

Purposes of double taxation treaties and interpretation of beneficial owner concept in Ukraine

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Abstract

The term "beneficial owner" has been interpreted by Ukrainian courts concerning the application of double taxation treaties' provisions since the adoption of the Tax Code of Ukraine in 2010. Changing nature of the beneficial owner concept, its importance as an instrument for treaty shopping counteraction and the necessity of its proper interpretation in the Ukrainian reality are the main factors that have a strong impact on the development of court practice concerning beneficial ownership. The article focuses on the prevention of tax avoidance as one of the purposes of double taxation treaties and its role in the interpretation of the term "beneficial owner". The analysis is based on the practice of the Supreme Administrative Court of Ukraine on interpretation of the relevant provisions of the Convention between the Government of Ukraine and the Government of Switzerland on Avoidance of Double Taxation with respect to Taxes on Income and Capital as of 30 October 2000.

Keywords: *interpretation, purposes of international treaties, double taxation treaties, beneficial ownership.*

JEL Classification: K33, K34

1. Introduction

In one of its decisions the Supreme Administrative Court of Ukraine admits that the term "beneficial owner" could not be interpreted in a narrow technical sense. Its meaning "should be defined taking into account purposes, tasks of international double taxation treaties" such as the prevention of tax avoidance and such main principles as "the prevention of treaty provisions abuse."² This approach is shared by the State Fiscal Service of Ukraine.³

The proposed approach provides that the prevention of tax avoidance is one of the purposes of double taxation treaties. Is it true for all double taxation treaties of Ukraine? Is the prevention of tax avoidance the purpose in all cases? The

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² Decision of the Supreme Administrative Court of Ukraine in case K/800/52155/13 of March 24, 2014, available online at: <http://reyestr.court.gov.ua/Review/38106136> (accessed on September 29, 2017).

³ Letter of the State Fiscal Service of Ukraine No. 9033/7/99-99-10-02-02-17 of October 31, 2014, available online at: <http://www.profiwins.com.ua/uk/letters-and-orders/gna/5296-9033.html> (accessed on September 29, 2017).

answers to these questions influence the relevance of the position maintained by the Supreme Administrative Court of Ukraine and the State Fiscal Service of Ukraine in the context of interpretation of the term “beneficial owner” in double taxation treaties. Present article attempts to find the answer to these questions on the example of Convention between the Government of Ukraine and the Government of Switzerland on Avoidance of Double Taxation with respect to taxes on income and capital as of 30 October 2000 (Treaty with Switzerland).⁴ It is important to note here that this treaty is not covered by the Multilateral Convention to implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI), because Switzerland excluded it from the list of the Covered Tax Agreements under Art. 2(1)(a)(ii) as of 7 June 2017.

There has been a lot of research into the purposes of double taxation treaties. This issue is the object of interest of such researchers as M. Edwardes-Ker, L. de Broe, J. Becerra, V. Uckmar, R. Shepenko.⁵ Nevertheless, it has not been widely investigated in the Ukrainian context.

The structure of the article consists of three parts: 1) purposes of international treaty in the context of interpretation of its provisions; 2) purposes of double taxation treaties in the light of OECD Model Convention with Respect to Taxes on Income and on Capital (OECD MC) and its Commentaries; 3) purposes of the Treaty with Switzerland.

2. Purposes of international treaty in the context of interpretation of its provisions

According to Art. 31(1) of the Vienna Convention on the Law of Treaties (VCLT) “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”⁶ This provision is applicable to the conventional relations between Ukraine and Switzerland on tax matters as a whole and to interpretation of

⁴ Конвенція між Урядом України і Швейцарською Федеральною Радою про уникнення подвійного оподаткування стосовно податків на доходи і капітал від 30 жовтня 2000 (Convention between the Government of Ukraine and the Swiss Federal Council on the avoidance of double taxation with respect to taxes on income and on capital of October 30, 2000), available online at: http://zakon0.rada.gov.ua/laws/show/756_012/page (accessed on September 29, 2017).

