



LUND UNIVERSITY
School of Economics and Management



WESTFÄLISCHE
WILHELMS-UNIVERSITÄT
MÜNSTER



3rd PhD Seminar Indirect Taxes

13 May 2015, Durham (UK)

Welcome to the 3rd International PhD seminar on Value Added Tax and other Indirect Taxes, which this year takes place in Durham Law School, Durham University. The first two editions were held on April 29-30, 2013 at Lund University (Sweden), and May 6-7, 2014 at Université Catholique de Louvain (Belgium). We hope you enjoy this year's event, and look forward to welcoming in Muenster University Germany in 2016!

PROGRAMME / SPEAKERS

9:00 WELCOME

9:15 SESSION 1: Research in Indirect Taxes

Access Taxpayer Data for Research – HMRC Datalab

Manpreet Khara (HMRC)

Excises: The Elasticity of Alcohol Demand

Joao Sousa (HMRC)

- 10:00 SESSION 2: Legal Foundations in VAT
- Formalism in Tax Law and its Limits: Some Remarks on Formal Obligations Based on Indirect Taxation*
- Paweł Mikuła (Jagiellonian University Cracow)
- The identification of taxable person in the VAT system*
- Maria Teresa Sutich (University of Bologna)
- 12:00 SESSION 2: VAT and Other Indirect Taxes
- Retroactive Changes in VAT and Other Consumption Taxes - An Introduction to Selected Research Issues*
- Eero Männistö (University of Helsinki)
- 13:00 Lunch Break
- 14:00 SESSION 3: Exclusions from VAT Base
- An Effective VAT Treatment of Small and Medium Enterprises*
- Justin Mastaki (Université Catholique de Louvain)
- Is Research and Development Taxable Under VAT?*
- Jasmin Kollmann (Vienna University of Economics and Business)
- 16:00 END OF SEMINAR
- 19:00 DINNER (Palatine Restaurant, Palatine Centre)

LIST OF DOCTORAL SPEAKERS

Jasmin Kollmann

Is research and development taxable under VAT?

Vienna University of Economics and Business

Supervised by: Professor Alexander Rust

My current research focus is placed on examining whether R&D constitutes an economic activity and whether the funding of R&D can be seen as a consideration. Neither the directive nor the ECJ have made clear to what extent VAT is applied to basic research activities. The

specific problem in this field is that VAT is only applied to economic activities, where goods are delivered or services are performed against consideration. When undertaking basic research, sometimes no consideration is received or consideration is received years later than the activity was performed. Furthermore it is not clear if subsidies for funding are taxable under VAT. This field gives rise to various questions: Firstly, it has to be investigated if the subsidy can be seen as a consideration for the research and development activities. Secondly, the difference if the subsidy is provided by a public body or by a private company will be examined. And last but not least, the question needs to be proposed if there are any obligations to achieve a particular result. Similar issues arise with donations from companies for research and development activities. Once further advanced, I plan to examine if R&D constitutes a supply of goods or services, which rates or exemptions are applicable, and especially, I will focus on the right to deduct.

Jasmin Kollmann is a 2nd year PhD student and a Research and Teaching Associate of the Department of Austrian and International Tax Law of the Vienna University of Economics and Business. Indirect tax law is subject of her special interest, due to both its permanent development and long-standing and still ongoing harmonization. At present, she is writing her doctorate thesis, which is conducted under the supervision of Professor Alexander Rust, entitled "Treatment of Research and Development under European VAT Law". She plans to finish her thesis by the end of 2016.

Eero Männistö

Retroactive Changes in VAT and Other Consumption Taxes - An Introduction to Selected Research Issues

University of Helsinki

Supervised by: Professor Esko Linnakangas

The aim of research project is to study different kind of retroactive changes and their effects on tax concepts and proceedings for example in VAT. Special focus will be in questions about VAT in EU and the impact of retroactivity in EU-level harmonized consumption taxes. The thesis will consist of three main chapters and subjects. These will include retroactive tax legislation, possible annulment of administrative decisions based on their incompatibility with EU-legislation and limitations of the temporal effects of judgments of the European Court of Justice ("ECJ"). The method in the research project is mainly dogmatic. In the thesis

there will be a theoretical framework which will act as an environment in which each main research subject will be analyzed.

