The EU Tax Regulatory Framework

Competence

Compliance

DTC

Discrimination
Restriction
Comparability
Justification
Proportionality
Host
Origin
Third Country

National Tax Laws of the EU Member States

Origin State rules
Host State rules
Purely domestic rules (TEU/TFEU not engaged)

International Law

Double Tax Conventions
(A) MS-MS
(B) MS-TC
(C) Prior

EU Law

TEU + TFEU
Regulations
Directives
Decisions
Charter of FR
International Agreements (EEA)
“Soft Law”

ECHR
The regulatory framework for tax in the EU
United Kingdom – as a “host” Member State
Example: Commerzbank
Case C-330/91

United Kingdom – as an “origin” Member State
Example: Marks & Spencer v David Halsey  Case C-446/03
ORIGIN STATE
(The tax rule of this State is causing the problem)

National of an EU Member State exercising a freedom in the host Member State (can be also a host State national)

HOST STATE
(The tax rule of this State is causing the problem)

Origin State national exercising a fundamental freedom right or EU citizenship right
However, as far as the exercise of the power of taxation so allocated is concerned, the Member States must comply with the Community rules ...and, more particularly, respect the principle of national treatment of nationals of other Member States and of their own nationals who exercise the freedoms guaranteed by the Treaty.
Double Tax Conventions

**Gottardo Case C-55/00, paragraph 33**

When giving effect to commitments assumed under international agreements, be it an agreement between Member States or an agreement between a Member State and one or more non-member countries, Member States are required, subject to the provisions of Article 307 EC, to comply with the obligations that Community law imposes on them.
“Migrant/non-migrant” or national treatment test

**Origin State Cases**

- Workers – *De Groot*
- Establishment – *Marks + Spencer*
- Services – *Eurowings*
- Capital – *Manninen*
- Citizenship – *Turpeinen*

**Host State Cases**

- Workers – *Schumacker*
- Establishment – *Avoir Fiscal*
- Services – *Gerritse*
- Capital – *Bouanich*
- Citizenship – *Martinez Sala*