

1. Record Nr.	UNINA9910700904303321
Titolo	Securities and Exchange Commission [[electronic resource]] : existing post-employment controls could be further strengthened : report to congressional committees
Pubbl/distr/stampa	[Washington, D.C.] : , : U.S. Govt. Accountability Office, , [2011]
Descrizione fisica	1 online resource (ii, 33 pages) : illustrations
Soggetti	Securities industry - United States Conflict of interests - Government policy - United States
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Title from PDF title screen (viewed Aug. 23, 2011). "July 2011." "GAO-11-654."
Nota di bibliografia	Includes bibliographical references.

2. Record Nr.	UNINA9910816695803321
Autore	Ferreira Vanessa Arruda
Titolo	The Improper Use of Tax Treaties by Contracting States Tax Treaty Dodging (IBFD Doctoral Series Volume 60)
Pubbl/distr/stampa	Amsterdam : , : IBFD Publications USA, Incorporated, , 2021 ©2021
ISBN	90-8722-722-1 90-8722-723-X
Descrizione fisica	1 online resource (357 pages)
Collana	IBFD Doctoral ; ; v.60
Soggetti	Double taxation - Treaties Taxation - Law and legislation - Interpretation and construction Fiscal policy
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Nota di contenuto	Cover -- IBFD Doctoral Series -- Title -- Copyright -- Table of Contents -- Acknowledgements -- Abstract -- Abbreviations -- Chapter 1: Introduction -- 1.1. Aim and scope of the study -- 1.2. Relevance and originality of the study -- 1.3. Research question -- 1.4. Methodology -- 1.5. Structure of the book -- Part 1: The Phenomenon of Tax Treaty Dodging -- Chapter 2: The Genesis of the Phenomenon -- 2.1. Introduction -- 2.2. The origins of the phenomenon -- 2.2.1. The need for a subtle "backdoor" alternative for opportunistic countries -- 2.2.2. Tax treaty dodging as a subtle backdoor solution -- 2.3. Observation of the phenomenon throughout the decades: A historic study of the literature -- 2.3.1. The 1960s and 1970s -- 2.3.2. The 1980s -- 2.3.3. The 1990s -- 2.3.4. The 2000s and 2010s -- 2.3.5. What now? -- 2.4. The reason for labelling the phenomenon the "improper use of tax treaties by contracting states: tax treaty dodging" -- 2.5. Concluding remarks -- Chapter 3: A Phenomenology: The Functioning of Tax Treaty Dodging -- 3.1. Introduction -- 3.2. The conditions for the phenomenon: An open door to tax treaty dodging practices -- 3.2.1. Tax treaty gaps (as first condition) -- 3.2.1.1. State sovereignty limited by customary international law and self-imposed

unilateral limitations -- 3.2.1.2. State sovereignty and the text of tax treaties -- 3.2.1.3. Exercising sovereign rights within the treaty gaps -- 3.2.2. Ambulatory interpretation (as second condition) -- 3.3. Types of tax treaty dodging -- 3.3.1. Legislative dodging -- 3.3.1.1. Redetermination of the constitutive elements of taxliability (as first legislative dodging method) -- 3.3.1.1.1. Reattribution of income -- 3.3.1.1.2. Redesign and creation of taxes -- 3.3.1.1.3. Change of tax rates -- 3.3.1.1.4. Exit taxes on substantial shareholding -- 3.3.1.1.5. Foreign tax credits.

