

NEWS LETTER

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RESEARCH

THE GENERAL PARTNERSHIP: ONE SIZE FITS ALL?



The German general partnership (GbR) serves as default form of business organisation and, more generally, as default organisational form for any association of persons pursuing a common purpose. No wonder, therefore, that the GbR is ubiquitous and comes in many different manifestations. Examples include small law

firms, medical practices and the joint holding of real estate by family members, but also events as elusive as the one-off purchase of a lottery ticket by two persons. To cater for this wide range of potential applications, the BGB provided that partnership property could only be disposed of with the consent of all partners, but it stopped short of recognising the GbR an entity separate from the individual partners. The result was a hybrid structure between contractual relationship and entity, resulting in a great deal of legal uncertainty. During the second half of the 20th century, the question of whether or not the GbR may constitute a legal entity was the subject of intense scholarly debate for several decades. In a landmark decision in 2001, the Federal Court of Justice finally settled the matter by ruling that the general partnership can have the status of a legal entity. This means that the GbR may, for example, enter into contracts and acquire property. In the absence of entity status, it is the partners themselves who have to “stand in” for the partnership in that respect.

In a recent article Erik Röder argues that, as a result of this decision, it has become even more evident that a uniform statutory framework for general partnerships cannot properly accommodate the many different types of general partnerships occurring in practice. Instead, Röder suggests that the general partnership form should be subdivided into two new types: a registered general partnership, for which the acquisition of entity status is linked to registration in a (currently still non-existent) public register for GbRs, and a distinct type of GbR that is not a legal entity but consists of merely a contractual relationship between its partners. Each partner of the latter type of partnership would be free to dispose of his or her share in individual assets dedicated to the partnership, without having to seek the consent of the other partners.

Röder, E: Reformüberlegungen zum Recht der GbR. In: Archiv für die civilistische Praxis (AcP), 2015, Volume 215, Issue 3/4, pp. 450–532 (83).

WHEN FAILURE MOTIVATES

Motivation is an art to which information is the key. Updated strategy based on the respective situation is crucial for politicians, bosses, parents, coaches and all the world's leaders. A recently published paper by Qiang Fu, Changxia Ke and Fangfang Tan offers first empirical evidence of the impact of progress feedback on player's motivation, comparing team and individual tournaments, and contributing to new insights on team incentives. The economists show: The leader in a competition performs worse when he realises his advantageous position, whereas the laggard will benefit from knowing that he lies behind. This applies to individual contestants, but not to contestants competing in a team.



The economists set up a best-of-three contest in the laboratory to better understand how players' strategic mindsets change as an effect of feedback. One condition simulated the competition between two rival teams, each team consisting of three players. Each player plays and decides one of the three contest games. The team that is first to win two games is the winner of the overall contest and is rewarded with a prize. The players were informed of whether

their teammate had won or lost their game in the previous round. In a control phase the players did not get any feedback on the team performance so far. The paper shows that in team contests neither winning nor losing in previous rounds biases the performance of contestants competing in subsequent rounds. In addition, to analyse how progress feedback might differ between team tournaments and individual tournaments, the economists studied an experiment in which individual players competed on their own behalf. Contrary to the predictions of game theory, Fu, Ke and Tan showed that in individual contests, first-round winners reduce their effort while first-round losers increase their effort if provided with feedback. According to Fu, Ke and Tan, possible explanation for the divergent behaviour between individual competitors and competitors in a team is provided by the "utility of winning", which considers the psychological satisfaction from winning.

Fu, Q., Ke, C., and Tan, F.: "Success breeds success" or "Pride goes before a fall"?: Teams and individuals in multi-contest tournaments. In: Games and Economic Behavior, 2015, Volume 94, pp. 57–79.

RESEARCH

MIND THE GAP



Distributional conflicts are conflicts over who gets what and how much he gets – of the available land, money, houses, jobs, parental love or even social recognition. They are ubiquitous and if they turn into violent conflict, they can have devastating consequences. Peaceful bargaining that resolves the conflict without violence is a superior outcome for all parties involved, but nevertheless violence often emerges.

