



ACTL

Annual
report
2010



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1. General information on the ACTL

1.1. Introduction

The Amsterdam Centre for Tax Law, founded on 1 January 2009, is the tax law research centre of the University of Amsterdam.

Until 31 December 2008, the tax law research was conducted at the Amsterdam Centre for International Law (ACIL).

The object of the ACTL is to conduct thorough research into various areas of the national, international and European tax law, and to share the results of this research with society by means of publications and seminars.

1.2. Institutional affiliations

Within the University of Amsterdam, the ACTL is considered to be a Centre of Excellence. Within that framework, the research of the ACTL belongs to the 'Private and Public European law priority area', which is one of the Amsterdam Law School research priority areas.

The ACTL is one of the founders of the Group for Research on European and International Taxation (GREIT). The GREIT is a cooperation in which researchers of various universities collaborate together, including Lisbon University (Portugal), Lund University (Sweden), Vienna University (Austria), Johannes Kepler University of Linz (Austria), European University Institute (Italy) and the University of Salerno (Italy). The GREIT-website is to be found at www.greit-tax.eu.





1.3. ACTL Research Programme

1.3.1. Tax Sovereignty versus Globalisation

1.3.2. Background and objective

Globalisation of world trade is characterised by progressive liberalization and regulation of trade between States and by formation and expansion of multilateral trade cooperation bodies, such as the World Trade Organization (WTO), the Organisation for Economic Cooperation and Development (OECD), the European Community, NAFTA and Ecosur. Taxation, which still is a largely national sovereignty, particularly in direct taxes, may conflict with these organisations' objects, especially as regards free movement of goods, services, persons and capital. The free movement rights enshrined in the treaties founding these organizations and the standards set by them in hard law (e.g. EU-directives) and soft law (e.g. recommendations), have their impact on national taxation. This also applies to bilateral tax treaties concluded between States. Although bilateral tax treaties can also be considered an expression of tax sovereignty, at the same time they limit the tax jurisdiction of the contracting States. European law especially limits the (tax) sovereignty of Member States.

Globalisation and free movement rights have as consequence that goods, services, persons and capital can move faster and to more destinations. On the one hand, this gives rise to the prospect of taxpayers trying to relocate their tax bases to jurisdictions with lower taxation, or to have them 'disappear' by international mismatches. States take all kinds of measures to protect their tax base. On the other hand, relocation of the taxpayer leads to 'tax competition' arising between States. Member States endeavour to make various aspects as attractive as possible (special regimes, low rates, advance certainty about tax position, etc.).

The aim of this research project is twofold: (i) to establish the limits on national tax sovereignty and tax jurisdiction set by international and supranational law, and (ii) to assess whether

these limits should be narrowed or broadened on the basis of criteria such as level playing field, interjurisdictional equity, free movement of persons and capital, budgetary stability, tax base integrity and fair interstate policy competition. The emphasis in the research program lies on European law in light of its major influence on national and bilateral tax law in the EU. In this respect, a distinction is drawn between the impact of the EU Treaty freedoms (theme 2) and the impact of the various harmonisation measures in the area of tax law within the EU (theme 3).

1.3.3. Research themes

The research program is divided into three related and partly overlapping research themes: double tax treaties, the EU treaty freedoms and the EU directives in the area of direct and indirect tax law. These three bodies of law all limit the tax sovereignty and/or the tax jurisdiction of the Member States.

Research theme 1: Influence of double tax treaties on tax sovereignty

Double taxation treaties can be considered an expression of tax sovereignty. By concluding tax treaties, the States can limit and allocate their tax jurisdiction. In some States (for example, in the United States, Canada, Germany and Denmark), this limitation and allocation of the tax jurisdiction can be unilaterally overridden by national law (tax treaty override). Tax treaties are generally bilateral and provide for the avoidance of double taxation on income and capital, or on inheritance and gift tax. Theme 1 focuses on the bilateral tax treaties for the avoidance of double taxation on income and capital. These treaties are generally concluded on the basis of the model convention issued by the OECD. On the basis of a bilateral tax treaty, the state of residence of a taxpayer has the obligation, generally, either to exempt the income or capital which may be taxed in the state of source of the income or capital, or to credit the tax of the state of source, in situations where the state of source is allowed to tax the income or capital under the treaty. Research Theme 1 will explore the extent to which tax jurisdiction is limited by those treaties. Issues that will be researched include:

- i) The status in public international law of the official OECD Commentary to the Model Convention and the relevance thereof as a means of interpretation of treaties following the Model Convention;
 - ii) The relevance of national law of both States party to a bilateral treaty, both anterior and posterior law (i.e. prior to or after concluding the treaty, respectively) for the interpretation of these bilateral tax treaties;
 - iii) The relevance of justified expectations of both the contracting States and their residents for the interpretation of these bilateral tax treaties;
 - iv) The possibility to fight treaty abuse by taxpayers (the doctrines of *fraus conventionis* or *fraus tractatus*);
 - v) The phenomenon of tax treaty override.
- Do the usual discrimination and restriction concepts of the CJ EU suffice to assess national tax measures applying to cross border situations which by their nature have no look-alike in purely internal situations, such as arm's length transfer pricing rules, controlled foreign corporations rules and thin capitalization rules? Is there a fourth concept (dislocations) in between disparities on the one hand and discriminations and restrictions on the other?
 - Does the CJ EU leave sufficient room for the curbing of international tax avoidance? (tax base integrity)
 - What function and scope do the justifications for tax impediments have which the ECJ *in abstracto* allows, such as especially the fiscal territoriality principle, the concept of fiscal coherence, and the necessity of a balanced allocation of taxing powers?

