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978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

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## THE IMPACT OF THE OECD AND UN MODEL CONVENTIONS ON BILATERAL TAX TREATIES

This book provides an analysis of bilateral tax treaties concluded by thirty-seven jurisdictions from five continents and empirically ascertains the impact of the OECD and UN Model Tax Conventions on bilateral tax treaties. It therefore fills a major gap in the international tax literature, which has so far either studied the sole Model Tax Conventions or focused on bilateral treaties in the context of the tax treaty policy of single countries, and sets the pace for a new methodology in the analysis and interpretation of tax treaties. A general report outlines the key points of the analysis, highlights current trends and predicts future developments in multilateralism and global tax law. Academics, tax authorities and international tax practitioners, for whom a textbook based on Model Tax Conventions is insufficient, will find this an essential resource.

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Frontmatter

[More information](#)

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Frontmatter

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Frontmatter

[More information](#)

## CONTENTS

<i>List of contributors</i>	xvii
<i>Preface</i>	xxvii
<i>Table of cases</i>	xxx
<i>Table of statutes</i>	xliv
General report	1
I The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of tax treaties	4
II The personal and material scope of the tax treaties	8
III Business profits and income from other independent activities	12
IV Passive income	17
V Income from employment and other dependent activities	23
VI Methods for relieving double taxation	28
VII The non-discrimination principle	30
VIII The mutual agreement procedure and international mutual assistance in tax matters	32
<b>1 Argentina</b>	<b>37</b>
1.1 The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Argentine tax treaties	37
1.2 Personal and material scope of the tax treaties	43
1.3 Business profits and other independent activities	45
1.4 Dividends, interest, royalties and capital gains	51
1.5 Employment and other dependent activities	57
1.6 Methods to avoid double taxation	60
1.7 Non-discrimination	62
1.8 Mutual agreement, exchange of information and mutual assistance in the collection of taxes	63
1.9 Conclusions	66

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

vi

## CONTENTS

2	Australia	68
2.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Australian tax treaties	68
2.2	Personal and material scope of the tax treaties	70
2.3	Business profits and other independent activities	73
2.4	Dividends, interest, royalties and capital gains	81
2.5	Employment and other dependent activities	95
2.6	Methods to avoid double taxation	99
2.7	Non-discrimination	101
2.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	104
2.9	Conclusion	108
3	Austria	110
3.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Austrian tax treaties	110
3.2	Personal and material scope of the tax treaties	112
3.3	Business profits and other independent activities	115
3.4	Dividends, interest, royalties and capital gains	122
3.5	Employment and other dependent activities	127
3.6	Methods to avoid double taxation	132
3.7	Non-discrimination	135
3.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	138
4	Belgium	142
4.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Belgian tax treaties	142
4.2	Personal and material scope of the tax treaties	146
4.3	Business profits and other independent activities	150
4.4	Dividends, interest, royalties and capital gains	154
4.5	Employment and other dependent activities	158
4.6	Methods to avoid double taxation: Article 23	161
4.7	Non-discrimination: Article 24	166
4.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	167
5	Brazil	171
5.1	The relevance of the OECD and UN Model Conventions and their Commentaries on the interpretation of Brazilian tax treaties	171

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## CONTENTS

vii

5.2	Personal and material scope of the tax treaties	173
5.3	Business profits and other independent activities	177
5.4	Dividends, interest, royalties and capital gains	181
5.5	Employment and other dependent activities	192
5.6	Methods to avoid double taxation: Article 23	197
5.7	Non-discrimination: Article 24	199
5.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	200
<b>6</b>	<b>Canada</b>	<b>203</b>
6.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Canadian tax treaties	203
6.2	Personal and material scope of the tax treaties	209
6.3	Business profits and other independent activities	213
6.4	Dividends, interest, royalties and capital gains	216
6.5	Employment and other dependent activities	220
6.6	Methods to avoid double taxation: Article 23	224
6.7	Non-discrimination: Article 24	226
6.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	227
6.9	Conclusions	231
<b>7</b>	<b>Chile</b>	<b>232</b>
7.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Chilean tax treaties	232
7.2	Personal and material scope of the tax treaties	235
7.3	Business profits and other independent activities	238
7.4	Dividends, interest, royalties and capital gains	245
7.5	Employment and other dependent activities	250
7.6	Methods to avoid double taxation: Article 23	253
7.7	Non-discrimination: Article 24	254
7.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	257
<b>8</b>	<b>China</b>	<b>261</b>
8.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Chinese tax treaties	261
8.2	Personal and material scope of the tax treaties: Articles 1, 2 and 4	263
8.3	Business profits and other independent activities	270
8.4	Dividends, interest, royalties and capital gains: Articles 10, 11, 12 and 13	276

