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A sampling of Cases and Articles on Legal Structure of Tax Treaties - United States

- [Jamieson v. Commissioner](#), T.C. Memo. 2008-118, aff'd [584 F.3d 1074 \(D.C. Cir. 2009\)](#)
 - The Court utilized the last-in-time rule when an American couple, residing in Canada, was found liable for certain taxes owed on foreign earned income, when a newly passed federal statute overrode the rule where it conflicted in part with a preexisting tax treaty with Canada.
- [Chae Chan Ping v. United States](#), 130 U.S. 581, 600 (1889).
 - The Supreme Court has generally stated that the “last expression of the sovereign will” shall prevail when a treaty (including a tax treaty) conflicts with U.S. domestic law, and hence a tax treaty may override a determination under domestic tax law.
 - If the statute and the treaty conflict, the last-in-time rule requires that “the last expression of the sovereign will *** [controls].” [Chae Chan Ping v. United States](#), 130 U.S. at 600; [Whitney v. Robertson](#), 124 U.S. at 194.
- [Pekar v. Commissioner](#), 113 T.C. 158, 161 (1999)
 - If there is no conflict between a statute and a treaty, “the Code and the treaty should be read harmoniously, to give effect to each.”
- [Whitney v. Robertson](#), 124 U.S. 190, 194 (1888).
 - Where a statute and a treaty pertain to the same subject matter, they must be read so as to give effect to both if at all possible.
- [Crow v. Commissioner](#), 85 T.C. 376 (1985)
 - The Court held that Congress did not intend to overrule or supersede any portion of the Canadian treaty in enacting section 877 pursuant to the Foreign Investors Tax Act of 1966.
 - Former Canadian treaty protected former U.S. citizen from taxation under section 877.
 - This is NOT an example of domestic law overriding an international treaty, but contains some helpful discussion.

Code Sections

- § 7852(d)-codified “doctrine of equal status”
 - This section was amended in 1988 to provide that neither a provision of a treaty nor a law of the United States affecting revenue shall have preferential status by

reason of its status as a law or a treaty. In enacting the amendment to section 7852, Congress intended to make clear that conflicts between a revenue law and a treaty must be resolved by applying the principle that the provision adopted later in time controls (the last-in-time rule). S. Rept. 100-445, at 321-322 (1988); see also Chae Chan Ping v. United States, 130 U.S. 581, 600 (1889).

- § 7701(1) provides authority to promulgate regulations necessary to prevent the avoidance of tax through treaty shopping and other “conduit arrangements” of treaty abuses.
- § 894(a), states that U.S. domestic law shall be applied with “due regard” to any treaty obligation of the United States.

Law Review Articles

- [Sung-Soo Han](#), *The Harmonization of Tax Treaties and Domestic Law*, 7 B.Y.U. Int’l L. & Mgmt. Rev. 29 (Spring 2011).
 - Provides a very helpful section on international treaty override that discusses how several different countries decide whether domestic law will override an international treaty, and also discusses the United States approach, which is that statutes and treaties have equal status.
- [PwC](#), *Jamieson: A Case Study in Resolving Treaty/Statute Conflicts*, 21 JITax 11 (January 2010)
 - Discusses how courts go about resolving conflicts between treaties and statutes.
- [Ed Morgan](#), *International Tax Law as a Ponzi Scheme*, 34 Suffolk Transnat’l L. Rev. 69 (Winter 2011)
 - Discusses [Jamieson](#), the last-in-time rule and the relationship between domestic tax policy and international agreements.
- [Richard L. Doernberg](#), *Overriding Tax Treaties: The U.S. Perspective*, 9 Emory Int’l L. Rev. 71, 82-116 (1995)
 - Providing the definition of treaty override and history of U.S. tax treaty overrides.
- [Joel D. Kuntz and Robert J. Peroni](#), *Taxation of Foreign Persons with U.S. Activities: Relationship Between Treaties and the Code*, U.S. Int’l Tax. ¶ C4.03 (2012)
 - Relatively short article on treaty overriding and the Code.
- [Christine L. Agnew](#), *Expatriation, Double Taxation, and Treaty Override: Who is Eating Crow Now?*, 28 U. Miami Inter-Am. L. Rev. 69 (Fall 1996).
 - Discusses the [Crow](#) case, and the change in Congress’ posture toward treaty override as a result of the codification of the “later-in-time rule” in section 7852(d) of the Code in 1988.

- [Michael J. McIntyre](#), *Legal Structure of Tax Treaties*, (2003, rev. 2010).
 - Virtually all of the U.S. treaty overrides represent attempts by Congress to prevent taxpayers from avoiding taxes that the U.S. is conceded to have the authority to levy under its treaties.