Eero Männistö was born in Helsinki (Finland) 1981. Graduated 2008 from the University of Helsinki (LL.M). At present writing doctoral thesis and working as doctoral student (University of Helsinki, Faculty of Law). Research project supervisor is Professor Esko Linnakangas. Previously worked at Finnish Tax Administration.

Justin Mastaki

The Neutrality of the Value Added Tax and its Derogations under Congolese Law: a Contribution to the Study of Ways and Means for an Effective VAT Treatment of Small and Medium Enterprises

Université Catholique de Louvain

Supervised by: Professor Edoardo Traversa

This research aims to demonstrate that the neutrality principle of VAT cannot be applied effectively to SMEs. This implies that the same rules will not be effective for these economic entities, mainly because of the accounting structure, compliance costs are higher than for large companies and a certain propensity to operate in informal sector. This situation requires a derogation adapted to their specificity. This derogation is necessary but not sufficient; it is still necessary to include appropriate mechanisms that reflect the real context. Accordingly, we assume the legitimacy of the breakdown of neutrality in favour of SMEs. Concerning the particular case of Democratic Republic of the Congo (DRC), we consider that the franking is necessary for small companies, but not sufficient regarding the economic and social context in which SMEs operate. Therefore, we think that the flat-rate scheme should be applied to certain SMEs. For others, we have advanced the implementation of the equalization tax, the monotributo system, the cash flow method or a lightened cash accounting system, and so on.

Justin Mastaki was born in 1976 in Bukavu which is the Capital of the South Kivu Province in Eastern of Democratic Republic of the Congo (DRC). He did all his studies (Primary School, Secondary School and University) in this city, except his doctoral research, which he is doing at Louvain University since 2012. He speaks some national and international languages. Concerning national languages, he speaks very good Swahili which is his native language; he

speaks also Lingala that is another national language. On international languages, he speaks French very well because it was the only official and teaching language in DRC; he has a basic level of English. Regarding professional experience, before starting Law School at the University, he was a Receptionist at the Senior Seminar of the Cross in Bukavu. After finishing law degree, he was hired as an Assistant at the Faculty of Law and was admitted as a Lawyer at the Bar of Bukavu. Currently, he is a Magistrate and Teacher at the Law Faculty of the Catholic University of Bukavu.

Paweł Mikuła

Formalism in tax law and its limits: some remarks on formal obligations based on indirect taxation

Jagiellonian University Cracow

Supervised by: Professor Bogumił Brzeziński

The central thesis of my research project is that in the legal system based on the rule of law, there are limits of formalism in the tax law (formalism understood not as a set of interpretative arguments but as a kind of 'presumptive qualification of facts' which is entailed in part by constituting formal obligations). Those limits set boundaries for legislature in establishing tax law and for tax authorities in applying it. Those limits are formed by numerous factors. Potentially, those factors may be reconstructed from: (constitutional) value (or principle) of truth in the law (and in the procedural tax law), principle of proportionality, principle of equality, function (as an interpretative argument) of instrumental obligations, other constitutional principles (protection of property; protection of good faith), legal character (substantial or procedural) of formal obligations in tax law, problem of formal evidence theory, problem of admissibility and limits of presumptive taxation and irreputable presumptions in tax law, in dubio pro tributario principle and problem of sanctions in tax law. My research project aims at answering the question whether there are limits of formalism in tax law and where they are (taking into consideration intuitive assumption that they may result from the issues mentioned above). The research is based on indirect taxation, however might be extrapolated on tax law in general.

