

LLM Programme International and European Legal Studies
International and European Tax Law

1. Introduction

Contact

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International and European Tax Law

Schedule

Date	Subject
10 Oct. 2023	Introduction to International and European Tax Law
17 Oct. 2023	Double Taxation
24 Oct. 2023	Taxation of cross-border activities
31 Oct. 2023	Tax Residence
7 Nov. 2023	Tax Avoidance (Taxpayer Schemes)
14 Nov. 2023	Tax Avoidance (State Countermeasures)
21 Nov. 2023	Tax Planning
28 Nov. 2023	Transfer Pricing
5 Dec. 2023	International Exchange of Information
12 Dec. 2023	Taxation of Digital Economy
19 Dec. 2023	Presentations
9 Jan. 2024	Presentations

Case study

- A, a US individual, wants to make business in Poland. However, he is not familiar with the Polish market, therefore he cooperates with his German friend B and they establish a German company C, which invests in Poland by acquiring shares in the Polish company D.

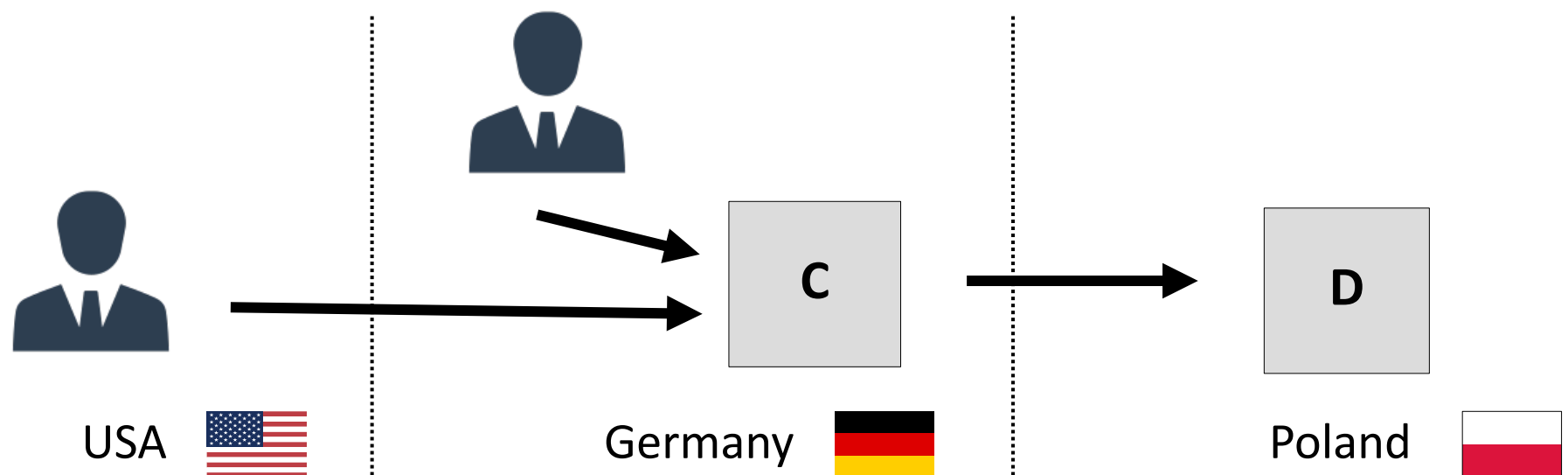
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Legal sources

- Domestic tax law
- European tax law
- International tax law

Legal sources

- Measures
 - ◆ Unilateral (domestic provisions)
 - ◆ Bilateral (tax treaties)
 - ◆ Multilateral (international tax conventions)

Legal sources

- Binding force
 - ◆ Tax conventions (multi- and bilateral)
 - ◆ EU law
 - Primary law
 - Secondary law
 - ◆ Domestic provisions
- No binding force
 - ◆ Soft law
 - ◆ Means of interpretation

