

**CONFERÊNCIA DE FISCALIDADE
DO CIJE**



**The
Regulatory Frame-
work for Tax
in the EU**

FACULDADE DE DIREITO

1 DE OUTUBRO

18H00

**Conferência aberta aos estudantes do
Mestrado em Direito da áreas de Ciências
Jurídico-Económicas e aos estudantes do
curso de Pós-graduação em Direito Fiscal**

PROGRAMA

18H00

Abertura da Conferência

Prof.^a Doutora Glória Teixeira

Faculdade de Direito da Universidade do Porto

18H15

The Regulatory Framework for Tax in the EU

Prof. Doutor Tom O'Shea

Universidade de Londres

Prof. Doutor George Gillham

Universidade de Londres

19H30

Encerramento



**University of Porto Presentation
1 October 2010**

**The Regulatory Framework for
Tax in the EU – Post-Lisbon**

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Regulation in the EU



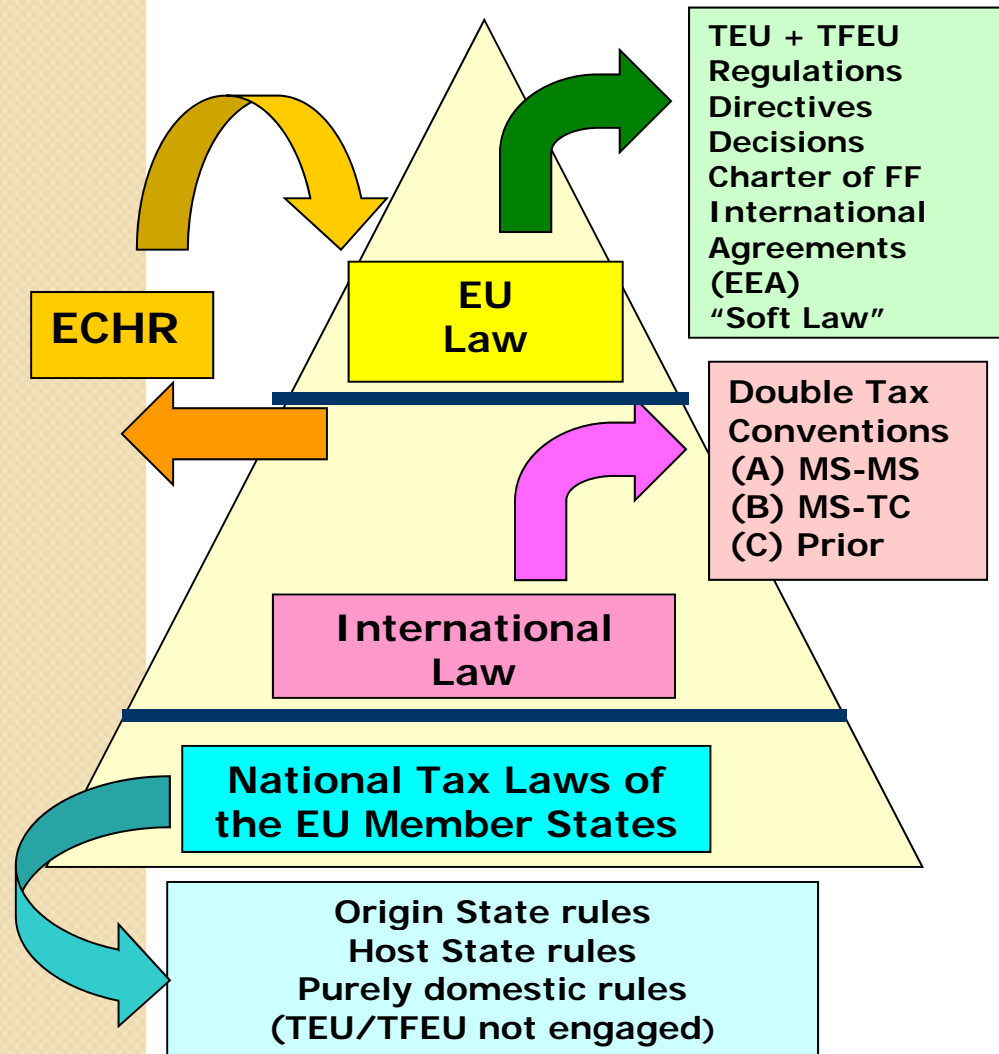
**Over-regulation
of volcanoes**

Regulation in the EU



**Under-
regulation
of banks**

The EU Tax Regulatory Framework



**Competence
Compliance
DTC**

**Discrimination
Restriction
Comparability
Justification
Proportionality
Host
Origin
Third Country**



The regulatory framework for tax in the EU

NATIONAL TAX RULES OF THE 27 EU MEMBER STATES

United Kingdom –

as a “host” Member State

Example: *Commerzbank*

Case C-330/91

United Kingdom –

as an “origin” Member State

Example: *Marks & Spencer v*

David Halsey Case C-446/03

THE ANOMALY CASES

KECK

Joined Cases C-267/91 + C-268/91
(Host State)

GRAF

C-190/98 (Origin State)

Sometimes a national rule may not restrict the fundamental freedoms + the EC Treaty may not be engaged.

ORIGIN STATE
(The tax rule of this State is causing the problem)

Origin State national exercising a fundamental freedom right or EU citizenship right

National of an EU Member State exercising a freedom in the host Member State (can be also a host State national)

HOST STATE
(The tax rule of this State is causing the problem)

De Groot
Case C-385/00
paragraph 94

However, as far as the exercise of the power of taxation so allocated is concerned, the Member States must comply with the Community rules ...**and, more particularly, respect the principle of national treatment of nationals of other Member States and of their own nationals who exercise the freedoms guaranteed by the Treaty.**

“Migrant/non-migrant” or national treatment test

Origin State Cases

Workers –
De Groot
Establishment –
Marks + Spencer
Services –
Eurowings
Capital –
Manninen
Citizenship –
Turpeinen

Host State Cases

Workers –
Schumacker
Establishment –
Avoir Fiscal
Services –
Gerritse
Capital –
Bouanich
Citizenship –
Martinez Sala

Double Tax Conventions

Gottardo Case C-55/00, paragraph 33