⁵ Edwardes-Ker, M. *Tax Treaty Interpretation*, PhD diss. (Queen Mary and Westfield College, University of London, 1994), pp. 160–171; De Broe, L. *International Tax Planning and Prevention of Abuse* (Amsterdam: International Bureau of Fiscal Documentation, 2008), pp. 235–262; Becerra, J. *Interpretation and Application of Tax Treaties in North America*. 2nd revised ed. (Amsterdam: International Bureau of Fiscal Documentation, 2013), pp. 113–117; Uckmar, V. “Double Taxation Conventions.” In *International Tax Law*, ed. by A. Amatucci (Aaphen aan den Rijn: Kluwer Law International, 2006), pp. 152–154; Shepenko, R. Цели налоговых соглашений (Objectives of tax agreements), *«Eurasian Law Journal»*, 2012, No. 1, pp. 80–83.

⁶ Vienna Convention on the Law of Treaties of May 23, 1969, available online at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (accessed on September 29, 2017).

the Treaty with Switzerland in particular. This is due to the fact that both countries are the parties to the VCLT and use Articles 31, 32 and 33 in case of interpretation of tax treaty provisions.⁷

Soviet researcher A. Talalaev has noted that the functions of the purpose of international treaty determine the role of such element in the process of interpretation. The purpose “defines and helps to better understand the subject matter of the international treaty and its content. In case of uncertainty and doubts concerning certain formulations in the text of international treaty, they have to be interpreted in accordance with the purpose for which the treaty has been concluded.”⁸ Modern Ukrainian researcher I. Zverev agrees on this position.⁹

The International Court of Justice shares similar view on the importance of the purposes of international treaties in the context of their interpretation. It can be justified by the references to the Court findings in cases concerning Oil Platforms (paragraphs 24–31 in the Judgment as of 12 December 1996 on preliminary objection), concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (paragraphs 26–28 in the Judgment as of 14 June 1993) and concerning the Gabčíkovo-Nagymaros Project (paragraph 142 in the Judgment as of 25 September 1997).¹⁰

The application of the purpose of international treaty as one of the means for its interpretation has to be based on the provisions and formulations of the treaty in case of the necessity to reveal the intentions of contracting states. As F. Engelen points out, “the object and purpose of a treaty can only be given effect in so far as this does not do violence to the actual terms of the treaty.”¹¹ Ukrainian courts try to follow the same approach in the cases concerning the application of international treaties. For example, paragraph 11 of the resolution of the Plenum of the Supreme Specialized Court of Ukraine on Civil and Criminal Cases No.13 as

⁷ Tymchenko, L. et al., *Застосування міжнародних податкових договорів (Application of international tax treaties)*, Irpin: Publishing Office of the National University of State Tax Service of Ukraine, 2013, pp. 14–15; Oberson, X. and Hull, H. R. *Switzerland in International Tax Law*, 3rd ed. (Amsterdam: International Bureau of Fiscal Documentation, 2006), p. 89.

⁸ Talalaev, A. *Юридическая природа международного договора (The legal nature of the international treaty)*, Moscow: Institute of International Relations, 1963, p. 100.

⁹ Zverev, I. *Тлумачення міжнародних договорів національними судами: європейський досвід та українська практика*, (Interpretation of international treaties by national courts: European experience and Ukrainian practice), Candidate of Legal Sciences diss., National University of Kyiv-Mohyla Academy, 2015, pp. 133–134.

¹⁰ Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment of the International Court of Justice of December, 12, 1996, ICJ Reports 1996, pp. 803–821, available online at: <http://www.icj-cij.org/docket/files/90/7287.pdf> (accessed on September 29, 2017); Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), Judgment of the International Court of Justice of June 13, 1993, ICJ Reports 1993, pp. 38–82, available online at: <http://www.icj-cij.org/docket/files/78/6743.pdf> (accessed on September 29, 2017); Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment of the International Court of Justice of September 25, 1997, ICJ Reports 1997, pp. 7–84, available online at: <http://www.icj-cij.org/docket/files/92/7375.pdf> (accessed on September 29, 2017).

¹¹ Engelen, F. *Interpretation of Tax Treaties Under International Law*, Amsterdam: International Bureau of Fiscal Documentation, 2004, p. 173.

of 19 December 2014 prescribes that “ordinary meaning of the purposes of international treaty has to be based on the text of treaty itself and its context.”¹²

The purposes of international treaties are often included in their preambles but there is also a possibility to fix such purposes in other provisions of the treaty (for example, Art. 1 of the UN Charter). They could also be presumed taking into account the fact of the conclusion of the treaty as it is. The latter could be illustrated by the international treaties on state borders where the final delimitation of state borders is one of the purposes of these categories of international treaties.¹³ As stated by I. Lukashuk, the cases of international treaties in which the purpose is presumed in their titles exist if “purposes are understandable from the title” and the international treaties are not dedicated to the problems of paramount importance.¹⁴

