



SECOND EUROPEAN REGION CONFERENCE

MILAN, 20-21 MAY 2021 - HOTEL PRINCIPE DI SAVOIA

Mobility of work, capital, IP and business in a changing European tax environment

PROGRAMME





Mobility is the dominant theme for the 2nd Conference of the European Region of the International Fiscal Association.

The subject is explored across the several components of business activities ranging from employment to IP and capital with due consideration for business reorganizations and cross border migrations.

Mobility is of special importance to Europe due to geographical vicinity of States, approximation of cultures and identity which go beyond the European Union and EEA. However, a comparison of geographical mobility between European States and within the US shows a gap which suggests additional efforts to eliminate obstacles and facilitate the migration of business and its components.

The Conference shall address the tax issues relating to the subject. The first segment shall cover mobility of work and its corporate and personal income tax implications. The corporate income tax session shall include PE issues including the permanency threshold (under which conditions employees' temporary stay may trigger PE exposure), income characterization and determination. The personal income tax session shall address income characterization, secondment of employees, tax treaties on cross-frontiers workers and social security implications. The second segment of the conference shall consist of two break-out sessions on mobility of capital and business.

Mobility of capital shall cover rules which prevent migration of debt within MNE and review the ATAD rules on interest deduction with focus on optional regimes which Member States may introduce to make their rules more attractive. The session shall also include review of anti-abuse doctrines or provisions which may play a role when MNE allocate debt among affiliates. The alternative break out session shall discuss three recent reorganizations which have been implemented in Europe and address some tax issues. The opening of day two shall be devoted to a conversation between Heads of four Revenue Agencies on tax and mobility through the European borders.

Two simultaneous sessions on taxation of IP and services shall conclude the conference.



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Day 1 - May 20, 2021 [Thursday]

11.00-11.15 **Opening - Murray Clayson (President of IFA)**

Welcome speech - Prof. Guglielmo Maisto (President of IFA European Region)

11.15-12.45 **Plenary I - Part I**

MOBILITY OF WORK (CORPORATE TAX ASPECTS)

Chair: Jonathan Schwarz

- Physical Presence in the Source State and PE threshold
- Supervisory activities and PE
- Secondment of employees
- Attribution of PE income
- UN Model and technical services
- Corporate residence and executive mobility

The first part of the Plenary I shall cover the corporate tax ramifications of the mobility of workers focusing on activities conducted within MNEs relating to both business and staff functions (e.g. supervision of foreign subsidiaries), both through the use of contractors and employees. The panel will cover (a) PE threshold (i.e., magnitude and character of physical presence required to establish a PE); (b) if and under when supervisory activities conducted by the parent company's personnel in the country of residence of the subsidiary may constitute a PE; (c) when secondment of employees creates a PE; (d) cost, transfer pricing and VAT issues relating to employee secondment; (e) determining PE profit from worker activity; (f) interaction between PE and technical service fee treatment; (g) executive mobility and corporate residence also having regard to vertical models of governance and reporting lines by function rather than entity.

12.45-13.45 **Light Lunch**



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13.45-15.00

Plenary I – Part II

MOBILITY OF WORK (PERSONAL INCOME TAX ASPECTS)

Chair: Daniel Gutmann

- Secondment of employees
- Frontier workers and *ad hoc* treaties
- Social security
- Special regime for “impatriates”

The second part of the Plenary I shall focus on distinct issues relating to personal income tax; (a) characterization of income; (b) secondment of employees and treaties; (c) special treaties on cross frontiers workers ; (d) social security issues. A separate subject which might also be included is a review of special tax regimes for non-resident individuals taking up residency on a temporary basis to conduct employment activities.

15.00-15.15

Coffee Break

15.15-16.45

Break-out Session I

MOBILITY OF CAPITAL – RESHAPING GROUP DEBT WITHIN EUROPE

Chair: Dennis Weber

- Domestic GAAR or SAAR on group debt allocation
- Implementation of ATAD including optional provisions
- Role of tax treaties

The Break-out Session I shall address reshaping of group debt within MNE in the light of BEPS and EU ATAD which include restrictions to interest deduction. The session shall include (a) a review of trends in the application of GAAR or SAAR to group debt allocation primarily when debt is shifted from one country to another country by way of intragroup transfer of assets (b) safe harbors or other favorable rules relating to allocation of debt including the optional provisions which the ATAD permits Member States to include in the implementing legislation on an optional basis [such as the possibility for Member States: to apply the



interest limitation rules at group level; to allow, in any case, the deduction of exceeding borrowing costs up to EUR 3 million; to allow the deduction in full of the borrowing costs if the taxpayer is a standalone entity; to exclude from the scope of the interest limitation rule the borrowing costs incurred on (i) loans which were concluded before 17 June 2016, and on (ii) loans used to fund a long-term public infrastructure project where the project operator, borrowing costs, assets and income are all in the Union; to allow, under certain conditions, the deduction in full of the borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group; to allow the taxpayer, under certain conditions, to deduct the borrowing costs at an amount that reflects the ratio between the borrowing costs and the EBITDA of the group; to allow taxpayers, with certain limitations, to carry forward and back exceeding borrowing costs and to carry forward unused interest capacity; to exclude financial undertakings from the scope of the interest limitation rule]; (c) role of tax treaties if any in addressing mobility of intragroup debt (e.g., application of PPT).

