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# **INDIVIDUALS' INCOME UNDER DOUBLE TAXATION CONVENTIONS**

## **A BRAZILIAN APPROACH**

**DANIEL VITOR BELLAN**



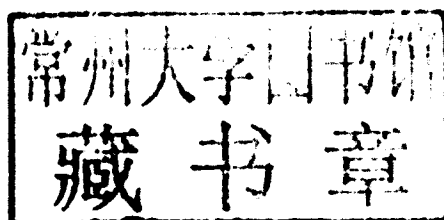
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# **Individuals' Income under Double Taxation Conventions**

***To my dear Thaís***

## About the Author

The news resounded through the corridors of academia that the board of examiners for the doctorate programme at the traditional Pontifical Catholic University of São Paulo had awarded the highest grade to a thesis in the field of Tax Law. Furthermore, it must be remembered that this committee included in its ranks the most punctilious of lecturers in the post-graduate programme of this institution, which until then had never awarded such high honours to any work that had passed through the rigors of its procedures.

The name of the young lawyer who reached such heights is Daniel Vitor Bellan, already known in the milieu of tax research by his challenging studies appearing in specialized publications.

As delighted as I was to receive the news, it did not surprise me. After all, eleven years had already passed since Daniel, the third-year student, had joined Lacaz Martins, Halembeck, Pereira Neto, Gurevich and Schoueri Advogados law firm, for the first time coming into contact with the practical aspects of tax consultancy, which at the time was under my supervision and that of my partner, Ricardo Lacaz Martins. His professional career developed in an extraordinary way: initially working in the area of tax consultancy, it soon became evident that Daniel's career pointed in the direction of administrative tax litigation. Today, he is the partner in charge of this department of the law firm, and it is with great frequency that my attention is drawn towards the ample references regarding his unerring oral defences in administrative tribunals.

Daniel's professional activities have not taken him away from his research. One only needs to refer to the example of his work 'Contribuições de Intervenção no Domínio Econômico',<sup>1</sup> which Daniel presented at the fifteenth Congress of Brazilian Tax Law (IDEPE), and which earned him our firm's best case prize of

---

1. Bellan, Daniel, 'Contribuições de Intervenção no Domínio Econômico', in *Revista Dialética de Direito Tributário* 78 (March 2002): 15–34.

2001. Having acted in several cases involving the subject of transfer prices, Daniel published articles on the subject, whether collating administrative decisions<sup>2</sup> or addressing practical issues.<sup>3</sup>

It was double taxation convention,<sup>4</sup> however, the subject that most stimulated Daniel's intellectual curiosity. Having recently graduated, I invited him to do some research on the subject of pension plans, which would form the subject of the International Fiscal Association (IFA) Conference held in the year 2000. Consequently, we put our joint signatures to the Brazilian report for that conference in an article entitled 'International Tax Aspects of Deferred Remuneration'. I'm pleased to see that the seed of curiosity that was planted on that occasion has remained firmly rooted in Daniel's research, to the extent that in 2004, the author defended one of the first dissertations presented before the Pontifical Catholic University of Sao Paulo in the area of International Tax Law. The dissertation '*Direito Tributário Internacional: salário e aposentadoria nos tratados contra bitributação*' impressed the examining committee, which was presided over by his tutor, Heleno Taveira Tôrres, and which also included José Artur Lima Gonçalves. We then took the decision to confer upon the recent master's graduate the necessary credits for a doctorate, already convinced that the work we were examining was merely the first in a series that would emerge in due course.

Our prediction could not have been more accurate, as demonstrated by the appearance of his present work, which serves to complement the results of his doctor's thesis that we examined. The result is the most complete work published in Brazil dealing with the subject of the earnings of individuals with respect to double taxation treaties.

The talent of the young researcher is notable by the way in which he frames contentious issues that present themselves to anyone devoted to the subject of double taxation treaties. Daniel does not restrict himself to the description of a single model; quite on the contrary, he carefully examines all double taxation treaties signed by Brazil, pointing out where they converge and diverge, whether among themselves, or in terms of the OECD Model Convention on Income and Capital. For this reason, it also offers valuable and conclusive material about Brazilian policy regarding the signing of double taxation treaties.

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2. Bellan, Daniel, 'Preços de Transferência – Decisões Administrativas', in *Manual dos Preços e Transferência no Brasil: Comemora os 10 anos de vigência da lei*, ed. Borges, Alexandre Siciliano (coord.) (São Paulo: MP, 2007), 243–356.
  3. Bellan, Daniel & Ribeiro, Ricardo P., 'Conceito de similaridade para efeito de controle fiscal dos preços de transferência', in *Preços de Transferência*, ed. Fernandes, Edison C. (coord.) (S. Paulo: Quartier Latin, 2006).
  4. Among others, it is worth mentioning the articles 'Interpretação dos tratados internacionais em matéria tributária', in *Direito Tributário Internacional Aplicado*, ed. Tôrres, Heleno (coord.), vol. III (São Paulo: Quartier Latin, 2005); 'O instituto da qualificação no Direito Tributário Internacional', in *Revista Dialética de Direito Tributário* 120 (São Paulo: September 2005): 43–59; and 'Algumas Considerações sobre a tributação dos royalties pagos a beneficiários residentes ou domiciliados no exterior', in *Direito Tributário Internacional Aplicado*, ed. Tôrres, Heleno (coord.) (São Paulo: Quartier Latin, 2003), 357–376.

