

International Tax Course

Course Outline

Programme

- I. Introduction, objectives of the Course and basic concepts (3 hours)
 - a. Introduction and objectives of the Course
 - Introduction to international tax planning
 - Pragmatic approach – concepts for future use
 - Discussion of the main instruments and structures
 - Discussion and exchange of opinions
 - b. Basic Concepts
 - Tax planning *versus* tax fraud and tax evasion
 - Tax avoidance
 - Fraud
 - Simulation
 - Abuse of law
 - “Definition” of international tax planning and its limits
 - The issue of international double taxation
 - International tax law and application conflicts
 - Relation between internal and international sources
 - Subjective and objective incidence
 - Territoriality
 - Hierarchy of tax rules
 - Connecting elements
 - Subjective
 - Objective
 - Some relevant concepts
 - Base companies
 - Holding companies
 - Service companies
 - Trading companies
 - Other

 - Treaty shopping
 - Dual companies

Recommended bibliography:

Jones, John F. Avery (et al.), *Tax Law: Rules or Principles*, in “Fiscal Studies”, Vol. 17, n.º 3, 1996;

Pereira, Paula Rosado, “*Princípios do Direito Fiscal Internacional – Do Paradigma Clássico ao Direito Fiscal Europeu*”, Almedina, 2010;

Rohatgi, Roy, “Basic International Taxation”, Londres, 2002;

Santiago, Bruno, *O princípio da não-discriminação no cruzamento do Direito Fiscal Internacional com o Direito Fiscal Comunitário*, in *Cadernos de Ciência e Técnica Fiscal*, 207, 2009; **Xavier, Alberto**, “Direito Tributário Internacional”, Almedina, 2007;

II. International tax law sources (6 hours)

a. Internal Portuguese rules

- Introduction
- Withholding tax versus final taxation
- The concept of residence
- Rules with relevance to non-residents:
 - Property income
 - Capital gains
 - Interest
 - Royalty
 - Dividends
 - Employment income
 - Rendering of services
 - Other

b. OECD Model Tax Convention

- Origins and relevance
- UN Model and US Model
- Role of Commentaries to the OECD Model Tax Convention
- Structure of OECD Model Convention
 - Definitions
 - Persons covered
 - Residence
 - Permanent establishment
 - Taxation rules
 - Business profits/permanent establishment
 - Capital income
 - Dividends
 - Interest
 - Royalties
 - Income from employment
 - Dependent
 - Artists and sportsmen
 - Pensions
 - Capital gains
 - Income from immovable property

- Other income
- Capital
- Methods for elimination of double taxation
 - Exemption method (full or progressive)
 - Credit method (full or ordinary) – *Credit for the tax suffered*
 - Matching credit and tax sparing
- Other rules
- c. EU Directives
 - Parent-Subsidiary Directive
 - Merger Directive
 - Interest and Royalties Directive
 - Savings Directive
 - Other
- d. Madeira Free Zone
 - Main aspects of the regime
 - Legislation and framework
 - Evolution and future
 - Use of Madeira Free Zone in operations of international tax planning

Recommended bibliography:

Baker, Philip, “Double Taxation Conventions”, Sweet & Maxwell, 2004;

Gusmeroli, Michele *Triangular Cases and the Interest and Royalties Directive: Untying the Gordian Knot?*, in European Taxation IBFD PUBLS, 2005;

Herédia, João, *The Case of the Madeira: Portugal v Netherlands*, in “Intertax”, KLUWER TAX PUBLS, 2002;

Neves, Tiago Cassiano, *A Revisão de 2008 da Convenção Modelo da OCDE*, in *Revista de Finanças Públicas e Direito Fiscal*, 2 – Ano III, 07 10;**Rocha, Miguel Leónidas / Ricardo Jorge Almeida**, *O mecanismo da eliminação da dupla tributação internacional – particularidades*, in *Revista de Finanças Públicas e Direito Fiscal*, 3 – Ano II, 10, 09, Almedina;

Vogel, Klaus, “On double taxation conventions - A commentary to the OECD, UN and US Model Conventions for the avoidance of double taxation of income and capital”, Vol. I e II, 1991;

Vogel, Klaus, *The Influence of the OECD Commentaries on Treaty Interpretation*, in “Bulletin for International Fiscal Documentation”, IBFD PUBLS, 2000;

Teixeira, Manuela Duro, “*A Determinação do Lucro Tributável dos Estabelecimentos Estáveis de Não Residentes*”, Almedina, 2007;**Xavier, Alberto**, “Direito Tributário Internacional”, Almedina, 2007;

OECD Model Tax Convention on Income and on Capital, OECD, 2010

III. Anti-abuse measures / Economic substance (in coordination with Transfer Pricing) (2 hours)

- Introduction and historical evolution
- The Portuguese legislative development
 - Anti-abuse general rule
 - Principle of substance over form and concept of fraud to law
- Rules related with blacklisted jurisdictions
 - CFC (Controlled Foreign Company) rules
 - Autonomous taxation and non-deductibility
 - Ministerial Order 150/2004, of 13 February)
- Thin capitalisation rules
- Transfer pricing rules
 - General rules and scope
 - Transfer pricing methods
 - Multilateral Arbitration Convention
 - Advance Pricing Agreements
- Other anti-abuse measures for specific structures and operations

Recommended bibliography:

Câmara, Francisco de Sousa da, *CFC Taxation*, in “International Bureau of Fiscal Documentation”, European Taxation, January 1996;

Morais, Rui Duarte, “Imputação de lucros de sociedades não residentes sujeitas a um regime fiscal privilegiado”, Lisboa, Publicações Universidade Católica, 2005;

Cordewener, Alex, *EU: Company Taxation, Cross-Border Financing and Thin Capitalization in the EU Internal Market: Some Comments on Lankhorst-Hohorst*, in “European Taxation”, IBFD PUBLS, 2003;

Thöemmes, Otmar, *CFC Legislation and EC Law*, in “Intertax”, 2003;

Wiggins, Laurie / Matos, Patrícia, *Transfer Pricing rules – a Portuguese perspective*, in “Tax Planning International Transfer Pricing”, BNAI, 2005;

Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, OECD, 2010

- IV. Instruments and structures of international tax planning / Examples of the most used structures and vehicles on international tax planning (4 hours)
- a. Instruments and structures of international tax planning
 - Introduction and historical evolution
 - Objectives and framework factors
 - Most common practices and instruments
 - b. Structures and vehicles most used on international tax planning
 - Outward investment
 - Inward investment
 - Holding companies
 - IP structures
 - Financing structures

- Recharacterization of financial flows
- Treaty shopping
- Trusts
- Trading companies
- Global management companies
- Use of offshore/tax heavens

Recommended bibliography:

Baker, Philip, "Double Taxation Conventions", Sweet & Maxwell, 2004;

Rohatgi, Roy, "Basic International Taxation", Londres, 2002;

Xavier, Alberto, "Direito Tributário Internacional", Almedina, 2007;

V. Case study (2 hours)

VI. Wrap-up and conclusions (1 hour)