Economists and political scientists have tried to understand the reasons that lead to this sad outcome. Two important factors are whether or not bargaining takes place between players of similar fighting strength, and what are the rules that govern peaceful bargaining. Researchers from the MPI of Tax Law and Public Finance set up a laboratory experiment to study how power asymmetry and how bargaining rules affect the likelihood for a redistributive conflict to escalate and become violent. They find that the balance of power and the bargaining rules interact with each other. If the parties who bargain have an influence about what share they request for themselves in the peaceful bargaining phase, then higher asymmetries in fighting strength lead to a higher probability of escalation. Intuitively, if players can choose their demands in the peaceful stage, this generates uncertainty about other players' types and causes strategic uncertainty. Symmetry may make it easier for players to overcome these problems. The effect of power asymmetry is much less pronounced if bargaining occurs in a mediated set-up in which peaceful divisions are proposed to the players, if these division proposals mirror the differences in fighting strength.

In a nutshell, the question of how to optimally choose the rules to settle a distributional conflict peacefully is linked to the distribution of power. In the presence of strategic uncertainty, an imbalance of power leads to more conflict and exogenous mediation proposals become important.

Herbst, L., Konrad, K., and Morath, F.: Balance of power and the propensity of conflict. In: Games and Economic Behavior, forthcoming.

MUNICH ECONOMISTS ARE THE BEST



Whether it is the beer is yet to be investigated: At no other German-speaking university do economists write as many outstanding articles as in the Bavarian capital at the Ludwig-Maximilians-University (LMU) in Munich. This is one of the results of the Handelsblatt (Journal of Commerce) Economics Ranking, which identifies the best researchers among economists in the German-speaking countries on an annual basis.

The Department of Public Economics at our Institute contributes to this excellent result. **Prof. Dr. Kai A. Konrad**, Director of the department, tops the Handelsblatt's list of the strongest researchers at the LMU, where he holds an honorary professorship. In addition, the Ph.D. programme at the department is linked with the programme at the LMU. The department engages in intellectual exchanges with the Department of Economics at the University of Munich and Ph.D. students participate in the Munich Graduate School of Economics (MGSE) in the Department of Economics at the LMU.

IN GOOD SCIENTIFIC COMPANY

Prof. Dr. Kai A. Konrad, Director of the Department of Public Economics at the Institute, has been elected to membership of the Berlin-Brandenburg Academy of Sciences and Humanities (BBAW) and of the European Academy of Sciences and Arts (EASA). The BBAW is a learned society with a three hundred-year old tradition of uniting outstanding scholars and scientists across national and disciplinary boundaries. 78 Nobel prize-winners have shaped its history. Membership is awarded on the basis of outstanding scientific achievement. The European Academy of Sciences and Arts is a learned society of around 1,700 top scientists and artists worldwide who approach questions facing Europe and the globe in various colloquia and publications. Kai A. Konrad will receive his membership certificate at the annual gathering of EASA in Salzburg on March 5, 2016.



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MISCELLANEOUS

WOLFGANG SCHÖN CHAIRMAN OF EATLP



Prof. Dr. Dr. h.c. Wolfgang Schön, Director of the Department of Business and Tax Law at the Institute, was elected the new Chairman of the Executive Board of the European Association of Tax Law Professors (EATLP) at the organisation's annual congress in May 2015 in Milan. The European Association of Tax Law Professors is a leading organisation of professors teaching tax law at universities in Europe. It was founded in 1999 with the aim of contributing to the development of a common approach to the study of

tax issues as well as to the harmonisation of taxes within the European Union, and to promote academic teaching and research on international, domestic and comparative taxation at European universities. The EATLP holds an annual conference to help achieve its goals of promoting academic teaching programs on European, international, domestic and comparative taxation and of contributing to the harmonisation of taxes within the European Union (see picture above from the 2015 congress in Milan). The 2016 EATLP Congress will take place in Munich on June 2 – 4, 2016 and will be hosted by the MPI for Tax Law and Public Finance.



BIRKE HÄCKER NEW ACADEMIC MEMBER OF CHBA

Dr. Birke Häcker, Senior Research Fellow at the Department of Business and Tax Law, has been elected academic member of the Chancery Bar Association (ChBA) of England and Wales. This notable honour is granted to “legal academics who have very well established reputations in one or more of the areas of expertise covered by the Chancery Bar Association”, according to the ChBA. The Chancery Bar Association is one of the longest established Bar Associations and represents the interests of more than 1,200 barristers who specialise in Chancery work in England and Wales. Academic membership at the ChBA is open to jurists who are not practising as barristers but hold a full-time academic teaching or research post. Currently the ChBA has 25 academic members from all over the world. Dr. Birke Häcker is the only German representative.

