Tax Treaties
Between Member States

Prof. Marjaana Helminen,
University of Helsinki

Workshop on EC Law and Tax Treaties
5 July 2005 Brussels
Tax Treatment of Intra-EU Cross-border Situations

- more burdensome treatment

- the biggest problem is international double taxation

- conflict with EC Treaty

- double taxation means a restriction

=> international double taxation between the Member States must be removed
Allocating v. Exercising of Taxing Powers

- allocation of taxing powers in tax treaties acceptable

- exercising of the taxing powers must not lead to discrimination or restriction
The Existing Tax Treaties

- do not remove all double taxation

1. many cases are not touched

2. many provisions are questionable from the perspective of EC law

- double taxation must be removed

=> something has do be done
Unsolved Double Taxation Situations

- income classification conflicts
- timing issues
- dual residence conflicts
- entity classification conflicts
- triangular situations
- permanent establishments

=> harmonization necessary? compulsory arbitration?
Availability of Treaty Benefits

- residents v. non-residents?

- PEs v. residents?
Most Favoured Nation Treatment (MFN)?

1. Should the benefits of any bilateral tax treaty of the state of residence be available to a resident of that state?

Free movement of capital?

2. Should the benefits of any tax treaty of the source state be available to the residents of any EU Member State with income from the source state?

Discrimination between non-resident taxpayers?
Most favoured nation treatment (MFN)?

- No general MFN principle under EC law
- In many cases MFN treatment has to be applied
- indirect discrimination based on nationality
- a restriction of the basic freedoms

-Art.12 EC prohibits any discrimination based on nationality

Discrimination between two nationals of two different EU Member States other than the state concerned?
D-case (C-376/03)

-German resident national D
-most property in Germany
-less than 90 % in NL
- wealth tax on the NL property
  without personal deduction in NL
- personal deduction would be available
  under the NL-Belgium tax treaty

=> NL gives a benefit
only to the residents of Belgium
=> Indirect discrimination based on nationality?
Anti-avoidance provisions?

- should cover only
  clearly artificial arrangements

=> bona fide cases must be excluded!
Concluding Remarks

- tax treaties necessary at the moment
- the problems must be solved

Re-negotiation of the bilateral treaties?
EU Model Tax Treaty?

Compulsory arbitration?

Prevention of double taxation?
=> Positive harmonization?

Multilateral EU tax treaty?

Directive?