Research theme 2: Influence of EU treaty freedoms on tax sovereignty

Tax sovereignty is limited by EU law. As regards direct taxes (e.g. income tax and corporation tax) this is predominantly due to the EU treaty freedoms. Although the tax sovereignty of Member States in the field of direct taxation is in general recognised by the Court of Justice of the European Union (CJ EU), the CJ EU case law has a huge impact on direct taxation. Research Theme 2 will explore the extent to which the tax sovereignty is limited by the EU treaty freedoms.

Issues that will be researched include:

- i) The issue whether and under which circumstances it may be prohibited to grant differential treatment to taxpayers of various Member States ('most favoured nation tax treatment' within the EU);
- ii) The influence of the EU treaty freedoms on the prevention of double taxation;
- iii) The influence of Community law on the tax treatment of a permanent establishment (i.e. a branch of an enterprise in another Member State) as compared to a resident company;
- iv) The correct balance between free movement within the EU and the right to levy tax, especially as regards the following questions:
 - Does the CJ EU assume competence in tax matters not covered by the attribution system of the Treaty on the Functioning of the European Union.
 - What balance does the CJ EU strike between free movement and tax sovereignty?

Research theme 3: Influence of EU directives on tax sovereignty

Disparities between national tax laws are an impediment to the common market. These impediments may be removed by positive integration. This has been done in the area of indirect taxation (e.g. VAT). There are, however, only few harmonisation measures in the field of direct taxation. Research theme 3 will explore the correct scope and interpretation of the various EU directives in the area of direct and indirect tax law, including the interpretation of the VAT Directive, and the interpretation of the various directives in the area of direct taxation (the Merger, Interest and Royalty, Parent-Subsidiary and Savings Directives). Furthermore, this theme will assess the (un) desirability of harmonization or uniforming of detailed areas of national taxation, such as cross border loss relief facilities, treatment of real estate, Home State taxation, Common Consolidated Corporate Base taxation, group taxation, dividend tax, etc.

1.3.4. Researchers

The research within this project is to be carried out by researchers who combine their scientific and practical experience in tax law with an in-depth knowledge and practical experience of international and European law. This permits conducting in-depth research at the intersection of international and European law and tax law.



Graag nu altijd de collegiaal netje achterlaten. Alvast bedankt.
Please tidy up when you leave the lecture room. Thank you.

1.4. Organisation

1.4.1. General

The director of the ACTL is prof. dr. Dennis Weber. Wendy Swart provides secretarial support. In 2010, the programme comprised 16 researchers (5.4 Fte). Dr. Hein Vermeulen, dr. Suzanne Mol-Verver and Ton Mertens joined and strengthened the ACTL in 2010. With their arrival, the ACTL reinforced its position in the area of Corporate Tax Law and Income tax law.

In 2010, the ACTL put considerable effort into recruiting new talent, which will result in new appointments in 2011.

The ACTL has a considerable number of non-remunerated staff (5), and staff of less than 0.1 Fte (3), who despite the low number of hours, make a material contribution to the research.

The ACTL moved to another building of the UvA. With the new premises, ACTL will provide better conditions not only to its current members but also will have a higher capacity to receive new visiting researchers.

1.4.2. Table ACTL Fte

Research staff 'Tax Sovereignty versus Globalisation'.

1.4.3. ACTL Staff overview (including other employers)

Director

prof. dr. D. (Dennis) M. Weber

- professor European Corporate Tax law
- Loyens & Loeff
- Deputy judge 's-Hertogenbosch tax court of appeal

Secretary ACTL

Wendy Swart

Professors

prof. dr. R. (Rob) P.C. Cornelisse

- professor tax law
- Loyens & Loeff

prof. dr. B. (Ben) J.M. Terra

- professor indirect taxation University of Amsterdam and Lund (Sweden)

prof. dr. P. (Peter) J. Wattel

- professor European Tax Law
- Advocate-General Netherlands Supreme Court

Name and present title		Fte
Professors (5)	prof. dr. R.P.C. Cornelisse	0.24
	prof. dr. B.J.M. Terra	0.00
	prof. dr. P.J. Wattel	0.08
	prof. dr. D.M. Weber	0.20
	prof. dr. S. van Weeghel	0.08
Assistant professors (9)	dr. M. van Dun	0.00
	mr. N. Idsinga	0.16
	dr. O.C.R. Marres	0.16
	mr. T. Mertens	0.00
	mr. drs. W.A.P. Nieuwenhuizen	0.00
	mr. dr. J.L. van de Streek	0.16
	Dr. H. Vermeulen	0.08
	Dr. S Mol-Verver	2.24
Dr. Walter de Wit	0.00	
PhD researcher (2)	Rita Szudoczky	1.00
	Bruno da Silva	1.00
Total research staff (16)		5.40

prof. dr. S. (Stef) van Weeghel

- professor International Tax Law
- PricewaterhouseCoopers

Assistant professors

dr. M. (Michel) van Dun

- Assistant professor International Tax Law
- Judge 's-Hertogenbosch tax court of appeal

mr. N. (Nathalie) Idsinga

- Assistant professor Inheritance Tax
- Loyens & Loeff

dr. O. (Otto) C.R. Marres

- Assistant professor International Tax and European Tax Law
- Tax lawyer at KPMG Meijburg & Co
- Deputy judge at the Court of Appeals of The Hague

