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CHAPTER 13

Are Football Referees Sportspersons?

Michael Lang*

§13.01 THE JUDGMENT OF THE BUNDESFINANZHOF (GERMAN FEDERAL FINANCE COURT) OF 20 DECEMBER 2017, I R 98/15

Bertil Wiman is not only a highly esteemed colleague but also an endearing friend. Ever since we became acquainted more than twenty years ago, we have collaborated with each other in various international scientific associations and networks, worked together on joint projects, and also spent several cheerful hours with each other. Therefore, I am particularly pleased to contribute to a commemorative volume to be published in *Bertil's* honour.

My considerations will be focusing on a judgment of the German Tax Court (Bundesfinanzhof, BFH) published a few months ago regarding the treatment of football referees in double taxation conventions.¹ The analysis of court judgments plays an important role in jurisprudence, and for a good reason: The judgments of courts must be subject to critical reflection so that they can have their case law confirmed, or to correct and further advance such case law. Even when a court adheres to its case law despite criticism, it is important to be aware of objections against its lines of justification. This will allow judges to grapple with potential counterarguments in a subsequent decision and, ultimately, base their case law on an even more solid foundation. After all, in states under the rule of law, it is not only the result but – often much more – also the justification of a decision that counts. The taxpayers will find a

* I sincerely thank Mrs Desiree Auer for her support in literature research, their critical remarks, and proofreading.

1. DE: BFH judg. of 20 Dec. 2017, I R 98/15; see L. Wionzeck/M. Nöthen, *Einkünfte eines national und international tätigen Fußballschiedsrichters*, GWR, at 145, 145 et seq. (2018) and F. Schade/A. Kopec, *Der national und international tätige Fußballschiedsrichter als Gewerbetreibender*, IWB, at 439, 439 et seq. (2018).

disappointing result much easier to bear if they see that the judge did not take their case lightly but carefully weighed up all arguments.

In the field of double taxation conventions, the analysis of national court judgments in an international context is also important for another reason: Many rules in double taxation conventions are based on model conventions, often on the one created by the Organisation for Economic Cooperation and Development (OECD). Therefore, substantially identical rules often apply to the bilateral relationships of many states to each other. Yet, there is no such thing as an international tax court that would have a binding final jurisdiction for a uniform interpretation of such provisions worldwide. Double taxation conventions are interpreted in all states in which they are applied, and no guarantee exists that high courts in different states will provide identical answers to the same legal question. Therefore, it is all the more important that judgments on questions concerning the interpretation of Double Tax Conventions (DTCs) – and the logic behind them – become known beyond the borders of the country that issues them. Naturally, courts in other states are not bound by such decisions. One should, however, assume and expect that courts will study the judgments from other states when they have to rule on the same or a similar legal question. These courts should explain why they follow a certain line of reasoning, or why they reject it and choose to take a different approach. For this reason, not only the content of a decision is important for courts in other states but also the critical analysis of such a decision, so as to better assess the significance of the decision and the sustainability of its reasoning. Especially judgments issued by the German Bundesfinanzhof attract great international attention, often for good reasons: Not only is the Bundesfinanzhof called upon to decide on particularly numerous cases – compared to courts in some other states – regarding the law of double taxation conventions, its decisions are also known for their high quality. The Bundesfinanzhof studies and refers not only to its own case law and the decisions of other courts but also to the opinions expressed in the relevant literature.

Beyond that, there are also other reasons why I find the analysis of the judgment I chose to be well suited for the occasion: Germany is not only situated halfway between Sweden and Austria, it is also a country where the jubilarian himself spent time researching. Moreover, he has a good command of the German language, so he can compare my analysis with the original version of the judgment and verify how well founded my considerations are. The field of double taxation conventions lies at the core of Bertil's research work. Lastly, I found the case of the football referee to be fitting for our jubilarian: It is linked not only to Bertil's yet unchanged sporting ambitions but also to the fact that tax scholars like us often find ourselves in a similar position to that of a referee, e.g., when we issue legal opinions to facilitate the solution of legal questions that have become the subject of a dispute between two parties. It should also be pointed out that, as a UN soldier in his younger years, Bertil himself was a kind of referee, contributing towards securing compliance with the rules of the international community.