Paweł Mikuła is a tax advisor, VAT manager at Deloitte as well as a PhD candidate in tax law at the Jagiellonian University Cracow. He is a graduate in law at the University of Silesia (Master of Laws) with focus on tax law and alumnus of postgraduate studies in accounting on

University of Economics in Katowice. He is an author of numerous publications in daily press on current tax issues as well as in Polish academic and professional press (Kwartalnik Prawa Podatkowego, Orzecznictwo Podatkowe, Monitor Podatkowy, Prawo i Podatki, Przegląd Orzecznictwa Podatkowego). He also delivered many lectures on tax conferences covering mainly topics on general tax law theory, procedural matters and VAT. In his research he focuses mainly on formal obligations and formalism in tax law, principle of proportionality and most crucial issues connected with VAT taxation. He is a co-founder and vicepresident of Polish 'Association of PhD Students and Holders in Tax Law'.

Maria Teresa Sutich

The identification of taxable person in VAT system

University of Bologna

Supervised by: Professor Adriano Di Pietro

The VAT Directive provides a broad concept of taxable person that represents the subjective condition to be fulfilled for the application of the Tax. Member States have the freedom to implement such concept under the national legal categories but this leads to a lack of harmonization. The Directive provides itself some legal figures for the identification of the taxable person (i.e. VAT group, public bodies, fixed establishment, VAT number and MOSS registration), and from their study it is possible to qualify the boundaries to the concept of taxable person in the light of the ECJ case law. However, the jurisprudence not always provides a coherent interpretation that can avoid mismatches between the law applied by Member States, with undesirable effects in terms of legal certainty and effectiveness of the VAT system, which are fundamental principles of EU law. The correct functioning of the taxation mechanism depends on the identification of the taxable person because one hand it is necessary for the tax authorities to carry out the activity of control, and on the other hand represents the information on which the counterparty in taxable supplies should rely to comply with its fiscal obligations. The aim of the project is to analyse the criteria adopted by the ECJ for each figure to depict the fundamental status of taxable person with particular attention to the substance over form criteria.

Maria Teresa Sutich was born on the 6 of October 1985 in Reggio Emilia, Italy. She is a Ph.D. candidate in European Tax Law at University of Bologna - SEAST (European school of Advanced Fiscal Studies), since 2014. She is also a lawyer admitted to the Bar association of

Genova since 2012, and practices as a tax consultant in a tax law firm Studio Legale e Tributario P. Centore & Associati in Genova. She received her law degree from the University of Parma in 2009 and the final thesis was about tax law. In 2011 she attended a Post graduate Master on national and international tax law in Milan at IPSOA. Her first experience abroad was the Erasmus scholarship in Spain at the University Alfonso X el Sabio (Madrid); and in 2013 she had the opportunity to spend another experience abroad with the traineeship in the European Commission (DG Taxud).

LIST OF DOCTORAL PARTICIPANTS

Carlotta Armuzzi

VAT Harmonization and International Trade

University of Bologna

Supervised by: Professor Adriano Di Pietro

My study focuses on a comparative analysis, at European and international level, of the role played by the principle of territoriality in the VAT system, mainly with regard to international trading transaction, in a perspective of increasing EU harmonization and continuous alignment with the international principles. The analysis will be developed in the following steps:

- Analysis of the supply of goods with regards to the concept of supply and the concept of good, starting from the provision of the VAT Directive, in comparison with the national provisions (among Member states).
- The role played by the international commercial terms applied to the contractual model, with particular reference to the movement of goods which is the essential condition for the international trade.
- The effects of this legal structure on the territoriality principle of the territoriality, with aim to understand if it is a criteria for the distribution of taxation power between the countries (EU and non EU) or a principle of the VAT system.

Stefanie Baur

The single supply under VAT Law

Friedrich-Alexander-University Erlangen-Nuremberg

Supervised by: Professor Roland Ismer

In my PhD I'll first analyze the concept of supply in general and then in detail the handling of composited supplies. Therefor I'll examine the existing ECJ-cases and try to find general rules to determine if a supply consisting of several actions needs to be considered as a single or as separate supplies. Further I address the problem which consequences will ensue in case a single composited supply has elements of a supply of goods as well as elements of a supply of services.

