

MPI Studies in Tax Law and Public Finance

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MPI Studies in Tax Law and Public Finance

Volume 6

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State Aid Law and Business Taxation

 Springer

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ISSN 2196-0011 ISSN 2196-002X (electronic)
MPI Studies in Tax Law and Public Finance
ISBN 978-3-662-53054-2 ISBN 978-3-662-53055-9 (eBook)
DOI 10.1007/978-3-662-53055-9

Library of Congress Control Number: 2016955414

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Printed on acid-free paper

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Preface

In November 2015, the Max Planck Institute for Tax Law and Public Finance, the Université Catholique de Louvain and the Tax Institute of the University of Liège along with Leiden University and the University of Rennes convened two interlinked events in the Palais des Académies in Brussels to discuss fundamental and specific issues of European competition law in the field of fiscal aid. The open conference “Taxation and EU State Aid Law – Current Practice and Policy Issues” was followed by the closed symposium “State Aid Law and Business Taxation: Selected Issues”. This volume consists of papers and presentations delivered in the course of the conference and the symposium. Its goal is to provide the reader with the most current account of where we currently stand with regard to the relationship between “business taxation and state aid law”.

It is no secret that this area of European competition law has risen to global prominence due to the procedures initiated by the European Commission against several European Member States in the context of harmful tax competition and aggressive tax planning. But it is also well known that the interaction between state aid discipline and national tax legislation started several decades ago and both extensive Commission practice and highly sophisticated Court jurisprudence in this field have contributed to transform the prohibition on selective aid under Art. 107 (1) of the Treaty on the Functioning of the European Union (TFEU) not only into a substantial constraint to tax sovereignty in the Member States of the European Union but also into a powerful policy tool in the hands of the European Commission (which can take action under Art. 107 and 108 of TFEU, without the necessity to consult with the Council or to establish proceedings in the Court of Justice of the European Union (CJEU)). In April 2016, the European Commission emphasized the high relevance of state aid law in the field of business taxation when it published its long-awaited notice on the notion of state aid under the Treaty.

Against this background, this volume tries to present both foundational questions—regarding central notions like “advantage”, “selectivity” and “discrimination”—and recent challenges stemming from the practical application of state aid control, e.g. in highly discussed sectors like energy taxation, research and

development incentives or leasing transactions. Given the state of the debate in the European Union and beyond, most contributions in this volume focus on different aspects of international taxation seen through the lens of Art. 107(1) of the TFEU: double taxation and double non-taxation, tax avoidance, beneficial ruling practice, transfer pricing, harmful tax competition, the code of conduct and so on. In this respect, this volume claims to contain not only the most recent account of state aid discipline in fiscal matters at large but also the first extensive multi-voice debate on the interaction between state aid law and international tax cases.

We were happy that many high-level speakers and further participants from the European Commission, academic and judicial institutions and private practice were willing to join us for two days, sharing their views and proposals for the future development of this area. The editors of this book hope that the findings presented in this volume are well received by an international audience, giving rise to further debate on the requirements of the European tax order when Member States are willing to deliver aid through the tax code to the benefit of their national and international business.

The editors express their gratitude to Leopoldo Parada for his diligent work on the publication of this book.

Liège, Belgium
Munich, Germany
Louvain-la-Neuve, Belgium
June 2016

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Contents

Part I Fundamentals

Tax Legislation and the Notion of Fiscal Aid: A Review of 5 Years of European Jurisprudence	3
Wolfgang Schön	
State Aid and Taxation: Selectivity and Comparability Analysis	27
Michael Lang	
Tax Incentives Under State Aid Law: A Competition Law Perspective . . .	39
Thomas Jaeger	
Comparing Criteria: State Aid, Free Movement, Harmful Tax Competition and Market Distorting Disparities	59
Peter J. Wattel	

Part II International Taxation and Harmful Tax Competition

Reforming the Code of Conduct for Business Taxation in the New Tax Competition Environment	75
Valère Moutarlier	
Anti-avoidance Measures and State Aid in a Post-BEPS Context: An Attempt at Reconciliation	85
Edoardo Traversa and Pierre M. Sabbadini	
State Aid Benchmarking and Tax Rulings: Can We Keep It Simple? . . .	111
Raymond Luja	
Double Taxation Relief, Transfer Pricing Adjustments and State Aid Law	133
Werner Haslehner	

Double Taxation Relief, Transfer Pricing Adjustments and State Aid Law: Comments 163
Rita Szudoczky

The Cat and the Pigeons: Some General Comments on (TP) Tax Rulings and State Aid After the Starbucks and Fiat Decisions 185
Peter J. Wattel

Part III Sector-Specific Aspects of Preferential Taxation

Energy Taxation and State Aid Law 197
Marta Villar Ezcurra

Intellectual Property, Taxation and State Aid Law 221
Cécile Brokelind

The Recovery Obligation and the Protection of Legitimate Expectations: The Spanish Experience 247
Juan Salvador Pastoriza