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Exemption Method and Credit Method

The Application of Article 23 of the OECD Model

24

European and International
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Exemption Method and Credit Method

Why this book?
The method article of any tax treaty plays an essential role in avoiding juridical double taxation. It determines the extent to which the residence state refrains from taxing an item of income if both contracting states may tax according to the distributive rules of the treaty. Calculating the respective relief can be challenging, as the wording of both articles 23A and 23B of the OECD Model leaves significant room for interpretation. In the European Union, such interpretation is made even more difficult because the application of the method article needs to comply with EU law, in particular with the fundamental freedoms and the State aid rules. Finally, the method article of the OECD Model has – in the aftermath of the Base Erosion and Profit Shifting Project – undergone adaptations, the impact of which requires further analysis.

This book aims to provide an in-depth analysis of all the current issues related to the application of articles 23A and 23B of the OECD Model. The topics discussed include:

- the method article and unilateral measures to avoid double taxation;
- the method article and allocation conflicts;
- conflicts of qualification under articles 23A(1) and 23B(1) of the OECD Model;
- the credit method and different taxes on income and on capital;
- the exemption method with proviso safeguarding progression; and
- relief from double taxation and EU State aid law

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Preface

If the application of the distributive rules of a tax treaty following the OECD Model Tax Convention (OECD Model) does not suffice to avoid juridical double taxation, the method article of the treaty requires the residence state to provide relief. To what extent such relief is granted chiefly depends on the method applied by the residence state to that effect. Articles 23A and 23B of the OECD Model include the two most prominent methods to avoid juridical double taxation: the exemption with progression method and the ordinary credit method. Since the wording of both articles is rather broad, the calculation of the relief requires a comprehensive interpretation of the method article in light of the rest of the treaty and, in some respects, also a recourse to the domestic law of the residence state.

So far, little research has focused on the details of the calculation of double taxation relief according to articles 23A and 23B of the OECD Model. In addition, the impact of the changes to the wording of both articles in the course of the 2017 OECD Model update following the Base Erosion and Profit Shifting Project combined with the changes to the Commentary on the OECD Model requires a closer scientific examination.

In order to address these matters alongside other important and current issues related to the application of article 23 of the OECD Model, the 28th Viennese Symposium on International Tax Law was held on 14 June 2021. Given the current situation regarding COVID-19, the symposium was held physically at WU (Vienna University of Economics and Business) as well as online. Professors from Austrian and foreign universities, tax researchers from WU and tax experts from various countries participated in the symposium. The speakers have since completed papers using input received during the symposium, and these papers have become the chapters of this book. Each author offers an in-depth analysis, along with the most recent scientific research on their topic.

The editors would like to thank Hedwig Pfanner, Karina Hertle and Nicholas Pacher, who were the main people responsible for the organization of the symposium and who made essential contributions to the preparation and publication of this book. The editors would also like to thank all of the authors who have patiently revised their contributions in order to enhance the quality of the book, and Dr Julienne Stewart-Sandgren, who contributed greatly with her linguistic editing of the authors' texts.

Above all, our sincere thanks goes to the publishing house at IBFD for agreeing to include this publication in its catalogue.

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