

Explicit Interpretation References to the OECD and UN Commentaries in the International Tax Treaty Network

Conceptual Framework & Methodology

- What is the relation between the OECD and UN Commentaries and Articles 31-32 of the Vienna Convention?
- Can the OECD and UN Commentaries be regarded as a legally binding means of interpretation?
- How is the relevance of the OECD Commentaries for tax treaty interpretation affected by observations, reservations and positions and how does disagreement expressed to the UN Commentaries affect their relevance for tax treaty interpretation?
- Which version of the OECD and UN Commentaries should be regarded as relevant for tax treaty interpretation and what weight can be attributed to different versions of them?
- How is the legal status of the OECD and UN Commentaries affected by Explicit Interpretation References?
- Examination of all tax treaties in force available at the IBFD Tax Research Platform (around 3,600 treaties), 81 general interpretation references to the OECD and UN Commentaries, analysis on a per-country level

Austria & Belgium

- 33 general interpretation references to the OECD and UN Commentaries in the Austrian tax treaty network
- First state to adopt this treaty practice
- Combination of a general expectance of the OECD and UN Commentaries' relevance and a reference to the VCLT
- 9 general interpretation references to the OECD Commentaries in the Belgian tax treaty network
- Legal bindingness of the OECD Commentaries mostly only for the tax administration

The Netherlands & Other Noteworthy Cases

- 11 general interpretation references to the OECD Commentaries in the Dutch tax treaty network
- General legal bindiness of the OECD Commentaries including later amendments in several instances
- No impact on the legal status of the OECD Commentaries in the Mexican provisions, as well as between Guernsey, Jersey & the Isle of Man
- Rather clear provisions between these islands and the UK
- Several specific interpretation references

General Observations on Explicit Interpretation References to the OECD and UN Commentaries in the International Tax Treaty Network

- Explicitly referring to the OECD and UN Commentaries in tax treaties as a potentially relevant state practice for creating customary international law
- Too few references in order to establish a general and consistent state practice
- *Opinio iuris* requirement most likely not met either
- No impact on the concept of acquiescence as the agreement on the OECD and UN Commentaries is explicit and therefore by definition not tacit
- Two possible legal consequences of general interpretation references to the OECD and UN Commentaries in the international tax treaty network: Legal bindingness of these instruments or no imposition of a legal status these instruments wouldn't have without being referred to explicitly

