

Permanent Establishment from the Perspective of Judicature of the European Court of Justice

Abstract

This thesis treats rulings of the EUCJ in the area of direct taxation. It describes the substance of the term permanent establishment as described in documents of the OECD, because the permanent establishment is mainly not regulated by the EU legal provisions regardless whether primary or secondary. Further, the thesis deals with EU jurisdiction within the scope of direct taxation and scrutinizes fundamental principles, based on which the EU deduces its jurisdiction, even though the jurisdiction should remain in the hands of the member states.

Subsequently, the thesis pays attention to the EUCJ as an institution, it describes important principles governing the procedures before the EUCJ and impact of activity of this institution as negative legislator. In this regard, it is not the aim of this thesis to describe the institutional footing of this organ. The thesis treats mainly the procedural activity, origin of its jurisdiction in the area of direct taxation and practical problem connected with the activity of the EUCJ. Finally, it outlines the most important issues ensuing from the EUCJ decision-making.

As next, the text deals with the structure of an EUCJ decision. The purpose of this is to make clear important substantive rules governing the EUCJ procedure. On this basis, the thesis describes the crucial order of thought which in each case should be followed so that a right decision concerning direct taxation is passed.

Finally, the thesis describes the most important decisions regarding permanent establishment as well as associated judicature which touches the topic indirectly but has influence on it. Firstly, the founding building blocks of the EUCJ judicature are presented, such as *Avoir Fiscal*, *Futura Participations* or *Royal Bank of Scotland*.

In the final part, the question of three country situation is described, which was firstly dealt in the case *Saint Gobain*. In this part, the issues such as method of prevention of double taxation or most favored nations clause are introduced. Lastly, the thesis focuses on the cross-border loss problem, which induced by the *Marks & Spencer* case.

Key words:

EUCJ, Permanent establishment, Direct taxation,