

Comparative Tax Policy Seminar: EU Tax Law and Policy

Professor Georg Kofler
Spring 2019 — Course Overview

Course Code: LAW-LW.12365.001.

Number of credits: 2.

Course contents: This course covers the core elements of European Union (EU) direct tax law and policy, i.e., primary and secondary Union legislation and the impact on Member States' domestic tax laws. Following a detailed introduction to the legal and political structure of the European Union and its impact on direct taxation, we will cover

- the non-discrimination rules of the four fundamental freedoms of the Treaty on the Functioning of the European Union (TFEU), i.e., the free movement of workers, the freedom of establishment, the freedom to provide services, and the free movement of capital, and the EU Court's landmark decisions in that area;
- the EU state aid rules that prohibit Member States from granting selective (tax) benefits to enterprises (we will also discuss the current decisions of the EU Commission with regard to potential state aid granted to Apple, Amazon, Starbucks, Fiat, and McDonald's and the US response to those proceedings);
- the direct tax directives, e.g., in the area of anti-tax avoidance, cross-border profit distributions and payments of interest and royalties, dispute resolution, and exchange of information, and their impact on tax planning and EU group structures;
- the EU Charter of Fundamental Rights and its impact on taxation; and
- recent EU proposals and initiatives, e.g., the work on the Common (Consolidated) Corporate Tax Base and the EU's external strategy (e.g., with regard to the EU "black list" of uncooperative third countries).

Learning outcomes: At the end of this course, students will be able to demonstrate a deep comprehension of EU law and its impact on direct taxation, apply EU rules to concrete cross-border tax issues, identify risks under EU state aid provisions, and understand sources, impact, and trends in EU tax policy.

Course materials: The course will be accompanied by a detailed set of slides that should lead you through all the materials covered; I will generally post the slides one or two weeks in advance of each session. In addition, you will find (hyperlinked) reading assignments and recommendations in the schedule below. The chapters in the reading assignments refer to M. Lang, P. Pistone, J. Schuch and C. Staringer (eds.), *Introduction to European Tax Law on Direct Taxation*, 5th edn., Linde Vienna 2018 (available in the bookstore). However, there are a number of other recent textbooks available on EU direct tax law (e.g., M. Helminen, *EU Tax Law – Direct Taxation 2018*, IBFD Amsterdam 2017), and you are free to use any of them instead.

Workload: Students should expect to spend, on average, approximately two hours preparing for every hour of class.

Attendance: Regular and punctual attendance at classes and active participation is required. Please e-mail me at georg.kofler@nyu.edu to request an excused absence.

#	Date	Day, Time, Room	Topics
1	Jan. 16	Wed., 4.10-6 p.m. VH 201	<p>Introduction</p> <p>Please read Chapters 1 and 2 in your textbook on the “The Sources of EU Law Relevant for Direct Taxation” and on “The Coordination of Tax Policies in the EU”.</p> <p>The Treaty on the Functioning on the European Union (TFEU) can be found here.</p>
—	Jan. 23	No class. – Legislative Monday.	—
2	Jan. 30	Wed., 4.10-6 p.m. VH 201	<p>Fundamental Freedoms</p> <p>Please read Chapter 3 in your textbook on the “The Relevance of the Fundamental Freedoms for Direct Taxation”.</p>
3	Feb. 6	Wed., 4.10-6 p.m. VH 201	<p>Please read the Court’s decisions on</p>
4	Feb. 13	Wed., 4.10-6 p.m. VH 201	<ul style="list-style-type: none"> ▪ Personal and family benefits: Schumacker and X (and ECJ-TF 4/2017) ▪ Business expenses: Gerritse and Scorpio (and ECJ-TF 2/2016) ▪ Permanent establishments: Avoir Fiscal and Saint-Gobain ▪ Cross-border dividends: Haribo and Salinen and Miljoen (and ECJ-TF 1/2016 and ECJ-TF 1/2017) ▪ Foreign losses: Marks & Spencer, Timac Agro and Bevola (and ECJ-TF 2/2015 and ECJ-TF 3/2018) ▪ Exit taxation: N and National Grid Indus (and ECJ-TF 3/2014) ▪ Horizontal discrimination: D and Sopora (and ECJ-TF 3/2015) ▪ Double taxation: Kerckhaert-Morres
5	Feb. 20	Wed., 4.10-6 p.m. VH 201	<p>EU State Aid</p> <p>Please read Chapter 4 in your textbook on the “The State Aid Provisions of the TFEU in Tax Matters”.</p>
6	Feb. 27	Wed., 4.10-6 p.m. VH 201	<p>Please read the Court’s decisions in World Duty Free, Aer Lingus and Dirk Andres.</p>
7	Mar. 6	Wed., 4.10-6 p.m. VH 201	<p>Skim the EU Commission’s Notice on Article 107 TFEU, available here.</p>
8	Mar. 13	Wed., 4.10-6 p.m. VH 201	<p>EU Charter of Fundamental Rights</p> <p>Please skim through the Charter, available here.</p> <p>Please read the Court’s decision in Berlioz as well as ECJ-TF 3/2017.</p>
—	Mar. 20	No class. – Spring recess.	—
9	Mar. 27	Wed., 4.10-6 p.m. VH 201	<p>Anti-Tax-Avoidance Directive (ATAD)</p> <p>Please read Chapter 8 in your textbook on the “The Anti-Tax Avoidance Directive”.</p> <p>Please read the ATAD, available here (ATAD 1) and here (ATAD 2).</p>
10	Apr. 3	Wed., 4.10-6 p.m. VH 201	<p>Parent-Subsidiary-Directive</p> <p>Please read Chapter 5 in your textbook on “The Parent-Subsidiary Directive”.</p> <p>Also skim through the Directive, available here.</p> <p>Please read the Court’s decision in Egiom and ECJ-TF 2/2018.</p>

11	Apr. 10	Wed., 4.10-6 p.m. VH 201	Interest-Royalties-Directive Please read Chapter 7 in your textbook on “The Interest and Royalty Directive”. Also skim through the Directive, available here .
12	Apr. 17	Wed., 4.10-6 p.m. VH 201	Dispute Resolution Please read Chapter 9 “The EU Arbitration Convention and Directive” and skim through the Convention, available here , and the Directive, available here .
13	Apr. 24	Wed., 4.10-6 p.m. VH 201	Recent EU Proposals and Developments
14	May 1	Wed., 4.10-6 p.m. VH 201	Recent EU Proposals and Developments