The same forms of inclusion of purposes in the text of international treaties are used in case of double taxation treaties. As usual, the purposes of these treaties are included in their preambles and are limited to “the avoidance of double taxation and prevention of fiscal evasion”.¹⁵ Nevertheless, there are examples of double taxation treaties with similar purposes that are declared not in the preamble but in title of the treaty itself.¹⁶ It has to be noted that the MLI prescribes that the prevention of tax avoidance and double non-taxation should be added to the purposes of double taxation treaties but only if its provisions cover such double taxation treaties (Art. 6 of the MLI). As we have already mentioned, it is not the case of the Treaty with Switzerland.

3. Purposes of double taxation treaties in the light of the OECD MC and its commentaries

The primary rule of interpretation is contained in the provisions of the Art. 31(1) of the VCLT, but it does not allow resolving all problems that could arise in the process of interpretation of treaty provisions. In these cases there is a possibility to use other means of interpretation that are included in next paragraphs of Art. 31 and Art. 32 of the VCLT.

Ukrainian courts apply the OECD MC and its Commentaries as a mean of interpretation of double taxation treaties because most of them are based on the OECD MC.¹⁷

¹² Ruling of the Plenum of the Supreme Specialized Court of Ukraine on Civil and Criminal Cases No.13 of December 19, 2014, available online at: <http://zakon2.rada.gov.ua/laws/show/v0013740-14> (accessed on September 29, 2017).

¹³ Gardiner, R. *Treaty Interpretation*. 2nd ed., Oxford: Oxford University Press, 2015, p. 213.

¹⁴ Lukashuk, I. *Структура и форма международных договоров (Structure and form of international treaties)*, Saratov: Publishing Office of Saratov Judicial Institute, 1960, p. 82.

¹⁵ Uckmar, V. “Double Taxation Conventions.” in *International Tax Law*, edited by Andrea Amatucci, Aaphen aan den Rijn: Kluwer Law International, 2006, p. 152.

¹⁶ Belamarik, A. Specialities in Interpretation of Tax Treaties. In *Fundamental Issues and Practical Problems in Tax Treaty interpretation*, ed. by M. Schilcher and P. Weninger, Vienna: Linde, 2008, p. 72.

¹⁷ Petrash, I. *Міжнародно-правові аспекти співробітництва України з питань подвійного оподаткування (International legal aspects of Ukraine's cooperation on double taxation)*,

There is no uniform approach to the issue of the legal status of the OECD MC and its Commentaries even in the practice of the same court. For example, the Kyiv Court of Appeal of Ukraine states in one of its resolutions that the provisions of the OECD MC and its Commentaries are subsequent practice of contracting states which establishes the agreement of the parties regarding the interpretation of double taxation treaty in accordance with Art. 31(3)(b) of the VCLT (resolution as of 18 September 2013 in case 826/3191/13-a).¹⁸ Nevertheless, the same court in its decision as of 1 March 2012 in case 2a-9844/11/2670 makes a reference to the OECD MC and its Commentaries without analysis of the legal status of these materials.¹⁹ The proposed approaches are not identical because their consequences are different. According to the first approach the provisions of the OECD MC and its Commentaries are the binding element of interpretation of double taxation treaty. As a result of the second approach, there is no certainty on the issue of the legal basis of the application of the OECD materials.

Ukrainian researchers agree to consider the legal status of the OECD MC and its Commentaries as supplementary means of interpretation according to Art. 32 of the VCLT.²⁰

The purposes of double taxation treaties are clarified in paragraph 7 of the Commentary to Art. 1 of the OECD MC: "The principal purpose of double taxation conventions is to promote, by eliminating international double taxation, exchanges of goods and services, and the movement of capital and persons. It is also a purpose of tax conventions to prevent tax avoidance and evasion."²¹ It is worth to be mentioned that the modern version of paragraph 7 was adopted only in January 2003. In the earlier version of this provision the purposes of double taxation treaties did not mention the prevention of tax avoidance. The same paragraph only included a statement that double taxation treaties "should not, however, help tax avoidance or evasion."²² Obviously, the reference to prevention of tax avoidance as one of the purposes of double taxation treaties was absent in the OECD MC and its Commentaries before 2003.

