined Cases C-222/05 to C-225/05, *J. van der Weerd and Others (C-222/05), H. de Rooy sr. and H. de Rooy jr. (C-223/05), Maatschap H. en J. van 't Oever and Others (C-224/05) and B. J. van Middendorp (C-225/05) v. Minister van Landbouw, Natuur en Voedselkwaliteit*, para. 28; DE: ECJ, 12 Feb. 2008, Case C-2/06, *Willy Kempter KG v. Hauptzollamt Hamburg-Jonas*, para. 60; DE: ECJ, 24 Mar. 2009, Case C-445/06, *Danske Slagterier v. Bundesrepublik Deutschland*, para. 31; ES: ECJ, 26 Jan. 2010, Case C-118/08, *Transportes Urbanos y Servicios Generales SAL v. Administración del Estado*, para. 31; BE: ECJ, 8 Sept. 2011, Joined Cases C-89/10 and C-96/10, *Q-Beef NV (C-89/10) v. Belgische Staat and Frans Bosschaert (C-96/10) v. Belgische Staat, Vleesgroothandel Georges Goossens en Zonen NV and Slachthuizen Goossens NV*, para. 34; UK: ECJ, 19 July 2012, Case C-591/10,

This diversity between national systems derives mainly from the lack of Community rules [...], it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness).¹¹

The development of the principles of equivalence and effectiveness by the ECJ can be classified as a measure supplementing the primacy of EU law and, accordingly, ensuring the efficiency and consistency of EU law.¹²

Ultimately, the ECJ bases its case law on the following rationale: if Member States abuse their procedural autonomy by introducing procedural provisions so restrictive that the substantive legal claims arising from EU law are torpedoed, inevitably, the limit of the principles of equivalence and effectiveness is reached. Therefore, abuse can be prevented by restricting the Member States to impose the same procedural requirements that they impose on other national cases. Then, however, the Member States would still have the power to torpedo EU claims by introducing restrictive procedural rules for all claims. Even if Member States were to treat EU claims as “poorly” as purely national claims in procedural terms, they may do so only to the extent that access to EU law still remains effective.

A further expression of the procedural autonomy of the Member States is that they may decide the preconditions of reopening proceedings in their national laws. In general, a *res judicata* matter cannot be reopened. The effect of a judgment becoming final is that the possibility of any party,

Littlewoods Retail Ltd and Others v. Her Majesty's Commissioners of Revenue and Customs, para. 27; UK: ECJ, 12 Dec. 2013, Case C-362/12, *Test Claimants in the Franked Investment Income Group Litigation v. Commissioners of Inland Revenue and Commissioners for Her Majesty's Revenue and Customs*, para. 32; RO: ECJ, 6 Oct. 2015, Case C-69/14, *Dragoș Constantin Târșia v. Statul român and Serviciul Public Comunitar Regim Permise de Conducere și Inmatriculare a Autovehiculelor*, para. 27; and RO: ECJ, 30 June 2016, Case C-200/14, *Silvia Georgiana Câmpean v. Serviciul Fiscal Municipal Mediaș, ancinement Administrația Finanțelor Publice a Municipiului Mediaș and Administrația Fondului pentru Mediu*, para. 39.

11. *Edis* (C-231/96), at para. 34. For further information on the principles of equivalence and effectiveness, see sec. 1.2.

12. A. Hatje, *Die gemeinschaftsrechtliche Steuerung der Wirtschaftsverwaltung* p. 55 et seq. (Nomos 1998); and V. Madner, *Effektivitätsgebot und Abgabenverfahrensrecht, in Abgabenverfahrensrecht und Gemeinschaftsrecht* p. 119 (M. Holoubek & M. Lang eds., Linde 2006).

including the court itself, to continue the litigation of a case once the case has been closed is excluded. The principle of *res judicata* leads to legal peace, although it bears the risk that wrongful legal interpretations will become final. This principle is one expression of the principle of legal certainty, which is one of the general principles of EU law. Also in light of this basic principle, the ECJ has had to find a balance between legal certainty and the legality of EU law. After all, the measuring stick in challenging a final decision also consists of the principles of equivalence and effectiveness.

This chapter investigates the extent of procedural autonomy and the circumstances in which the ECJ has decided that the principles of equivalence and effectiveness limit this autonomy of the Member States. It will examine the origin of the principles, their interplay and the limits of their applicability.