when giving effect to commitments assumed under international agreements, be it an agreement between Member States or an agreement between a Member State and one or more non-member countries, Member States are required, subject to the provisions of Article 307 EC, to comply with the obligations that Community law imposes on them.



TREATY ON EUROPEAN UNION

[TEU]

Preamble to the Consolidated TEU

- DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them
- **Article 1** - establish among themselves a EUROPEAN UNION...on which the Member States confer competences to attain objectives they have in common. **[The EU or Union]**

EU

- **Article 1** - The Union shall be founded on the present Treaty [TEU] and on the Treaty on the Functioning of the European Union [TFEU]. **[The Treaties]**
- Those two Treaties shall have the same legal value.
The Union shall replace and succeed the European Community.
- **Article 3(3)** – The Union shall establish an internal market. This is defined in Article 26(2) TFEU as **an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.**

Competence

- **Article 4(1)** – competences not conferred upon the Union in the Treaties remain with the MS.
- **Article 4(3)** – the Union and the MS shall...assist each other in carrying out tasks which flow from the Treaties
- MS shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.
- The MS shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives

Limits on EU Competence

- **Article 5 - Three main limits on EU competence:**
- **Attribution of powers** (scope of the Treaties) – the EU shall act only within the limits of the competences conferred upon it by the MS in the Treaties to attain the objectives – **competences not conferred remain with the MS.** [**Articles 5(2) + 13(2)**]
- **Subsidiarity** – decisions taken at the lowest level possible – the EU shall act only if the objectives cannot be sufficiently achieved by the MS + if the action (by reason of the scale or effects) can be better achieved at the EU level [**Article 5(3)**]
- **Proportionality** – EU action cannot exceed what is necessary to achieve the objectives of the Treaties

Charter of Fundamental Freedoms

- **Article 6(1)** – The EU recognises the rights, freedoms and principles set out in the **Charter of Fundamental Rights of the EU** of 7 December 2000, as adapted
- **It shall have the same legal value as the Treaties.**
- The provisions of the Charter shall not extend the competences of the Union.
- The EU shall accede to the ECHR. [**Article 6(2)**]
- **Article 6(3)** – Fundamental rights as guaranteed by the ECHR ...shall constitute general principles of EU law.