Candidate of Legal Sciences diss., V. M. Koretsky Institute of State and Law, National Academy of Sciences of Ukraine, 2003, p. 71.

¹⁸ Resolution of Kyiv Court of Appeal of Ukraine in case 826/3191/13-a of September 18, 2013, available online at: <http://reyestr.court.gov.ua/Review/33679111> (accessed on September 29, 2017).

¹⁹ Decision of Kyiv Court of Appeal of Ukraine in case 2a-9844/11/2670 of March 1, 2012, available online at: <http://www.reyestr.court.gov.ua/Review/22240992> (accessed on September 29, 2017).

²⁰ Melnyk, S. Legal Status of the Commentaries on the OECD Model Tax Convention in Ukraine, *«International Tax Bulletin»*, May 2009, Issue 2, available online at: http://www.ifa-ukraine.org/files/newsletter/ITB_2_1.pdf (accessed on September 29, 2017); Melnyk, P., and Tymchenko, L., eds. *Імплементация міжнародно-правових норм у сфері оподаткування в законодавство України (Implementation of international legal norms in the field of taxation in Ukrainian legislation)*, Irpin: National University of State Tax Service of Ukraine, 2012, p. 342.

²¹ *Model Tax Convention on Income and on Capital: Condensed Version 2014*, Paris: OECD Publishing, 2014, p. 61.

²² *Model Tax Convention on Income and on Capital 2010 (Full Version)*, Paris: OECD Publishing, 2010, p. C(1)-44.

It seems that the Commentary to Art. 1 of the OECD MC has allowed to deny access to benefits of double taxation treaties in a case of tax avoidance only since 2003. According to M. Lang, such a provision has no relevance for the interpretation of double taxation treaties concluded before 2003.²³ This statement is shared by K. Vogel as it follows from the next passage: “when interpreting treaties concluded by OECD member States, only that edition of ... Commentary which was applicable at the time of the treaty’s completion can be binding.”²⁴

Moreover, current version of paragraph 7 of the Commentary to Art. 1 of the OECD MC is also criticized taking into account the manner in which the prevention of tax avoidance is added to the purposes of double taxation treaties. For example, G. Maisto points out that “while the drafters of the OECD MC and its Commentaries have identified opportunities to the prevention of tax avoidance among the purposes of tax treaties, they choose to deal with the abuse of treaties through treaty rules that contain specific tools to fight abuse”.²⁵ Thus, he mentions that it cannot be concluded that the prevention of tax avoidance is one of the primary purposes of a double taxation treaty.

The position of the OECD MC drafters is flexible in case of the issue concerning the application of the later versions of the OECD MC and its Commentaries. The keystone of their approach is contained in paragraph 35 of the Introduction to the OECD MC and its Commentaries: “Needless to say, amendment to the Articles of the Model Convention and changes to the Commentaries that are a direct result of these amendments are not relevant to the interpretation or application of previously concluded conventions where the provisions of those conventions are different in substance from the amended Articles”. They also add that other changes or additions to the Commentaries of the OECD MC are “normally applicable to the interpretation” of double taxation treaties concluded before their adoption. It is based on the presumption that these changes or additions reflect the consensus of the OECD member countries on the issue of proper interpretation of treaty provisions.²⁶

4. Purposes of the Treaty with Switzerland

As it was mentioned by I. Pereterskiy, “interpretation of legal norm always precedes application of such norm. Application of abstract legal norms is often linked to some difficulties that could be resolved by proper interpretation of norm

²³ Lang, M. *Introduction to the Law of Double Taxation Conventions*. 2nd ed., Vienna: Linde, 2013, p. 68.

²⁴ Klaus Vogel *on Double Taxation Conventions*. 3rd ed., London: Kluwer Law International, 1997, p. 46.

²⁵ Maisto, G. Domestic Anti-Abuse Rules and Bilateral Tax Conventions in the Light of Public International Law. In *Essays on Tax Treaties. A Tribute to David A. Ward*, ed. by G. Maisto, A. Nikolakakis and J. Ulmer, Amsterdam: International Bureau of Fiscal Documentation, 2012, p. 336.

