Publication Review

Taxation of Intercompany Dividends under Tax Treaties and EU Law

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Subject: Tax. Other related subjects: European Union. Legal systems

This book is the eighth volume in the IBFD’s EC and International Tax Law Series—an excellent series which deals with issues of interpretation of EU tax law and treaty laws, from a general as well as a multijurisdictional perspective. The book is based on presentations made at a seminar held in Milan on October 1, 2011, entitled “Taxation of Dividends under Tax Treaties and EU Law”.

The coverage of the book is truly impressive. It comprises of five parts. The first part considers the taxation of dividends and EU law. In this part, contributors examine interesting developments as a result of the case law of the Court of Justice of the European Union, especially Haribo Lakritzen Hans Riegel BetriebsgmbH and Österreichische Salinen AG v Finanzamt Linz and European Commission v Germany. Much emphasis is placed on the Court’s asymmetrical treatment of economic and juridical double taxation of cross-border dividends. There is also extensive discussion on the use of tax treaties in neutralising discrimination and the issue of equivalence of the exemption and the credit methods.

The second part focuses on the treatment of dividends under the OECD Model Tax Convention (the Convention). The definition of dividends in the Convention and the overview of its historical evolution form the basis for understanding the Convention’s application in thin capitalisation and transfer pricing situations. Beneficial ownership in the context of dividends is also examined and the proposed changes to the Commentary of the Convention are analysed. This theme is picked up in part three, where the application of domestic and treaty anti-abuse rules on dividends is considered. Specific types of transactions are analysed and cases on beneficial ownership are reviewed. There is an interesting analysis of the tax planning aspects of dividend taxation in this part, though generally the discussion remains at an academic level.

The next part deals with inter-company dividends and non-discrimination. The non-discrimination provision of the Convention is examined in a number of scenarios, mainly where a permanent establishment is interposed and the subsidiary’s shares are attributed to it. The authors deal with the question of whether it is possible to eliminate economic or juridical double taxation in these scenarios. The analysis is incisive. It is shown that in some cases, no definite solution can be found. This part also contains a discussion on the substantive and procedural aspects of the OECD’s Treaty Relief and Compliance (TRACE) project.

The last part of this book, part five, contains contributions from scholars all around the world. There are 12 country reports altogether. There is no concluding chapter linking together the issues discussed. This, arguably, is the only criticism that can be levelled against the book. Overall, this book provides an excellent and very comprehensive analysis of some of the topics relating to the tax treatment of dividends both in the EU and internationally. Those who have undertaken research in this area will agree that the book contains an impressive wealth of materials, bringing together as it does thought-provoking analysis from different angles.

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2. European Commission v Germany (C-284/09) [2011] STC 2392 (European Court of Justice (First Chamber)) (decided October 20, 2011).