



INSTITUT FÜR
FINANZ- UND
STEUERRECHT



UNIVERSITÄT
HEIDELBERG
ZUKUNFT
SEIT 1386

8th Joint Seminar: **State Aid Rules as Limits for Tax Legislators and Tax Administrations** (May 2016)

Negotiations on a Multilateral Instrument on the Prohibition of State Aid through Tax Concessions

Heidelberg, 3 May 2016

In the Tuesday afternoon session, we will have mock negotiations on the question whether or not and if so, in which form and substance a Multilateral Instrument on the Prohibition of State Aid through Tax Concessions (MIPSAT) should be implemented in an upcoming BEPS agreement.

I. Topics for negotiations

- Substantive law: What should a prohibition on certain practices of state aid look like? Should it be modelled along the lines of the Agreement on Subsidies and Countervailing Measures (ASCM), of primary EU law (arts. 107 et seq. TFEU) or should it be designed autonomously, and with specific regard to the problems of base erosion and profit shifting?
- Implementation in international or national law: Should the BEPS parties implement the regulations into binding international or national law? Or should they only endorse a soft-law instrument?
- Enforcement mechanisms: Who should decide on/overview the states' observance of the multilateral instrument? E.g., an international court, an arbitration committee, a consultation forum, a review panel ...

II. Parties of the negotiations

- The **Republic of Tongolia**, a large developing country outside the EU that depends on foreign direct investment. In order to attract investors, the Republic of Tongolia frequently grants tax credits or fixed tax rates to foreign investors. These benefits create effective tax rates that are usually considerably lower than the average tax rate due for enterprises or entrepreneurs.
- The **State of Notoria**, a small, but developed country outside the EU. Its national tax legislation contains provisions establishing an “IP box” comparable to the Dutch IP box. This regime applies to patents registered in Notoria or any other state of the world, copyrights on software, domain names, trademarks and registered designs. The regulation includes intellectual property that was not created in Notoria. It also includes intellectual property that was created before the introduction of the “IP box” legislation. Intellectual property that is held by a taxpayer residing in Notoria can be inserted in the “IP box” subject to the taxpayer’s choice. If he or she does so, only 20 per cent of the income generated directly or indirectly through the intellectual property will be taxed. The applicable tax rate is 5 per cent which is considerably lower than the average 30 per cent tax rate on ordinary income.
- The **United States of America**, a large and powerful developed country. It affirms fair conditions of international trade. At the same time, U.S. companies profit from preferential tax regimes abroad (e.g. IP boxes).
- The **EU Commission**, a sincere agent of the 28 Member States, fully aware of the heterogeneity of their economies, their tax systems and their administrative practice.

For more detailed instructions on your role, see section IV. on the following page. Please do not disclose these instructions or your strategies to members of the other parties.

III. Procedure

Each party should prepare a MIPSAT (first draft). ~~The statement concluded by specific proposal (application) how the ECJ should decide.~~ The draft should be submitted to all participants of the seminar via e-mail by April 15. On this basis, each party may refine its proposal and present a second draft by April 29, again to all participants of the seminar.

The mock negotiations will be chaired by one or two professors.