²⁶ *Model Tax Convention on Income and on Capital: Condensed Version 2014*, Paris: OECD Publishing, 2014, pp. 15–16.

to a considerable extent.”²⁷ At the same time, Z. Judin does not agree that interpretation of legal norms could be limited to proper “understanding before application, because the process of interpretation exists at all stages of application of legal norms.”²⁸ That is why the proper interpretation of treaty provisions is one of the most important factors that determine their realization. Such interpretation presupposes that the object and purposes have to be taken into account. The Treaty with Switzerland is not an exception from this rule. It was signed in Kyiv on 30 October 2000 and ratified by the Verkhovna Rada of Ukraine on 10 October 2002.

Neither title nor preamble, as a usual place for object and purposes of international treaty, do not allow to clarify whether prevention of tax avoidance is one of the purposes of the Treaty with Switzerland. For example, the preamble of the Treaty with Switzerland reflects only the motives of contracting states (“willing to conclude the convention on avoidance of double taxation with respect to taxes on income and capital and confirming their intention to develop and deepen mutual economic relations”). At the same time, the title of the treaty mentions only avoidance of double taxation. Thus, the literal interpretation of the title and preamble of the Treaty with Switzerland does not give an answer to the question concerning prevention of tax avoidance as one of the purposes of the Treaty with Switzerland.

In the absence of possibility to define the purposes of the Treaty with Switzerland on the basis of its text it might be useful to apply the OECD MC and its Commentaries. Ukrainian and Swiss courts use them as a mean of interpretation of double taxation treaties.²⁹ In this context it is necessary to define the legal status of the OECD MC and its Commentaries in accordance with the provisions of the VCLT.

It does not seem well-grounded when Ukrainian courts apply the OECD MC and its Commentary as an interpretation tool in accordance with Art. 31(3)(b) of the VCLT.

Firstly, the OECD materials could not be an agreement of the parties regarding interpretation of the Treaty with Switzerland, because they are not adopted in connection with it.

Secondly, the provisions of the OECD MC and its Commentaries have been drafted and agreed upon by the experts of the OECD Committee on Fiscal Affairs. They are appointed by the governments of member states, as it is mentioned in paragraph 29 of the Introduction to the OECD MC and its Commentaries. Taking into account the fact that Ukraine is not a member of the OECD, it is very difficult, if possible, to consider the OECD MC and its

²⁷ Pereterskiy, I. *Толкование международных договоров (Interpretation of international treaties)*, ed. by S. Krylov and G. Tunkin, Moscow: State publishing office of judicial literature, 1959, p. 17.

²⁸ Judin, Z. *Загальна теорія інтерпретації договору (The general theory of interpretation of the treaty)*, Odesa: Phoenix, 2008, p. 19.

²⁹ Oberson, X., and Hull, H. R. *Switzerland in International Tax Law*, 3rd ed., Amsterdam: International Bureau of Fiscal Documentation, 2006, p. 91.

Commentaries as subsequent practice in interpretation or application of the Treaty with Switzerland.

It seems that the OECD MC and its Commentaries could be applied by the Ukrainian authorities and courts as a supplementary mean of interpretation in accordance with Art. 32 of the VCLT.³⁰

The clarification of the legal status of the OECD MC and its Commentaries prescribes the possibility to include the prevention of tax avoidance into the purposes of the Treaty with Switzerland on the basis of paragraph 7 of the Commentary to Art. 1 of the OECD MC. Nevertheless, it has to be mentioned that the Treaty with Switzerland was signed in October 2000 so it is doubtful to apply paragraph 7 because of the fact that it was formulated in 2003. The key argument in favour of this assumption is that the inclusion of the prevention of tax avoidance in the purposes of double taxation treaties could not be considered as usual clarification of the provisions of Art. 1 of the OECD MC. It seems that these changes are substantial in their essence and should not be applied to double taxation treaties concluded before 2003 (paragraph 35 of the Introduction to the OECD MC).

Additional argument against the prevention of tax avoidance as one of the purposes of the Treaty with Switzerland is the observation from Switzerland to paragraph 7 of the Commentary to Art. 1 of the OECD MC. It states that Switzerland does not agree with the changes that were made in 2003 and “does not share the view expressed in paragraph 7 according to which the purpose of double taxation conventions is to prevent tax avoidance and tax evasion.”³¹ This approach may seem to be a reflection of traditional unwilling of Switzerland to adopt specific and in particular complex anti-avoidance provisions in its double taxation treaties.³²

The consequences of the observation are determined by paragraph 3 of the Introduction to the OECD MC and its Commentaries. It recommends the tax authorities of OECD member states to follow the provisions of the Commentaries to the OECD MC, as modified from time to time and subject to their observations thereon.³³

Following the position of G. Maisto, the observation of a contracting state to the OECD MC and its Commentaries could be considered as unilateral interpretative declaration if it exists at the moment of the conclusion of double taxation treaty. He adds that the contracting state should make an objection to the other contracting states’ declared intention to apply treaty provisions pursuant to

³⁰ Melnyk, P., and Tymchenko, L., eds. *Імплементація міжнародно-правових норм у сфері оподаткування в законодавство України (Implementation of international legal norms in the field of taxation in Ukrainian legislation)*, Irpin: National University of State Tax Service of Ukraine, 2012, p. 342.

