



EU TAX POLICY CONFERENCE

6-8 June 2012

Salão Nobre, Reitoria da Universidade de Lisboa

Wednesday, 6 June 2012

13:30 **Opening Session**

Paulo Nuncio (Secretary of State for Fiscal Affairs)

14:30-17:30 **Session 1: General Considerations on EU Tax Policy**

Economic Principles in the Design of Corporation Tax

Michael Devereux (Oxford University)

COFFEE BREAK

What is Tax Discrimination?

Michael Knoll (Pennsylvania University)

Thursday, 7 June 2012

10:00-13:00 **Session 2: CCCTB**

*Corporate Tax Harmonization and the Economic Impact of the
CCCTB*

Ruud de Mooij (IMF)

COFFEE BREAK

The CCCTB: Selected Legal Issues

Christiana HJI Panayi (Queen Mary, London University)

13:00-14:30 **LUNCH**

14:30-17:30 **Session 3: Tax Havens**



With Which Countries do Tax Havens Share Information?

Clemens Fuest (Oxford University)

COFFEE BREAK

***The Effect of Tax Havens in Territorial and Worldwide
Jurisdictions***

Giorgia Maffini (Oxford University)

Friday, 8 June 2012

10:00-13:00 **Session 4: VAT**

Non-Profit Organisations and VAT

Peter Melz (Stockholm University)

COFFEE BREAK

***Cross-border VAT and intra-entity 'transfers' by multiple location
entities***

Rebecca Millar (Sydney University)

13:00-14:30 **LUNCH**

14:30-17:30 **Session 5: Financial Sector Taxation**

New thinking on taxing the financial sector

Michael Keen (IMF)

COFFEE BREAK

The EU Commission's Proposal for a Financial Transactions Tax

John Vella (Oxford University)

17:30 **Closing Session**



SESSION 1: GENERAL CONSIDERATIONS ON EU TAX POLICY

Economic Principles in the Design of Corporation Tax

The UK Mirrlees review proposes an allowance for corporate equity (ACE) in corporation tax systems, primarily on two grounds: (a) it equalises the treatment of debt and equity and (b) taxes only economic rent, so is neutral with respect to decisions as to the scale of investment. These are important issues, but so are two others: (i) the location of real activity is at least partly determined by discrete choices, rather than equalising rates of return; it therefore depends on a form of average rate, rather than marginal rate, and (ii) differences in tax rates creates incentives to shift profit between countries. The ACE does not do well for either of these two issues. There is a trade-off between taking introducing an ACE and the alternative of we have witnessed in practice time and again of lowering the rate and broadening the base. For given revenue, the latter is better for addressing profit shifting and also for attracting more profitable discrete investment projects. A related broader issue is where profit should be taxed. The Mirrlees review takes it as given that the tax is basically a source-country tax. But that leaves to one side the debate on taxing the worldwide income of parents and also more radical reforms, such a taxing profit on a destination basis.

Michael Devereux is Director of the Oxford University Centre for Business Taxation, Professor of Business Taxation, and Professorial Fellow at Oriel College. He is Research Director of the European Tax Policy Forum, and Research Fellow of the Institute for Fiscal Studies, CESifo and the Centre for Economic Policy Research. He was elected President of the International Institute for Public Finance in August 2011, is Assistant Editor (Economics) of the *British Tax Review* and is on the Editorial Board of the *World Tax Journal*. Professor Devereux is a member of the UK government's Business Forum on Tax and Competitiveness, chaired by David Gauke MP, Exchequer Secretary to the Treasury. He gained his PhD in Economics at University College London. Prior to moving to Oxford, he was Professor and Chair of the Economics Departments at the Universities of Warwick and Keele. He has been closely involved in international tax policy issues in Europe and elsewhere, working with the OECD's Committee of Fiscal Affairs, the European Commission and the IMF.

What is Tax Discrimination?