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

viii

## CONTENTS

8.5	Employment and other dependent activities	282
8.6	Methods to avoid double taxation: Article 23	285
8.7	Non-discrimination: Article 24	288
8.8	Mutual agreement and exchange of information	290
<b>9</b>	<b>Colombia</b>	<b>294</b>
9.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Colombian tax treaties	294
9.2	Personal and material scope of the tax treaties	296
9.3	Business profits and other independent activities	298
9.4	Dividends, interest, royalties and capital gains	301
9.5	Employment and other dependent activities	304
9.6	Methods to avoid double taxation	305
9.7	Non-discrimination	306
9.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	308
<b>10</b>	<b>Croatia</b>	<b>311</b>
10.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Croatian tax treaties	311
10.2	Personal and material scope of the tax treaties	313
10.3	Business profits and other independent activities	316
10.4	Dividends, interest, royalties and capital gains	320
10.5	Employment and other dependent activities	321
10.6	Methods to avoid double taxation	323
10.7	Non-discrimination	323
10.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	324
<b>11</b>	<b>The Czech Republic</b>	<b>325</b>
11.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Czech tax treaties	325
11.2	Personal and material scope of the tax treaties	327
11.3	Business profits and other independent activities	331
11.4	Dividends, interest, royalties and capital gains	341
11.5	Employment and other dependent activities	345
11.6	Methods to avoid double taxation	348
11.7	Non-discrimination	349
11.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	353



Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## CONTENTS

ix

- |    |         |   |     |
|----|---------|---|-----|
| 12 | Estonia | 356   |     |
|    | 12.1    | The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Estonian tax treaties | 356 |
|    | 12.2    | Personal and material scope of the tax treaties   | 358 |
|    | 12.3    | Business profits and other independent activities   | 364 |
|    | 12.4    | Dividends, interest, royalties and capital gains  | 369 |
|    | 12.5    | Employment and other dependent activities   | 372 |
|    | 12.6    | Methods to avoid double taxation: Article 23  | 378 |
|    | 12.7    | Non-discrimination: Article 24  | 379 |
|    | 12.8    | Mutual agreement, exchange of information and mutual assistance in the collection of taxes                                | 383 |
| 13 | Finland | 387   |     |
|    | 13.1    | The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Finnish tax treaties  | 387 |
|    | 13.2    | Personal and material scope of the tax treaties   | 390 |
|    | 13.3    | Business profits and other independent activities   | 394 |
|    | 13.4    | Dividends, interest, royalties and capital gains  | 397 |
|    | 13.5    | Employment and other dependent activities   | 404 |
|    | 13.6    | Methods to avoid double taxation  | 409 |
|    | 13.7    | Non-discrimination  | 414 |
|    | 13.8    | Mutual agreement, exchange of information and mutual assistance in the collection of taxes                                | 416 |
| 14 | France  | 421   |     |
|    | 14.1    | The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of French tax treaties   | 421 |
|    | 14.2    | Personal and material scope of the tax treaties: Articles 1, 2 and 4  | 430 |
|    | 14.3    | Business profits and other independent activities   | 441 |
|    | 14.4    | Dividends, interest, royalties and capital gains  | 445 |
|    | 14.5    | Employment and other dependent activities   | 453 |
|    | 14.6    | Methods to avoid double taxation  | 454 |
|    | 14.7    | Non-discrimination  | 459 |
|    | 14.8    | Mutual agreement, exchange of information and mutual assistance in the collection of taxes                                | 463 |
| 15 | Germany | 466   |     |
|    | 15.1    | The importance of the OECD and UN Model Conventions and their Commentaries for the interpretation of German tax treaties  | 466 |