As I had done eleven years ago, I was able to catch a glimpse of Daniel's distinctive talent and today it therefore gives me great joy to see the recognition conferred upon him in professional and academic circles. If Daniel Vitor Bellan was already known by tax law professionals by his studies, this book presents the image of a mature researcher. Daniel is no longer the promising young man I met a long time ago. He is now one of the great names of which Brazilian scholars in international tax law can be proud. May this be but the first of a series of books presented to us by the author in the forthcoming years. Finally, if knowledge implies responsibility, then the high degree of such knowledge that Daniel has achieved raises the scientific community's expectations on his contributions.

Prof. Luís Eduardo Schoueri  
Professor of Tax Law at the University of  
São Paulo – Law School



## Preface

The present text is based on a thesis presented as a partial requirement for obtaining the degree of Doctor in State Law from the Pontifícia Universidade Católica de São Paulo (PUC/SP).

The thesis was defended before a body made up of myself, as tutor, and also of Professors José Eduardo Soares de Mello and José Artur Lima Gonçalves, both from PUC/SP, Susy Gomes Hoffmann, of Pontifícia Universidade Católica de Campinas (PUCCAMP), and Roberto França Vasconcellos, of Fundação Getúlio Vargas (FGV/SP), on 30 May 2008, the occasion on which the then-candidate Daniel Vitor Bellan passed with a maximum grade.

This is a wide-ranging work, replete with original insight, used to explore the arduous subject of international double taxation treaties pertaining to individuals.

Simply by reading this work's summary one is able to grasp the breadth of the aspects and topics examined by the author, who boldly addresses the difficult issues that arise from them.

After dealing briefly with individuals' income tax in Brazil, he goes on to examine the interpretation and qualification of International Tax Law, in order to examine the multiple hypotheses related to the taxation of earnings of individuals enshrined in international treaties.

The book therefore makes a significant scientific contribution, not only to the study of income tax, but also to the nuances contained in International Tax Law, a discipline lacking in greater academic output in Brazil.

The dedicated and consistent research of his assertions render the work of the young lawyer, a specialist in Tax Law, Daniel Vitor Bellan, mandatory reading for all those who seek to broaden their knowledge on the subject.

## *Preface*

It can thus be strongly recommended both as a complementary text for post-graduate courses in Tax Law, and as an in-depth study for scholars and activists alike in the field of international taxation.

Regina Helena Costa  
Post-Doctor and Lecturer of Tax Law at Pontifícia  
Universidade Católica de São Paulo

## Acknowledgements

This book is a dream come true. It is the culmination of a project that has spanned eight years. It began in 2002 when I was undertaking my Master degree at PUCSP (Brazil). By extensive research and reflections, it was developed further into my doctoral thesis, presented in 2008 at that same University. Now, I was given the honor to have it published by Kluwer.

Numerous people have supported and encouraged me throughout this period, and I owe them a special mention here.

I would like to start by thanking Professor Regina Helena Costa for being my doctoral supervisor. Despite her busy routine as a Federal Regional Court judge, she spent innumerable hours discussing and commenting on the drafts of the manuscript and sharing her helpful thoughts and ideas.

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I have to express my gratitude to Professor Luís Eduardo Schoueri, a dear friend, partner and professor. Not only did he give me the opportunity to work with him since 1997, but he has also trusted and invested in me for many years. I am also deeply indebted to him for his classes, lectures, meetings and for his examples of rectitude, ethics, honesty, dedication to his studies and love of teaching. I owe him even the subject of this book, which was the result of a study prepared jointly with him for the International Fiscal Association Congress in 2000. I am also extremely grateful for his constructive academic comments, suggestions and for his kind Introductory Observations to this book.

Many thanks to my other partners at Lacaz Martins, Halembeck, Pereira Neto, Gurevich & Schoueri Advogados for their competence and professionalism, which helped me to face challenges that contributed to my professional development.

Particular thanks to my friend and Professor Roberto Quiroga Mosquera, the first of my tax law professors. Furthermore, I would like to pay a tribute to my law

## *Acknowledgements*

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I need to thank the support of my friend Roberto França Vasconcellos, an excellent professor and a talent in the Brazilian tax law field. I am deeply indebted to him for my brief academic career.

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To Lou Rolla, my dear editor, my thanks for having accepted and welcomed me so nicely in Kluwer Law International. His professionalism and efficiency impressed me from the very first moment. In addition, it is important to point out that the success of this publication is due to the positive support and encouragement of my friends Luís Eduardo Schoueri and Sergio André Rocha. Also, the project was only possible due to the hard work of Natali de Vicente Santos, Carla de Melo Brandão and Chris Ainsbury on the translation and review. Thank you all.

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I also thank my great friends Maurício Giannico, Ricardo Barsotti, Aristóteles Moreira Filho and José Jardim for their friendship and support.

A special thank to my parents, Gabriel and Inez, and all my family for everything, mainly for teaching me the value of work, study and honesty.

Last but definitely not least, a special mention to my dearest Thais, for whom this book is dedicated.

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