§13.02 THE JUDGMENT OF THE FINANZGERICHT

The decision of the Bundesfinanzhof is based on a case that was first decided by the Finanzgericht (tax court of first instance) Rheinland-Palatinate:² The taxpayer residing in Germany worked as a football referee, both in Germany and abroad. In addition to the games of the German national league, he also presided over World Cup games organised by the Fédération Internationale de Football Association (FIFA) and qualification games for the European Championship, the UEFA Champions League, and the UEFA Cup, all organised by the Union of European Football Associations (UEFA).

In its assessment of the tax convention issue, the Finanzgericht maintained the following:³ ‘Though it might [...] be expected that the [...] football referee does not receive any income as a “sportsperson” within the meaning of Art.17 para.1 OECD MC or Art.17 para.1 DTC Germany-Switzerland, the Senate agrees with the opinion of the Finanzgericht of Lower Saxony in its judgment of 24 November 2004, according to which a sporting activity requires, as a rule, the active participation in a competition, and a referee does not meet this requirement (*loco citato*); therefore, the same should apply to a football referee as to a tennis umpire.’

§13.03 THE APPLICABLE DTCs

The BFH, before which the case was eventually brought, initially criticised that the Finanzgericht (FG) only applied the DTC Germany-Switzerland:⁴ ‘Contrary to what the FG assumed, the payment by the international football associations resident in Switzerland does not mean that only the convention between [...] Germany and Switzerland [...] should be consulted. Instead, according to the conventions concluded with those states in which the refereed games took place and which also apply to the German business tax (see, for instance, Art. 2 para. 3(1) lit.d of the convention between [...] Germany and the Spanish State [...]) on the one hand – similar to Art.17 para.1 of the Model Convention of the Organisation for Economic Cooperation and Development (OECD Model Convention – OECD MC) – income derived by a resident of a Contracting State as a sportsperson from that resident’s personal activities as such exercised in the other Contracting State may be taxed – just as the income of entertainers – in that other State (for instance, Art. 17 DTC Germany-Spain 1966). On the other hand – where games in the Netherlands and in France are concerned -, the conventions signed with these states to avoid double taxation attribute the taxation right for income derived by a resident of a Contracting State from a personal sporting activity to the other state when the employment is exercised in the other Contracting State, without the need for a permanent establishment to be regularly available there (Art. 9 para. 2 (2) of the convention between [...] Germany and [...] the Netherlands [...]; Art. 12 para.2(2) of the convention between [...] Germany and the French Republic [...]).’

2. DE: FG Rheinland-Pfalz judg. of 18 Jul. 2014, 1 K 2552/11.

3. DE: FG Rheinland-Pfalz judg. of 18 Jul. 2014, 1 K 2552/11, para. 31.

4. DE: BFH judg. of 20 Dec. 2017, I R 98/15, paras 11-34.

The BFH was right in its criticism: The other conventions are also applicable. One must reproach the BFH, however, for not having examined these conventions separately but subsequently implying that its considerations presented with regard to Article 17 OECD MC are also applicable to these conventions, not taking notice of the fact that the formulations of the convention provisions are, indeed, different in detail and that the original versions of some of the conventions were signed even before the first version of the OECD MC was published. The BFH would have been better advised to deal with each of these conventions separately. The BFH, however, limited itself to the interpretation of Article 17 OECD MC.

§13.04 THE IMPORTANCE OF THE GERMAN TAX LAW

The role played by the interpretation provision of Article 3 paragraph 2 OECD MC in the Court's reasoning of the decision is somewhat unclear. It reads as follows: 'As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.' Ultimately, the BFH must have interpreted the relevant term of sportsperson solely on the basis of the convention. Nevertheless, its decision contains a reference to Article 3 paragraph 2 OECD MC: 'The terms "sportsperson" or "sporting activity" are not defined in the DTCs or in German law – in the corresponding provisions of the individual DTCs modelled on Art. 3 para.2 of the OECD Model Convention to be used.'⁵

In several other judgments, the BFH is clearer: According to the opinion of the BFH, Article 3 paragraph 2 OECD MC shall be understood in the sense that conventions 'should be interpreted first according to the wording and the definitions of the convention, then according to the meaning and the context of the provisions within the convention, and finally according to the definitions of national law'.⁶ In any event, the wording, the context, and the object and purpose are to be given priority. National law should only be used as the last option for the interpretation of undefined terms. There are various arguments in favour of attaching great importance to the formulation 'unless the context otherwise requires' in Article 3 paragraph 2 OECD MC.⁷ First and foremost, hastily resorting to national law for convention interpretation would result in

5. DE: BFH judg. of 20 Dec. 2017, I R 98/15, para. 36.

6. DE: BFH judg. of 26 Aug. 2010, I R 53/09, para. 14; see also BFH judg. of 25 Feb. 2004, I R 42/02, para. 14, with further examples.