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

x

## CONTENTS

15.2	Personal and material scope of the tax treaties	471
15.3	Business profits and other independent activities	476
15.4	Dividends, interest, royalties and capital gains	483
15.5.	Employment and other dependent activities	489
15.6	Methods to avoid double taxation	492
15.7	Non-discrimination	495
15.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	496
<b>16</b>	<b>Hong Kong</b>	<b>501</b>
16.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Hong Kong tax treaties	501
16.2	Personal and material scope of the tax treaties	502
16.3	Business profits and other independent activities	508
16.4	Dividends, interest, royalties and capital gains	514
16.5	Employment and other dependent activities	519
16.6	Methods to avoid double taxation	524
16.7	Non-discrimination	527
16.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	529
16.9	Concluding remarks	530
<b>17</b>	<b>Hungary</b>	<b>532</b>
17.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Hungarian tax treaties	532
17.2	Personal and material scope of the tax treaties	534
17.3	Business profits and other independent activities	539
17.4	Dividends, interest, royalties and capital gains	544
17.5	Employment and other dependent activities	545
17.6	Methods to avoid double taxation	546
17.7	Non-discrimination	546
17.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	547
<b>18</b>	<b>India</b>	<b>549</b>
18.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Indian tax treaties	549
18.2	Personal and material scope of the tax treaties	556
18.3	Business profits and other independent activities	563
18.4	Dividends, interest, royalties and capital gains	580

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## CONTENTS

xi

18.5	Employment and other dependent activities	586
18.6	Methods to avoid double taxation: Article 23	591
18.7	Non-discrimination: Article 24	592
18.8	Mutual agreement, exchange of information and collection of taxes	595
<b>19</b>	<b>Italy</b>	<b>598</b>
19.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Italian tax treaties	598
19.2	Personal and material scope of the tax treaties	602
19.3	Business profits and other independent activities	608
19.4	Dividends, interest, royalties and capital gains	615
19.5	Employment and other dependent activities	624
19.6	Methods to avoid double taxation: Article 23	625
19.7	Non-discrimination: Article 24	628
19.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	630
<b>20</b>	<b>Lebanon</b>	<b>633</b>
20.1	The relevance of the OECD and the UN Model Conventions and their Commentaries for the interpretation of Lebanese tax treaties	633
20.2	Personal and material scope of the tax treaties	636
20.3	Business profits and other independent activities	638
20.4	Dividends, interest, royalties and capital gains	641
20.5	Employment and other dependent activities	643
20.6	Methods to avoid double taxation	645
20.7	Non-discrimination	646
20.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	646
<b>21</b>	<b>Liechtenstein</b>	<b>649</b>
21.1	The relevance of the OECD and the UN Model Conventions and their Commentaries for the interpretation of Liechtenstein tax treaties	649
21.2	Personal and material scope of the tax treaties	650
21.3	Business profits and other independent activities: Articles 5, 7, 8, 9, 16 and 17	654
21.4	Dividends, interest, royalties and capital gains: Articles 10–13	656
21.5	Employment and other dependent activities: Articles 15, 18, 19 and 20	658
21.6	Methods to avoid double taxation: Article 23	660

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

xii

## CONTENTS

21.7	Non-discrimination: Article 24	661
21.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	663
<b>22</b>	<b>The Netherlands</b>	<b>666</b>
22.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Dutch tax treaties	666
22.2	Personal and material scope of the tax treaties	670
22.3	Business profits and other independent activities	679
22.4	Dividends, interest, royalties and capital gains	700
22.5	Employment and other dependent activities	707
22.6	Methods to avoid double taxation	723
22.7	Non-discrimination	726
22.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	728
<b>23</b>	<b>New Zealand</b>	<b>735</b>
23.1	The relevance of the OECD Model Conventions and Commentaries for the interpretation of New Zealand tax treaties	735
23.2	Personal and material scope of the tax treaties	738
23.3	Business profits and other independent activities	740
23.4	Dividends, interest, royalties and capital gains	745
23.5	Employment and other dependent activities	754
23.6	Methods to avoid double taxation: Article 23	757
23.7	Non-discrimination: Article 24	760
23.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	763
23.9	Conclusion	767
<b>24</b>	<b>Norway</b>	<b>768</b>
24.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Norwegian tax treaties	768
24.2	Personal and material scope of the tax treaties	775
24.3	Business profits and other independent activities	782
24.4	Dividends, interest, royalties and capital gains	784
24.5	Employment and other dependent activities	788
24.6	Methods to avoid double taxation: Article 23	789
24.7	Non-discrimination: Article 24	791
24.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	792

