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The interpretation of multilingual tax treaties

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PART I

SEMANTIC AND NORMATIVE ANALYSIS

CHAPTER 1 - FORWARD

This part is aimed at laying the foundations for the analysis of the issues that constitute the subject matter of the present study, i.e. the most common types of issues emerging in the interpretation of multilingual tax treaties. Those issues have been already pointed out in section 1 of the Introduction and will be thoroughly analysed in Part II.

The foundations presented in this part may be divided into two categories: substantive and methodological foundations.

With regard to the first category, it has already been noted in the Introduction that, in order to suggest valuable and durable solutions to the question of how the interpreter should tackle and disentangle the various issues that he might face when confronted with a multilingual tax treaty, the author has chosen to anchor his analysis to a deeper and hopefully more stable and clear foundation than the mere text of Articles 31-33 VCLT. He has decided to primarily approach his task on the basis of modern linguistic and, more specifically, semantic and pragmatic theories.

Accordingly, Chapter 2 of this part is dedicated to the analysis of the answers that modern semantics (here intended in a broad sense, as including pragmatics) has given to key questions such as:

- (i) what is the goal pursued by persons using (written) language as a means of communication?
- (ii) how do persons actually create their utterances and use language in that respect?
- (iii) how do other persons interpret the utterances they hear or read?
- (iv) why do utterances seem inextricably affected by vagueness and ambiguity?
- (v) how is it possible to reduce the impact of such vagueness and ambiguity in creating and/or interpreting utterances?

On the basis of the results stemming from the analysis of the relevant semantic studies, the author has then established the fundamental principles that should guide the interpreter whenever construing a treaty. Such principles, which together work as a yardstick, a parameter of value to be used in order to assess the appropriateness of any treaty interpretation in light of the explicit or implicit arguments supporting it, are described in section 1 of Chapter 3. Moreover, in Chapter 3 of Part II, the results of this normative analysis are tested against the results of the positive analysis of the case law and scholarly writings concerning the application of Articles 31 and 32 VCLT, in order to assess whether the semantics-based principles established by the author represent, at least to a certain extent, a reasonable approximation of the law as it stands.

Thereafter section 2 of Chapter 3 scrutinizes whether and how those fundamental principles may impact on the interpretation of multilingual (tax) treaties and, more

specifically, endeavors to concisely answer the most crucial questions arising in the interpretation of multilingual treaties. Such questions are further analysed and the relative answers expanded in Chapters 4 and 5 of Part II, with regard to, respectively, multilingual treaties in general and multilingual tax treaties in particular. Such chapters also compare the author's approach with those taken by scholars, courts and tax administrations in the application of Article 33 VCLT and, more generally, in connection with the interpretation of multilingual (tax) treaties.

Finally, the methodological foundations of this research are set out in section 3 of Chapter 3.

Specifically, that section highlights that the present study does not attempt to put forward any solution to specific multilingual tax treaty interpretative issues, but, on the contrary, is committed to designing the formal legal and logical structure within which any interpreter of multilingual tax treaties may move in order to choose and reasonably justify his interpretation.

In that respect, it also outlines the reasons why the author has decided to choose such a methodological approach, reasons that may be ascribed to the inherent ambiguity and vagueness of treaties (and which characterize any type of linguistic expression) and to the significant influence that the socio-political values of the persons called to construe (tax) treaties have on the interpretation thereof.