

1. Record Nr.	UNINA9910795987403321
Autore	Sinnig Julia
Titolo	The Effectiveness of General Anti-Avoidance Rules
Pubbl/distr/stampa	Amsterdam : , : IBFD Publications USA, Incorporated, , 2022 ©2022
ISBN	9789087227944 9789087227937
Edizione	[1st ed.]
Descrizione fisica	1 online resource (325 pages)
Collana	IBFD Doctoral ; ; v.65
Soggetti	European Union countries International business enterprises Tax planning
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Nota di contenuto	Cover -- IBFD Doctoral Series -- Title -- Copyright -- Table of Contents -- Preface -- Abbreviations -- Chapter 1: Introduction -- 1.1. The future of international taxation: The 2020s compromise? -- 1.2. The interdisciplinary field of tax law and economics -- 1.3. Methodology -- 1.4. Terminology -- 1.4.1. Tax evasion -- 1.4.2. Tax avoidance and tax abuse -- Chapter 2: Tax Policy in a Time of Crisis: Ensuring the Tax Revenue -- 2.1. Introduction to the global tax arena -- 2.2. The history of the international tax system: The harmonization vs. tax competition controversy -- 2.2.1. The global network of tax treaties -- 2.3. The international standards set by the OECD Model -- 2.3.1. The 1920s compromise: A system welded for tax competition -- 2.4. Alleviating double taxation by allocating tax revenue -- 2.4.1. Different forms of double taxation -- 2.4.2. A brief history of relieving double taxation -- 2.4.2.1. The economic consequences of double taxation -- 2.4.2.2. Checking tax evasion -- 2.4.2.3. Allocation rules for dividends and interest -- 2.4.3. The formation of the OECD -- 2.5. Corporate tax and how to avoid it -- 2.5.1. The role of the corporate form -- 2.5.2. Nexus and the notion of treaty residence -- 2.5.3. Distributive rules -- 2.5.3.1. The conduit company method -- 2.5.3.2. The last-minute restructuring method -- 2.5.4. The impact of the PPT

-- 2.6. Economic substance: The ailment or the cure? -- 2.6.1. Transfer pricing as a method to allocate profit -- 2.6.2. Economic substance to counter abuse: BEPS Action 6 -- 2.6.2.1. Action 6: Preamble -- 2.6.2.2. The treaty abuse rule in article 7: The PPT -- 2.7. The multilateral instrument (MLI) -- 2.8. Summary: Treaty shopping, directive shopping and withholding taxes -- Chapter 3: Preventing Treaty Abuse within the OECD Framework.