Rebecca Brinkmann

VAT taxation of consignment stocks

Muenster University

Supervised by: Professor Joachim Englisch

My research project basically concerns the question how consignment stocks are taxed. I will concentrate on a comparison between Germany and 3 different other Member States of the EU. In this regard I will first define the term consignment stock and differentiate it from other types of warehousing. Subsequently, I will focus on the civil law basis of the contract. From one situation to another the details vary. Nevertheless, there are typical elements which need to be considered. One of them is the transfer of the ownership of the delivered goods from the supplier to the buyer. Furthermore, I want to investigate how these contracts are classified. In a third step I will take into account the VAT rules of the four countries and compare them in a fourth step with the provisions of the VAT Directive. Finally, I will present suggestions of further improvement of the current rules on the basis of my results.

Emanuele Ceci

VAT fraud/abuse in the digital economy area: existing issues and future challenges

Université Catholique de Louvain

Supervised by: Edoardo Traversa

The evolution of the business models is at the origin of several issues regarding potential risks of fraud/abuse, even more in VAT. The VAT system, created of 40 years ago, is indeed not entirely "well-fitted for today's society" and its evolution. E-commerce cannot be

compared to the common business area, mainly because of its intangible nature and the way that e-business is performed. This situation will have an impact on the ongoing fight against VAT fraud/abuse. We can for instance mention the application of the destination principle, more problematic for e-commerce, which leaves grey zones favourable to the development of fraudulent/abusive behaviours. It is therefore essential in order to anticipate/solve these issues to analyse whether or not the classic means of fighting VAT fraud/abuse are relevant and applicable to the concept of digital economy, and which potential solutions are/could be suggested to improve it.

Karina Elgaard

The Relations between VAT Law and Income Tax Law

University of Copenhagen

Supervised by: Professor Jacob Graff Nielsen and Professor Dennis Ramsdahl Jensen

For EU Member States VAT law is based on EU law and income tax law is primarily based on national law. Thus, the relations between VAT law and income tax law may cause legal problems in terms of the legal base and conflicts with EU law. The main aim of the project is to examine the relations between VAT law and income tax law which can be demonstrated in regulations and case law in connection with the interpretation and application of similar VAT concepts and income tax concepts such as e.g. independently economic activities/independently business activities, and fixed establishment/permanent establishment. Further, the aim of the project is to discuss the possibilities/obstacles for harmonization of VAT law and income tax law.

Najat Idrissi

VAT and charities

Erasmus University Rotterdam

Supervised by: Professor S.J.C. Hemels and Professor R.N.G. Van der Paardt

My research is about whether the current treatment of charities in the VAT is effective and efficient, or whether there are other possibilities that might be more effective and efficient. To analyse the VAT treatment of charities, it is necessary to categorize charities. For example, a distinction will be made between charities that are primarily committed to activities in a Member State and charities that are committed to activities outside the Member State,

because these charities are dealing with different kind of problems. By this distinction, the problems and their solutions will be better displayed. Possible solutions are judged on whether these can be implemented by the national legislator without interference of the European legislator, as the autonomy of the Member State legislation is limited by European Law.

Richard Kettisch

The VAT frame conditions of chain transactions

University of Graz

Supervised by: Professor Tina Ehrke-Rabel

A so-called 'chain supply' consists of two or more consecutive supplies in terms of VAT, where the same goods are sold between various parties—forming one chain—and delivered directly from the first seller in the chain to the last purchaser. In circumstances where the goods are being moved from one Member State to another (or a third state), the question arises as to how the tax exemption should be ascribed amongst several eligible supplies. Though VAT Professionals and the fiscal authorities seem to get along on the whole, the dogmatically correct assessment of chain supplies remains to be solved until today. Only recently this became apparent once again, when decisions of two different chambers of the German Administrative Supreme court contradicted each other, drawing different conclusions from the ECJ's case law. Therefore my main aim is to work out a sound theoretical basis for chain supplies. In this context, I am dealing with various different aspects of cross-border trade in goods, its current problems and possible solutions: the basic principles of cross-border trade, VAT fraud and protection of good faith (especially in intra-Community trade), the impact of differing national VAT codes, interdependencies between VAT law and national civil law, and the possible role of administrative assistance in cross-border trade.