7. See more on this by M. Lang, *Die Bedeutung des originär innerstaatlichen Rechts für die Auslegung von Doppelbesteuerungsabkommen, Art. 3 Abs. 2 OECD-Musterabkommen*, in: Burmester/Endres, *Außensteuerrecht, Doppelbesteuerungsabkommen und EU-Recht im Spannungsverhältnis*, Festschrift für Helmut Debatin, 283, 296 (1997).

tions are also applicable. One of these conventions separately presented with regard to sports, not taking notice of the fact that, indeed, different in detail, were signed even before the Convention would have been better advised than the BFH, however, limited itself to

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Paragraph 2 OECD MC in the present reads as follows: 'As regards the Contracting State, any term not defined by competent authorities agree to have the meaning that it has in the laws of that State prevailing at the time of the taxation.' Ultimately, the BFH has based its decision solely on the basis of the definition in Article 3 paragraph 2 of the DTCs, which are not defined in the DTCs but are individual DTCs modelled on

According to the opinion of the BFH, in the sense that conventions and the definitions of the terms used in the provisions within the scope of the 'national law'.⁶ In any event, the Convention is given priority. National law is not applied in the case of undefined terms. There is no importance to the formulation of paragraph 2 OECD MC.⁷ First and foremost, interpretation would result in

having the same term understood differently in two states. DTCs would then fail to fulfil their intended purpose, i.e. distribute taxation rights between the two states.⁸

The notion that the BFH actually based its judgment on Germany's national tax law is also indicated by some of the literature sources cited by the BFH to express its understanding of the term 'sportsperson' under the convention: The cited papers by Gosch,⁹ Holthaus,¹⁰ and Strunk¹¹ deal with the term of sportsperson in the context of the rules on limited tax liability and tax deduction. There is no reason, however, why these rules should be regarded as relevant for the interpretation of the convention. Contrary to the notion of 'entertainment', for instance, the German legislators did not intend to exploit taxation rights attributed by the convention through amendments to the national law.¹² German tax law is familiar with the term sporting activity since 1958 when it was mentioned in section 50a paragraph 4 Income Tax Act (EStG),¹³ i.e., even before the first OECD MC was created.

§13.05 THE TERM 'SPORTSPERSON' IN DTC LAW

The BFH, however, also cited some literature sources which deal exclusively with the interpretation of Article 17 OECD MC. Not all literature sources, however, are as unequivocal as the reference of the BFH may lead us to believe. For instance, though Stockmann – cited by the BFH – mentions the judgment of the Finanzgericht of Lower Saxony, according to which a tennis umpire was not qualified as a sportsperson, he otherwise suggests that Article 17 OECD MC should apply to sportspersons who publicly perform – directly or through the media – in front of an audience.¹⁴ He mentions that these are 'typically' sportspersons who take part in competitions.¹⁵ This formulation in particular, however, does not rule out that, by derogation, individuals who do not participate in competitions themselves can be qualified as sportspersons. Kempermann, also cited by the BFH, initially as well takes the view that a sportsperson within the meaning of the convention should only be an individual who participates in a public competition in the state where the activity is performed.¹⁶ Accordingly, a

8. For more detail, see M. Lang, *Art. 3 Abs. 2 OECD-MA und die Auslegung von Doppelbesteuerungsabkommen*, 8 IWB, at 281, 289 (2011).

9. D. Gosch in Kirchhof, *EStG*, 16th edition § 49 para. 26.

10. J. Holthaus, *Ausländische Künstler und Sportler im Steuerrecht*, 18 (2nd edition, nwb 2015).

11. G. Strunk in Korn, *EStG* § 50a (2018) para. 38.

12. See D. Gosch in Kirchhof, *EStG*, 16th edition § 49 paras 26-28 and regarding the term 'entertainment' see J. Holthaus, *Aktuelle Entwicklungen beim Steuerabzug für Vergütungen an beschränkt Steuerpflichtige nach § 50a EStG*, ISR, at 256, 258 (2013) with reference to DE: BFH judg. of 21 Apr. 1999, 1B 99/98.

