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# The Oxford Handbook of International Tax Law

Florian Hasse and Georg Kofler (eds)

Publication Review

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The Oxford Handbook of International Tax Law<sup>1</sup> is a 1057 page, 57 chapter, work of authoritative reference divided into eight parts covering historical perspectives of international tax law as well as the future of international tax law and many selected issues in between. It skilfully manages to deal with many classic, technical aspects of international tax law, such as transfer pricing and double taxation, whilst also providing an educational account of international tax history, and bravely future gazing on issues such as value creation, tax governance and the two pillar proposals.

Part One of the Handbook, addressing the history and scope of international tax law, begins with an account of the ancient roots and developments of international tax law in Chapter 1 before proceeding, in Chapter 2, to consider what the authors describe as the new international tax order of the 1920s compromise, and the developments to the 2020s compromise, within the new international tax governance. Chapter 3 then considers sources of law and legal methods in international tax law briefly, to be followed by an assessment of jurisdictional underpinnings of international taxation in Chapter 4. International tax law and customary international law is discussed in Chapter 5. Chapter 6, which discusses the influence of international tax law on national tax systems, provides some focus on the domestic foundations of international tax, expressly stated by the Editors to be important to the Handbook's aims. Part One contains a further three chapters on aspects of the international tax architecture covering international tax law and personal nexus in Chapter 7, international tax law and low and middle-income countries in Chapter 8, ending at Chapter 9, with an interesting discussion on the status quo, trends and perspectives in international tax.

The relationship between international tax law and other legal and social spheres is the title to Part Two, which comprises seven chapters covering international tax law and private international law as well as public international law in Chapter 10 and Chapter 11 respectively. Chapter 12 considers international tax law and corporate law, including topics such as corporate financing and the tax aspects of debt and equity as well as the distribution of dividends. International trade law in the international tax context is considered in Chapter 13, which features a discussion on subsidies. Chapter 14 views international tax law from the perspective of an economic analysis of law. Chapter 15 provides an interesting discussion of international tax law and language. An analysis of comparative tax law is provided in Chapter 16.

Part Three features a total of twelve chapters covering a wide range of selected issues on tax treaties and international tax law, those selected issues being qualification conflicts and tax treaties in Chapter 17, triangular cases and tax treaties in Chapter 18, and the future of avoiding double taxation in Chapter 19. Charities in tax conventions are addressed in Chapter 20 with

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<sup>1</sup> Florian Haase and Georg Kofler (eds), *The Oxford Handbook of International Tax Law*, (Oxford University Press 2023).

exchange of information and tax treaties considered in Chapter 21. Beneficial ownership and tax treaties are covered in Chapter 22, including a brief analysis of beneficial ownership and anti-abuse mechanisms, and Chapter 23 addresses the principal purpose test under tax treaty law. Chapter 24 considers tax treaties and human rights law, whilst Chapter 25 considers the taxation of international partnerships. Chapter 26 covers regional double tax treaty models. Chapter 27 considers unilateralism, bilateralism and multilateralism in international tax law, with a discussion which includes reference to the multilateral process of international tax lawmaking. The final chapter of Part Three, Chapter 28, discusses the issue of agents in international tax treaties.

Legal aspects of international transfer pricing is the topic of Part Four of the Handbook, which is comparatively modest in size with just four chapters providing specific analysis on the role of Article 9 of the OECD Model Convention, in Chapter 29, OECD transfer pricing guidelines and international tax law, in Chapter 30, corresponding adjustments, in Chapter 31, and finally a discussion on the topic of transfer pricing versus formulary apportionment in Chapter 32, which features analysis of net and gross income apportionment as well as the arm's length range.

Part Five centers around the Europeanization of international tax law with a discussion of the role of the ECJ in the developments of international tax law in Chapter 33, an analysis of tax treaties and EU fundamental freedoms in Chapter 34, a discussion of EU state aid and international taxation, briefly accounting for tax rulings, in Chapter 35, whilst Chapter 36 considers international tax law from the perspective of the EEA and EFTA. Chapter 37 takes account of the twenty first century tax challenges of the EU candidate countries, while Chapter 38 analyses European anti-tax avoidance regimes including soft law instruments, state aid and tax avoidance as a general principle of EU law. The anti-tax avoidance Directive is also discussed in Chapter 38, with Chapter 39, as the final chapter in Part Five, considering alternative dispute resolution in the European Union, including arbitration.

Another collection of selected issues features in Part Six of the Handbook, on the broad topic of cross-border indirect taxation. This Part begins in Chapter 40 by analysing aspects of cross-border VAT, moving on, in Chapter 41, to a discussion on the taxation of imports, focusing on import VAT. 'White supplies' and double taxation in cross-border VAT law is the topic of Chapter 42 including a discussion on the meaning of harmonization in indirect taxation. An interesting comparison between EU VAT law and the OECD international VAT/GST guidelines is provided in Chapter 43.

Part Seven evaluates recent international tax trends in major economies and regions via seven chapters incorporating perspectives on the US in Chapter 44, China in Chapter 45, India in Chapter 46, Brazil in Chapter 47, Germany in Chapter 48, the East African Community (EAC) in Chapter 49 and Japan in Chapter 50. While some countries are obvious and indeed necessary inclusions in such a geographically focused evaluation of international tax law, overall Part Seven is a very interesting and informative read which demonstrates the significant lack of international tax harmonization.

The final Part of the Handbook, Part Eight, engages in future gazing on the outlook of the international tax architecture. The final chapters consider the emerging issues and the future of international tax law, incorporating a discussion on the emerging consensus on value creation in Chapter 51, the allocation of taxing rights under Pillar One of the OECD proposal in Chapter 52, with Chapter 53 addressing the issue of effective minimum taxation under Pillar Two of

the OECD proposal. The challenges of the emerging international tax consensus for low and middle-income countries are analysed in Chapter 54, which briefly considers the possibility of a move towards a strengthened developing-country alliance. Global tax governance is the topic for discussion in Chapter 55, which incorporates an interesting analysis of the development of international tax standards and the role of the OECD vis-à-vis developing countries. The final two chapters evaluate the future of labour taxation and the ‘rise of the robots’ including automation and the future of work, in Chapter 56, and digitalization and the future of VAT in the European Union, in Chapter 57.

There is no doubting the usefulness of this Handbook nor the interest certain to be shown in it. The Handbook is likely to become an important point of reference in this area and a very useful resource for academics, students, practitioners, international organisations and government officials alike.

Despite its enormous size and extensive coverage of topics, the quizzical element of the Handbook is the choice in some parts, especially but not limited to those parts covering selected issues, of the issues so selected. Granted, it is a difficult decision for the Editors, as the choice of what issues to include and what to leave out will never satisfy everybody. Suffice it to say that the choice in Part three is certainly varied. There are however a few arguable topic gaps, Part Five on the Europeanization of international tax law, for example, lacks an explicit discussion on European corporate tax. There is also the inevitable and unavoidable overlap of issues discussed between the chapters, analysis of customary international law is found in several chapters for example, and many chapters address Pillar One and Pillar Two. However, this does not detract from the overall usefulness of this Handbook.

This Handbook is the first edition on international tax law, it will surely be the first of many.

**Maria Kendrick**