ALEXANDER HELLGARDT CONCLUDES HABILITATION



PD Dr. Alexander Hellgardt, Senior Research Fellow at the Department of Business and Tax Law, has successfully concluded his habilitation at the Ludwig-Maximilians-University (LMU) in Munich. His thesis entitled “Regulierung und Privatrecht” (Regulation and Private Law) deals with private law as a tool which the legislator may use to regulate the economy or society. As such, private law competes with criminal law and administrative law and serves the public interest. This perspective on private law, uncommon in Germany, not only challenges jurisprudential theories but also has important consequences for legislation and legal practice. For the 2015/2016 winter term, Hellgardt is an interim professor of Civil Law, German, European and International Business Law at the Ludwig-Maximilians-University, Faculty of Law in Munich.

ERIK HORNUNG RECIPIENT OF EHA COLE GRANT

Dr. Erik Hornung has been awarded the Arthur H. Cole Grant by the Economic History Association for a project to analyse the effect of the very first compulsory health insurance scheme on life expectancy. The grant allows Erik Hornung and his colleagues Prof. Dr. Stefan Bauernschuster, from the University of Passau, and Anastasia Driva, from Ludwig-Maximilian University in Munich, to locate and digitise mortality data from Prussian censuses for 462 Prussian counties from 1875 to 1913 and to make it accessible for empirical analysis. With the Compulsory Health Insurance Act of 1883, Chancellor Otto von Bismarck introduced a fundamental change in the distribution of public health services in Germany. Initially the health insurance applied to industrial workers only. The fact that some parts of the German population were insured earlier than others will be exploited by Hornung and his colleagues to analyse how the insurance influenced the mortality of the population.

Dr. Erik Hornung is a Senior Research Fellow at the Department of Public Economics of the Institute. Since April 2015 he has held an interim professorship (W3-50%) of Economics with a specialisation in quantitative economic history at the University of Bayreuth.



MISCELLANEOUS

THREE CALLS FOR PROFESSORSHIPS

We are proud to announce that three of our senior research fellows have embarked on the next step of their career paths and have accepted calls for professorships at internationally renowned universities.



Dr. Nadja Dwenger from the Department of Public Economics, has accepted a professorship at the Institute of Economics at the University of Hohenheim. Since the 2015/2016 winter term she has been holding a position as professor of Public Finance. Dwenger completed her Ph.D. in economics at the Freie Universität Berlin in 2010 and joined our institute the same year. The focal point of her research is empirical public finance. In particular, Nadja Dwenger is interested in the determinants of tax compliance and in questions relating to how taxpayers respond to governmental regulation.

Dr. Birke Häcker from the Department of Business and Tax Law, has been appointed Linklaters Professor of Comparative Law at the University of Oxford with effect from September 1, 2016. Birke Häcker is qualified in both English and German law. Having completed full undergraduate law degrees first at Oxford and then at Bonn, she obtained a DPhil at the University of Oxford. Since 2011, she has been working at the Institute in the areas of general private and business law and comparative law, including relevant tax aspects. In Oxford, she succeeds Professor Stefan Vogenauer, who became Director at the Max Planck Institute for European Legal History in Frankfurt am Main in October 2015.



Dr. Florian Morath from the Department of Public Economics has accepted the offer to join the Faculty of Economics and Business Administration at Johann Wolfgang Goethe University Frankfurt. He will start working as a professor of Economic Policy in Frankfurt on February 1, 2016. Florian joined the Institute in 2009 and received his Ph.D. in economics from Free University Berlin in 2010. His research focusses on the political economy of conflict and redistribution, public goods and externalities, and the economics of taxation.

WELCOME TO OUR NEW HEAD OF ADMINISTRATION



After holding professional positions at the Goethe-Institutes in Mexico City, Ljubljana, Seoul, Tokyo und Buenos Aires, **Barbara Schulz** made her way home to Munich and is now in charge of the administration for the two joint MPs: the MPI for Tax Law and Public Finance and the MPI for Innovation and Competition.

