

Project Title: Taxation of Non-Residents

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Abstract:

Taxes constitute the states' major revenue source and guarantee their functioning leading to social equality, peace and economic growth. A state is allowed to design its tax system the way it considers it appropriate. This general assumption is based on the principle idea of state sovereignty in international law. However, the state's freedom to draft its tax law is not completely unrestricted. While it is commonly accepted that resident tax payers can be taxed on their world-wide income, the question whether and to which extent non-resident tax payers can be taxed is disputed. In a globalized economy defining the legal basis on which ground a non-resident should be taxed and how this tax liability is enforced, poses a great challenge to national legislators.

Hence, this research project will by means of legal interpretation – structured in three parts – answer eight research questions and establish which limitations to the states' right to tax non-residents exist. The **first part** will lay down and explore the fundamentals of a state's jurisdiction to tax in international law. Thus, the first decisive step within the research project will be taken by identifying the existing concepts found in national tax laws for taxing non-residents. **Part two**, which forms the project's core, analyzes the limitations set by international and European law for the taxation of non-residents. The fundamental question is, whether international law requires the existence of a certain genuine link to the state, which assumes a right to tax the non-resident. Can a state tax a non-resident on his world- wide income, although only this income shows no economic or physical link to this state? For the purpose of answering this question, the existing concepts for taxing non-residents under national law and the rules granting taxing rights to the source state vis-à-vis non-resident tax payers in international tax law will be analyzed. In addition, it will be analyzed which limitations to taxing non-residents are foreseen by European law. Both steps will take into account the limitations set by the need to effectively enforce the tax liability. Depending on the whether the “genuine-link” criterion is found to form binding international law, **the third part** will establish a conceptual framework for drafting taxation rules for non-resident tax payers, which are both in line with international and European tax law as well as the underlying policy intention to realign value creation and taxation. **This research project thus will give answers to pressing questions both of great academic and political importance.** Hence, the answers found to the research questions will foster the academic debate and will give policy makers clear guidance when drafting new tax rules for non-residents.

Keywords: State Sovereignty, Jurisdiction to Tax, International Tax Law, European Tax Law, Non-Residents, Customary International Law