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## CONTENTS

xiii

25	Peru	796	
	25.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Peruvian tax treaties	796
	25.2	Personal and material scope of the tax treaties	799
	25.3	Business profits and other independent activities	801
	25.4	Dividends, interest, royalties and capital gains	807
	25.5	Employment and other dependent activities	810
	25.6	Methods to avoid double taxation: Article 23	813
	25.7	Non-discrimination	814
	25.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	816
26	Poland	820	
	26.1	The relevance of the OECD and the UN Model Conventions and their Commentaries for the interpretation of Polish tax treaties	820
	26.2	Personal and material scope of the tax treaties	822
	26.3	Business profits and other independent activities	827
	26.4	Dividends, interest, royalties and capital gains	836
	26.5	Employment and other dependent activities	841
	26.6	Methods to avoid double taxation	845
	26.7	Non-discrimination	848
	26.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	850
27	Portugal	855	
	27.1	The relevance of the OECD and the UN Model Conventions and their Commentaries for the interpretation of Portuguese tax treaties	855
	27.2	Personal and material scope of the tax treaties	858
	27.3	Business profits and other independent activities	863
	27.4	Dividends, interest, royalties and capital gains	872
	27.5	Employment and other dependent activities	876
	27.6	Methods to avoid double taxation	880
	27.7	Non-discrimination	882
	27.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	884
	27.9	Concluding remarks	887
28	Romania	888	
	28.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Romanian tax treaties	888

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

xiv

## CONTENTS

28.2	Personal and material scope of the tax treaties	892
28.3	Business profits and other independent activities	895
28.4	Dividends, interest, royalties and capital gains	903
28.5	Employment and other dependent activities	909
28.6	Methods to avoid double taxation: Article 23	911
28.7	Non-discrimination: Article 24	912
28.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	913
<b>29</b>	<b>The Russian Federation</b>	<b>915</b>
29.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Russian tax treaties	915
29.2	Personal and material scope of the tax treaties	920
29.3	Business profits and other independent activities	925
29.4	Dividends, interest, royalties and capital gains	931
29.5	Employment and other dependent activities	933
29.6	Methods to avoid double taxation	935
29.7	Non-discrimination	937
29.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	940
29.9	Conclusion	943
<b>30</b>	<b>Serbia</b>	<b>944</b>
30.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Serbian tax treaties	944
30.2	Personal and material scope of the tax treaties	951
30.3	Business profits and other independent activities	955
30.4	Dividends, interest, royalties and capital gains	962
30.5	Employment and other dependent activities	966
30.6	Methods to avoid double taxation	969
30.7	Non-discrimination	970
30.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	971
<b>31</b>	<b>Slovakia</b>	<b>973</b>
31.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Slovak tax treaties	973
31.2	Personal and material scope of the tax treaties	975
31.3	Business profits and other independent activities	978
31.4	Dividends, interest, royalties and capital gains	983
31.5	Employment and other dependent activities	989

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## CONTENTS

xv

31.6	Methods to avoid double taxation: Article 23	992
31.7	Non-discrimination: Article 24	993
31.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	994
<b>32</b>	<b>Slovenia</b>	<b>998</b>
32.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Slovenian tax treaties	998
32.2	Personal and material scope of the tax treaties	1001
32.3	Business profits and other independent activities	1003
32.4	Dividends, interest, royalties and capital gains	1007
32.5	Employment and other dependent activities	1015
32.6	Methods to avoid double taxation	1018
32.7	Non-discrimination	1019
32.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	1022
<b>33</b>	<b>Spain</b>	<b>1026</b>
33.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Spanish tax treaties	1026
33.2	Personal and material scope of the tax treaties	1031
33.3	Business profits and other independent activities	1034
33.4	Dividends, interest, royalties and capital gains	1039
33.5	Employment and other dependent activities	1043
33.6	Methods to avoid double taxation	1047
33.7	Non-discrimination	1050
33.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	1053
<b>34</b>	<b>Sweden</b>	<b>1056</b>
34.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Swedish tax treaties	1056
34.2	Personal and material scope of the tax treaties	1060
34.3	Business profits and other independent activities	1064
34.4	Dividends, interest and royalties and capital gains	1067
34.5	Employment and other dependent activities	1072
34.6	Methods to avoid double taxation	1075
34.7	Non-discrimination	1078
34.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	1079