1.2. The principles developed by the ECJ

1.2.1. The principle of equivalence

1.2.1.1. Content and development

The principle of equivalence serves as an initial filter for the ECJ to determine whether the national courts have correctly applied their national procedural law to protect rights granted under EU law. Under the principle of equivalence, a situation and its consequences derived from EU law cannot be less favourable than a situation and its consequences based on national law.¹³ Already in its early case law, the ECJ held that the principle of equivalence is an expression of the principle of equal treatment.¹⁴ In literature, it has been discussed whether the principle of equivalence is an expression of equal treatment or of non-discrimination, with the outcome that it is an

13. See, e.g. *Palmisani* (C-261/95), at para. 27; *Edis* (C-231/96), at para. 34; *Aprile* (C-228/96), at para. 18; *Levez* (C-326/96), at para. 18; *Dilexport* (C-343/96), at para. 25; *Metallgesellschaft* (C-397/98), at para. 85; *Cofidis* (C-473/00), at para. 28; *Weber's Wine World* (C-147/01), at para. 38; *Kapferer* (C-234/04), at para. 22; *van der Weerd and Others* (C-222/05 to C-225/05), at para. 28; *Kempter* (C-2/06), at para. 60; *Danske Slagterier* (C-445/06), at para. 31; *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 31; *Q-Beef and Bosschaert* (C-89/10 and C-96/10), at para. 34; *Littlewoods Retail and Others* (C-591/10), at para. 27; *Test Claimants in the Franked Investment Income Group Litigation* (C-362/12), at para. 32; *Târşia* (C-69/14), at para. 27; and *Câmpean* (C-200/14), at para. 39.

14. IT: ECJ, 19 June 2003, Case C-34/02, *Sante Pasquini v. Istituto nazionale della previdenza sociale (INPS)*, para. 70.

expression of the non-discrimination principle.¹⁵ The consequence of this result is the prohibition of procedurally treating claims based on EU law worse than compared to claims based on national law, but not the reverse.¹⁶ As the principle of equivalence is an expression of equal treatment, laws being tested against the principle of equivalence should be subject to the equality test.

1.2.1.2. The comparability requirement

The first requirement under this test is the determination of two comparable situations. These two comparable situations are subsumed under different national procedural laws and, accordingly, are treated differently. For national procedural law to interfere with the principle of equivalence, the procedural rule applicable to the claim based on EU law must be less favourable than the procedural rule applicable to the national claim. Therefore, when testing the national rule against the procedural rule governing EU law, the comparability of the two systems must be determined.¹⁷

The decision as to which rules are comparable is left for the national court.¹⁸ This competence of the national courts emerges due to the fact that the ECJ is only allowed to interpret EU law. The decision that procedural rules are applicable for the enforcement of EU rights, however, is based on national procedural law. Although the ECJ cannot interpret the applicable national procedural law, it still provides some guidance for the national courts: when choosing the two comparable procedural rules, their purpose and essential characteristics must be taken into consideration.¹⁹ Accordingly, the two procedural rules must have the same purpose, and their scopes must be comparable, as well.²⁰ Furthermore, the procedural rules must be interpreted within a general context, which means that the comparison of the two rules undertaken must be an objective comparison, not a subjective one with reference to the specific case.²¹ Moreover, the national law of one Member State

15. T. Ehrke-Rabel, *Äquivalenzgebot und Abgabenverfahrensrecht*, in *Abgabenverfahrensrecht und Gemeinschaftsrecht* p. 135 et seq. (M. Holoubek & M. Lang eds., Linde 2006).

16. *Id.*, at p. 136.

17. *Palmisani* (C-261/95), at para. 38.

18. *Palmisani* (C-261/95), at para. 38; and *Levez* (C-326/96), at paras. 38 and 42 et seq.

19. *Palmisani* (C-261/95), at para. 38; UK: ECJ, 16 May 2000, Case C-78/98, *Shirley Preston and Others v. Wolverhampton Healthcare NHS Trust and Others and Dorothy Fletcher and Others v. Midland Bank plc*, para. 56; *Levez* (C-326/96), at para. 43; and *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 35.

20. *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 36 et seq.