mr. A. (Ton) Mertens

- Assistant professor Income Taxation
- Tax lawyer Loyens & Loeff N.V.
- Deputy judge 's-Hertogenbosch tax court of appeal

mr. drs. W. (Wilbert) A.P. Nieuwenhuizen

- Assistant professor VAT
- Nieuwenhuizen BTW adviseurs

mr. dr. J. (Jan) L. van de Streek

- Assistant professor Corporate Taxation
- Ernst & Young

Mr. dr. H. (Hein) Vermeulen

- Assistant professor Corporate Taxation
- PwC

Dr. S. Mol-Verver

- Assistant professor Income Taxation
- Loyens & Loeff

Dr. W. (Walter) de Wit

- Assistant professor European Tax Law and indirect taxation
- Ernst & Young

PhD-researchers

Rita Szudoczky

Bruno da Silva

1.4.4. Other activities

Membership of editorial/advisory board of academic publications and/or academic associations, etc.

R.P.C. Cornelisse

- Editorial board Fiscaal Tijdschrift FED
- Editorial board Maandblad Belastingbeschouwingen

O. Marres

- Editorial board Nederlands Tijdschrift Fiscaal Recht
- Editorial board Nederlandse Documentatie voor Fiscaal Recht

T. Mertens

- Chair committee 'Loosomheffing' Vereniging voor Belastingwetenschap

J.L. van de Streek

- Member of the editorial board of tijdschrift Fiscale Berichten voor het Notariaat (FBN).

R. Szudoczky

- IFA, Hungarian Branch
- Teaching Associate at the International Tax Center of Leiden (adv. LL.M Program in International Taxation)

H. Vermeulen

- Editor Real Estate Review, Tax and Civil Law (Vastgoed Fiscaal & Civiel)
- Secretary, Commission on Collective Investment Vehicles of the Association of Tax Law Researchers (Vereniging voor Belastingwetenschap).

P. Wattel

- Editor, Netherlands Law Review (Nederlands Juristenblad)
- Member of the board of trustees, Europäische Rechtsakademie, Trier (Germany)

D. Weber

- General editor of Highlights & Insights on European Taxation
- Coordinator of the International and European Tax Law program of the Nederlandse Orde van Belastingadviseurs (Netherlands Association of Tax Lawyers: NOB)
- Board member of the NOB's European tax law section

- Board member of GREIT
- Lecturer in the European Tax Studies-course at the Erasmus University Rotterdam (direct and indirect taxation)
- Lecturer at the International Tax Center of Leiden (adv. LL.M Program in International Taxation)
- Lecturer at the Wirtschaft Universität Wien in Vienna

S. van Weeghel

- Chair of the Dutch branch of the International Fiscal Association
- Member of the permanent scientific committee of the International Fiscal Association
- Member Board of Trustees International Bureau for Fiscal Documentation
- Chair of the Dutch government committee on tax reform

1.5. Funding

Most of the research in this programme is funded from the first flow of funds (government funds). In addition, ACTL seminars are usually sponsored due to which these remain cost-neutral. For 2010, ACTL has organised a Winter course on European Tax Law in order, amongst others, to be less dependent on government funds or sponsors.

1.6. Location and Internet address

The address of the ACTL is:

University of Amsterdam (UvA)
 Amsterdam Centre for Tax Law (ACTL)
 Nieuwe Doelenstraat 15
 1012 CP Amsterdam

The ACTL Internet page is www.jur.uva.nl/actl. This page is updated regularly. Publications of ACTL members are announced and free publications and downloads are made available.

The ACTL has a group in LinkedIn (www.linkedin.com). Persons who are interested in the activities of the ACTL are kept up to date. At the end of 2010, the group had over 500 members.



1.7. Activities in 2010

2010 was the second year in the existence of the ACTL as an independent research centre. In 2010, the ACTL made a growth spurt when three experienced researchers joined to strengthen the research team, namely, dr. Hein Vermeulen, dr. Suzanne Mol-Verver and Ton Mertens. With their arrival, the ACTL reinforced its position in the area of Corporate Tax Law and Income Tax Law. In 2011, the ACTL focused on the labour market and as a result, new researchers are to join the Centre in 2011.

At the end of 2010, the ACTL relocated to another building of the UvA. This has resulted in the ACTL having more room at its disposal whereby the current researchers can be better housed and the future growth can be accommodated.

In January 2010, the first ACTL Wintercourse on European Direct Tax Law was organised. For five full days, speakers from the academic world, practice and the European Commission discussed various aspects of the European direct tax law. In light of the success it booked, this Wintercourse is again being organised for 2011 and, in addition, a new Wintercourse is to be launched: the Wintercourse on International Taxation.

At its formation, the ACTL had the intention of organising more English language international seminars. A start was made to bring this intention to fruition on 28 April 2010 by organising a seminar entitled: 'From Marks & Spencer to X Holding: the future of cross-border group taxation'. Experts from the Netherlands and across Europe gathered together to debate the decision of the Court of Justice in the X Holding case, the possible impact on the Netherlands fiscal unity and in the UK (considering both the Marks & Spencer case and the Phillips Electronics case) and also to analyse future trends of cross-border group taxation (with special attention to Danish cross-border group taxation, group taxation in the VAT and group taxation in the CCCTB). Over 90 participants attended that seminar. A seminar book is to be published by Kluwer Law International

In April 2010, a Study Committee, instituted by the Netherlands government and chaired by prof. dr. S. van Weeghel (ACTL), published

its report on the revision of the Netherlands tax system.