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

xvi

## CONTENTS

35	Uganda	1083	
	35.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of Ugandan tax treaties	1083
	35.2	Personal and material scope of the tax treaties	1084
	35.3	Business profits and other independent activities	1088
	35.4	Dividends, interest, royalties and capital gains	1092
	35.5	Employment and other dependent activities	1094
	35.6	Methods to avoid double taxation	1096
	35.7	Non-discrimination	1097
	35.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	1098
	35.9	Conclusion	1099
36	The UK	1101	
	36.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of UK tax treaties	1101
	36.2	Title and personal and material scope of the tax treaties	1114
	36.3	Business profits and other independent activities	1121
	36.4	Dividends, interest, royalties and capital gains	1129
	36.5	Employment and other dependent activities	1134
	36.6	Methods to avoid double taxation: Article 23	1137
	36.7	Non-discrimination	1138
	36.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	1144
37	The USA	1149	
	37.1	The relevance of the OECD and UN Model Conventions and their Commentaries for the interpretation of US tax treaties	1149
	37.2	Personal and material scope of the tax treaties	1153
	37.3	Business profits and other independent activities	1158
	37.4	Dividends, interest, royalties and capital gains	1166
	37.5	Employment and other dependent activities	1170
	37.6	Methods to avoid double taxation	1171
	37.7	Non-discrimination	1174
	37.8	Mutual agreement, exchange of information and mutual assistance in the collection of taxes	1175
	37.9	Conclusions	1178
	<i>Index</i>		1180



Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

xviii

LIST OF CONTRIBUTORS

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

xix

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

XX

LIST OF CONTRIBUTORS

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## LIST OF CONTRIBUTORS

xxi

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

xxii

LIST OF CONTRIBUTORS

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## LIST OF CONTRIBUTORS

xxiii

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

xxiv

LIST OF CONTRIBUTORS

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

XXV

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

xxvi

LIST OF CONTRIBUTORS

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Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

## PREFACE

Tax treaties have existed for well over a century and have undoubtedly improved the legal framework for the exercise of taxing powers on cross-border economic relations. They are usually bilateral in scope and result from the negotiation of package deals that have yielded a highly diversified constellation of agreements. Since the 1920s the desire to achieve internationally accepted tax treaty practice has led international organisations to undertake activities in this domain, aimed at developing a reliable and policy-sound tax treaty framework that states would be able to take into account when concluding their own bilateral treaties. However, it was only after decades of activity by the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN) in this field that a convergence in the content of tax treaties could be seen. Meanwhile, the number of bilateral tax treaties around the world as well as their complexity have been increasing dramatically, giving rise to a highly varied set of rules in the absence of a proper customary international tax law and opening up room for a considerable growth in international tax planning. Some academics have successfully supplemented the efforts of the international organizations by writing works that have guided the evolution of scholarly legal debate over the interpretation of tax treaty clauses following the Models.<sup>1</sup> However, the international academic legal thinking on tax treaties has so far generally focused only on such clauses, neglecting those that depart from them. Clauses deviating from the Models have been relegated to the area of regional dialogue or even to each country's national tax scene and have then been examined solely with a view to ascertaining their consistency with the respective national tax treaty policy. From the time the editors began to carry out interdisciplinary research activities with other scientists on international tax coordination and tax treaties, further repercussions have become evident. In particular, due to the needs of economists to streamline the information they analyse for the purpose of obtaining results from their research, they sometimes

<sup>1</sup> The editors hereby wish to acknowledge the outstanding contribution by Professor Dr Klaus Vogel, whose works have brought the entire international tax world much closer together and have educated generations of international tax experts.

Cambridge University Press

978-1-107-01972-0 - The Impact of the OECD and Un Model Conventions on Bilateral Tax Treaties

Edited by Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer

Frontmatter

[More information](#)

equate tax treaties with the clauses contained in the Models, simply assuming that no relevant differences exist with the bilateral treaties actually in force around the world. This book aims to fill a gap in legal tax literature by providing an innovative scientific support for establishing the boundaries of the influence of the OECD and UN Models on the drafting and interpretation of bilateral tax treaties around the world. From this perspective, it supplements the documentation activities carried out by the Institute in cooperation with other universities, scientific institutions and the OECD ([www.taxtreatieshistory.org](http://www.taxtreatieshistory.org)) on the *travaux préparatoires* on the OECD Model. However, the book also contains relevant information on bilateral tax treaties that depart from the pattern of the Models and nevertheless also achieve some degree of convergence.