³¹ *Model Tax Convention on Income and on Capital 2010 (Full Version)*, Paris: OECD Publishing, 2010, p. C(1)-37.

³² Jung, M. Switzerland. «*Cahiers de Droit Fiscal International*», 2010, vol. 95a, p. 774.

³³ *Model Tax Convention on Income and on Capital: Condensed Version 2014*, Paris: OECD Publishing, 2014, p. 7.

the observation coupled with the principle of good faith in accordance with the VCLT. Otherwise, a failure to make the objection may suggest that the (non-observing) contracting state should consider the observing state's departure from the Commentaries to the OECD MC pursuant to its observations as being "in accordance with ... [the] Convention" under Article 32 of the VCLT.³⁴ This logic determines the absence of the prevention of tax avoidance among the purposes of the Treaty with Switzerland because Ukraine has not made any objection concerning the observation of Switzerland to paragraph 7 of the Commentary to Article 1 of the OECD MC. The position of G. Maisto seemed to be based on the principle of acquiescence that is one of the principles of interpretation of treaty provisions.³⁵

5. Conclusions

On the basis of the analysis of the VCLT, the positions of contracting states, the OECD MC and its Commentaries it might be concluded that there is no possibility to include the prevention of tax avoidance into the purposes of the Treaty with Switzerland. Thus, the position of the Supreme Administrative Court of Ukraine on the wide, economic interpretation of the term "beneficial owner" does not look as well-grounded in case of the Treaty with Switzerland because such approach presupposes that the prevention of tax avoidance is one of the purposes of the Treaty with Switzerland.

It has to be mentioned that the question of the possibility of wide, economic interpretation of the term "beneficial owner" is still open in the context of subsequent practice of contracting states in accordance with Art. 31(3)(b) of the VCLT. As it has been stated by S. van Weeghel, anti-abuse principle could be applied in the interpretation of double taxation treaty even if it is not explicitly included in its text but on the condition that both contracting states regard a particular instance of taxpayer conduct as an abuse of the treaty provisions.³⁶ The concept of beneficial owner is one of the instruments for the limitation of improper use of double taxation treaties in the form of treaty shopping and could be considered as a reflection of anti-abuse principle. As a result, this logic could be used for establishing wide, economic interpretation of the term "beneficial owner" even in the absence of the prevention of tax avoidance among the purposes of the Treaty with Switzerland.

³⁴ Maisto, G. The Observations on the OECD Commentaries in the Interpretation of Tax Treaties. In *A Tax Globalist. Essays in Honour of Maarten J. Ellis*, ed. by H. van Arendonk, F. Engelen and S. Jansen, Amsterdam: International Bureau of Fiscal Documentation, 2005, pp. 84–86.

³⁵ Merezhko, O. *Право міжнародних договорів: сучасні проблеми теорії та практики (The right of international treaties: modern problems of theory and practice)*, Kyiv: Klaxon, 2002, pp. 246–247.

³⁶ Van Weeghel, S., and Gunn, A. A General Anti-Abuse Principle of International Law: Can It be Applied in Tax Cases? In *Essays on Tax Treaties. A Tribute to David A. Ward*, ed. by G. Maisto, A. Nikolakakis and J. Ulmer, Amsterdam: International Bureau of Fiscal Documentation, 2012, p. 323.