On 26 May 2010, the ACTL organized a seminar to debate the report of the Study Committee. Among the speakers, aside from prof. dr. S. van Weeghel, two other members of the Committee were present: prof. dr. R. de Mooij and prof. dr. H. Vording. A book further to the seminar was published by the ACTL under its own management.

On 16 and 17 September 2010, the GREIT Conference on 'Taxation and Human Rights in Europe and the World' was held at the premises of the European University Institute in Fiesole, Florence, Italy. Hosts were prof. Pasquale Pistone, prof. Georg Kofler and prof. Miguel Maduro. The 2010 GREIT Conference dealt with issues surrounding the impact of the Lisbon Treaty on EU law and explored the possible development of human rights in the field of taxation in the era of global law. Speakers included P. Pistone, M. Maduro, G. Kofler, C. Brokelind, A.P. Dourado, D. Weber, L. Azoulai, S. Besson, P. Baker, D. Sarmiento, F. Vanistendael, J. Wouters, D. Gutmann, L.S. Rossi, R. Lyal, H. Micklitz, M. Scheinin, S. Van Thiel, D. Rosenbloom, J. English and others. A conference book is to be published by IBFD.

On 19 November 2010, the ACTL organised a seminar entitled 'The 2010 update to the OECD MC and the revised Transfer Pricing guidelines'. This seminar was prompted by the amendments to the OECD Model Tax Convention and the Transfer Pricing Guidelines which were adopted by the OECD Council in July 2010. During the seminar, OECD representatives and experts from across Europe debated the relevant updates. Subjects included the attribution of profits to a PE, tax treaty entitlement of CIVs, income from employment, the revised Transfer Pricing guidelines and sovereign wealth funds. A seminar book is to be published by Kluwer Law International.

In 2010, a number of ACTL members spoke at various conferences held throughout the world. Stef van Weeghel spoke as key-note speaker during the NOB annual Conference in June 2010, and he presented the general report during the annual congress of the International Fiscal

Association in September 2010 in Rome. Dennis Weber gave various presentations in, amongst others, London, Brussels, Hong Kong, Madrid, Lisbon, Florence, Bogota (Colombia), Milan and Vigo (Spain). Peter Wattel spoke at national and international conferences at, amongst others, the annual meeting of the European Academy of Tax Law Professors in Leuven, the International Fiscal Association in London, and during a Congress of the Cour de Cassation, the École nationale des magistrats and the Europäische Rechtsakademie in Paris. In that same year, Bruno da Silva gave presentations in Macau and Rita Szudoczky in Lisbon. Otto Marres, Hein Vermeulen and Jan van de Streek spoke at various (international) congresses held in the Netherlands.

Key publications in 2010:

- Stef van Weeghel, General report about the IFA 2010 main topic Tax treaties and tax avoidance: application of anti-avoidance provisions;. Amersfoort: SDU Fiscale & Financiële Uitgevers, 2010, (Cahiers de droit fiscal international, studies on international fiscal law ; vol. 95a).
- Dennis Weber, “Traditional and alternative routes to European Tax Integration”, IBFD, 2010, 362 pp.
- D.M. Weber, “Continuïteit en vernieuwing - Een visie op het belastingstelsel”. This book is the outcome of a seminar organized by the Amsterdam Centre for Tax Law on the report of the Committee Van Weeghel (136 pp.).

1.8. A glimpse into the future

In its two years of existing independently, the ACTL has distinguished itself well as a research centre. It started to grow in 2010, which growth will be continued in 2011. The growth the ACTL will live through must remain manageable and thus, it must be managed step by step. The starting point has to be maintaining and raising the quality of the researchers and the research output. The ACTL wishes to develop into a centre of (potential) top researchers only. The ACTL is to undertake a number of projects in order to accomplish this objective. First, the ACTL is to organise international conferences regularly. Research results of these conferences will be published to the extent possible by publishers operating internationally. Second, new PhD researchers will be recruited in a professional manner by appointing a ACTL PhD-program director. Third, the ACTL will explore all the possibilities available to become strengthened by means of attracting national and international top researchers. Fourth, the ACTL will endeavour to enter into (informal) international collaborations with foreign universities. Fifth, the ACTL will continue to strive to, in addition to research, develop high quality educational activities which follow on from the ACTL research.

1.9. Research Output 2010

1.9.1. Academic publications

R.P.C. Cornelisse

- Geruisloze omzetting, FED fiscale brochures, 6e druk.
- Fiscale grensverkenning: Enige reflecties over duurzame en eenduidige fiscale regelgeving, *NTFR* 2010/429 Vriendenbundel Jan Kees Bartel (Wetgevingskunsten).

O. Marres

- O. Marres and mr. drs. V. Kalloe: Analytische vennootschapsbelasting, *NTFR* 2010/340.

J.L. van de Streek

- Dr. Jan van de Streek and Rita Szudoczky, “Revisiting the Dutch Interest Box under the EU State Aid Rules and the Code of Conduct: when a “Disparity” is Selective and Harmful” *Intertax* 5 (2010), pp. 263-273 (peer-reviewed).
- De moeizame symbiose tussen het flexibele BV-recht en de aanmerkelijkbelangregeling in de Wet IB 2001, in: 40 jaar *Cursus Belastingrecht*, Kluwer, Deventer, 2010, blz. 213-220.
- De CCCTB: Buitenlands inkomen, eenzijdige voorkomingsregels en de relatie tot belastingverdragen, in: *Naar een Europese vennootschapsbelasting?*, Serie Academische Fiscale Beschouwingen, Kluwer, Deventer, 2010, blz. 219-229.

