

Summary

International Law Problems of Multinational Corporations Multinational Corporations in International *Tax Law*

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1. As a general rule, multinational enterprises are taxwise not treated as legal units. Each state only looks at that part of the enterprise, which is situated within its borders. For that reason there is no coherent integrated system of taxation. There are on the one hand positive conflicts of laws (key-word: double-taxation) and on the other hand negative conflicts (key-word: tax-evasion).
2. The contribution of the general international law to the tax law is negligible. There exists no general prohibition of double taxation in international law.
3. The avoidance of international double taxation is a matter of the national tax-laws and of bilateral double taxation treaties. Up to now there are no multilateral double taxation agreements.
4. We find furtherreaching efforts to solve the double-taxation-problem within the European Communities (EC); however the chances of realisation are not great. The present emphasis is on efforts to harmonize the taxation of enterprises.
5. The problem of multiple tax burdens is of central importance. It occurs when two countries tax the same object at different persons, who are economically closely connected with eachother. Difficult questions arise from transfer-pricing within multinational enterprises and from the allocation of expenses to the parent company or to the subsidiary company. The present situation is unsatisfying. The arbitration procedure suggested by the EC-Commission means one step ahead.

6. Negative conflicts of laws occur mainly with regard to base-companies. Generally such enterprises will be recognized as legal entities in tax law. A presumption for abuse of law does not exist even for base-companies in tax havens.
7. The applicable tests for base-companies in the Federal Republic of Germany are the rules concerning the real substance of legal constructions and the rules about abuse of law (§ 42 AO). The point is whether there are economic or other good reasons for incorporating abroad and whether the enterprise is conducting economic activities of a certain importance.
8. The tax-problems of base-companies are now regulated by §§ 7—14 of the German Außensteuergesetz. These rules recognize base-companies as legal entities, but allocate their passive income to the German shareholders.
9. This procedure is in fact an enforcement of German tax laws abroad through private means. That is why problems of international law arise.
10. Limitations of this approach may arise from a general duty in international law to recognize foreign legal entities. In addition, there may exist a rule of international law against the lifting of the corporate veil. That is why the allocation of foreign income to domestic shareholders can only be done within the limits of a fair weighing of interests.
11. It is unclear, whether the German law concerning the tax treatment of base-companies is compatible with the tax-treaties. The decisive question is, whether a piercing of the corporate veil is compatible with the ends of the tax-treaties. It is desirable that the problems are solved by way of negotiations.
12. Attempts to enforce the national tax laws abroad are confronted with the difficulties to find the relevant facts. International agreements about cooperation in this field are not very far reaching.
13. Duties to inform the national tax authorities can conflict with foreign prohibitions. Though a solution seems to emerge in international law, the main answer still has to be given by the national law.

14. Foreign prohibitions may be recognized as law; this does not conflict with the rule of German law, that their must be a legal basis for acts of government.
15. The solution for these conflicts may be found in a combination of rules on substantive and conflict laws and in an analysis of the state interest involved. This leads to flexible solutions taking into account the character of the foreign prohibition and the fact, whether the information is asked from the taxpayer or from a third party.