Jana Cahlikova joined the Department of Public Economics as a Senior Research Fellow from the CERGE-EI in Prague, where she completed her masters in economics and subsequently started her Ph.D. training which will be completed in early 2016. Her research interest lies in behavioural economics, experimental economics and applied microeconometrics. She focusses on topics such as social identity, group decision-making and behavior under stress and will use this perspective to study determinants of tax compliance and preferences for redistribution.



Our guests in 2015: **Benjamin Alarie** (University of Toronto, Canada), **Hugh J. Ault** (Boston University, USA), **Pierre Boyer** (University of Mannheim, Germany), **Michalina Aleksandra Duda** (The John Paul II Catholic University of Lublin, Poland), **Tatiana Fokina** (Higher School of Economics, Russia), **Bruno Frey** (CREMA/Zeppelin University, Switzerland), **Boris Gershman** (American University, USA), **Beatriz Guimerá Oro** (University of Valencia, Spain), **Samuel Häfner** (University of Basel, Switzerland), **Shih Chou Huang** (National Taipei University of Business, Taiwan), **Dan Kovenock** (Chapman University, USA), **Mariana Göttingen** (University of Göttingen, Germany), **Jingfeng Singapore** (Singapore), **Nikola Croatia** (Croatia), **Toshiko Miyamoto** (Japan), **Rhea Molato** (University of Pines), **Tadashi Murai** (Osaka), **Mattias Polborn** (University of Illinois Urbana-Champaign, USA), **Daniel Reck** (University of Michigan, USA), **Armin Riess** (University of Luxembourg, Luxembourg), **Paloma Schwarz** (University of Luxembourg, Luxembourg), **Marco Serena** (Universidad Carlos III de Madrid, Spain), **Laurent Simula** (University of Uppsala, Sweden), **Marcel Thum** (Technische Universität Dresden, Germany), **Fábio Tomkowski** (Pontificia Universidade Católica do Rio Grande do Sul, Brasília), **Mie Tsuji** (Kansai University, Osaka, Japan), **Andreas Wegener** (Universität Hannover, Germany), **Sébastien Wolff** (Louvain University, Belgium), **Sung-Wook You** (Bucheon, Korea).



CONFERENCE

TAX CITIZENSHIP AND INCOME SHIFTING

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What problems arise when national tax laws compete in an international economy? This question provides an ideal playground for the researchers of the two Institute's departments and for an interdisciplinary conference. Wolfgang Schön from the Department of Business and Tax Law and Kai A. Konrad from the Department of Public Economics, together with Guttorm Schjelderup from the Norwegian Center for Taxation at the Norwegian School of Economics, and

Thomas Gresik from the University of Notre Dame invited guests from the fields of law, accounting and economics to a two-day conference on "Tax Citizenship and Income Shifting". The event was hosted by the University of Notre Dame in their beautiful London Global Gateway (see picture above).

Kai A. Konrad presented the success or failure of the fight against tax havens as the outcome of a coordination game between a tax haven and its potential users. His analysis explains some empirical findings, such as the substantial profits realised by haven countries and the positive fees for tax haven services. It also produces policy implications for the fight against tax havens.

Thomas Gresik from the University of Notre Dame alluded to the question on what policies are best to prevent multinational enterprises from using internal financing to shift their pre-tax income to low-tax countries. He characterised when it is better to use an earnings stripping rule or a safe harbor rule depending on the development status of the host country.

Dirk Schindler from the Norwegian Center for Taxation laid out popular examples of how multinational firms shift their profits to low-tax jurisdictions and thereby reduce their effective tax rates. Then, he presented empirical evidence that firms also shift profits into loss making affiliates in high-tax countries and identified channels how this is accomplished.

Guttorm Schjelderup from the Norwegian Center for Taxation considered the optimal relationship between the corporate tax rate and a source tax on royalty payments, given that multinational firms use royalty payments to shift their pre-tax profits into low-tax jurisdictions and given that a corporate tax causes underinvestment because the cost of equity is not tax deductible. He argued that a royalty tax below the cor-

porate tax rate can mitigate underinvestment by giving firms possibilities to avoid the high corporate tax rate – thereby stimulating investment. Schjelderup identified conditions when, to maximise public revenue, the royalty tax could be set equal to the corporate tax rate and when it is best to have a lower royalty tax rate.