13. See Teske, *Besteuerung beschränkt Steuerpflichtiger*, 46 DStZ, at 246, 247 (1958); see also M. Lang, *Doppelbesteuerungsabkommen und innerstaatliches Recht*, at 196 et seq (LexisNexis ARD ORAC, 1992).

14. F. Stockmann in Vogel/Lehner, *DBA*, 6th edition, Art. 17 para. 31.

15. F. Stockmann in Vogel/Lehner, *DBA*, 6th edition, Art. 17 para. 31.

16. M. Kempermann in Flick/Wassermeyer/Kempermann, *Doppelbesteuerungsabkommen Deutschland-Schweiz*, Art. 17 para. 14. See also C. Schlotter, *Einkünfte eines national und international tätigen Fußballschiedsrichters: Gewerblichkeit und abkommensrechtliche Behandlung*, ISR, at 154, 156 (2018).

referee who merely presides over competitions but does not take part in them would not be a sportsperson. At the same time, however, Kempermann considers that the decisive factor is not the quality of the competitions or the sporting event but that Article 17 covers the participation in all kinds of events that serve to entertain the spectators.¹⁷ Therefore, show fights, exhibition dances, or ice revues are covered by Article 17 OECD MC.¹⁸ The same is true for the reference to the deliberations of Article 17 OECD MC. Though the latter writes that in addition to golf caddies, race organisers, and horse owners, 'referees' are excluded from the application of Article 17 OECD MC 'since the latter merely supervise the sports activities of others but do not actively participate in them',²⁰ he then goes on to write that 'What is important, [...] is that the respective activity must in some way, either directly or indirectly (through the media), take the form of a public performance. The typical occasion for such a performance is a competition that due to the temporal limitation and local concentration normally inherent to competitions, is in fact the type of activity for which the existence of a special rule like Article 17 OECD and UN MC can be justified. Yet, although many authors have a strong focus on competitive events in this respect, it is largely accepted, and even supported by no. 6 OECD MC Comm. on article 17 ([...]), that sporting events of a mere entertaining nature (such as e.g., ice revues, show fights of wrestlers, martial arts demonstrations, and probably also toreros bullfights) are likewise covered by this provision.'²¹

Those authors who reject the qualification of the referee under Article 17 OECD MC mostly invoke the judgment of the Finanzgericht of Lower Saxony of 24 November 2004, 9K 147/00. The BFH, too, mentioned this judgment. The case at issue involved a tennis umpire:²² 'The term sportsperson is not defined in the DTCs. According to the common understanding of the term, a sportsperson is anyone who exercises a physical or mental activity that is performed for its own sake and, in most cases, in compliance with certain rules and in organisational forms specially designated for that purpose. (Stockmann in Vogel/Lehner, DBA, Art. 17 para. 31). Sport always involves an externally observable effort or (artistic) movement that is attributable to personal skill (performance) and can be improved in a targeted manner (training) (see "Sport" in Meyers Enzyklopädisches Lexikon). Since the rule of Art. 17 OECD MC applies to both sportspersons and entertainers, these two terms must be interpreted in a systematically similar manner. The term sportsperson refers only to a natural person performing publicly either directly or indirectly through the media. These are typically sportspersons taking part in competitions (see Wassermeyer in Debatin/Wassermeyer, DBA, Art. 17 para. 26). The referee presides over games in several different types of sports

17. M. Kempermann in Flick/Wassermeyer/Kempermann, *DBA Deutschland-Schweiz*, Art. 17 para. 14.

18. M. Kempermann in Flick/Wassermeyer/Kempermann, *DBA Deutschland-Schweiz*, Art. 17 para. 14.

19. See Austrian BMF of 10 Oct. 2002, K 972/2-IV/4/02: DTCs Austria/CSSR 1978, Austria/Germany 2000, Austria/Hungary 1975 and Austria/Italy 1981.