21. *Preston and Others* (C-78/98), at para. 62.

is the basis for the comparability analysis (it is not necessary that within the different Member States, similar procedural laws are in force), and the comparability concerns only the equal treatment of EU rights compared to national rights.²² It follows that comparable situations should be subsumed under comparable procedural rules, or at least that EU rights should not be subsumed under less favourable procedural rules, whereas different treatment can also be followed in non-comparable situations.²³

1.2.1.3. Less favourable treatment of EU claims

If the national court has established that two claims are comparable, in a second step, the analysis should be made as to whether the treatment of the EU claim is less favourable compared to the comparable national claim. Less favourable treatment, however, does not imply the extension of the most favourable rules governed by national law to all actions of EU law;²⁴ it only provides for the safeguard that claims that are based on EU law and similar to a national claim cannot be treated worse than national claims.

To decide whether a procedural provision governing EU law is less favourable than a provision governing national law, the national court must evaluate “the role of the provision in the procedure, viewed as a whole, of the conduct of that procedure and of its special features”.²⁵ In this sense, the ECJ has held that the fact that EU claims are decided by a different national court than national claims may not be regarded as unfavourable if these courts are – although less numerous – hierarchically superior to the courts deciding national claims.²⁶ After all, the specialized national courts may even ultimately be more favourable for the claimant, as their designation will lead to homogeneous jurisprudence from a national court specialized in matters relating to the specific EU claims in question.²⁷ Furthermore, the ECJ ruled that the possible incurrence of higher costs for the claimant is also not considered less favourable treatment.²⁸

22. *Aprile* (C-228/96), at para. 17; and *Dilexport* (C-343/96), at para. 24.

23. *See, e.g.* IT: ECJ, 2 May 2018, Case C-574/15, *Criminal proceedings against Mauro Scialdone*, para. 59.

24. *Edis* (C-231/96), at para. 36; IT: ECJ, 15 Sept. 1998, Case C-260/96, *Ministero delle Finanze v. Spac SpA*, para. 20; *Levez* (C-326/96), at para. 42; *Dilexport* (C-343/96), at para. 27; and *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 34.

25. ES: ECJ, 8 Sept. 2011, Case C-177/10, *Francisco Javier Rosado Santana v. Consejería de Justicia y Administración Pública de la Junta de Andalucía*, para. 90.

26. HU: ECJ, 12 Feb. 2015, Case C-567/13, *Nóra Baczó and János István Vizsnyiczai v. Raiffeisen Bank Zrt*, para. 46.

27. *Baczó and Vizsnyiczai* (C-567/13), at para. 46.

28. *Baczó and Vizsnyiczai* (C-567/13), at para. 47.

In this sense, the question arises as to which treatment is considered to be less favourable and, accordingly, contrary to the principle of equivalence. There has been only one case in which the ECJ itself decided that the principle of equivalence was infringed. The case revolved around two state liability rules under Spanish law: when the state liability is caused by an infringement of EU law, the remedies against the administrative measure must be exhausted in order to claim state liability, whereas when the state liability is due to a breach of the national Constitution, this precondition did not have to be fulfilled.²⁹ The ECJ held, in this case, that the national procedural rules are regarded as being similar.³⁰ Therefore, the ECJ concluded that the principle of equivalence precludes the application of this national procedural rule.³¹

What is remarkable about this judgment is that it is the only one in which the ECJ held that the principle of equivalence was infringed, and the final decision was not left to the national court to decide. Moreover, the ECJ did not discuss whether the treatment of the procedural law governing EU law was unfavourable; the ECJ took this precondition as a given, without seeing any need to further evaluate it. The ECJ also did not discuss possible reasons of justification that – in theory – could also be tested when applying the principle of equivalence.

1.2.1.4. Possible justifications and the proportionality test

Whereas the first two described conditions are expressly mentioned by the ECJ when testing the principle of equivalence against a national procedural rule, possible justification grounds are not directly tested by the ECJ. However, as the principle of equivalence is one expression of the non-discrimination principle, possible justifications and the following proportionality test could be tested against the principle of equivalence.

Also in its rulings, the ECJ has hinted that a limitation to the principle of equivalence could be justified. When the ECJ tested the procedural rule in question against the principle of equivalence in *Levez*,³² it referred, mutatis

29. *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 28.

30. *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 45.

31. *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 46.

