Mergers in International Taxation
An Analysis of the European and Conventional Tax Rules on Corporate Reorganizations

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Aim of the thesis

- To analyze...
  - the rationale for tax deferral in case of corporate reorganizations and its extension to cross-border scenarios
  - the cross-border tax aspects of domestic and cross-border reorganizations in the framework of tax treaties
  - reorganization clauses in tax treaties, their implementation and tax treaty policy in this respect
  - tax rules derived from European (proposed) legislation and CJEU decisions

- In order to...
  - propose specific reorganization clauses to be included in tax treaties
  - propose mechanisms to fill the lacunae in the Merger directive and the CCCTB proposal to fulfill treaty freedoms
Structure of the thesis

• Introduction
I. The (in)definition of corporate reorganizations. Grounds for combination of businesses
II. The Taxation of Corporate Reorganizations
III. The cross-border tax effects of mergers
IV. Reorganization clauses in tax treaties
V. Cross-Border Taxation of Mergers in European Tax Law
• General Conclusions
Cross-border tax aspects of reorganizations

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<th>Initial situation</th>
<th>Merger</th>
<th>Final situation</th>
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- **State of the residence**
- Current taxation at source
- Tax deferral at residence
Cross-border tax aspects of reorganizations and tax treaties

• Timing mismatches → International economic double taxation
  – Limitation of taxing rights at source by tax treaties
  – Credit method v. exemption method
  – No solution under OECD model
    • Commentaries to arts. 23A and 23B
    • Non-Discrimination/mutual agreement procedure

• Unilateral solutions granted by state of residence
  – Carryover of tax credits, renounce of tax deferral,…
  – Eliminate double taxation… but tax neutrality?
Reorganization clauses in tax treaties

• Over 120 tax treaties and “agreements” include specific provisions for reorganizations… but few examples of consistent treaty policy

• Most of them are partial solutions…
  – Respecting gains from sale of shares in immovable property companies/Gains from alienation of substantial participations…
  – And most of them tend to distribute taxing rights on certain sources of income arising in the course of the reorganization…

• While others provide comprehensive solutions and material rules of the application of tax deferral in each contracting state.
  • Benchmark: Art. XIII(8) 1980 US-Canada tax treaty
  • Specific mutual agreement procedure before source state administration
  • Discretional nature of relief
  • Implementation by both states
Reorganization clauses in tax treaties

• Only this last category of reorganization clauses seems to be likely to be included in tax treaties at their current development.

• Inclusion of these type of clauses in tax treaties?
  – Situation outside international juridical double taxation
  – Rules beyond distribution of taxing rights
  – Tax policy option
  – Practical arrangements
  – Coherence with ultimate aims of tax treaties
Thanks for your attention!