Prohibitions of tax discrimination have long appeared in constitutions, tax treaties, trade treaties and other sources, but despite their ubiquity, little agreement exists as to how such provisions should be enforced or defined. This has led prior commentators to conclude that the concept is incoherent. In this Article, we draw on both traditional and modern economic theory to propose coherent guidelines for interpreting tax discrimination to require, in the alternative, locational neutrality, savings/leisure neutrality, or competitive neutrality. Furthermore, we argue that in common market contexts, such as the European Union, nondiscrimination provisions should be interpreted to promote competitive neutrality by preventing states from putting residents at a tax-induced competitive advantage or disadvantage relative to nonresidents. We show that, contrary to the dominant view, since maintaining a level playing field between resident and nonresident taxpayers does not necessarily require equal taxation of residents and nonresidents, courts and tax authorities cannot simply compare effective tax rates to root out tax discrimination. Instead, more subtle analysis is required. That analysis, however, produces simple rules of thumb that provide states and courts with clear direction in writing tax laws and evaluating challenges to those laws.

Michael Knoll is the Theodore Warner Professor of Law at the University of Pennsylvania Law School. Professor Knoll is also Professor of Real Estate at the Wharton School and Co-director of the University's Center for Tax Law and Policy. Professor Knoll, who joined the University of Pennsylvania faculty from the University of Southern California Law School in 2000, teaches courses in corporate finance and taxation in the Law School, the Wharton School, and the Wharton Executive Program. He is also an affiliate of the Zell/Lurie Real Estate Center at the Wharton School, and the editor of *Forensic Economic Abstracts*, an electronic journal published by the Social Science Research Network. Professor Knoll's undergraduate and J.D. degrees are from the University of Chicago. He also earned a Ph.D. in Economics at the University of Chicago. In 1990, he joined the USC Law faculty as an Assistant Professor, and in 1995 he was promoted to full Professor. He has been a Visiting Professor at Boston University (1996), Penn (1998-99), Georgetown (1999), Virginia (2000), and Columbia (2009). Professor Knoll was also a John M. Olin Senior Research Scholar at Columbia (1996-97), a Visiting Scholar at NYU (1996-97), a John M. Olin Distinguished Visiting Professor of Law at Toronto University (1996), and a John Raneri Research Fellow at the Australian



School of Taxation and Business Law, University of New South Wales (2011). Before entering academia, Professor Knoll clerked for the Honorable Alex Kozinski, U.S. Court of Appeals, Ninth Circuit, served as legal advisor to two vice chairmen of the U.S. International Trade Commission, and practiced law. Professor Knoll has published extensively in the fields of corporate finance, taxation, and real estate finance.

SESSION 2: CCCTB

Corporate Tax Harmonization and the Economic Impact of the CCCTB

This paper explores the economic consequences of proposed EU reforms for a common consolidated corporate tax base. The reforms replace separate accounting with formula apportionment as a way to allocate corporate tax bases across countries. To assess the economic implications, we use a numerical computable general equilibrium (CGE) model for Europe. It encompasses several decision margins of firms such as marginal investment, FDI decisions, and multinational profit shifting. The simulations suggest that consolidation does not yield substantial welfare gains for Europe. The variation of effects across countries is large and depends on the choice of the apportionment formula. Consolidation with formula apportionment does not weaken incentives for tax competition. Tax competition instead offers a rationale for rate harmonization, in addition to base harmonization

Ruud de Mooij is Senior Economist in the Tax Policy Division of IMF's Fiscal Affairs Department. Before joining the IMF, he was Professor of Public Economics at Erasmus University Rotterdam. While working at the IMF, Ruud is currently also a research fellow at the University of Oxford and at the CESifo network in Munich, and a policy-watch editor for *International Tax and Public Finance*.