32. *Levez* (C-326/96).

mutandis, to the *Van Schijndel*³³ case.³⁴ In *Van Schijndel*, the ECJ held that, when applying the principle of effectiveness, the national procedural law principles may justify an ineffective application of EU law.³⁵ Applying this argument with the reference in *Levez* to the *Van Schijndel* case, one could conclude that also for the principle of equivalence might a possible justification be that of national procedural principles.

In a last step, when a justification is determined, this justification also needs to withstand the proportionality test. Under this test, the justification needs to be weighed against a breach of the principle of equivalence. For this, the justification must be suitable and necessary. Only if these preconditions are met and the national court concludes that the importance of the national procedural principle outweighs the severity of the restriction of the principle of equivalence may the national court conclude that the less favourable treatment of EU law claims compared to national law claims is justified. Accordingly, there would not be any breach of the principle of equivalence, although EU claims would be treated worse than comparable national law claims.

1.2.2. The principle of effectiveness

1.2.2.1. Content and development

The principle of effectiveness is the second principle developed by the ECJ that serves as a limitation to the principle of procedural autonomy. Under the principle of effectiveness, national procedural rules do not render the exercise of rights conferred by EU law virtually impossible or excessively difficult.³⁶

33. NL: ECJ, 14 Dec. 1995, Joined Cases C-430/93 and C-431/93, *Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten*, para. 19.

34. *Levez* (C-326/96), at para. 44.

35. *Van Schijndel v. Stichting Pensioenfonds voor Fysiotherapeuten* (C-430/93 and C-431/93), para. 21. For a more detailed description of this case, see sec. 1.2.2.3.

36. See, e.g. *Palmisani* (C-261/95), at para. 27; *Edis* (C-231/96), at para. 34; *Aprile* (C-228/96), at para. 18; *Levez* (C-326/96), at para. 18; *Dilexport* (C-343/96), at para. 25; *Metallgesellschaft* (C-397/98), at para. 85; *Cofidis* (C-473/00), at para. 28; *Weber's Wine World* (C-147/01), at para. 38; *Kapferer* (C-234/04), at para. 22; *van der Weerd and Others* (C-222/05 to C-225/05), at para. 28; *Kempter* (C-2/06), at para. 60; *Danske Slagterier* (C-445/06), at para. 31; *Transportes Urbanos y Servicios Generales* (C-118/08), at para. 31; *Q-Beef and Bosschaert* (C-89/10 & C-96/10), at para. 34; *Littlewoods Retail and Others* (C-591/10), at para. 27; *Test Claimants in the Franked Investment Income Group Litigation* (C-362/12), at para. 32; *Târşia* (C-69/14), at para. 27; and *Câmpean* (C-200/14), at para. 39.

Also concerning the principle of effectiveness, the ECJ has held that the role of the provision in question, its progress and its special features must be taken into consideration when applying the principle of effectiveness.³⁷ Similarly to the principle of equivalence, when the ECJ is testing a national procedural rule against the principle of effectiveness, the national procedural rules must be viewed as a whole.³⁸ However, national procedural law principles, such as the protection of the right to defence, the principle of legal certainty and the proper conduct of procedure, must not be disregarded.³⁹ There are several lines of jurisdiction in which the ECJ has had to decide the impact of the principle of effectiveness on national legislation.

1.2.2.2. The challenge of national time limits

One jurisdiction line of the ECJ in which the effect of the principle of effectiveness becomes very clear is the challenge of national time limits. Over the past 40 years, the ECJ has had to rule on many cases in which national time limits were questioned. In general, the ECJ has held that, due to the principle of legal certainty, the application of national time limits is not precluded.⁴⁰ For limitation periods to comply with the principle of legal certainty, they must be set in advance – otherwise, the national time limits might result in a breach of the principle of effectiveness.⁴¹ Time limits are one way of protecting taxpayer rights, as well as the rights of the tax authorities. On the one hand, the ECJ has held that the principle of effectiveness is not infringed if a national limitation period in force for individuals is less beneficial compared to the national limitation period in force for the tax authorities.⁴² On the other hand, the principle of effectiveness is infringed if the taxpayer overpaid a tax or other charge and can neither receive reimbursement for this overpayment within the national time limits set nor bring proceedings

37. BE: ECJ, 14 Dec. 1995, Case C-312/93, *Peterbroeck, Van Campenhout & Cie SCS v. Belgian State*, para. 14; and *Cofidis* (C-473/00), at para. 37.