Bibliography

- Becerra, J. *Interpretation and Application of Tax Treaties in North America*. 2nd revised ed. Amsterdam: International Bureau of Fiscal Documentation, 2013.
- Belamarik, A. "Specialities in Interpretation of Tax Treaties." In *Fundamental Issues and Practical Problems in Tax Treaty Interpretation*, ed. by M. Schilcher and P. Weninger, Vienna: Linde, 2008. pp. 67-90.
- De Broe, L. *International Tax Planning and Prevention of Abuse*. Amsterdam: International Bureau of Fiscal Documentation, 2008.
- Edwardes-Ker, M. *Tax Treaty Interpretation*, PhD diss. Queen Mary and Westfield College, University of London, 1994.
- Engelen, F. *Interpretation of Tax Treaties Under International Law*. Amsterdam: International Bureau of Fiscal Documentation, 2004.
- Gardiner, R. *Treaty Interpretation*. 2nd ed. Oxford: Oxford University Press, 2015.
- Iudin, Z. *Загальна теорія інтерпретації договорів (The general theory of interpretation of the treaty)*. Odesa: Phoenix, 2008.
- Lang, M. *Introduction to the Law of Double Taxation Conventions*. 2nd ed. Vienna: Linde, 2013.
- Lukashuk, I. *Структура и форма международных договоров (Structure and form of international treaties)*. Saratov: Publishing Office of Saratov Judicial Institute, 1960.
- Maisto, G. Domestic Anti-Abuse Rules and Bilateral Tax Conventions in the Light of Public International Law. in *Essays on Tax Treaties. A Tribute to David A. Ward*, ed. by G. Maisto, A. Nikolakakis and J. Ulmer. Amsterdam: International Bureau of Fiscal Documentation, 2012. pp. 325-341.
- Maisto, G. The Observations on the OECD Commentaries in the Interpretation of Tax Treaties. in *A Tax Globalist. Essays in Honour of Maarten J. Ellis*, ed. by H. van Arendonk, F. Engelen and S. Jansen. Amsterdam: International Bureau of Fiscal Documentation, 2005. pp. 73-89.

- Melnyk, P., and Tymchenko, L., eds. *Імплементція міжнародно-правових норм у сфері оподаткування в законодавство України (Implementation of international legal norms in the field of taxation in Ukrainian legislation)*. Irpin: National University of State Tax Service of Ukraine, 2012.
- Melnyk, S. Legal Status of the Commentaries on the OECD Model Tax Convention in Ukraine, «*International Tax Bulletin*», May 2009, Issue 2, available online at: http://www.ifa-ukraine.org/files/newsletter/ITB_2_1.pdf (accessed on September 29, 2017).
- Merezhko, O. *Право міжнародних договорів: сучасні проблеми теорії та практики (The right of international treaties: modern problems of theory and practice)*. Kyiv: Klaxon, 2002.
- Oberson, Xavier, and Hull, Howard R. *Switzerland in International Tax Law*. 3rd ed. Amsterdam: International Bureau of Fiscal Documentation, 2006.
- Pereterskiy, I. *Толкование международных договоров (Interpretation of international treaties)*, ed. by S. Krylov and G. Tunkin. Moscow: State publishing office of judicial literature, 1959.
- Petrash, I. *Міжнародно-правові аспекти співробітництва України з питань подвійного оподаткування (International legal aspects of Ukraine's cooperation on double taxation)*, Candidate of Sciences diss., V. M. Koretsky Institute of State and Law, National Academy of Sciences of Ukraine, 2003.
- Shepenko, R. Цели налоговых соглашений (Objectives of tax agreements), «*Eurasian Law Journal*», 2012, No. 1, pp. 80-83.
- Tymchenko, L. et al. *Застосування міжнародних податкових договорів (Application of international tax treaties)*. Irpin: Publishing Office of the National University of State Tax Service of Ukraine, 2013.
- Uckmar, V. Double Taxation Conventions. In *International Tax Law*, ed. by A. Amatucci. Aaphen aan den Rijn: Kluwer Law International, 2006. pp. 150-181.
- Van Weeghel, S., and Gunn, A. A General Anti-Abuse Principle of International Law: Can It be Applied in Tax Cases? In *Essays on Tax Treaties. A Tribute to David A. Ward*, edited by Guglielmo Maisto, Angelo Nikolakakis and John Ulmer. Amsterdam: International Bureau of Fiscal Documentation, 2012. pp. 305–323.
- Zverev, I. *Тлумачення міжнародних договорів національними судами: європейський досвід та українська практика (Interpretation of international treaties by national courts: European experience and Ukrainian practice)*, Candidate of Legal Sciences diss. National University of Kyiv-Mohyla Academy, 2015.
- Talalaev, A. *Юридическая природа международного договора (The legal nature of the international treaty)*. Moscow: Institute of International Relations, 1963.