15.15-16.45

Break-out Session II

MOBILITY OF BUSINESS – TRENDS ON CROSS BORDER BUSINESS REORGANIZATION

Chair: Scott Wilkie

The Break-out Session II shall provide an overview of major cross border business reorganizations which have taken place in Europe in the last 12 months using as a point of reference several actual public reorganizations of which the members of this panel are aware and with the issues raised by which they have experience. The focus of this session will be on how the ways in which multinational enterprises conduct business are “mobile” in different ways to respond to the tax landscape as it may be changing to respond to BEPS, the two Pillars and the GloBE proposals made by the OECD Secretariat, the influence of tax regulation and judicial determinations in the European Union and other circumstances that may cause businesses to relocate or recalibrate how they conduct business structurally, organize internal group transactions and have commercial exchanges with third parties within Europe, and both inbound to and outbound from Europe. These practical cases will be intended to stimulate a debate on how reorganizations have changed in response to regulatory, political and commercial forces identified with BEPS, highlighting issues concerning the taxation of cross border mergers and other ways of combining or organizing business elements, the transfer of places where business is conducted or directed, and European “inversions”, as



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well as the possible reactions to the anticipation or actual execution of realignment of enterprise as a result of “Brexit”. Issues relating to transfer of debt within the transfer of business shall be addressed under this Break-out Session II. This session will not be limited to typical organizational ways in which multinational enterprises organize and reorganize their component legally distinct elements; in keeping with the overall theme of the conference, this session will also consider less direct transactional and other ways in which multinational enterprises may recalibrate the deployment of their resources in ways that are responsive to changing political, fiscal and business dynamics even within a continuing familiar structural framework.

16.45-17.00 **Coffee Break**

17.00-17.30 **Plenary II**

SUMMARY AND CONCLUSIONS ON DAY 1

The Summary and Conclusion shall cover separately the three subjects and (a) highlight the issues of application of the current rules (b) formulate recommendations on the desirability to provide certainty to taxpayers in the application of domestic or treaty rules.

17.30-18.30 **YIN Seminar¹**

19.00 **Cocktail**

¹ For information purposes only. The subject is not related to the main theme of the Conference.



Day 2 – May 21, 2021 [Friday]

9.15-10.30 Plenary III

REVENUE AGENCIES IN CONVERSATION ON TAX AND MOBILITY THROUGH THE EUROPEAN BORDERS

Chair: Paolo Valerio Barbantini (Agenzia delle Entrate Deputy Director General – Italy)

Speakers:

Eduard Müller (Minister of Finance - Austria)

Georgios Pitsilis (Governor of Independent Authority for Public Revenue (IAPR) of the Hellenic Republic - Greece)

Hans d’Hondt (President - Service public fédéral Finances - Belgium)

Commissioners of Revenue Agencies of four European countries (Countries involved: Austria, Belgium, Greece, Italy) address the challenges raised by mobility and the balance between tax risk assessment and elimination of double taxation. The debate shall review also the work undertaken by IOTA.

Areas of discussion would be:

- Tax Administrations vis à vis the issue of mobility of income;
- Tax Administrations vis à vis digital economy and new technologies (e.g. 5G);
- Tax Administrations vis à vis specific sectors that are more affected by mobility and pose higher risk of compliance;
- Actions taken locally: actual examples of risk analysis and controls carried out in the respective countries and whether these activities might trigger and go beyond non tax issues as unfair competition with resident players;
- International cooperation: how and to what extent tax administrative cooperation can play a role in exchanging (real-time) information.

10.30-10.45

Coffee Break



10.45-12.00 Break-out Session III

MOBILITY OF IPS AND SERVICES– CORPORATE TAX ASPECTS

Chair: Robert Danon

- IP Box
- Characterization of income
- Withholding tax aspects

The Break-out Session III shall discuss issues of implementation of IP Box regimes and the way these regimes have evolved and might be further evolve in the light of the balance between residence and source taxation. The session shall also include a debate on income tax issues which may arise from the following: (i) mobility of business functions within groups; (ii) services (iii) characterization transactions related to IP (e.g. sale of IP vs license of IP) and (iv) income streams under treaties (Article 12 vs Article 7 OECD Model Convention). Similar issues of characterization regard cloud computing or streaming.

10.45-12.00 Break-out Session IV

MOBILITY OF IPS AND INCREASING SERVICITIZATION– INTERNATIONAL VAT ASPECTS

Chair: Karl-Heinz Haydl

The Break-out Session IV shall cover VAT and also Customs issues arising from transactions involving IPs and the increasing servitization of the economy. The digitalisation of the entire economy has led and will further lead to new business models and new go to market strategies, increasing the volume of cross-border transactions, impacting on their qualification as supply of goods or supply of services from a VAT perspective and leading to more complex and bundled supplies of goods and/or services. The session shall deal with these aspects looking at whether and where qualification issues from a VAT/GST perspective exist or may arise, what consequences they have for the allocation of the taxing rights for VAT/GST purposes, whether double taxation issues exist or may arise and if yes, how they can be resolved. Additionally, the session shall also address the impacts of servitization on VAT collection, and the importance of effective VAT collection mechanisms and administrative cooperation and exchange of information to ensure a level playing field for business and to safeguard VAT revenues for governments.



12.00-12.30 **Plenary IV**

SUMMARY AND CONCLUSIONS ON DAY 2 AND ON THE WHOLE CONFERENCE

12.30-13.30 **WIN Seminar²**

² For information purposes only. The subject is not related to the main theme of the Conference.