R. Szudoczky

- “The influence of primary law on the interpretation of secondary law in the field of EU citizenship and direct taxation: “whatever works”...”. (in: Weber, D. (ed.), *Traditional and alternative routes to European tax integration*, IBFD 2010).
- Dr. Jan van de Streek and Rita Szudoczky, “Revisiting the Dutch Interest Box under the EU State Aid Rules and the Code of Conduct: when a “Disparity” is Selective and Harmful” *Intertax* 5 (2010), pp. 263-273 (peer-reviewed).

H. Vermeulen

- “REITS in het Verdrag Nederland-Verenigd Koninkrijk 2008”, *Nederlands Tijdschrift voor Fiscaal Recht* 2010/2202, 30 September 2010, pp. 1-6.

- “De behandeling van vastgoed in de nieuwe regeling van de beleggingsdeelneming”, *Weekblad fiscaal recht* 2010/6874, pp. 1182-1190.
- “Symbiose tussen FBI en VBI”, in M.L.M. van Kempen, A.C. Rijkers, S.A.W.J. Strik (red), *Liber Amicorum 40 jaar Cursus Belastingrecht. Tribuut aan Leno Sillevius en Nico de Vries*, Kluwer Deventer 2010.
- “Enige opmerkingen over het financieel instrument en de VBI”, *Weekblad fiscaal recht* 2010/6845, 4 February 2010, pp. 154-159.
- “Leidt het verlichte regime ook tot verlichting van de aandeelhouderseisen van het FBI-regime?”, *Nederlands Tijdschrift voor Fiscaal Recht* 2010/339, 18 February 2010, pp. 5/8.

P. Wattel

- EC law and direct taxation: l’europa des juges et des contribuables; in: Jutta Kruthoffer-Röwekamp (hrsg.): *Die Rechtsprechung des EuGH in ihrer Bedeutung für das nationale und internationale Recht der direkten Steuern; Kolloquium im Bundesministerium der Finanzen*, Berlin; Nomos/Beck, 2010, p. 17-28.
- Een proactievare rol van de Hoge Raad in belastingzaken? *WFR* 2010/6882, p.1468-1473 - ‘Daily Mail’ and ‘Schumacker’ (extensive ECJ case notes with the benefit of hindsight) in: T.W.B. Beukers, H.J. van Harten, S. Prechal (red.): *Het recht van de Europese Unie in 50 klassieke arresten*; Boom, 2010, p. 187-194 and p. 250-258.

D. Weber

- *Impuestos da Salida. Vulneración de los convenios de doble imposición (treaty override)?*, published in: *Derecho Tributario Global*, ILADT, 1/2010.
- General report, *Traditional and alternative routes to European Tax Integration*, IBFD, 2010, p 1-11.
- Editor of the book “*Traditional and alternative routes to European Tax Integration*”, IBFD, 2010, 362 pp.
- Editor of the book “*Continuïteit en vernieuwing - Een visie op het belastingstelsel*”. This book is the outcome of a seminar organized by the Amsterdam Centre for Tax Law on the report of the Committee Van Weeghel (136 blz.) (redactie)The book includes papers from: prof. R.A. de Mooij, prof. A.O.

Lubbers, dr. S.J. Mol-Verver, prof. G.J.B.
Dietvorst, prof. mr. dr. P.G.H. Albert, dr. O.
Marres, prof. B. Peeters, prof. I.J.J. Burgers,
dr. R. Russo en dr. R. Offermanns.

S. van Weeghel

- Prof. Stef van Weeghel general report about the IFA 2010 main topic Tax treaties and tax avoidance: application of anti-avoidance provisions, Amersfoort: SDU Fiscale & Financiële Uitgevers, 2010 (Cahiers de droit fiscal international, studies on international fiscal law; vol. 95a).

1.9.2. Professional publications

R.P.C. Cornelisse

Annotations

- HR 27 November 2009, nr. 08/04388, BNB 2010/54.
- HR 5 February 2010, nr. 08/02949, BNB 2010/147.
- HR 23 April 2010, nr. 08/04843, BNB 2010/244.

N. Idsinga

Article

- Wijzigingen in de aanmerkelijkbelangregeling bij vererving en schenking van aanmerkelijkbelangaandelen (2), FBN 2010/3.

O. Marres

Articles

- Hoofdstuk 5 (dividendbelasting) in: R.L.R. Hennuïn (red.), *Hoofdzaken belastingrecht*, 12^e dr., Amsterdam: Ars Aequi Libri 2010.
- Aftrek van rente op onzakelijke leningen, *NTFR* 2010/1672.

Annotations

- HR 2 oktober 2009 nr. 08/00900, BNB 2010/22 (cross-border loss compensation; EU freedom of establishment).
- HR 23 oktober 2009, nr. 08/00324, BNB 2010/34 (allocation of expenses re share issue).
- HR 13 November 2009, nr. 08/01904, FED 2010/42.
- HR 19 March 2010, nr. 09/02250, BNB 2010/215.
- HR 9 April 2010, BNB 2010/291.
- HR 9 April 2010, BNB 2010/292.

T. Mertens

Books

- Het beginsel van de minste pijn; een inleiding tot de loonheffingen, 5th edition, Ars Aequi Libri 2010.

Articles

- Hoezo, 'de thans gebruikelijke uitleg?', *NTFR* 2010/2862, 23 December 2010.