Gabriel Zucman from the University of Berkeley quantified the magnitude of public revenues that are lost due to offshore tax evasion and avoidance. He estimated that 55 % of the foreign profits by US corporations are booked in tax havens, and that 8 % of the world’s private financial wealth is held through tax havens.

Michael Kirsch from the University of Notre Dame evaluated current reforms on the taxation of non-resident US citizens. Under the US tax law, citizenship is a connecting factor between US tax jurisdiction and non-resident US citizens that are taxed on their worldwide income. Even though the resulting tax claims are alleviated by exemptions, they are substantial and have for some time been accompanied by extensive reporting requirements. Kirsch argued that the current developments, like the Foreign Account Tax Compliance Act, increase the practicability of a citizenship-based taxation, which should therefore be retained.



In a panel discussion [from left to right], Thomas Gresik - University of Notre Dame, William Morris - General Electric, Guttorm Schjelderup - Norwegian Center for Taxation, Mike Williams - UK Treasury, and Philip Baker QC - Field Court Tax Chambers, addressed current policy questions.

Ruth Mason from the University of Virginia drew a different picture, opposing Michael Kirsch. She argued that using citizenship as a connecting factor for taxation is neither justified nor practical in a globalised world. Mason considered the reporting requirements and the penalties for not complying with them to be disproportionate and a sign that the US cannot enforce tax claims which rely on citizenship as a connecting factor. She further challenged the efficiency of the connecting factor citizenship because it puts the US in a disadvantageous position for attracting qualified workers.

CONFERENCE

3RD POSTDOCTORAL CONFERENCE ON TAX LAW



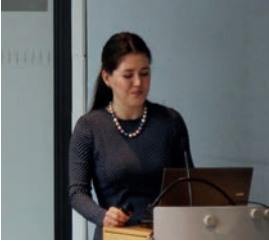
In November 2015, the Max Planck Institute for Tax Law and Public Finance hosted, for the 3rd time, a Postdoctoral Conference on Tax Law. This conference brought together young academics from various countries to discuss current research topics and to exchange ideas. This year, the choice of topics heavily reflected the importance of the BEPS process and the influence of current international debates

such as the rising concern about inequality. For two days, the conference gave participants the opportunity to reflect on those issues. Discussions were lively and continued during coffee breaks and the conference dinner where the external guests had the opportunity to taste Bavarian cuisine.

Several presentations were inspired by recent developments in international tax law. Ricardo García Antón from the IBFD argued for a shift towards a real multilateralism aimed at developing global solutions for humanity and at fighting global inequality.



Daniel Blum from Vienna was equally concerned about the architecture of the international tax law system. He focused on the taxation of non-residents and investigated whether there were legal limits to state sovereignty in this respect and, if so, how they might be identified. For him, the decisive question is how to align the substantive and enforcement jurisdictions.



The two conference days allowed everyone to learn about developments in other parts of the world. In particular, the structure and the evolution of the Eurasian Economic Union were new to many participants. The talk given by Karina Ponomareva from Omsk on this subject highlighted the similarities and the differences between Eurasian and European integration and illustrated current difficulties in the area of tax law.

Karoline Spies from Vienna analysed the impact of the EU fundamental freedoms on the EU/Switzerland-relationship in direct tax matters. She identified two major areas of influence: the fact that, in the TFEU, the free movement of capital is also guaranteed vis-à-vis third countries and the EU/Swiss Agreement on the Free Movement of Persons. The legal constraints for exit taxes served as an example to demonstrate the scope of this influence.



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SELECTED PUBLICATIONS

Häcker, B. Divergence and Convergence in the Common Law – Lessons from the *Jus Commune*. *Law Quarterly Review (LQR)*, 2015, Volume 131, pp. 424-453.

Konrad, K. A., and Morath, F. Evolutionary determinants of war. *Defence and Peace Economics*, forthcoming.

Osterloh-Konrad, Ch. Fiat voluntas! – Der Schutz potentieller Rechtsnachfolger bei der Anordnung von Vor- und Nacherbschaft. In: *Archiv für die civilistische Praxis (AcP)*, 2015, Volume 215, pp. 107-164.