38. *Peterbroeck, Van Campenhout & Cie v. Belgian State* (C-312/93), at para. 14; and *Cofidis* (C-473/00), at para. 37.

39. *Peterbroeck, Van Campenhout & Cie v. Belgian State* (C-312/93), at para. 14; and *Van Schijndel v. Stichting Pensioenfonds voor Fysiotherapeuten* (C-430/93 and C-431/93), at para. 19.

40. *Rewe-Zentralfinanz* (C-33/76), at para. 5; *Edis* (C-231/96), at para. 35.

41. NL: ECJ, 15 July 1970, Case C-41/69, *ACF Chemiefarma NV v. Commission of the European Communities*, para. 19; UK: ECJ, 11 July 2002, Case C-62/00, *Marks & Spencer plc v. Commissioners of Customs & Excise*, para. 39; *Danske Slagterier* (C-445/06), at para. 33; IT: ECJ, 16 July 2009, Case C-69/08, *Raffaello Visciano v. Istituto nazionale della previdenza sociale (INPS)*, para. 49.

42. IT: ECJ, 8 May 2008, Joined Cases C-95/07 and C-96/07, *Ecotrader SpA v. Agenzia delle Entrate - Ufficio di Genova 3*, para. 54; and *Q-Beef and Bosschaert* (C-89/10 and C-96/10), at para. 42.

against the state.⁴³ In general, national time limits are applicable as long as they do not render the application of rights virtually impossible or excessively difficult and, therefore, comply with the principle of effectiveness.⁴⁴

The early social security case of *Emmott*⁴⁵ set a very broad interpretation of the principle of effectiveness in connection with time limits. The ECJ held, in this case, that Member States may not rely on national time limits if a directive has been wrongly implemented or not been implemented at all.⁴⁶ In later cases, the ECJ limited this scope of *Emmott*. The ECJ held that national limitation periods are applicable even if a Member State has not properly transposed the directive on which the claim is based.⁴⁷ The ECJ has emphasized that the difference in the latter cases compared to *Emmott* was that the proceedings were not barred, but there was a limited period for asserting a legal claim.⁴⁸ It was repeatedly accentuated that the solution in *Emmott* was justified by the particularity of the circumstances, as the plaintiff in *Emmott* was deprived of any opportunity to rely on the rights granted by the directive.⁴⁹ In *Fantask*⁵⁰ and the judgments after it, the ECJ concluded that a 5-year limitation period must be accepted under EU law, even if the Member State has not transposed the directive in question properly into its national law.⁵¹ Therefore, the broad interpretation of *Emmott* was overruled.

As it is within a Member State's national procedural autonomy to introduce time limits, a related question concerns which lengths of time limits have been accepted by the ECJ. The ECJ has not stated in its judgments that a certain amount of time as a limitation period or period for appeal is ineffective. The limitation provided by the ECJ is that the rights of the individuals conferred under EU law must be safeguarded.⁵² In most of the decided cases in which the ECJ has held that the time limits do not comply with

43. *Q-Beef and Bosschaert* (C-89/10 and C-96/10), at para. 43.

44. *Edis* (C-231/96), at para. 35.

45. IE: ECJ, 25 July 1991, Case C-208/90, *Theresa Emmott v. Minister for Social Welfare and Attorney General*.

46. *Emmott* (C-208/90), at para. 23.

47. NL: ECJ, 27 Oct. 1993, Case C-338/91, *H. Steenhorst-Neerings v. Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen*, para. 21 et seq.; and UK: ECJ, 6 Dec. 1994, Case C-410/92, *Elsie Rita Johnson v. Chief Adjudication Officer*, para. 36.

48. *Johnson v. Chief Adjudication Officer* (C-410/92), at para. 30.

49. *Johnson v. Chief Adjudication Officer* (C-410/92), at para. 26; DK: ECJ, 2 Dec. 1997, Case C-188/95, *Fantask A/S e.a. v. Industriministeriet (Erhvervministeriet)*, para. 51; *Edis* (C-231/96), at para. 46; and *Ministero delle Finanze v. Spac* (C-260/96), at para. 29.

50. *Fantask and Others v. Industriministeriet* (C-188/95).

51. *Fantask and Others v. Industriministeriet* (C-188/95), at paras. 40 and 52; and *Edis* (C-231/96), at para. 30.

