

LLM Programme International and European Legal Studies

International and European Tax Law

1. Introduction

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Shakira Case

- Shakira is a citizen of Venezuela
- All her income is acquired by a company situated in the Bahamas
- During 2012-2014 she visited her then boyfriend, Gerard Piqué
- Spanish tax authorities claimed she was a Spanish tax-resident and imposed taxes and fines of appr. € 23 m. and a 7-year imprisonment
- Shakira closed the case through settlement



Google Case



- Google Ireland signed advertisement contracts with clients from EU countries
- Google also maintained local subsidiaries
- The French and Greek tax authorities claimed that local Google subsidiaries qualified as permanent establishments and imposed taxes
- Google won the case at court in France but lost in Greece

Construction site cases

- A construction company undertakes an engineering work abroad and expects that all income will be taxable in its home country
- The construction is planned to take 6 months
- Due to unforeseeable circumstances, the construction is delayed for 1 week
- Tax implications: all income might be also taxable in the host country

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.

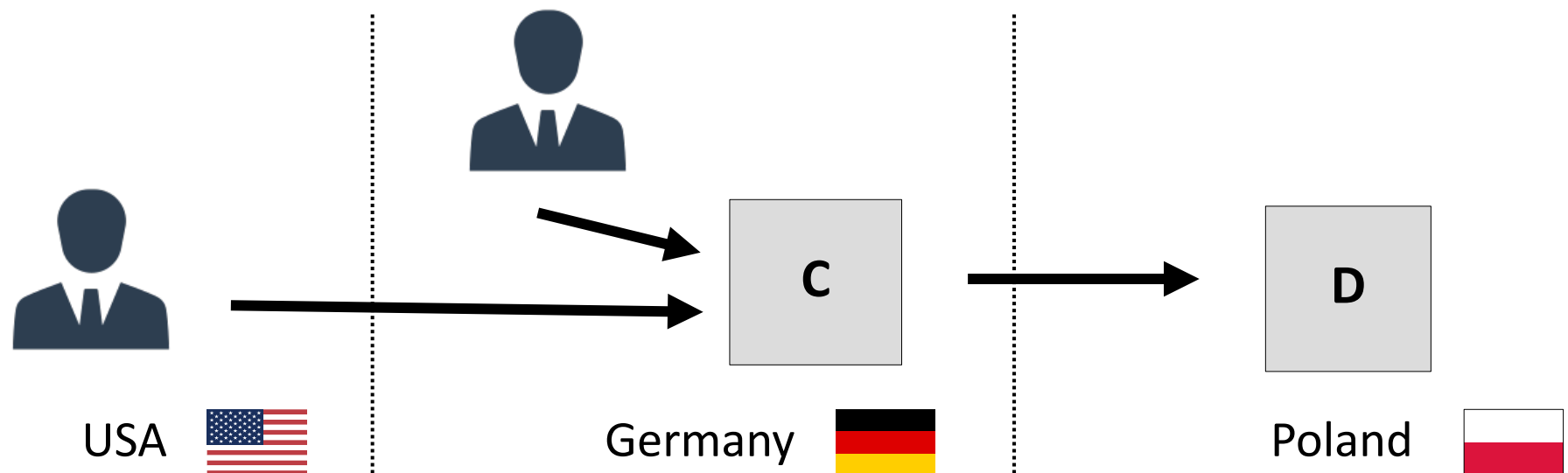
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International and European Tax Law

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International and European Tax Law

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

International and European Tax Law

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

International and European Tax Law

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

International and European Tax Law

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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