3.3.1.2. Redefining undefined treaty terms (as second legislative dodging method) -- 3.3.1.2.1. Scope of the method: Actions in line with the context in article 3(2) -- 3.3.1.2.2. Residence -- 3.3.1.2.3. Immovable property -- 3.3.1.2.4. Dividends -- 3.3.1.2.5. Interest -- 3.3.1.2.6. Employment and pension income -- 3.3.1.3. Legislative omission: Treaty override (as third legislative dodging method) -- 3.3.2. Executive dodging -- 3.3.2.1. Passive dodging: Tolerating treaty shopping schemes -- 3.3.2.2. Dodging through public-private agreements -- 3.3.2.3. Executive interpretative dodging -- 3.3.2.3.1. Brazil -- 3.3.2.3.2. France -- 3.3.2.3.3. China -- 3.3.2.3.4. Australia -- 3.3.3. Judicial dodging? -- 3.4. Effects of tax treaty dodging -- 3.5. Concluding remarks -- Part 2: The Legal Assessment of Tax Treaty Dodging -- Chapter 4: Tax Treaty Dodging from the Perspective of International Law -- 4.1. Introduction -- 4.2. Tax treaty dodging as an illegitimate act -- 4.2.1. The principles of treaty interpretation in international law as a limitation to tax treaty dodging -- 4.2.2. The principle of good faith as a limitation to tax treaty dodging -- 4.2.3. The principle prohibiting the abuse of rights as a limitation to tax treaty dodging -- 4.2.4. The principle of reciprocity as a limitation to tax treaty dodging -- 4.2.5. Obligation not to defeat the object and purpose of a treaty prior to its entry into force as a limitation to tax treaty dodging -- 4.2.6. Taxpayers' fundamental rights as a limitation to tax treaty dodging -- 4.2.7. Bilateral investment treaties as a limitation to tax treaty dodging -- 4.2.8. Answer to the first part of the research question -- 4.3. Tax treaty dodging versus the legitimate exercise of rights: The dividing line -- 4.3.1. Elements of the principles of treaty interpretation in international law -- 4.3.1.1. Good faith. 4.3.1.2. Context -- 4.3.1.3. Subsequent agreements -- 4.3.1.4. Subsequent practice -- 4.3.1.5. Reciprocity -- 4.3.1.6. Object and purpose -- 4.3.1.7. Supplementary means of interpretation -- 4.3.2. Honesty, reasonableness, fairness and malicious intent as elements of the principle of good faith -- 4.3.3. Reciprocity -- 4.3.4. Excessive tax burden as an element of taxpayers' fundamental rights and expropriation clauses in bilateral investment treaties -- 4.3.5. Legitimate expectations as an element of the principle of good faith, article 18 of the Vienna Convention and bilateral investment treaties -- 4.3.6. Answer to the research sub-question -- 4.4. Tax treaty dodging versus direct violation of the wording of tax treaties -- 4.4.1. The origins of the discussions: The Melford case (1982) -- 4.4.2. Beyond Melford (1982) -- 4.5. Concluding remarks -- Part 3: The Way Forward: Addressing Tax Treaty Dodging -- Chapter 5: Available Measures -- 5.1. Introduction -- 5.2. Measures available to contracting states -- 5.2.1. Official protest by the offended state -- 5.2.1.1. Avoiding the effects of acquiescence -- 5.2.1.2. Avoiding the effects of subsequent practice -- 5.2.2. Mutual agreement procedure -- 5.2.3. Termination or suspension on the basis of the Vienna Convention -- 5.2.3.1. Termination or suspension of a treaty as a consequence of its material breach -- 5.2.3.2. Termination or withdrawal as a consequence of a fundamental change of circumstances -- 5.2.4. Termination on the

basis of article 32 of the OECD Model (2017) -- 5.2.5. The ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts (and bringing a claim before the International Court of Justice) -- 5.2.6. Bringing a claim before the court of the offending state -- 5.2.7. Unilateral measures: Countermeasures and retorsion -- 5.2.8. Static interpretation.
5.2.9. Tax treaty provisions addressing later changes in domestic law -- 5.3. Measures available to taxpayers -- 5.3.1. Mutual agreement procedure and arbitration (offered under tax treaties and bilateral investment treaties) -- 5.3.2. Bringing a claim before an international tribunal -- 5.3.3. Bringing a claim before the courts of a contracting state -- 5.4. Concluding remarks -- Chapter 6: Conclusion and Recommendations -- 6.1. Conclusion -- 6.2. Recommendations -- References -- Other Titles in the IBFD Doctoral Series.

Sommario/riassunto

This book examines the methods used by states to modify the outcome of tax treaties and presents ways to better address this phenomenon.