20. A. Cordewener in Reimer/Rust, *Klaus Vogel on Double Taxation Conventions*, Art. 17 para. 50.

21. A. Cordewener in Reimer/Rust, *Klaus Vogel on Double Taxation Conventions*, Art. 17 para. 49.

22. DE: FG Niedersachsen judg. of 24 Nov. 2004, 9K 147/00, paras 37-40.

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¹⁹ *Deutschland-Schweiz*, Art. 17 para.

²⁰ *Deutschland-Schweiz*, Art. 17 para.

²¹ *Austria/CSSR 1978, Austria/Germany*

²² *Convention Conventions*, Art. 17 para. 50.
²³ *Convention Conventions*, Art. 17 para. 49.
paras 37-40.

and, as an impartial observer, he must ensure that the rules are complied with, he is the
only one with the power to decide, and takes factual decisions. The referee issues
cautions, warnings, and disqualifications. He must possess a licence obtained by
examination and issued by the sports authority concerned (see "Schiedsrichter"
[referee] in Meyers Enzyklopädisches Lexikon). A referee merely monitors compliance
with the rules a sportsperson subjects himself to, and takes decisions in competitions,
but does not take part in these himself. His capacity is primarily defined according to
the licence obtained by examination, and not – like in the case of a sportsperson –
according to a performance improvable through regular training. Even though the term
sportsperson in Art. 17 OECD-MA should be broadly interpreted (see Wassermeyer in
Debatin/Wassermeyer DBA Art. 17 para. 26), it always requires the sporting activity of
an individual, usually the participation in a competition. The view that the referee may
also be performing a sporting activity (see Wassermeyer in Debatin/Wassermeyer,
DBA (version of September 2000) Art. 17 MC para. 27) is not represented in the current
commentaries. According to the definition of sport, it is not sufficient for a sportsperson
to perform sporting activities himself, but a regular participation in a competition is
required, in which the sportsperson competes with other sportspersons.'

Even if the Finanzgericht initially holds that Article 17 OECD MC covers persons
performing in public and that these 'typically' involve sportspersons who participate in
competitions, it ultimately requires the active participation in a competition. Quite a
few passages in this judgment probably apply to a tennis umpire but definitely not to
a football referee.²³ 'His capacity is primarily defined according to the licence acquired
by examination, and not – like in the case of a sportsperson – according to a
performance improvable through regular training.' Contrary to a referee in other
sports, the football referee – as the BFH stresses²⁴ – is also physically active. The
reasoning chosen by the Finanzgericht at the time is not suitable for a football referee
and should therefore not be applied to this case.

Ultimately, the context of Article 17 OECD MC is what counts: Though the term
'sportsperson' is not defined in Article 17 OECD MC – nor in any other provision of the
OECD MC – the context provides quite a few indications for the interpretation: In
Article 17 paragraphs 1 and 2 OECD MC, the term is mentioned in one breath with the
term 'entertainer'. Article 17 paragraph 1 OECD-MA contains a few examples for
'entertainers', their common characteristic being that they perform publicly.²⁵ These
examples also have an impact on the interpretation of the term 'sportsperson'.
Therefore, there are many good reasons to subsume those referees who must become
physically active – such as football referees – into Article 17 OECD MC, when they
perform in public.²⁶ Limiting especially and exclusively the term 'sportsperson' to the

²³ DE: FG Niedersachsen judg. of 24 Nov. 2004, 9K 147/00, para. 39.

²⁴ DE: BFH judg. of 20 Dec. 2017, I R 98/15, para. 35.

²⁵ F. Stockmann in Vogel/Lehner, DBA, 6th edition, Art. 17 para. 31; J. Roeleveld/ K. Tetla, in
Vann, *Global Tax Treaty Commentaries* (2017), Article 17: Entertainers and Sportspersons, IBFD
Online; K. Vogel, *Klaus Vogel on Double Taxation Conventions*, 4th edition., 1330-1331 (Kluwer
L. Intl. 2015).

²⁶ On the contrary J. Roeleveld/K. Tetla, in Vann, *Global Tax Treaty Commentaries* (2017), Article
17: Entertainers and Sportspersons, IBFD Online.

participation in a competition makes even less sense if one considers that the definitions of 'entertainer' and 'sportsperson' are often not that easy to delimit, as the elements of show fights and ice revues demonstrate. When, however, individuals engage in physical activity as part of a public performance – like, for instance, show fighters – can be defined as sportspersons, it is not understandable why other cases make the use of the term sportsperson dependent on the participation in a competition. The participation in a competition can be seen as an important indication that the sportsperson performs his activity in public.²⁷ A public performance, however, is also possible without directly participating in a competition.