3.1. From preventing double taxation to further preventing treaty abuse -- 3.2. Combating BEPS -- 3.3. Improper use of tax treaties and treaty shopping -- 3.4. From beneficial ownership to a PPT -- 3.4.1. The 1963 and 1977 OECD Models -- 3.4.2. The 1986 OECD Conduit Companies Report -- 3.4.3. The 1992 update to the OECD Model Commentary -- 3.4.4. The 1998 Report on Harmful Tax Competition and the 2002 Report Restricting the Entitlement to Treaty Benefits -- 3.4.5. The 2003 update to the OECD Model Commentary -- 3.4.6. The 2014 update to the OECD Model Commentary -- 3.4.7. The 2017 update to the OECD Model Commentary -- 3.5. Preliminary conclusion -- Chapter 4: Judicial Anti-Avoidance in the European Union -- 4.1. Introduction -- 4.2. The specific nature of EU tax law -- 4.3. The methodological and constitutional nature of EU direct tax law -- 4.3.1. The internal market in the BEPS era -- 4.3.2. EU primary law - The treaties and the fundamental freedoms -- 4.3.3. The legal basis of general principles of EU law -- 4.3.4. The effect of a general principle in EU law -- 4.4. The case law of the Court of Justice of the European Union -- 4.4.1. Emsland Stärke - The elements of an abuse test -- 4.4.2. Cadbury Schweppes - Wholly artificial arrangements -- 4.4.3. Kofoed - A general principle of prohibition of abuse -- 4.4.4. The Danish beneficial ownership cases -- 4.4.4.1. Background -- 4.4.4.2. Legal framework -- 4.4.4.3. Difference from AG Kokott's opinions -- 4.4.4.4. Understanding the outcome -- 4.4.4.5. Assessing the facts -- 4.4.5. The dividend cases -- 4.4.5.1. T Danmark (C-116/16) - The TDC Case -- 4.4.5.2. Y Denmark (C-117/16) - The NetApp Case -- 4.4.6. The interest cases -- 4.4.6.1. Case C-115/16 - N Luxembourg I - The TDC Parent Case -- 4.4.6.2. Case C-118/16 - X Denmark A/S - The Nycomed/Takeda Case -- 4.4.6.3. Case C-119/16 - C Danmark I. 4.4.6.4. Case C-299/16 - Z Denmark -- 4.4.7. The notion of abuse in EU law after the Danish beneficial ownership cases -- 4.4.8. The elements of the abuse test -- 4.4.8.1. The subjective element of the abuse test -- 4.4.9. Balancing the general principles of EU law - Legal certainty and anti-abuse -- 4.4.9.1. The legal nature of the prohibition of abuse of rights under EU law -- 4.4.9.2. The general principle of abuse and the fundamental freedoms -- 4.4.9.3. The principle of abuse and the directives -- 4.5. Preliminary conclusion -- Chapter 5: Alignment between the European Union and the OECD: An Interlocking Relationship -- 5.1. Introduction -- 5.2. Beneficial ownership according to the ECJ: A specific example of alignment -- 5.3. Common standards to combat tax abuse -- 5.4. Disentangling abuse from real economic activity: An economic assessment -- 5.5. Understanding the indications of abuse through economic theory -- 5.5.1. Behavioural theory of corporations -- 5.5.2. The theory of the firm -- 5.6. Everyday hallmarks of economic standards -- 5.6.1. Pre-tax profit -- 5.6.2. Risk and market forces -- 5.6.3. Indifferent parties and intermediaries -- 5.7. Indications of abuse in the subjective element -- 5.7.1. Group structure put in place to obtain a tax advantage -- 5.7.2. Immediate redistribution of dividends or interest -- 5.7.3. Insignificant income -- 5.7.4. Sole activity is redistribution and company lacks personnel and facilities -- 5.7.5. Contractual obligations rendering the company unable to use and enjoy -- 5.7.6.

Close connection between the arrangement and new tax legislation --

5.8. Preliminary conclusion: An economic test to disentangle abuse from real economic activity -- Chapter 6: A Network Analysis to Estimate the Effects of Anti-Avoidance Measures in the European Union and the OECD -- 6.1. Introduction.