Annotations

- HR 13 November 2009, nr. 08/01905, BNB 2010/51c*.
- HR 4 December 2009, nr. 08/05071, BNB 2010/118c*.
- HR 5 February 2010, nr. 08/2969, BNB 2010/132c*.
- HR 5 February 2010, nr. 07/13543, BNB 2010/164c*.
- HR 5 February 2010, nr. 08/04988, BNB 2010/165c*.
- HR 5 February 2010, nr. 08/05235, BNB 2010/196c*.
- HR 12 March 2010, nr. 08/05149, BNB 2010/252c*.
- HR 12 March 2010, nr. 09/00335, BNB 2010/253c*.

B. da Silva

Annotations

- Comment: New rules for excise duties and a draft directive strengthening cooperation between Member States in field of taxation. ECOFIN Council in H&I 2010/1.1.
- Comment: Commission requests Portugal to amend restrictive exit tax provisions for individuals. European Commission in H&I 2010/1.7.
- Comment: Agreement on reform of excise duties on cigarettes and other tobacco products in H&I 2010/1.27.
- Comment: Commission staff working document accompanying proposal for a revised Code of Conduct for applying the Arbitration Convention: EU Joint Transfer Pricing Forum - summary report on penalties. European Commission in H&I 2010/2.5.
- Comment: Council proposal: Reversal of VAT liability for CO2 emission allowances. Council of the European Union in H&I 2010/2.10.
- Comment: VAT. Code of conduct arbitration convention. ECOFIN in H&I 2010/3.1.

- Comment: Mutual assistance and other tax governance measures; derogation from VAT directive to Portugal. ECOFIN in H&I 2010/3.2.
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 - Comment: Views on the possible introduction in the EU of a tax on financial transactions. EU Council meeting in H&I 2010/11.1.
 - Comment: Consultation paper: possible amendments to the Interest & Royalty Directive. European Commission in H&I 2010/11.2.
 - Comment: Communication and Staff working paper regarding the Taxation of the Financial Sector. European Commission in H&I 2010/12.4.
- J.L. van de Streek**
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 - Cursus Belastingrecht (Vennootschapsbelasting), onder redactie van S.A.W.J. Strik en N.H. de Vries, update onderdeel 2.2.6 (art. 10d Wet Vpb. 1969).
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- R. Szudoczky**
Annotations
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- B. Terra**
- Terra, Ben & Kajus, Julie, A Guide to the European VAT Directives, Volume 1, Introduction to European VAT, 1147 pages, Volume 2, Integrated texts of the Recast VAT Directive and of the Sixth VAT Directive, 265 + 155 pages, IBFD Amsterdam 2010.
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 - Ben Terra, The Court of Justice and VAT Judgments and Opinions in 2009 Pending cases, ETIL Lund 2010.
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 - Ben Terra and Oskar Henkow, EU Excises Volume 1, ETIL Lund 2010.
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 - Ben Terra, VAT and Financial Services, The Proposals for Change, ETIL Lund 2010.
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H. Vermeulen

- “De vastgoedgoeddeelneming is niet meer. Wat nu?”, Vastgoed Fiscaal & Civiel 2010/2, April 2010, pp. 24-28.
- “Het fonds voor gemene rekening in de vastgoedpraktijk”, Vastgoed Fiscaal & Civiel 2010/3, June 2010, pp. 1-5.
- “De onroerendezaak lichamen van art. 4 Wet BvR in Europees perspectief”, Nederlands Tijdschrift voor Fiscaal Recht, 1 July 2010, pp. 1-3.
- “Fiscale staatssteun en vastgoedbeleggingsinstellingen”, Vastgoed Fiscaal & Civiel 2010/6, December 2010, pp. 3-7.
- “Strijd van overdrachtsbelastingheffing ter zake van onroerendezaaklichamen met Europees recht. Een kans voor de notaris?”, Fiscale Berichten voor het Notariaat 2010/69, December 2010, pp. 7-9.
- “Vastgoedbeleggingsfondsen en de samenloop van overdrachtsbelasting en btw”, Vastgoed Fiscaal & Civiel 2010/5, November 2010, pp. 15-18.
- “Real estate transfer tax on shares possibly contrary to the EU Capital Duty Directive”, in Tax Planning International European Tax Service, Volume 12, Number 9, September 2010.

P. Wattel

- Treuzelenderwijs; Vooraf, NJB 2010/4, blz. 215.
- Steuermoral of Amnistia fiscale; Vooraf, NJB 2010/11, blz. 699.
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- Beggar thy neighbour; Vooraf, NJB 2010/42, blz. 2685.

D. Weber

- Kritiek op X Holding. Harde taal. Maar met een reden. Reactie op de opinie van prof. Dr. P.H.J. Essers, NTFR 2010/2283.
- On 12 August a letter was published in NRC Handelsblad about the State problems regarding tax exemptions the Dutch government guaranteed the FIFA when in the Netherlands the World championship football will be organized in 2018 or 2022.
- Jurisprudentie Europees direct belastingrecht 2009/2010, Kluwer, 2010-2011, 288 pp.(First edition 2008).
- European Direct taxation, Case law and Regulations, Kluwer Law International 2010, 1560 pp.(first edition 2009).
- Waarom de Scheuten Solar Technology-zaak ons van de straat gaat houden, WFR 2010/6847, p 212.
- A-G Wattel 7 juli 2010, Weigeren van voordelen van grensoverschrijdende fiscale eenheid in strijd met recht van vestiging? (X Holding), FED 2010/95.
- Comment: Commission/Italy, Higher taxation on cross-border dividend not compensated by ordinary credit in tax treaty, H&I 2010/2.6.
- Comment: X Holding. Refusal of advantage of a cross-border tax consolidation a justified restriction of the freedom of establishment, H&I 2010/7.6.
- Comment: X Holding. Cross-border tax consolidation. Additional opinion AG Wattel of the Netherlands Supreme Court, H&I 2010/9.3.