Transfer Pricing Issues of BEPS in the Light of EU Law

Wolfgang Schön

British Tax Review, 2015, No. 3, pp. 417–428

One of the aims of the OECD’s Action Plan on Base Erosion and Profit Shifting (BEPS) is to reduce existing leeway for multinational enterprises to shift profits by exploiting transfer pricing rules. Profit allocation is meant to be aligned with “real activity” and “value creation.” The article of Wolfgang Schön is devoted to the question of whether this extension of the arm’s length approach is supported by the jurisprudence of the CJEU on taxation of intra-group dealings which has granted Member States discretion to discriminate against cross-border transactions within corporate groups only in so far as these are “wholly artificial arrangements”. According to Schön, EU law is both helpful and unhelpful at the same time. In principle, the Court of Justice of the European Union (CJEU) has accepted the necessity of testing intra-group dealings with regard to their artificiality and in particular their lack of consistency with market transactions vis-à-vis third parties. Yet it remains doubtful to what extent this narrow justification allows Member States to realign intra-group profit allocation in order to reflect “value creation” and “real activity.” For this purpose it seems more advisable to Schön to enter into a debate on international allocation of taxing rights and to discuss the options of shifting the borderline between the limited and unlimited tax liability of group companies in an open fashion.

Technology Transfers For Climate Change

May Elsayyad and Florian Morath

International Economic Review, forthcoming

International climate agreements are difficult to achieve. Uncertainty about the country-specific benefits of climate protection as well as the fact that mitigation efforts constitute contributions to a public good and provide the opportunity for non-contributors to free-ride, strengthen the incentives to postpone the mitigation efforts. While getting countries to commit to emission targets has remained an elusive goal, initiatives to support renewable technology seem to be more successful. However, these are also controversially debated. May Elsayyad and Florian Morath show that the transfer of green technologies can be a promising approach in tackling the problem of climate change. The authors analyse a two-period public goods model where later contributions can be based on better information, but delaying the mitigation effort is costly because of irreversible damage to the ecosystem. Elsayyad and Morath show that countries have an incentive to provide cost-reducing technology as this can lead to other countries making contributions earlier and can therefore reduce a country's burden of contributing to the public good.

Grundfragen des Europäischen Steuerrechts

Wolfgang Schön and Caroline Heber (eds.)

MPI Studies in Tax Law and Public Finance, 2015, Volume 5, 164 pages



The new, fifth volume of the Institute's book series "MPI Studies in Tax Law and Public Finance" brings together the findings of the Institute's lecture series on the fundamentals of European tax law. Each chapter of the book is dedicated to current developments of European Union Law and their impact on the tax law system of every single member state. Since Union law has priority of application over conflicting national law, European tax law influences national tax laws to a large degree. The issues raised in this book range from current disputes on the case law of the European Court of Justice to the fundamental question on how to form a coherent European tax law system: The authors analyse the impact of the European fundamental rights and fundamental freedoms, the possibilities for and limitations on harmonisation and current challenges in international taxation such as the fight against international tax avoidance.

Endogenous Group Formation in Experimental Contests

Luisa Herbst, Kai A. Konrad, and Florian Morath

European Economic Review, 2015, Volume 74, pp. 163–189



Why would anyone refrain from joining an alliance in an upcoming conflict? Because “the strong man is the strongest when alone,” as William Tell in Friedrich Schiller’s eponymous book puts it. Is that true and who wants to form an alliance nonetheless, and why? In a recently published paper, economists from the Institute used an experimental approach to study alliance formation in contests or in conflict more generally, and discovered the following: Weakly motivated players have an incentive to enter into an alliance and to free ride on the effort of strongly motivated players. Players who are willing to expend high effort

correctly anticipate that they will be exploited in an alliance and prefer to stand alone. In line with the behavioural choice of Schiller’s protagonist, strong players win with a higher-than-average probability when standing alone, while they gain a much lower expected resource share when in an alliance. Furthermore, the way in which alliances are formed has consequences for the effort provision. In line with theories of in-group favouritism, and despite the self-selection of weak players into alliances, players in voluntarily formed alliances mobilise more resources than players who were forced into an alliance. This effort increase in voluntarily formed alliances is largest for strong players who actually voted against alliance formations; these players anticipate the lower effort of their fellow alliance members and strongly increase their own effort.

Interested in more scientific research results?



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Max Planck Institute for Tax Law and Public Finance on:

<http://www.ssrn.com/link/Tax-MPG-RES.html>

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