Charter of Fundamental Freedoms

- Primarily applies to EU institutions and bodies
- Requirement to respect fundamental rights defined in the context of the Union is only binding on the MS when they act in the scope of Union law + when they implement Community rules
(See Explanation on Article 51 CFR)



EU Citizenship

- **Article 9** – every national of a MS shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.

EU Institutions

- **Article 13(2)** - Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.
- **Article 16(3)** – The Council shall act by qualified majority vote except where the Treaties provide otherwise.
- **Article 19(1)** – The ECJ shall ensure that in the interpretation and application of the Treaties the law is observed + **MS shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.**

Enhanced Cooperation

- **Article 20(1)** - MS can make use of the enhanced cooperation procedures outlined in the Treaties
- Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation is open to all MS [**Article 238 TFEU**]
- **Article 20(2)** - The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole + provided at least 9 MS participate in it.

Enhanced Cooperation

- **Article 20(3)** – all members of the Council may participate in deliberations, but only members of the Council representing participating MS may take part in the vote.
- **Article 20(4)** – acts adopted in the framework of enhanced cooperation shall bind only participating MS



Treaty on the Functioning of the EU **[TFEU]**

TFEU

- **Article 1(1)** - This Treaty organises the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences.
- **Article 2(1)** - When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the MS being able to do so themselves only if so empowered by the Union or for the implementation of Union acts. [**Exclusive Union Competence**]

TFEU – Shared competence

- **Article 2(2)** - When the Treaties confer on the Union a competence shared with the MS in a specific area, the Union and the MS may legislate and adopt legally binding acts in that area.
- The MS shall exercise their competence to the extent that the Union has not exercised its competence.
- The MS shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

TFEU

- **Article 2(5)** - In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to **support, coordinate or supplement** the actions of the Member States, without thereby superseding their competence in these areas.
- **These areas are specified in Article 6 TFEU (include administrative cooperation).**
- **Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of MS' laws or regulations.**

TFEU – Exclusive Competence

- **Article 3(1)** - The Union shall have exclusive competence in the following areas:
 - (a) customs union;
 - (b) the establishing of the competition rules necessary for the functioning of the internal market;
 - (c) monetary policy for the Member States whose currency is the euro;
 - (d) the conservation of marine biological resources under the common fisheries policy;
 - (e) common commercial policy.



TFEU – Exclusive Union Competence

- **Article 3(2)** –

The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

TFEU – Shared Competence

- **Article 4(1)** - The Union shall share competence with the MS where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6 TFEU.
- **Shared competence between the Union and the MS applies in the following principal areas: (a) internal market;** (b) social policy, for the aspects defined in this Treaty; (c) economic, social and territorial cohesion; (d) agriculture and fisheries, excluding the conservation of marine biological resources; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy; (j) area of freedom, security and justice; (k) common safety concerns in public health matters, for the aspects defined in this Treaty.



TFEU – Article 6

- The Union shall have competence to carry out actions to **support, coordinate or supplement** the actions of the Member States. The areas of such action shall, at European level, be:
 - (a) protection and improvement of human health;
 - (b) industry;
 - (c) culture;
 - (d) tourism;
 - (e) education, vocational training, youth and sport;
 - (f) civil protection;
 - (g) **administrative cooperation**.



New Mutual Assistance Directive

- The EU has adopted a new mutual assistance Directive for the recovery of taxes (**Council Directive 2010/24/EU of 16 March 2010**).
- The Directive is designed to provide an improved assistance system with rules that are easier to apply, more flexible conditions for requesting assistance and a requirement for information to be exchanged spontaneously.
- **The EU member states have to implement the Directive into their national legal systems by the 31 December 2011 and apply its provisions from 1 January 2012.**



TFEU

- **Article 8** - In all its activities, **the Union** shall aim to eliminate inequalities, and to promote equality, between men and women.
- **Article 10** - In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

TFEU

- **Article 18 (ex Article 12 TEC)**
- Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.
- **The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.**

TFEU

- **Article 20** (ex Article 17 TEC)
- 1. Citizenship of the Union is hereby established. Every person holding the nationality of a MS shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.
- 2. Citizens of the Union **shall enjoy the rights** and be subject to the duties provided for in the Treaties.
They shall have, inter alia:
- (a) **the right to move and reside freely within the territory of the MS; ...**
- **These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.**

TFEU

- **Article 21(1)** - (ex Article 18 TEC)
- Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.
- **Article 21(2)** - the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.