The editors are confident that this book (the first of its kind to cover over forty countries and to contain this type of analysis), which is based on papers which were presented at a conference organized in July 2010 in Rust, Austria by the Institute for Austrian and International Tax Law of the WU Vienna University of Economics and Business, will be of use to academics for their research on international tax matters in the legal and economic fields of the social sciences, as well as to practitioners who need more refined and detailed information on the wording and interpretation of tax treaties, which is often not accessible in the English language. The selection of authors reflects this goal and includes a balanced mix of academics (including some doctoral students with a research focus on tax treaties) and practitioners, who have drafted the chapters on the basis of a questionnaire prepared by the editors together with their research team in order to achieve a standard structure that makes the text more user-friendly. Furthermore, a general report enhances access to the national chapters and highlights the common and differing features, which could be of interest to the readers from certain areas of the world (such as the EU) or who are working in certain specific technical domains covered by tax treaties.

The book presents to the international tax community the results of a long period of research activity and is current to 1 January 2011. This research was carried out in the framework of various high-level research projects (including the EURYI Project for the European Science Foundation and the SFB on International Tax Coordination) by an international team based at the Institute for Austrian and International Tax Law of the Vienna University of Economics and Business, composed of the editors and several researchers, including in particular João Félix Pinto Nogueira and Elisabeth Pamperl, whom the editors warmly thank for their enthusiasm, initiative and support. However, the editors also regard this book as an important phase in their cooperation with the authors of the national chapters from around the world. They have patiently revised their chapters in order to enhance the scientific quality of this book, which will hopefully become an essential tool for

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Frontmatter

[More information](#)

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PREFACE

xxix

activities involving tax treaties, both in research and in practice. All chapters have been linguistically edited by Richard Casna and Margaret Nettinga. Finally, special thanks go to Renée Pestuka, who has brought the whole team together and indefatigably supported the project, showing in practice how the international tax world can be coordinated and making it possible for the editors to present a further concrete product of their joint scientific endeavours.

*Vienna-Naples-New York, 3 February 2011*

*The Editors*

*Michael Lang*

*Pasquale Pistone*

*Josef Schuch*

*Claus Staringer*

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[More information](#)

## TABLE OF CASES

## Argentina

Supreme Court (*Corte Suprema*)

28 April 1998, Hoechst AG c. DGI [1998] Citation 321:1031 40

13 October 1994, Cafes La Virginia S.A. [1994] Citation 317:1282 41

Federal Court of Appeals (*Camara Federal de Apelaciones*)

Room IV, 29 September 2000, Picapau SRL contra DGI [2000] 55

Room V, 2 June 2009, Austral Lineas Aereas (Cielos del Sur SA) [2009] 42

Tax Court (*Tribunal Fiscal de La Nación*)

Room D, 11 March 1980, La Industrial Paraguaya Argentina SA s/recurso de apelación Impuesto a los réditos [1980] 42

Room C, 7 November 1997, Astillero Ministro Manuel Domecq Garcia SA s/recurso de apelacion [1997] 62

Room B, 4 November 2003, Pionera SA [2003] 46

Room B, 6 February 2004, Alpescas SA – Fish Management SA UTE [2004] 46

Room B, 23 February 2004, Pesquera Santa Elena SA, Fish Management SA UTE [2004] 46

Room D, 12 May 2004, Aerolineas Argentinas SA [2004] 42

Room B, 11 December 2009, Volkswagen Argentina SA s/apelación [2009] 42

Room D, 26 February 2010, Aventis Pharma SA [2010] 42

## Australia

## High Court of Australia, Canberra

Thiel v. Commissioner of Taxation (1990) 171 CLR 338 69

## New South Wales Supreme Court, Sydney

Jamieson v. Commissioner for Internal Revenue (2007) NSWSC 324 108

## Federal Court of Australia

Lamesa Holdings v. Federal Commissioner of Taxation (1997) 35 ATR 239 70