Legal sources

- Multilateral agreements (examples)
 - 1988 Convention on Mutual Administrative Assistance in Tax Matters (OECD/Council of Europe)
 - 1990 EEC Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (EU Arbitration Convention)
 - 1994 Caribbean Community (CARICOM) Multilateral Tax Agreement (signed by certain Central America countries)
 - 1996 Convention between Denmark, Finland, Iceland, Norway and Sweden for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital (Nordic Convention)

Legal sources

- Multilateral agreements (examples)
 - ◆ 2014 Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information
 - ◆ 2017 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (known as Multilateral Instrument or MLI)
 - ◆ 2021 OECD Agreement to tax digital economy multinationals at a minimum 15% rate

Legal sources

- Bilateral agreements
 - ◆ Double Taxation Conventions on Income and on Capital (so-called "tax treaties")
 - The main body of International Tax Law
 - ◆ Inheritance and/or Gift Taxation Treaties
 - ◆ Tax Information Exchange Agreements (TIEAs)
 - ◆ Intergovernmental Agreements between USA and single countries for the implementation of FATCA (Foreign Account Tax Compliance Act)

Legal sources

- EU law
 - ◆ Primary
 - TEU
 - TFEU
 - ◆ Secondary
 - Regulations (unification of law)
 - Directives (harmonization of law)
 - ◆ Soft law
 - Recommendations
 - Codes of Conduct
 - Guidelines
 - Communications

Legal sources

- Secondary EU law
 - ◆ Parent-Subsidiary Directive (1990, recast 2011)
 - ◆ Merger Directive (1990, codified 2009)
 - ◆ ~~Savings Directive~~ (2003, repealed 2015)
 - ◆ Interest and Royalties Directive (2004)
 - ◆ Mutual Assistance Directive ("EU Directive on administrative cooperation in the field of taxation" 1977, 2011)
 - ◆ Recovery Directive ("EU Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures", 2010)
 - ◆ Anti-Tax Avoidance Directive (ATAD, 2016)
 - ◆ Dispute Resolution Mechanisms Directive (2017)
 - ◆ Pillar 2 Directive (2022)

Legal sources

- Domestic provisions
 - ◆ National Constitution
 - ◆ National statutes
 - Tax codes
 - Single statutory acts
 - ◆ Administrative orders

Legal sources

- Soft law
 - ◆ BEPS (Base Erosion and Profit Shifting) Programme
 - ◆ OECD Reports on harmful tax practices
 - ◆ OECD Transfer Pricing Guidelines
 - ◆ Code of Conduct for the EU's Transfer Pricing Documentation

Legal sources

- Case law
 - ◆ Domestic case law
 - Common law countries vs. civil law countries
 - ◆ Foreign case law
 - ◆ International Courts case law (e.g. CJEU)
- Tax arbitration
 - ◆ Tax treaties
 - ◆ EU Arbitration Convention
 - ◆ Arbitration bodies appointed by certain jurisdictions

International and European Tax Law

Legal sources

- General principles of taxation
 - ◆ **Fairness:** Taxation should produce the right amount of tax at the right time, while avoiding both double taxation and unintentional non-taxation.
 - ◆ **Certainty (and simplicity):** Tax rules should be clear and simple to understand, so that taxpayers know where they stand
 - ◆ **Neutrality:** Taxation should seek to be neutral and equitable between forms of business activities.
 - ◆ **Efficiency:** Compliance costs to business and administration costs for governments should be minimised as far as possible.
 - ◆ **Flexibility:** Taxation systems should be flexible and dynamic enough to ensure they keep pace with technological and commercial developments
- Customary law

Basic terminology

- Taxable person
- Taxable base
- Tax rate
- Source / Residence State
- Direct taxes
 - ◆ Income tax
 - ◆ Inheritance and donation tax
- Indirect taxes
 - ◆ VAT
 - ◆ Excise taxes
- Property taxation
- Capital taxation
- Transaction taxes

Basic concepts

- Free movement of goods, capital, persons
- Elimination of double taxation
 - ◆ Residence vs. Source Taxation
 - ◆ Origin vs. Destination Taxation
- Tax neutrality
 - ◆ Capital import neutrality
 - ◆ Capital export neutrality
- Tax avoidance and tax evasion

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