Katarzyna Knawa

Taxation of financial services under the value added tax regime in light of the tax liability certainty rule

Jagiellonian University

Supervised by: Professor Adam Nita

The tax which each individual is bound to pay ought to be certain, and not arbitrary” [Adam Smith]. Financial services have their own specificities, which lead to difficulties in applying general VAT laws on determining i.e. taxable basis and tax point. At the same time any specific provisions that would help to overcome the controversies and assure tax certainty are scarce. CJEU stated in few cases on financial services that the exemption is the way to alleviate those difficulties. This however may not be enough especially in the countries like Poland where the tax certainty rule is provided for by the Constitution. The aim of the thesis is to discuss if the existing VAT law provisions as interpreted in the light of the neutrality, proportionality and uniformity principles are enough to assure tax certainty, thus meeting the Constitutional standards the aim of which is to protect the interests of taxpayers.

Jørn Lyngstad

VAT and corporate groups

University of Oslo

Supervised by: Professor Frederik Zimmer

The main aim is to assess VAT questions related to corporate groups. It will have a focus on Norwegian law, but will to some extent include assessments of EU law, in particular with respect to questions which are scarcely discussed, or not discussed at all, in Norway. One question in this respect will be how the EU-law can affect the understanding of Norwegian law related to these questions. More particularly, the work will include issues related to VAT group registration, supplies between the group companies, the position of the holding company, cost distribution and allocation of acquisitions.

Martijn Schippers

Customs valuation from an EU customs law perspective

Erasmus University Rotterdam

Supervised by: Professor Walter de Wit

Customs valuation is one of the three elements for determining the customs debt and is therefore an important subject within customs law. In my study the concept of customs valuation is being examined from an EU customs law perspective. The main research question to be answered is: How is and should the concept of customs valuation be embedded in EU customs law? Therefore the relationship between legislation adopted by the

Council (such as the Community Customs Code and the Union Customs Code) and implementing legislation adopted by the Commission will be discussed, because in practice and theory the question rises in how far such 'lower' legislation can change the scope of higher legislation. Furthermore, issues as the treatment of royalty and license rights and the first sale for export rule will be explored from a customs valuation perspective. VAT at import into the EU is based on the customs value and therefore the outcome of my research will have direct impact on VAT. Further, there is an ongoing discussion in practice and theory about the convergence between transfer pricing and customs valuation. Since, this research topic is closely linked to these fields of taxation, VAT and transfer pricing issues related to customs valuation will be part of this research as well.

Abdel Tanouti

The concurrence of customs law with both VAT law and excise law upon importations of goods into the EU

Erasmus University Rotterdam

Supervised by: Professor Walter de Wit, and Professor René van der Paardt

When it comes to the import of goods into the European Union, customs duties and other taxes are due. The value added tax (VAT) law and excise law are to a large extent aligned with the customs law. In this respect, some mismatches in practice can occur along the way as a result of certain 'differences' between the abovementioned legislations i.e. differences in purpose and interpretation. My research project aims to identify the mismatches occurred. Subsequently, I will come up with certain suggestions about how to take this issue into account in situations where customs law concurs with both VAT law and excise law. In a desirable scenario, this should lead to a better understanding and a better alignment of the VAT law and the excise law with the customs law.

Yige Zu

What Would Be the Ideal VAT for China?

University of Durham

Supervised by: Professor Rita de la Feria

Yigu's thesis focuses on issues in designing and implementing the Chinese VAT. In her research, she will examine the weaknesses of China's current VAT regime, and the limitations

on VAT reforms. She will also look at the design features of various VAT/GST models developed elsewhere in the world, whilst considering how could China benefit from the international experience. The aim of the thesis is to contribute to the assessment of the effectiveness of the existing law and practice on VAT in China, and to explore the ideal VAT model for China that fits into its unique political and economic background without going against the best VAT practices. The hope is that beyond an academic enquiry, the findings posited by the thesis will influence Chinese tax law and policy, especially in so far as VAT reform is concerned.



LUND UNIVERSITY
School of Economics and Management



WESTFÄLISCHE
WILHELMS-UNIVERSITÄT
MÜNSTER