The CCCTB: Selected Legal Issues

This presentation examines the legal aspects of the Commission's draft plans to introduce a Common Consolidated Corporate Tax Base (CCCTB) for EU group companies. It looks upon the basic features of the draft proposal such as the rules for becoming a CCCTB group, formulary apportionment, loss relief, intra-group transfers, reorganisations, the administration of the new



system, taxation of inbound and outbound investment, and anti-abuse rules. The presentation also examines the application of enhanced co-operation in this context and considers how the rules of the CCCTB will be modified vis-à-vis non-CCCTB Member States. This presentation is based on the research that the speaker has done in the area, which was published by the UK's Institute for Fiscal Studies last December.

Christiana Panayi is a senior lecturer in Tax Law at Queen Mary, University of London. She teaches on the EU Tax Law, International Tax Law, Taxation Principles and Concepts, and UK Business Taxation courses of the LLM Programme. Christiana is also a researcher at the Institute for Fiscal Studies. Her report '[The Common Consolidated Corporate Tax Base and the UK tax system](#)' examines the effect of the Common Consolidated Corporate Tax Base on the UK tax system for the Tax Law Review Committee and was published in 2011. Furthermore, she is an external examiner for the University of Dundee and University College Dublin. She studied at Oxford University for the BA in Jurisprudence and for the BCL. She also has a PhD from the London School of Economics. Her doctoral thesis entitled "Double Taxation, Tax Treaties, Treaty Shopping and the European Community" won the 2007 tax thesis competition conducted jointly by the European Commission and the European Association of Tax Professors, and was published by Kluwer Law, EUCOTAX Series in 2007. Christiana is a solicitor of England & Wales and an advocate of the Cyprus Supreme Court. Before joining Queen Mary, she worked for Allen & Overy, and is also a member of the Law Society and the Cyprus Bar Association. Christiana Panayi has published extensively in the area of EU and International Tax Law. She speaks regularly at tax conferences and teaches abroad, and has lectured at NYU, Cambridge University and Boston College.

SESSION 3: TAX HAVENS

With Which Countries do Tax Havens Share Information?

In recent years tax havens and offshore financial centres have come under increasing political pressure to cooperate with other countries in matters of taxation and efforts to crowd back tax evasion and avoidance. As a result many tax havens have signed tax information exchange



agreements (TIEAs). In order to comply with OECD standards tax havens are obliged to sign at least 12 TIEAs with other countries. This paper investigates how tax havens have chosen their partner countries. We ask whether they have signed TIEAs with countries to which they have strong economic links or whether they have systematically avoided doing this, so that information exchange remains ineffective. We analyse 555 TIEAs signed by tax havens in the years 2008-2011 and find that on average tax havens have signed more TIEAs with countries to which they have stronger economic links. Our analysis thus suggests that tax havens do not systematically undermine tax information exchange by signing TIEAs with irrelevant countries. However, this does not mean that they exchange information with all important partner countries.

Clemens Fuest is Professor of Business Taxation at the Saïd Business School, University of Oxford, and Research Director of the Oxford University Centre for Business Taxation. He is a research fellow of CESifo and IZA and a member of the European Academy of Sciences and Arts. He is also a member of the Academic Advisory Board of the German Federal Ministry of Finance. He has an undergraduate degree in economics from the University of Mannheim and a doctorate in economics from the University of Cologne. Prior to Oxford, he was a lecturer at the University of Munich and a professor of economics at the University of Cologne. His current research focuses on the implications of globalisation and European integration for tax policy and the impact of taxes on firm behaviour.

The Effect of Tax Havens in Territorial and Worldwide Jurisdictions

Using consolidated firm-level accounting data from ORBIS (2003-2007) for 15 OECD countries, this paper compares the tax burden of companies headquartered in worldwide countries with that of companies headquartered in territorial countries. The tax burden is measured by a marginal effective tax rate (METR) and, employing a new methodology, by the marginal effective tax base (METB). The latter controls for statutory corporate tax rates. A higher METR for entities headquartered in worldwide jurisdictions is explained by higher corporate statutory tax rates. There is not statistically significant difference in tax burdens across worldwide and territorial countries if the METB is considered. Using corporate presence in tax havens, the paper also investigates the vulnerability of territorial jurisdictions to tax avoidance. The results show that offshore low-tax



operations reduce the METR and the METB of multinationals more in territorial systems than in worldwide systems.