- Comment: Zwijnenburg. Application of anti-abuse provision in merger directive. Avoiding transaction tax. Tax avoidance, H&I 2010/9.5.



1.9.3. Presentations

R.P.C. Cornelisse

- 19 November 2010, at the ACTL seminar: The 2010 amendments to the OECD MC and the new transfer pricing guidelines, chairman of the panel which discussed the amendments regarding the granting of tax treaty benefits to CIVs.

N. Idsinga

- 30 September/1 October, presentation at the Fiscale conferentie Estate Planning about onderdeel fictiebepalingen in de Successiewet.

O. Marres

- 28 April 2010, at the ACTL seminar, presentation: From Bosal to X Holding The future of tax base protection in the Netherlands.
- 26 May 2010 speaker at the ACTL seminar, Continuïteit en vernieuwing Een visie op het belastingstelsel Seminar naar aanleiding van het rapport van de Studiecommissie belastingstelsel Commissie van Weeghel, presentation: Rente in de vpb: defiscalisering of vermogensaftrek.
- 2 Juni 2010, presentation at the NOB jaarcongres about De toekomst van de Dividendbelasting.
- 16 juni 2010, presentation at the Europese Fiscale Studies (EUR) seminar Exithetfing bij ondernemingen, Cartesio en exithetfing.
- 19 November 2010, at the ACTL seminar: The 2010 amendments to the OECD MC and the new transfer pricing guidelines, chairman in the panel which discussed the amendments on employment income.
- 14 December 2010, Kluwer Cursus 'Vpb in internationale convernverhoudingen', onderdeel 'EU-recht'.

T. Mertens

- 12 April 2010, Masterclass employment taxes, Utrecht, Netherlands Tax Authorities.
- 4 November 2010, Loyens & Loeff Tax Mastercourse - employment taxes in crossborder situations, Soestduinen.
- 25 November 201, Expertmeeting 'werkkosten-regeling', Amsterdam, Eggen Instituut.

S. Mol-Verver

- 26 May 2010, (Rechtsvorm)neutraliteit in de winstbelasting n.a.v. het voorstel van de studiecommissie belastingstelsel, presentation at the seminar: ACTL seminar, Continuïteit en vernieuwing Een visie op het belastingstelsel Seminar naar aanleiding van het rapport van de Studiecommissie belastingstelsel Commissie van Weeghel.

B. da Silva

- 28 April 2010, ACTL seminar, presentation: The CJ's cross-border group taxation case law: an overview.
- 17 to 24 May 2010, course on the Overview of the tax systems of the European Union held in Macau S.A.R.
- 11 June 2010, presentation about Recent EU Tax Developments on a conference organized by the European Branch of the Chartered Institute of Taxation.
- 26 August 2010, chair of the 6th alumni seminar of the adv LL.M. in International Tax Law of ITC Leiden.
- 19 November 2010, at the ACTL seminar: The 2010 amendments to the OECD MC and the new transfer pricing guidelines, presentation on Tax Treaty entitlement of CIVs: characterization and tax treaty issues.

J.L. van de Streek

- 28 April 2010, ACTL seminar, presentation: Group Taxation in the CCCTB.

R. Szudoczky

- 23 June 2010 The Direct Tax Directives, lecture together with Prof. Cécile Brokelind during the GREIT Summer course 2010 at the University of Lisbon.
- 29 August 2010 – 3 September 2010, IFA 2010 Rome Congress, participant at the Poster Programme.

H. Vermeulen

- 26 February 2010, Round Table Taxation in the field of Real Estate, Amsterdam, PropertyNL 2010/3, pp. 38-43.
- 29 September 2010, speaker at the Vastgoed Fiscaal & Civiel Seminar Amersfoort, presentation on direct tax aspects of investing in real estate through collective investment funds (CIVs).

- 19 November 2010, at the ACTL seminar: The 2010 amendments to the OECD MC and the new transfer pricing guidelines, presentation on solutions offered in the Commentary to the OECD MTC for CIVs and its investors to enjoy tax treaty benefits.