§13.06 FINAL REMARK

The BGH judgment at issue is an example of how courts tend to interpret the term sportspersons and the scope of application of the distribution rules corresponding to Article 17 OECD MC in a generally restrictive manner. There are several reasons for that: Especially in the case of international sportspersons and entertainers, the application of Article 17 OECD MC leads to a situation in which several states have taxation rights. A single performance may already entitle the source state to taxation. The source states, however, are not always capable of enforcing their taxation rights. Within the scope of the exemption method, this may lead to factual non-taxation. It is only natural that authorities and even courts should not be happy with such a consequence. The cause of the problem, however, lies in the existence of a separate distribution rule for sportspersons and entertainers, which sets the threshold for taxation in the source state – i.e., the mere activity – at a low level. This provision – once the states decide to include it in their conventions – must not be deprived of its effect by way of interpretation.

Some courts argue – though not in the case of the BFH judgment under consideration – that Article 17 OECD MC is a special provision that should be interpreted in a restrictive manner.²⁸ Such arguments, however, are not convincing. On the one hand, Article 17 OECD MC is not at all the more special provision in every respect. It is arguably more specific when compared to Article 7 OECD MC and to Article 15 OECD MC, because it singles out the group of entertainers and sportspersons from each of these provisions and subjects them to a separate rule.²⁹ Vice versa, however, Article 7 OECD MC and Article 15 OECD MC can also be regarded as being the more specific provisions, because they only cover self-employed and employed persons, while Article 17 OECD MC is applicable to both self-employed and employed persons in the area of entertainers and sportspersons.³⁰ Yet even if one were to consider

27. As correctly held by Zoubek, *Notion of Sportsmen in Art. 17 OECD Model*, in: Loukota/Stefaner (Hrsg) *Taxation of Artistes and Sportsmen in International Tax Law*, at 35, 51 (2007).

28. See, for instance, Schweizer Bundesgericht judg. of 6 May 2008, II. öffentliche Abteilung, 2C_276/2007/zga.

29. J. Roeleveld/K. Tetla, in Vann, *Global Tax Treaty Commentaries* (2017), Art. 17: Entertainers and Sportspersons, IBFD Online.

30. M. Lang, *Schweizer Bundesgericht zur DBA-Auslegung*, in: Brähler/Lösel (Hrsg) *Festschrift Christiana Djanani* at 496, 500 et seq. (2008).

one considers that the defining is not that easy to delimit, as the When, however, individuals ance – like, for instance, show understandable why other cases participation in a competition. important indication that the performance, however, is also

Article 17 OECD-MA the more special provision and regard it as a derogation from the other rules, a restricting interpretation would not be justified. Derogations must not be generally given a strict interpretation. When there is a rule and a derogation, this only means that there are two provisions with a different scope of application and a different legal consequence. Each of these provisions must be interpreted according to its objective and purpose.³¹ Any assumption according to which derogations must be narrowly interpreted in case of doubt is methodically untenable.³²

It is also interesting in this case that, once again, a court has decided in favour of maintaining the taxation right of its own state. One can only speculate as to which extent courts consciously or unconsciously follow an 'in dubio pro patria' principle when deciding such cases. To be fair, however, one must also note that the German Bundesfinanzhof is probably one of those courts this accusation least applies to. In most cases, the decisions of the BFH are carefully weighed and impartial. Often enough, the BFH pits itself against Germany's fiscal authorities – not necessarily to the latter's elation.

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OECD Model, in: Loukota/Stefaner Tax Law, at 35, 51 (2007).

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31. M. Lang, *supra* n. 30, at 500 et seq.

32. On the principle, see H. Ruppe, *Die Ausnahmestimmungen des Einkommensteuergesetzes*, at 28 et seq. (Orac, 1971); G. Stoll, *Das Steuerschuldverhältnis in seiner grundlegenden Bedeutung für die steuerliche Rechtsfindung*, at 104 (Orac, 1972); M. Lang, *supra* n. 13, at 75.