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The interpretation of multilingual tax treaties

Arginelli, P.

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Author: Arginelli, Paolo

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Propositions

1. The authentic text(s) of a multilingual treaty prepared and agreed upon by the negotiators in the working languages of the negotiations should be given particular relevance for the purpose of construing that treaty, in particular where the treaty negotiators were not involved in the subsequent preparation of the other authentic texts. (Part II, Chapter 4, section 3.2.3)
2. Article 33 VCLT does not require the interpreter to analyze from the outset all authentic texts of a treaty for the purpose of interpreting and applying it; the various authentic texts need to be compared only if an interested party points at a *prima facie* discrepancy among them. (Part II, Chapter 4, section 3.3)
3. In the case of a *prima facie* discrepancy between two authentic texts (A and B), which Articles 31 and 32 VCLT appear not capable to remove, the interpreter must choose one of the two *prima facie* diverging meanings (for instance, the meaning provisionally attributed to A) as the sole meaning of the relevant treaty provision. Such an approach, which is in line with Article 33(4) VCLT, does not conflict with Articles 31 and 32 VCLT since it simply entails that the chosen meaning is attributed to the other authentic text (B) as the “special meaning” that the parties intended to give thereto. (Part II, Chapter 4, section 3.5.6)
4. In the absence of decisive evidence to the contrary, a final clause providing for a prevailing text in the case of discrepancies should be construed as requiring the interpreter to compare the *prima facie* divergent authentic texts in light of all the available means of interpretation, in order to determine whether reconciliation is possible by applying the rules of interpretation laid down in Articles 31 and 32 VCLT before relying exclusively on the prevailing text. (Part II, Chapter 4, section 3.6.2.3)
5. Where the provisions of a tax treaty follow the OECD Model, the English and French official texts of that Model may be given particular relevance for the purpose of construing the treaty. (Part II, Chapter 5, section 3.3)
6. The *renvoi* to the domestic law meaning provided for in Article 3(2) of OECD Model based tax treaties must be construed (i) as to apply even where the term used in domestic law is not identical to the term used in the relevant authentic treaty text, but just a synonym thereof and (ii) as generally including domestic law assimilations and deeming provisions. (Part II, Chapter 5, sections 5.3.2.4 and 5.3.2.5)
7. Where a tax treaty is authenticated (also) in the official languages of the contracting States and legal jargon terms are at stake, Article 3(2) may be construed as establishing the prevailing authentic text in cases of a discrepancy, provided that the context does not require a different meaning. (Part II, Chapter 5, section 5.5.2.3)
8. Language normally provides a set of underspecified sentences (i.e. sentences where information relevant for the purpose of their understanding is omitted) that may be understood only by means of semantic and pragmatic inferences based on the context.
9. The approach to conflicts of income attribution taken by the OECD in the 1999 Partnerships Report is reasonable within the system and in the light of the object and purpose of the OECD Model.
10. A limitation-on-benefits provision included by an EU member State in its tax treaty with a non-EU State, which denies treaty access to companies resident of that EU member State if (some of) the companies’ shareholders are not resident of the latter State while being resident of other EU member States, is contrary to EU law.
11. The EU freedom of establishment requires EU member States that relieve international juridical double taxation by means of tax exemption to allow non-resident persons having a permanent establishment on their territory to temporarily offset the profits attributable to that permanent establishment with the losses incurred by the head office.
12. Human knowledge of the world is made of conjectures about reality, whose truthfulness cannot be verified.