

EC and International Tax Law Series

Volume 18

Current Tax Treaty Issues

50th Anniversary of the International Tax Group

and achieve uniformity in the allocation

of taxing rights between countries in cross-

border situations.

overlap of different tax

systems, and in particular

Tax Law

to allocate the taxing rights

The main international sources of tax

on income arising within

law are bilateral or multilateral treaties

the jurisdiction of the two

and on important source for the interp

countries involved.

Guglielmo Maisto / Series Editor

IBFD

Current Tax Treaty Issues

Why this book?

Current Tax Treaty Issues – 50th Anniversary of the International Tax Group comprises contributions focusing on international tax issues marking the 50th anniversary of a group of experts whose collective writings for decades have landmarked the international literature on tax treaties and international tax law in general. The book begins with a part on tax treaty policy and domestic law, including a review of the history of tax treaties and tax policy and international organizations in the tax treaty context. The domestic law aspects focus on a comparison of various features of tax litigation in the Netherlands and in the United Kingdom. It also includes an in-depth analysis of the “preservation principle” under which treaty provisions are prevented from being construed to restrict exclusions, exemptions, credit or other allowances granted by domestic law. Part 1 concludes with a review of the constitutional issues arising from the parliamentary process of approval of tax treaties. Part 2 deals with treaty interpretation and application with a focus on tax treaty application to states and their political subdivisions and local authorities. It also includes a chapter on “treaty access” dealing with policy and practical considerations on access to treaties by commercial entities with a focus on the principal purpose test and the limitation on benefits provision and the handling of characterization issues under treaties. A separate chapter reviews the use of memoranda of understanding for tax treaty interpretation and administration for tax treaty interpretation. Part 2 concludes with an analysis of the use of the OECD Commentaries in the context of BEPS and the MLI. Part 3 is devoted to taxing rules relating to the jurisdiction to tax, a commentary on the PE definition as revised by the 2017 Update to the Model Convention and the taxation of services income. It also analyses the treaty practice on article 21 of the OECD and UN Models. The definition of “beneficial ownership”, with the impact of the preamble to the 2017 Model Convention and the interpretation of the beneficial ownership limitation are also examined. Finally, a critique on the meaning of “beneficial ownership” before and after BEPS and whether the expression has become obsolete is presented. This book presents a unique and detailed insight into the most controversial issues which may be found in the tax treaty context. As such, it is an essential reference source for international tax students, practitioners and academics.

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Foreword

This book is the eighteenth volume in the IBFD *EC and International Tax Law Series*, which includes monographs focussing on issues of interpretation of EU tax and treaty laws with particular attention to the interaction between tax law and other branches of law, primarily comparative law and public international law.

The *EC and International Tax Law Series* is based on multijurisdictional research carried out by legal scholars – including academic researchers – that is presented during annual invitational seminars. This volume of the series is based on the presentations made at the “Current Tax Treaty Issues – 50th Anniversary of the International Tax Group” seminar that was held in Milan on 25 November 2019.

The aim of the *EC and International Tax Law Series* is to promote the dissemination of studies on EU and international tax law that go beyond domestic domains. Applications requesting support for research or publication projects are welcomed and may be sent by e-mail to the attention of Prof. Guglielmo Maisto (Series Editor) at seminar@maisto.it.

Prof. Guglielmo Maisto

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Non-Discrimination and Beneficial Ownership

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