52. *Marks & Spencer* (C-62/00), at para. 42.

the principle of effectiveness, it was due to the specific circumstances of the case. The length of the time limit itself was not the focus of the ECJ's objection, which can be seen from a case in which even a time limit of 15 days was considered particularly short, but was not rejected by the ECJ due to its length.⁵³

In cases in which the ECJ has held that a certain time limit contradicts the principle of effectiveness, the persons contesting the decisions were especially vulnerable persons. One example of this would be a pregnant woman who, under Luxembourg law, had only 15 days to apply for an action for nullity and reinstatement of her dismissal.⁵⁴ Another illustration is seen in a case in which a woman was discriminated against based on her sex concerning the wage paid to her but could not bring the action in due time under national law, as the employer did not provide her with all the necessary information.⁵⁵ A further example is seen in a case in which a 15-day period was granted to refugees to file an application for subsidiary protection, since their application for asylum was rejected.⁵⁶ The ECJ explicitly held, in this case, that, due to the "difficult human and material situation"⁵⁷ of the refugee, the principle of effectiveness precluded a limitation period of 15 days.⁵⁸ Also in the other described cases, the ECJ ruled that, due to the special circumstances of the cases and the persons concerned, the time limits did not comply with the principle of effectiveness.⁵⁹

When comparing cases on the principle of effectiveness concerning national time limits, the line between acceptable time limits and non-acceptable time limits is difficult to draw. This is the reason why the rulings might seem contradictory concerning the allowance of time limits.⁶⁰ However, based on an analysis of ECJ case law, one can derive that, especially when vulnerable persons are involved, the ECJ has a tendency to apply the restriction of the

53. LU: ECJ, 29 Oct. 2009, Case C-63/08, *Virginie Pontin v. T-Comalux SA*, para. 62.

54. *Pontin* (C-63/08), at para. 62.

55. *Levez* (C-326/96), at para. 31.

56. IR: ECJ, 20 Oct. 2016, Case C-429/15, *Evelyn Danqua v. Minister for Justice and Equality and Others*, para. 10.

57. *Danqua* (C-429/15), at para. 46.

58. *Danqua* (C-429/15), at para. 49.

59. See *Levez* (C-326/96), at para. 32; and *Danqua* (C-429/15), at para. 49; whereas in *Pontin* (C-63/08), at para. 67, the ECJ held that it appears that the national law did not comply with the principle of effectiveness, but it left this for the national court to determine.

60. For an overview of cases, their time limits and whether the ECJ decided that the time limit was an infringement of EU law, see A. van Eijdsden & J. van Dam, *Possibilities and Impossibilities for Challenging Final Tax Assessments and Decisions in Tax Cases that Contravene EC Law*, 19 EC Tax Review 6, p. 250 (2010).

List of Contributors

Christina Dimitropoulou is a research and teaching associate and doctoral candidate in the Doctoral Program in International Business Taxation at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business). Her research focuses on digital taxation and tax policy. She holds two master degrees in tax law and public finance and in public law. She is contributing as a reviewer in tax law journals and has over 8 years of professional experience as a tax lawyer in law firms and tax accounting firms.

Karol Dziwiński received his law degree from the University of Warsaw, Poland in 2016 and a master's degree in Italian law from the University of Catania, Italy in 2017. Currently, he is a teaching and research associate at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business) and a team member of the Transfer Pricing Center at the Institute for Austrian and International Tax Law. He cooperates scientifically in the area of tax law with Henkel AG & Co., KGaA.

Florian Fiala is a teaching and research associate at the Institute of Austrian and International Tax Law, WU (Vienna University of Economics and Business). He holds an LL.M. in Business Law. Before joining WU, he gained experience in tax advisory while working at Deloitte Austria from 2015 to 2018.

Prof. Dr **Heinz Jirousek** is a Senior Scientist at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business). He is a former head of the unit for international tax law and consultant at the Austrian Ministry of Finance.

Prof. Dr DDr h.c. **Michael Lang** is Head of the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business) and academic director of the LL.M. Program in International Tax Law as well as the Doctoral Program in International Business Taxation (DIBT) at the same university.

Katharina Moldaschl received a master's degree in Business Law from WU (Vienna University of Economics and Business). She works as a teaching and research associate at the Institute for Austrian and International Tax Law, WU.