P. Wattel

- 21 January 2010, Amsterdam: ACTL Winter course on European Direct Tax Law; two presentations on “Overview of the ECJ case law on direct taxes” and “Cross-border loss relief”.
- 15/16 februari 2010, Paris, France: presentation on “Forum shopping? Does EU State Liability Law bypass National Time Limits?”; Congress of the Cour de Cassation, the École nationale des magistrats and the Europäische Rechtsakademie on “Effective judicial protection in European Law; the role of the national judge”.
- 12 maart 2010, Utrecht: lecture on “Algemeen en formeel belastingrecht”, PAOB-cursus “Nieuwe jurisprudentie”.
- 28 April 2010, Amsterdam: ACTL-seminar “From Marks & Spencer to X. Holding; the future of cross-border group taxation”; chair of panel 2: “The experience in the UK”.
- 29 April 2010, Madrid, Spain: presentation on “The domestic court’s attitude,” and chair of session V “European responses”; Conference of the Spanish Ministry of Economy and Finance and the Europäische Rechtsakademie (ERA): “The impact of ECJ case law on national tax systems”.
- 26 May 2010, Amsterdam: chair of the ACTL seminar “Continuïteit en vernieuwing; een visie op het belastingstelsel”; naar aanleiding van het rapport van de Studiecommissie belastingstelsel (Commissie Van Weeghel).
- 27-29 May 2010, Leuven, Belgium: debater topic 1: Retroactivity of ECJ Judgements; yearly congress of the EATLP (European Association of Tax Law Professors).
- 4 June 2010: Utrecht: debater, Rechtspraak op het moment dat er toe doet; RUU/HR-Congres “De Hoge Raad in 2025: contouren van de toekomstige belastingrechtspraak”.
- 25 June 2010, Lisboa, Portugal: duo-presentation with Prof. Miguel Poiars Maduro on “Demand and Supply Side of Preliminary Referrals to the EU Court of Justice;” GREIT Summercourse, University of Lisbon.
- 19 November 2010, Amsterdam: ACTL seminar “The 2010 amendments to the OECD MC and the new transfer pricing guidelines,” chair of the panel on the new Article 7 OECD MC; attribution of profits to Permanent Establishments.
- 7 October 2010, Rotterdam: presentation “Fiscale implicaties van het *Cartesio*-arrest, EUR/RUG Symposium “Europees ondernemingsrecht: grensoverschrijdend ondernemen na *Cartesio*”.
- 2 and 3 November 2010, London, UK: Presentation on “Harmonisation by the back door or a new respect for national systems?”; trilateral meeting of the German, Netherlands and British branches of the International Fiscal Association.
- 4 and 5 november 2010, Zeist: presentation on “Exitheffingen”; NOB Rondetafelbijeenkomst.

D. Weber

- 25 and 26 February 2010 in London, European Tax law: recent developments at the European American Tax Institute.
- 22 March 2010 (day of signing of the treaty), Tax treaty Netherlands and Hong Kong, panel discussion, Courtyard Hong Kong.
- 23 April 2010, X holding: incorrect or wrong?, EU Tax Law Group, Brussels.
- 28 April 2010, ACTL seminar, presentation: X Holding: A critical review, during ACTL seminar, From Marks & Spencer to X Holding: the future of cross-border group taxation.
- 28 April 2010 chair of the seminar: ACTL seminar, From Marks & Spencer to X Holding: the future of cross-border group taxation.
- 29 April 2010, in Madrid, New EU tax law concepts? Evaluating the ECJ impact on direct taxation, Academy of European Law (ERA).
- 26 May 2010, Moderator, Panel 4: *Capita selecta*, seminar Continuïteit en vernieuwing, een visie op het belastingstelsel, Koninklijke Nederlandse Academie van Wetenschappen (KNAW).
- 24 and 25 June 2010, X Holding/Regione Sardegna (state aid)/Scheuten Solar, during the GREIT Summercourse at the University of Lisbon 2010.
- Spoke at the annual seminar of the European American Tax Association in Noordwijk.

- 16 September 2010, Human Rights, Their Enforcement, Economic Policy and International taxation in the era of Global Law 2010 GREIT Conference - Taxation and Human Rights in Europe and the World - 16 and 17 September 2010 - Florence (Italy).
 - 17 September 2010, moderator, Session 7; The Impact of Human Rights on Tax Litigation GREIT Conference - Taxation and Human Rights in Europe and the World - 16 and 17 September 2010 - Florence (Italy).
 - 15 October 2010, at the Universidad del Rosario, gave a presentation on abuse of law in Bogotá, Colombia.
 - 21 October 2010, Anti-avoidance, new trends and EU update, European American Tax Association, Noordwijk.
 - 5 November 2010, at a roundtable of the Dutch organisation for Tax Advisors in Slot Zeist, gave a presentation about EU law and interest deduction limitations.
 - 19 November 2010, at the ACTL seminar: The 2010 amendments to the OECD MC and the new transfer pricing guidelines, chairman of the panel which discussed the amendments to the taxation of sovereign wealth funds.
 - 22 November 2010, forwarded comments during the seminar entitled: The meaning of 'enterprise', 'business' and 'business profits' under tax treaties and EU tax law, held in Milan.
 - 24 November 2010, at Slot Zeist, chaired a seminar on recent developments in European Taxation.
 - 16 December 2010 delivered a speech on tax consolidation and loss relief after X Holding, at the Universidad de Vigo (Spain).
 - 17 December 2010, was a member of the PhD Committee which had to assess the PhD in European Tax Law of María Cruz at the Universidad de Vigo (Spain).
- Rome. Subject: 'Tax treaties and tax avoidance: application of anti-avoidance provisions'. The IFA is the largest independent scientific tax organisation in the world. This annual congress will have more than 1,800 participants from all over the world.
- 19 November 2010, at the ACTL seminar: The 2010 amendments to the OECD MC and the new transfer pricing guidelines, presentations with an overview of the 2010 amendments to the OECD MC and the amendments regarding the taxation of sovereign wealth funds; chairman of the panel which discussed the amendments to the Transfer Pricing guidelines.

S. van Weeghel

- 26 May 2010 speaker at the seminar: ACTL seminar, Continuïteit en vernieuwing Een visie op het belastingstelsel Seminar naar aanleiding van het rapport van de Studiecommissie belastingstelsel Commissie van Weeghel
- 2 June 2010, speaker at the NOB jaarcongres
- 29 August-3 September 2010, General reporter during the annual congress of the International Fiscal Association (IFA) in

Colofon

Uitgave

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