TFEU – The Internal Market

- **Article 26(1)** – (Article 14 TEC):
- The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
- **Article 26(2)** - The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.
- **Horizontal amendment** – “common market” is changed to “internal market” throughout



TFEU

- **Free movement of goods** – Articles 28 – 37 TFEU
- **Free movement of workers** – Articles 45 – 48 TFEU
- **Freedom of establishment** – Articles 49-55 TFEU
- **Freedom to provide services** – Articles 56–62 TFEU
- **Free movement of capital** – Articles 63 – 66 TFEU

TFEU – State aid

- **Article 107 (1)** - (ex Article 87 TEC)
- Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- **Articles 107-109 TFEU**

TFEU

- **Article 110** - (ex **Article 90 TEC**)
- No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.
- Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.
- **Articles 110-113 TFEU**

TFEU – Approximation of laws

- **Article 114(1)** - Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
- **Article 114(2)** - Paragraph 1 shall not apply to fiscal provisions...



TFEU - Unanimity

- **Article 115** - (ex Article 94 TEC)
- Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the MS as directly affect the establishment or functioning of the internal market.



TFEU - Institutions

- **European Parliament** – Articles 223-234 TFEU
- **European Council** – Articles 235 – 236 TFEU
- **The Council** – Articles 237-243 TFEU
- **The Commission** – Articles 244 – 250 TFEU
- **The ECJ** – Articles 251 – 281 TFEU



TFEU – Legislative provisions

- **Article 288** - (ex Article 249 TEC)
- To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.
- A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.
- A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

TFEU – Enhanced Cooperation

- **Articles 326-334 TFEU –**
- **Article 326** - Such cooperation shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.
- **Article 327** - Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

TFEU – Enhanced Cooperation

- **Article 328(1)** - When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions.
- **Article 329(2)** - Authorisation to proceed with enhanced cooperation shall be granted by a decision of the **Council acting unanimously**.

TFEU – Enhanced Cooperation

- **Article 330** - All members of the Council may participate in its deliberations, but **only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote.**
- Unanimity shall be constituted by the votes of the representatives of the participating Member States only.
- A qualified majority shall be defined in accordance with Article 238(3).

TFEU – Enhanced Cooperation

- **Article 333** - Where a provision of the Treaties which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, **the Council, acting unanimously** in accordance with the arrangements laid down in Article 330, **may adopt a decision stipulating that it will act by a qualified majority.**

TFEU – Pre-Union Agreements

- **Article 351** - (ex Article 307 TEC)
- The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more MS on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.
- To the extent that such agreements are not compatible with the Treaties, the MS or MS concerned shall take all appropriate steps to eliminate the incompatibilities established. MS shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

TFEU – “Sweep-up” competence

- **Article 352(1)** - (ex Article 308 TEC):

If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.



TFEU – Protocol No 2


- On the application of subsidiarity and proportionality
- Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality.

TFEU – Protocol No 25

- **Exclusive Union Competence** - With reference to Article 2 of the Treaty on the Functioning of the European Union on shared competence, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.

TFEU – Protocol No 30

- **Charter on Fundamental Rights** - The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.



The Charter of Fundamental Rights of the EU (CFU)

Field of Application of the CFR

- **Article 51(1)** - The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States **only when they are implementing Union law.**
- **They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.**
- **Article 51(2)** - The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Scope and interpretation

- **Article 52(3)** - In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.



Scope and interpretation

- **Article 52(5)** - The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.



Freedom to seek employment, establish and provide services in any MS

- **Article 15(2) CFR** - Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.



Freedom to conduct a business

- **Article 16 CFR** - The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.



Right to Property

- **Article 17** - Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.



Equality before the law

- **Article 20 CFR** – Everyone is equal before the law.

Non-discrimination

- **Article 21(1) CFR** - Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
- **Article 21(2) CFR** - Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.



Right to good administration

- **Article 41(1) CFR** - Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.



Freedom of movement and residence

- **Article 45 CFR** - Every citizen of the Union has the right to move and reside freely within the territory of the Member States.



