Record Nr. UNINA9910811017403321

Titolo Taxes covered under article 2 of the OECD model: the scope of tax

treaties in a dynamic global environment of newly created taxes //

editors Georg Kofler [and six others]

Pubbl/distr/stampa Amsterdam:,: IBFD,, [2021]

©2021

ISBN 90-8722-672-1

Descrizione fisica 1 online resource (313 pages)

Collana WU Institute for Austrian and International Tax Law - Tax Law and

Policy;; Volume 19

Disciplina 341.484

Soggetti Double taxation

Income tax - Law and legislation

OECD countries

Lingua di pubblicazione Inglese

Formato Materiale a stampa

Livello bibliografico Monografia

Nota di contenuto

Cover -- Title -- Copyright -- Table of Contents -- Preface -- Chapter 1: The Notion of "Tax" According to Article 2 OECD Model Convention 1982 and 2017 -- 1.1. Introduction -- 1.2. Characteristics of a tax --1.2.1. Compulsory payment -- 1.2.2. Unrequited payment -- 1.2.3. Imposed on behalf of -- 1.2.4. A contracting state or of its political subdivisions or local authorities -- 1.2.5. Irrespective of the manner in which they are levied -- 1.3. Accessory duties or charges to taxes --1.4. Ordinary and extraordinary taxes -- 1.5. Conclusion -- Chapter 2: Taxes on Income According to Article 2(1) and (2) OECD Model Convention 2017 -- 2.1. Background and drafting history: Article 2(1) and (2) -- 2.1.1. Background -- 2.1.2. "Direct personal or impersonal taxes" to "taxes on income" -- 2.1.3. Rationale for taxes mentioned in article 2(2) -- 2.2. Understanding the substantive scope of "taxes on income" -- 2.2.1. "Taxes on income" as taxes on "total income" or on "elements of income" -- 2.2.2. Autonomous reading of income --2.2.3. Specific taxes in article 2(2): Illustrative or exhaustive reference to payroll taxes? -- 2.2.4. Identifying "taxes on income" -- 2.3. Conclusion -- Chapter 3: Taxes on Capital According to Article 2(1) and (2) OECD Model Convention 2017 -- 3.1. Introduction -- 3.2.

on income and capital in article 2(1) and (2) of the OECD Model --3.2.2. Taxes on capital in article 22 of the OECD Model -- 3.3. The historical development of taxes on capital in the OECD Model -- 3.3.1. Preliminary remarks -- 3.3.2. League of Nations (1921-1946) -- 3.3.3. OEEC/OECD (1954-2017) -- 3.4. Capital vs property -- 3.4.1. Preliminary remarks -- 3.4.2. The terms capital and property in the system of the OECD Model. 3.4.3. Is ownership a requirement for a tax to be a taxon capital? --3.5. Conclusions -- Chapter 4: Taxes on Estates and Inheritances and on Gifts According to Article 2(1) and (2) OECD Model Convention 1982 -- 4.1. The OECD Model Convention on Taxes on Estates and Inheritances and on Gifts 1982 -- 4.1.1. General overview and structure of the treaty -- 4.1.2. The principle of duality -- 4.2. Article 2 OECD Model 1982 -- 4.2.1. Structure of article 2 -- 4.2.2. Article 2(1) and (2) -- 4.3. Notional objective elements in article 2(1) -- 4.3.1. Form of collection of the tax -- 4.3.2. Gratuitousness -- 4.3.3. Periodicity -- 4.4. Taxes on wealth transfers covered by article 2(2) --4.4.1. Taxes on estates and inheritances -- 4.4.2. Taxes on wealth transfers inter vivos -- 4.4.3. The issue of trusts and private foundations -- 4.5. Treaty practice -- 4.6. Conclusion -- Chapter 5: The List of Taxes According to Article 2(3) OECD Model Convention 1982 and 2017 -- 5.1. Definition and historical background of the list of taxes in the OECD Model Tax Conventions 1982 and 2017 -- 5.1.1. OECD Model Tax Convention on Income and on Capital vs OECD Model Tax Convention on Estates and Inheritances and on Gifts -- 5.1.2. Historical evolution of article 2(3) -- 5.2. List of taxes in the OECD Model 2017 -- 5.2.1. Non-exhaustive list of taxes -- 5.2.2. The restricting effect of article 2(3) -- 5.2.3. The amplifying effect of article 2(3) -- 5.3. List of taxes in the OECD Model on Estates and Inheritances and on Gifts 1982 -- 5.3.1. Exhaustive list of taxes -- 5.3.2. Restricting function of article 2(1) and (2)? -- 5.3.3. Relation of an exhaustive list in article 2(3) and (4) -- 5.4. Alternative formulation of article 2 according to the Commentary to the OECD Model on Income and on Capital -- 5.5. Conclusion. Chapter 6: Identical or Substantially Similar Taxes According to Article 2(4) OECD Model Convention 1982 and 2017 -- 6.1. Introduction --6.1.1. Introductory remarks -- 6.1.2. Historical evolvement of the term "substantially similar" -- 6.1.3. Two different routes for a new tax to be covered by the treaty - Interaction with article 2(1) and (2) -- 6.2. The "substantially similar" test - A detailed examination of court decisions -- 6.2.1. Introductory remarks -- 6.2.2. Tax base as the sole criterion to determine "substantially similar" -- 6.2.3. Tax object as the sole criterion to determine "substantially similar" -- 6.2.4. Taxable person combined with tax base and/or tax object -- 6.2.5. Criteria that are combined by the court -- 6.2.6. Lessons learned from the ECJ regarding similar rules in the VAT Directive -- 6.3. The "substantially similar" test - An objective evaluation of the criteria -- 6.3.1. Decisive criteria - Tax base and tax object -- 6.3.2. Relevant criterion - Taxable person -- 6.3.3. Low-relevance criterion - Tax rate -- 6.3.4. Irrelevant criteria -- 6.4. Benchmark for the "substantially similar" test -- 6.4.1. The benchmark for comparison - "Existing taxes" -- 6.4.2. Impact of one contracting state's existing taxes on the other contracting state's tax -- 6.5. The interactions between article 2(4) and other paragraphs of article 2 -- 6.5.1. Why is article 2(4) needed? -- 6.5.2. Example of treaties that do not include article 2(1)and (2) -- 6.5.3. Example of treaties that do not include the term "substantially similar tax" under article 2(4) -- 6.5.4. The interaction between article 2(4) and (3) withan

