

Do recent tax treaties give too much attention to limitation on benefits and anti abuse rules and too little to the avoidance of double taxation?

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Agenda

- A Introduction**
- B The development and abuse of tax treaties**
- C International trends**
- D Treaty developments internationally**
- E The case study of Cyprus**
- F Concluding remarks**

» Understanding the topic

“Do recent tax treaties give too much attention to limitation on benefits and anti abuse rules and too little to the avoidance of double taxation?”

» 3 main elements

» Very wide

» Involves both domestic and international aspects

» Sources and information considered

- » OECD reports
- » European Commission papers
- » OECD Model Convention and Commentary
- » Recent tax treaties concluded internationally
- » Articles and other publications
- » International case law
- » Own experience

The development and abuse of tax treaties

- » **Focus on taxation of multinational enterprises**
- » **Trend**
 - » Revision of domestic corporate tax regimes
 - » Revision of existing tax treaties
- » **Governments:**
 - » Compete to attract and preserve FDI
 - » In need of additional revenues
- » **Factors affecting the development of tax treaties**
 - » Legal
 - » Political
 - » Economic
 - » Market conditions



The development and abuse of tax treaties

» June 2012 G20 Summit – Key fiscal issues:

- » Erosion of tax base; and
- » Profit shifting

» Nature and purpose of tax treaties

» Abuse of treaties and treaty shopping

» Anti-avoidance rules

- » Under domestic law
- » Under treaties



G20 Summit, Los Cabos, Mexico

International trends

To fight tax avoidance and evasion practices, by:

- » Revision of existing tax treaties
- » Exercising higher level of scrutiny of transactions
- » Introducing anti-avoidance rules









Domestic law	Tax treaties
<ul style="list-style-type: none">» CFC rules» Substance over form» GAARs	<ul style="list-style-type: none">» Beneficial ownership» Place of Effective Management» Limitation of Benefits» Exchange of Information

Treaty developments internationally





- » **India** considers revision of pre-2004 tax treaties
- » **UK** tax treaties:
 - » Exchange of information / assistance in collection of taxes (Norway)
 - » Updated anti-abuse measures (Spain)
- » **Luxembourg** tax treaties
 - » Specific anti-abuse clauses (Czech Republic / Germany / Poland)
- » **Netherlands** tax treaties:
 - » Main purpose (United Kingdom / Switzerland)
 - » Limitation on benefits (Japan)
 - » Application of domestic anti-abuse rules (Germany)

Why Cyprus?

Examples:

- »   Protocol to the Cyprus – Russia treaty
- »   Cyprus – Ukraine treaty
- »   Cyprus – Germany treaty
- »   Cyprus – Spain treaty

The case study of Cyprus

	 Russia	 Ukraine	 Germany	 Spain
Limitation of Benefits	√	X	X	X
Beneficial Ownership test	√	√	√	√
Place of effective management	√	√	√	√
Exchange of Information	√	√	√	√
Capital Gains	√	X	√	√
Application of domestic anti-abuse rules	X	X	√	√

√ = Introduction of new provision / Revision of existing provision

Concluding remarks

- » Taxpayers rely on tax treaties to reduce or even avoid taxes
- » Tax authorities in pursuit of increased tax revenues
- » Double non-taxation and prevention of tax avoidance from within tax treaties
 - » Exchange of information provisions
 - » Disclosure cooperation between treaty partners
 - » Limitation on benefits clauses
 - » Anti-abuse provisions
- » Avoidance of double taxation
- » Anti-abuse provisions cannot narrow down scope of treaties



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YES, but

Concluding remarks

- » Ought to give attention, BUT ...
- » Balance to be preserved between domestic laws and tax treaties
- » DTTs promote cooperation between states
- » Purpose of tax treaties
 - » Dual purpose
 - » But is ensuring effective taxation also a purpose? 
- » Neither to allow abuse by taxpayers nor to allow abuse by contracting states
- » Problematic domestic tax law or tax treaty network?

Thank You!

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