

Recent developments in International Taxation

On the 7th of September, following the IFA/OECD seminar and the lunch dialogue, a specific seminar covering the latest and most important case-law on international taxation worldwide took place. This seminar focused on recent judicial decisions in key international tax topics like tax treaties and domestic tax rules with cross-border implications. The panelists highlighted the recent trend of a increase in cases brought before courts to interpret, address and clarify international tax issues.

This trend is occurring not only in those jurisdictions with stable and robust legal systems, countries which already have been quite active in the issuance of courts decisions on the matter in the past, but also in other jurisdictions with less developed legal systems. The seminar discussed cases from the different continents.

One of the key matters addressed during the seminar through a comparative study of case-law was a current hot topic in the mind of practitioners and administrations, i.e. the application of anti-abuse provisions to double tax treaties. Cases from the Supreme Courts of Canada, Argentina, as well as of the Court of Appeal in Trinidad and Tobago, were addressed and analyzed to see and understand differences in the approaches adopted by each court and the arguments raised by tax authorities and taxpayers. These cases may be seen as an indication on how jurisdictions might interpret and apply the Principal Purpose Test (PPT) of article 7(1) of the MLI and article 29(9) of the OECD and UN Model Treaties. In this respect, the tax authorities tend to apply domestic GAARs to test the benefits under the tax treaty in the absence of an express legal basis to do so in the applicable double tax treaty. The panel observed that the conclusions of the higher courts in different jurisdictions vary in this regard although the reasoning of judges seems to be similar in either finding, or not finding, abuse.

The seminar also explored two important judgements from the Spanish Supreme Court and the French Supreme Administrative Court respectively, both covering important aspects of beneficial ownership. The Spanish judgement stated that beneficial ownership cannot be understood as implicitly included in the wording of a tax treaty provision that does not expressly it. On the other hand, the French judgment concluded that beneficial ownership could be applied under a look-through approach considering the double tax treaty applicable between France and the jurisdiction of tax residence of the beneficial owner of the income even if there is an intermediary.

The panel considered other important international tax issues such as the exclusion of a permanent establishment based on working from home only and the auxiliary or preparatory nature of the activities carried on in the source State (judgement from the Finish Supreme Administrative Court); discrimination in the context of tax treaties (judgements from the High Court of Australia and the Supreme Court of Brazil); and whether a MAP procedure started by the taxpayer should be a *sine qua non* requirement or condition to effectively get a withholding tax refund (Commercial High Court of Rwanda).

The seminar also addressed cases related to the enforcement of foreign tax laws and interpretation of tax treaty provisions in the context of cum/ex frauds. Two important cases on this matter were discussed, i.e. a decision from the German Federal Fiscal Court and a judgment from the Court of Appeal in the United Kingdom.

Finally, the seminar examined the opinion of CJEU's Advocate General Szpunar on the relationship between the freedom to provide services and reporting and withholding obligations

to online providers of intermediation services, concluding that said fundamental freedom should not preclude the compliance with these domestic obligations.

The panel concluded that judicial and administrative bodies of States are quite active in addressing interesting and complex international tax issues. Such decisions and judgements are useful at an international level as they provide technical grounds and arguments, which may be used by practitioners worldwide where similar issues arise.