Taxes on capital in articles 2 and 22 of the OECD Model -- 3.2.1. Taxes

exhaustive list - The 1982 OECD Model on Inheritance and Gifts as an example -- 6.6. Conclusion -- Chapter 7: Diverted Profits Taxes and Article 2 OECD Model Convention 2017 -- 7.1. Introduction -- 7.2. The UK DPT: An overview.

7.3. The substantive scope of article 2 OECD Model 2017: Which benchmark for testing the DPT? -- 7.3.1. Tax treaties in line with the wording of article 2 OECD Model 2017 -- 7.3.2. Tax treaties not in line with the wording of article 2 OECD Model 2017 -- 7.3.3. The time of signature of the treaty -- 7.4. DPTs as "subsequent taxes" as per article 2(4) -- 7.4.1. The corporate income tax -- 7.4.2. The DPT -- 7.4.3. Summary of conclusions -- 7.5. DPTs as "existing taxes" as per article 2(3) -- 7.5.1. Article 2 in line with the wording of the OECD Model 2017 -- 7.5.2. Article 2 not in line with the wording of article 2 of the OECD Model 2017 -- 7.5.3. Any impact from the MLI? -- 7.5.4. Summary of conclusions -- 7.6. Conclusions -- 7.7. The coverage of DPT under article 2: A theoretical problem or relevant in practice? --Chapter 8: Digital Taxes and Article 2 OECD Model Convention 2017 --8.1. What is a digital tax? -- 8.1.1. Introduction -- 8.1.2. Digital taxes around the globe -- 8.2. The European DST as an example -- 8.2.1. Background and legislative intent -- 8.2.2. Structure -- 8.3. DST and the objective scope of DTCs -- 8.3.1. Article 2 OECD Model 2017 --8.3.2. DST: A tax on income or on capital? -- 8.3.3. An identical or substantially similar tax? -- 8.4. DST and relief for double taxation --8.4.1. Relief provided by DTCs -- 8.4.2. Other relief -- 8.5. Conclusion and outlook -- Chapter 9: Industry-Specific Taxes and Article 2 OECD Model Convention 1982 and 2017 -- 9.1. Introduction -- 9.2. Essentials of article 2 OECD Model 1982 and 2017 -- 9.2.1. Article 2: Taxes covered -- 9.2.2. Terms: Taxes on income and on capital and EIG taxes -- 9.2.3. Tests application -- 9.3. Specific taxes in the extractive industry -- 9.3.1. The extractive industry and its specific taxes -- 9.3.2. Production sharing payments within PSCs. 9.3.3. Testing production sharing payments and their coverage under article 2 OECD Models -- 9.4. Specific taxes in the financial industry --9.4.1. The financial industry and its specific taxes -- 9.4.2. Bank levies and their coverage under article 2 OECD Models -- 9.4.3. FATs and their coverage under article 2 OECD Models -- 9.4.4. FTTs and their coverage under article 2 OECD Models -- 9.5. Conclusions -- Chapter 10: Double Protection under Article 2 OECD Model Convention 1982 and 2017? -- 10.1. The OECD Model 1982 and 2017 -- 10.2. Article 2 (1) and (2) OECD Model 1982 and 2017 -- 10.2.1. The general definition in article 2(1) and (2) OECD Models -- 10.2.2. The relation between the two model conventions -- 10.2.3. Delimitation between taxes on income and on capital and taxes on estates, inheritances and gifts -- 10.3. The importance of article 2(3) and (4) OECD Models 1982 and 2017 -- 10.3.1. The list of taxes according to article 2(3) OECD Models -- 10.3.2. The amplifying power of article 2(3) OECD Models --10.3.3. The relation between the two model conventions -- 10.4. Conclusion and outlook -- Chapter 11: Tax Treaty Application beyond the Scope of Article 2 OECD Model Convention 1982 and 2017 (Mutual Agreement, Non-Discrimination, Mutual Assistance) -- 11.1. Introduction -- 11.2. MAP beyond the substantive scope of the OECD Models 1982 and 2017 -- 11.2.1. The MAP beyond the scope of the convention -- 11.2.2. Meaning of double taxation -- 11.2.3. Meaning of "not provided for in the Convention" -- 11.3. Mutual assistance clauses under the OECD Model 2017 -- 11.3.1. Commonality, relationship and subject of the mutual assistance clauses -- 11.3.2. Article 26 of the OECD Model 2017 -- 11.3.3. Article 27 of the OECD Model 2017 -- 11.4. Non-discrimination clauses -- 11.4.1.

	Relationship between article 10 OECD Model 1982 and article 24 OECD Model 2017. 11.4.2. Article 24(6) of the OECD Model 2017.
Sommario/riassunto	This book explores the relationship between article 2 of the OECD Model Conventions 1982 and 2017.