Giorgia Maffini is a Research Fellow at the Oxford University Centre for Business Taxation since October 2006. She is also a tax consultant for the Law Firm Belluzzo and Associates LLP (London) and a visiting lecturer at Bocconi University (Milan) where she teaches a course on tax planning. She previously worked as an economist for the Centre for Tax Policy and Administration (CTPA) at the Organization for Economic Co-operation and Development (OECD) in Paris. Giorgia's main area of research is taxation. She has worked on the incidence of the corporate income tax on wages, as well as on transfer-pricing issues affecting productivity measurement. Giorgia has also been interested in the effects of tax incentives for savings. Recently, she has been investigating the effect of tax haven operations on tax liabilities and taxation issues in developing countries. Giorgia holds a PhD in Economics from the University of Warwick (UK). She received a BSc in Economics and Social Sciences (DES) from Bocconi University, Milan (summa cum laude), a Master's in Economics from University College of London (UCL), and a Ph.D. in Public Finance by the University of Pavia (Italy).

SESSION 4: VAT

Non-Profit Organisations and VAT

In the European Union NPOs normally are exempted from VAT, as stated in articles 132 and 134 of the VAT Directive. The exemptions are applicable to certain activities and normally only if certain conditions are met. Some Member States seem to have stretched the exemptions further in their VAT acts. The most important principle to discuss is the condition of neutrality between activities carried out by potentially exempt NPOs and commercial enterprises. Exemption from output VAT also means no deduction for input VAT is granted. This is normally systematically correct and does seldom create cascading effect because the NPOs normally are final producer, however, in some situations, deductions may be justified.



Peter Melz is professor of fiscal law at the Faculty of Law, Stockholm University. There is member of the tax group at Stockholm Centre for Commercial Law and head of the Department of Law. He has carried out research in a number of fields. His main contribution in the VAT field is a monograph from 1990. On the subject taxation of NPOs he has written a number of articles and he has been an expert in Government Committees about both VAT and income taxation of NPOs. For the moment he mostly is working with corporate taxation, being a member of a Government Committee which should propose a more neutral taxation of equity and debt financing of corporations.

Cross-border VAT and intra-entity 'transfers' by multiple location entities

The *OECD International VAT/GST Guidelines* set out two key principles that should drive the design of cross-border consumption tax rules:

- “For consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption”; and
- “The burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation.”

The first principle prescribes the destination principle as the fundamental jurisdictional basis for imposing a consumption tax while the second acknowledges that VAT is an indirect consumption tax, the burden of which is intended to fall on final private consumption rather than on production. This paper will examine one small aspect of the cross-border application of VAT, focussing on the problematic question of cross-border intra-entity ‘transfers’. Such transfers create a tension between different aspects of ‘neutrality’. In one sense, taxing inbound intra-entity transfers enhances neutrality by ensuring that untaxed ‘offshore’ services are not preferred over ‘onshore’ taxed services. But in another sense such tax offends neutrality because it taxes transfers from offshore establishments but not transfers between two domestic establishments of the same entity. In the European context, the CJEU decision in *Ministero dell’Economia e della Finanze, Agenzia delle Entrate v FCE Bank plc* (Case C-201/04) prevents the imposition of VAT on such transfers, which cannot be treated as supplies of services for VAT purposes. Such restrictions do not apply in many non-EU VAT/GST laws and this paper will show how the New Zealand and Australian GST laws, using different mechanisms, attempt to tax such inbound transfers without offending neutrality.