6.2. Applying the tax treaty network in light of modern international tax policy -- 6.3. Computing the tax benefit of holding structures -- 6.3.1. Case C-116/16: T Danmark - TDC -- 6.3.2. Case C-117/16: Y Denmark - NetApp ApS -- 6.4. Weighing the tax benefits against other business benefits -- 6.5. Assessing the impact of the rulings on treaty shopping gains -- 6.6. Network analysis of treaty shopping -- 6.6.1. The network approach and treaty shopping gains -- 6.6.2. Baseline 2018 -- 6.6.3. Scenarios for the analysis -- 6.7. Impact analysis: Scenario results -- 6.7.1. Scenario 1: Denmark unilateral -- 6.7.2. Scenario 2: EU-wide -- 6.7.3. Scenario 3: Inclusive Framework -- 6.7.4. Scenario 4: EU-wide prohibitive penalty -- 6.7.5. Scenario 5: OECD IF (Strong) -- 6.8. Summary of scenario results -- 6.9. Preliminary conclusion -- Chapter 7: Case Studies -- 7.1. Introduction -- 7.2. France -- 7.2.1. Introduction -- 7.2.2. The history of the French GAAR: Fictitious arrangements and fraude à la loi -- 7.2.3. Applying the French GAAR -- 7.2.4. The French GAAR and the European Union -- 7.2.4.1. Non-genuine arrangements -- 7.2.4.2. Main purpose/one of the main purposes to obtain a tax advantage -- 7.2.4.3. Case C-6/16 Eqiom SAS & Enka SA -- 7.2.4.4. Domestic rulings from the Conseil d'État on 5 June 2020 (nos. 423811, 423809, 423810, 423812 and Enka) -- 7.2.5. The French GAAR and tax treaties -- 7.2.6. Preliminary conclusion -- 7.3. Germany -- 7.3.1. Introduction -- 7.3.2. The history of the German GAAR: Teleological interpretation or statutory provision? -- 7.3.3. Applying the German GAAR -- 7.3.4. The German GAAR and the European Union -- 7.3.4.1. Non-genuine arrangements -- 7.3.4.2. Main/sole purpose -- 7.3.4.3. Cases C-504/16 Deister Holding AG and C-613/16 Juhler Holding A/S -- 7.3.4.4. GS -- 7.3.4.5. X -- 7.3.5. The German GAAR and tax treaties.

7.3.6. Preliminary conclusion -- 7.4. Denmark -- 7.4.1. Introduction -- 7.4.2. The (brief) history of the Danish GAAR from 2015 -- 7.4.3. Recent rulings involving the Danish GAAR -- 7.4.3.1. SKM2017.333.SR -- 7.4.3.2. SKM2019.413.SR -- 7.4.3.3. SKM2020.39.SR: The first domestic application on "inverted Christmas trees" -- 7.4.4. The Danish GAAR and tax treaties -- 7.4.4.1. SKM2018.466.SR: The "Singapore ruling" -- 7.4.5. Rulings from the High Court of Eastern Denmark on the beneficial ownership cases on dividends -- 7.4.5.1. The TDC Case: C-116/16 T Danmark -- 7.4.5.2. The NetApp Case: C-117/16 Y Denmark ApS -- 7.4.6. Preliminary conclusion -- 7.5. Australia -- 7.5.1. Introduction -- 7.5.2. The Australian GAAR: Literal or purposive interpretation? -- 7.5.3. Applying the GAAR -- 7.5.3.1. Sole/dominant purpose or principal purpose -- 7.5.3.2. Tax benefit -- 7.5.4. Significant case law -- 7.5.4.1. Peabody -- 7.5.4.2. Spotless -- 7.5.4.3. Hart -- 7.5.4.4. RCI -- 7.5.4.5. Futuris -- 7.5.5. Australia's recent GAAR rules dealing with BEPS -- 7.5.6. The Australian GAAR and the OECD Multilateral Instrument -- 7.5.7. Preliminary conclusion -- Chapter 8: Conclusion - Effectiveness of the GAARs -- 8.1. Chapter 1 - Introduction -- 8.2. Chapter 2 - Ensuring the tax revenue -- 8.3. Chapter 3 - Preventing treaty abuse within the OECD framework -- 8.4. Chapter 4 - Judicial anti-avoidance in the European Union -- 8.5. Chapter 5 - Alignment between the European Union and the OECD - An interlocking relationship -- 8.6. Chapter 6 - A network analysis to estimate the effects of anti-avoidance measures in the European Union and the OECD -- 8.7. Chapter 7 - Case studies -- 8.7.1. France --

8.7.2. Germany -- 8.7.3. Denmark -- 8.7.4. Australia -- 8.8. Final conclusions -- References -- Other Titles in the IBFD Doctoral Series.

Sommario/riassunto

The book analyzes two destination-based corporate tax models, their application to different types of digitalized business models, and their compliance with tax and data protection law frameworks.