Marta Ołowska works as a teaching and research associate at the Institute of Austrian and International Tax Law's Global Tax Policy Center, WU (Vienna University of Economics and Business). She is a PhD candidate in the field of business law, with a primary focus on indirect taxation and new technologies, at WU. She holds a master's degree in Law and a bachelor's degree in International Relations from the University of Warsaw and completed postgraduate studies in Taxation at Warsaw School of Economics (SGH). She gained international experience participating in exchange programs in Singapore and the United States. Before joining WU, she worked at Dentons' Warsaw office in the tax department.

Angelina Papulova received a bachelor's and a master's law degree at the Ural State Law University, Russia. She completed her LL.M. degree at WU (Vienna University of Economics and Business) in 2018. Currently she is a doctorate candidate and a teaching and research associate at the Institute for Austrian and International Tax Law, WU.

Prof. Dr **Pasquale Pistone** holds a Jean Monnet ad personam Chair in European Tax Law and Policy at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business) and is the Academic Chairman of IBFD, Amsterdam. He is, furthermore, an Associate Professor of Tax Law at the University of Salerno, an honorary professor at both the Ural State Law University and at the University of Cape Town and an honorary doctor at the University of Örebro. He is the Secretary General of the European Association of Tax Law Professors (EATLP). He is the editor-in-chief of the World Tax Journal and the IBFD Doctoral Series, and the co-editor of the IBFD Global Tax Treaty Commentaries and of the journal *Diritto e Pratica Tributaria Internazionale*.

Christina Pollak received her degree in Law from the University of Vienna, Austria in 2016 and an LL.M. degree in Tax Law from the University of Lund, Sweden in 2018. Currently, she is a KPMG Research Project Assistant at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business). She cooperates scientifically in the area of VAT and customs law with KPMG Austria.

Ioana-Felicia Rosca is a research associate and doctoral candidate as part of the Doctoral Program in International Business Taxation at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business). She has over six years of experience within the International Tax Services department of PwC Bucharest and the Transfer

Pricing department of PwC Vienna. She is a member of the Romanian Tax Chamber, a holder of the Chartered Institute of Taxation ADIT qualification and has completed two LL.M. degrees in Tax Law and International Taxation at University of Bucharest and at WU.

Prof. Dr **Alexander Rust** is Professor of Tax Law at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business). He previously worked as Professor of Tax Law and Director of the Master's Program in European and International Tax Law at the University of Luxembourg, as an acting assistant professor at New York University and as an assistant at the University of Munich. He is a member of the editorial board of *Intertax* and *Internationale Steuer-Rundschau*, as well as co-editor of *Klaus Vogel on Double Taxation Conventions: Commentary*. His main research interests are tax treaty law, European tax law and tax policy.

Prof. Dr **Josef Schuch** received his Doctorate in Law in 1998 for his thesis on expenses and losses under tax treaty law. In 2002, he completed his post-doctoral thesis on timing issues under tax treaty law. His research and publishing activities mainly focus on international tax law. He has been a professor in International Tax Law at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business) since 2002 and is a partner at Deloitte Austria.

Prof. Dr **Claus Staringer** is a professor at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business) and a principal consultant with the law firm Freshfields Bruckhaus Deringer.

Annika Streicher received a bachelor's and a master's degree in Business Law from WU (Vienna University of Economics and Business). She works as a teaching and research associate at the Institute for Austrian and International Tax Law, WU.

Andreas Ullmann received his degree in Law from the University of Vienna, Austria in 2016. After finishing his studies, he did an internship at the Austrian Ministry of Finance in the department of International Tax Law. Currently, he is working as a teaching and research associate at the Institute of Austrian and International Tax Law, WU (Vienna University of Economics and Business).

Jean-Philippe Van West successfully completed the Doctoral Program in International Business Taxation at WU (Vienna University of Economics and Business) in 2019 with a doctoral thesis on article 29(8) of the 2017 OECD Model. He currently works in the International Tax department of PWC Belgium and is a guest professor at the VUB (Free University of Brussels).

Contact

IBFD Head Office
Rietlandpark 301
1019 DW Amsterdam
P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Tel.: +31-20-554 0100 (GMT+1)

Email: info@ibfd.org

Web: www.ibfd.org



IBFD, Your Portal to Cross-Border Tax Expertise