Rebecca Millar is an Associate Professor at Sydney Law School, where she specialises in Australian GST and comparative VAT law. Since 2005, she has been regularly engaged to design and draft VAT laws for developing countries under the technical assistance program of the International Monetary Fund and/or the World Bank. She is an academic advisor to the secretariat of OECD Working Party 9, assisting in the work to develop the OECD *International VAT/GST Guidelines*. She has been a member of the Australian Taxation Office Indirect Tax Rulings Panel and was on the expert panels for the Australian Board of Taxation's *Review of the Legal Framework for the Administration of the GST* and *Review of the Application of GST to Cross-Border Transactions*. Prior to becoming an academic in 2002, she worked in practice for ten years, including a period with Ernst and Young, where she worked on GST implementation between 1999 and 2002.

SESSION 5: FINANCIAL SECTOR TAXATION

New thinking on taxing the financial sector

The years since the financial crisis have brought both new thinking, and innovative action, in the taxation of the financial sector. The presentation will review both theory and experience. Key issues covered will include: Does interest deductibility lead banks, as has been shown to be the case for non-financial firms, to take on excess leverage? Can bank taxes play a role in addressing externalities from bank failures and rescue? Is there a case for adopting a Financial Activities Tax to alleviate distortions from the VAT exemption of financial services, and if so how should it be designed? Are generalized financial transactions taxes desirable? How are the new bank taxed adopted in many countries performing?

Michael Keen is Deputy Director of the Fiscal Affairs Department of the International Monetary Fund, where he was previously head of the Tax Policy and Tax Coordination divisions. Before joining the Fund, he was Professor of Economics at the University of Essex and visiting Professor at Kyoto University. He was awarded the CESifo-IIPF Musgrave prize in 2010, delivered the 2012 Chelliah lecture at NIPFP in Delhi, is Honorary President of the International Institute of Public Finance (of which he was elected President from 2003 to 2006), and in 2008 was ranked the world's leading



author in public economics journals. He has led technical assistance missions to nearly thirty countries on a wide range of issues in tax policy, and consulted for the World Bank, European Commission, and the private sector. He has served on the Board of the National Tax Association in the U.S., and on the editorial boards of *American Economic Journal: Economic Policy*, *International Tax and Public Finance* (of which he was joint founder), *Journal of Public Economics*, the *Review of Economic Studies* and many other journals. He is co-author of books on *The Modern VAT*, the *Taxation of Petroleum and Minerals*, and *Changing Customs*. Recent publications also appear in the *American Economic Review*, *Economic Policy*, the *Journal of Public Economics*, *Journal of Development Economics* and the *National Tax Journal*.

The EU Commission's Proposal for a Financial Transactions Tax

This presentation assesses the proposal by the European Commission for an EU-wide FTT. It starts by looking at the design of the proposed FTT before moving on to the objectives it is meant to achieve. Two questions are asked in relation to each objective: (i) is the objective worth pursuing? (ii) is the FTT the most adequate tool to obtain it? The conclusions reached are that a case can be made for pursuing some objectives but not others, and the FTT is not the most adequate tool to obtain them.

John Vella is a Senior Research Fellow at the Oxford University Centre for Business Taxation and a member of the Faculty of Law at the University of Oxford. John first studied law at the University of Malta, obtaining a BA and an LL.D. He was admitted to the Maltese bar and practiced briefly. He then obtained an LL.M and a PhD from the University of Cambridge. Following the completion of his PhD he joined the Faculty of Law at the University of Oxford as Norton Rose Career Development Fellow in Company Law before moving on to the Oxford University Centre for Business Taxation. John has been a Program Affiliate Scholar at New York University and has acted as a co-arbitrator in a tax dispute before the ICC International Court of Arbitration. In November 2011 he gave evidence before the House of Lords EU Sub-Committee A (Economic and Financial Affairs and International Trade) on Financial Transaction Taxes. His recent research has focused on revenue authorities' discretionary powers and the taxation and regulation of the financial sector in the aftermath of the financial crisis.