
Editorial

'The Vogel': A Commentary to the Existing Model Treaties*

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In Germany and the other German-speaking countries 'the Vogel' has already been well established for years. Now, international tax experts have the opportunity to appreciate this unique commentary to the OECD Model Treaty. In the meantime two editions have already been published. Now, Kluwer has provided a new and updated version for the English-speaking world.

Professor Klaus Vogel of the Munich University and member of the scientific committee of the International Fiscal Association (IFA) started his commentary on the existing model treaties in 1983. At this time only the commentary of the OECD itself existed. However, this was more an official interpretation of the model treaty than a commentary. Therefore, the publication of Vogel started something completely new and not available up to that time. Based on former model treaties beginning with the treaty of the League of Nations from 1928 via the first OECD Model Treaty of 1963 he commented clause by clause, section by section and sentence by sentence of the existing OECD Model Treaty of 1977. Apart from that the relevant rules of the UN model and the US treasury model are not only reproduced but also integrated in the comments.

In doing that he considered the entire tax literature and the deviations of the tax treaties concluded by Germany. Because of this scientific research and the close connections Klaus Vogel maintains to the tax practice, he produced a unique commentary of highest standard which almost immediately had been accepted by the scientists, the practitioners, and the authorities. In the German-speaking area there is no one intensively dealing with tax treaties who does not use 'the Vogel'.

As, however, the commentary was written in the German language, the use was limited to those who could read German. Now, by the support of the Dresdner Bank, an English edition has been published by Kluwer. Therefore, from now on the community of international tax experts benefit from a commentary which is unique and has no comparison in its area. However, the English edition which is congruent with a second edition in the German language, is not only a reproduction of the first edition in Germany. It has been updated and expanded.

After an introduction dealing with a search on double taxation and its avoidance, the developments and the legal frame work of the tax treaties, their mechanics of instalments, their position in international law, the methods of their interpretation, the tax treatment of qualification conflicts, and a chapter on tax avoidance Klaus Vogel deals with the OECD Model Treaty of 1977 for about 1 500 pages. But not only the OECD Model Treaty has been commented. Each article starts with a reproduction of the respective clause of the UN and the US Model Treaty as well, which are also commented and investigated to which extent they deviate from the OECD Model Treaty. As most of the existing tax treaties are based on one of these model treaties 'the Vogel' can be used for practically all jurisdictions and all tax treaties. As the commentary has first been produced for Germany, the existing German tax treaties are searched also whether they are congruent with the OECD Model Treaty and which regulations deviate from said model. All results are also presented in tables indicating the number where a detailed explanation can be found. Therefore, the reader always gets a quick overview which can be complemented easily by a sophisticated comment.

Apart from that – if necessary – the national law and its relationship for international law is described. For example, the commentary to Article 10 of the OECD Model Treaty dealing

* Klaus Vogel

– German edition: DBA-Doppelbesteuerungsabkommen, Kommentar, 2. Auflage 1990, C.H. Beck, München.

– English edition: Double Taxation Conventions Commentary, 1. Edition 1991, Kluwer, Deventer and Boston.

with the dividends describes the dividend distributions to physical persons and corporations in countries with a classic system, an imputation system, and split tax rates. Apart from that the system in the countries France, United Kingdom, Turkey, Belgium, Canada, Denmark, Germany, and Ireland is explained.

The commentary does not only deal with existing tax rules. To the benefit of a better understanding prior regulations are also commented. In the context of the suspension rules for withholding taxes on dividends Klaus Vogel – for example – deals with the re-investment clause of the former US-German Tax Treaty of 1954/65 and enumerates the entire tax literature published on that subject. That example also demonstrates that the commentary not only provides all necessary help for the application of a certain treaty but also satisfies the highest scientific demands. This is supported, too, by the tax literature which introduces each commentary to a certain article and some of the chapters. So, the commentary to Article 26 OECD Model Treaty dealing with the exchange of information provides three pages – narrowly printed – of tax literature. And an index of 40 pages with catchwords support the reader to find that part of the commentary which he is looking for.

One of the merits of the commentary, although very much focused to the German situation, is considering not only tax literature from other countries but also referring to its case law. So, the decisions of the US Supreme Court and Tax Court, the UK House of Lords, the French Conseil d'Etat and the Netherlands Hoge Raad have been integrated in the commentary. This integration may not be exhaustive, but it is far more thorough than any other publication has been.

Based on the experience within the German-speaking countries it can be expected that 'the Vogel' very soon becomes a necessary part of the library of each expert dealing with international taxation; the English edition of that book is an indispensable asset and a mandatory tool for the international tax community.