Right to an effective legal remedy and a fair trial

- **Article 47 CFR** - Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
- Everyone is entitled to a fair and public hearing within a reasonable time



Proportionality of criminal offences

- **Article 49(3)** - The severity of penalties must not be disproportionate to the criminal offence.



Explanations relating to the CFR

- **Official Journal Ref:** (2007/C 303/02)
- They do not have the status of law
- “Valuable tool of interpretation intended to clarify the provisions of the Charter”

REGULATORY FRAMEWORK FOR TAX IN THE EU: CASE STUDY: FREEDOM OF ESTABLISHMENT

Presented by
George Gillham, Senior Associate, McGrigors LLP



Freedom of establishment



Loss Relief

- C-446/03 M&S
- C-414/06 Lidl Belgium

Controlled Foreign Companies

- C-196/04 Cadbury Schweppes
- ECOFIN 10597/10

Thin Capitalisation

- C-524/04 Thin Cap GLO
- ECOFIN 10597/10

Exit Tax

- C-9/02 de Lasteyrie
- IP/09/1460

How to take advantage

- Filing on an EU basis
- Making claims for refunds

Loss Relief



C-446/03 Marks & Spencer

- Tax relief in state of parent company must be given for terminal losses
- Special regime for (domestic) company groups but not for Portuguese resident parent companies with subsidiaries established in other Member States (“MS”)
- Clear breach of EU law as laid out in Marks & Spencer. Comparison with treatment of permanent establishments (“PEs”) particularly marked

C-414/06 Lidl Belgium

- Opinion of A-G Sharpston acknowledged time value of money
- ECJ did not follow A-G: balanced allocation of taxing rights

What benefits are there?

- Wholly unsuccessful foreign (but EU) corporate ventures can be closed down and losses set off against profits of parent companies in Portugal

Thin Capitalisation



C-524/04 Test Claimants in the Thin Capitalisation Group Litigation

- Thin cap rules are acceptable to the extent that they aim only to prevent the creation of wholly artificial arrangements which do not reflect economic reality and with a view to escaping national taxation

ECOFIN 10597/10

- Arm's length principle to be applied
- Excessive local debt: equity ratios when compared to worldwide group

What benefits are there?

- Portugal abolished thin cap rules in respect of parent companies based in other MS on 01/01/06
- Portuguese companies expanding into other MS or buying companies in other MS can load those companies with the debt it is necessary to borrow to pay for them

Controlled Foreign Companies



C-196/04 Cadbury Schweppes

- The profits of a CFC cannot be taxed despite the existence of tax motives if the CFC is actually established in the host state and carries on genuine economic activities there
- A MS cannot tax foreign profits as domestic profits unless there are in place wholly artificial arrangements intended to escape the national tax normally payable

ECOFIN 10597/10

- Number of conditions including the lack of a correlation between activities carried on by the CFC and the extent to which it physically exists

What benefits are there?

- Irish group treasury companies are fine- so long as the lending decisions are actually made in Ireland by competent personnel

Exit Taxes



C-9/02 de Lasteyrie

- Transfer of residence (and assets) from one country to another is an exercise of the freedom of establishment
- Domestic rules which trigger a tax charge on exit are unjustifiable restrictions on that freedom of establishment

IP/09/1460

- Commission consider that Portuguese domestic rules which charge immediately unrealised capital gains to tax on transfer of Portuguese located assets to other MS are contrary to freedom of establishment

What benefits are there?

- Immediate exit taxes can be ignored when moving assets to another MS
- Situation different for delayed capital gains tax charges (C-170/04 N)

How to take advantage



Filing on an EU basis

- Document transactions defensively and implement correctly
- Domestic tax returns on the basis that additional words are read into national law to make it EU compliant
- Do NOT assume that domestic law will simply be disapplied
- Wait for tax return to be amended by tax authority and then appeal and request reference to ECJ from domestic courts if necessary
- Time consuming and expensive

Making claims for refunds

- Even more time consuming and expensive
- Length of time that the litigation will take may put you outside domestic time limits (c.f. FII GLO [2010] EWCA Civ 103 in UK)
- ECJ is less likely to hand down decisions which will lead to substantial refunds to taxpayers (c.f. C-475/03 Banca Popolare)

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