

# LITERATURE REVIEW

## The Oxford Handbook of International Tax Law, Florian Haase and Georg Kofler (editors), Oxford University Press, 2023

The editors of the Oxford Handbook of International Tax Law were confronted with an almost impossible task of providing readers with a comprehensive capture of the international tax system, including a view on its past and its future. To succeed in doing so, it needed substantial work written by leading tax scholars following an extraordinarily well thought through structure that is to cover a wide range of topics. This book is precisely that and, as such, a true milestone for international tax research.

The Oxford Handbook of International Tax Law contains 57 (!) chapters divided into eight parts. It provides thorough dogmatic systematization of the relevant materials and thus ensures that practitioners and academics dealing with international tax issues possess an in-depth overview on the evolution of a wide range of subjects in jurisprudence and/or literature. Speaking from the perspective of an academic, I find this extremely helpful for the purposes of both researching and supervising. In addition to ensuring the necessary comprehensive coverage of the relevant materials, the book also provides various new insights and thereby clearly exceeds its core task of informing readers on the state of the art discussion on the respective issues.

The book commences by concentrating on the history and scope of international taxation. This part includes, first, four chapters on its development. Although all of them more or less end at the status quo, they focus on different parts of international tax history. In a particularly interesting chapter, Sadowsky demonstrates how incredibly far back international taxation reaches and how long the problem of tax evasion has already existed. Soriano focuses on the 1920 compromise and draws a line to the one of 2020 of which

the evolvement is very well presented in the work of Avi Yonah. Ranjan, in turn, recalls the genesis of international taxation from the perspective of developing countries and accentuates challenges that still exist. Furthermore, the first part contains four chapters that elaborate on the dogmatic underpinnings of international tax law. This includes, in particular, an inquiry into whether the international tax regime has, as suggested by powerful voices, indeed reached the standard of customary international law.<sup>1</sup> While the relevant contributors principally tend to share the scepticism with which this claim was met in literature, the discussion is gaining further life by Elliffe working out a principle he refers to as 'consensus international tax law'.

Part two deals with the interaction of international tax law with other legal and social spheres. This includes chapters on the interaction of international tax law with international private law,<sup>2</sup> public international law,<sup>3</sup> corporate law,<sup>4</sup> and international trade law<sup>5</sup> that provide various insights. It was, for instance, stimulating to see that the tension created by the application of local laws to global firms is also pressing in other fields.<sup>6</sup> Furthermore, it was interesting to learn how far reaching the impact of WTO law is on tax policy making.<sup>7</sup> This is followed by the work of Haslehner with a concise, yet thorough, systematization of a plethora of research on economic analyses and taxation demonstrating both the merits and limits of this perspective. Haase engages with language and the use of multilingualism in international taxation after which the part concludes with Barassi discussing the science and method of comparative tax research. I found this chapter to be very beneficial particularly because it may well need the methodological nuances of

### Notes

<sup>1</sup> Fadi Shaheen & David Rosenbloom, *Jurisdictional Underpinnings of International Taxation*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023); Elizabeth Gil García, *International Tax Law and Customary International Law*, in *The Oxford Handbook of International Tax Law* (Haase and Kofler eds, Oxford University Press 2023); Craig Elliffe, *International Tax Law and its Influence on National Tax Systems*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>2</sup> Polina Kouraleva-Cazals, *International Tax Law and Private International Law*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>3</sup> Christiana HJI Panayi & Katerina Perrou, *International Tax Law and Public International Law*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>4</sup> Marcos André Vinhas Catão & Veronica Souza, *International Tax Law and Corporate Law*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>5</sup> Servatius Van Thiel, *International Tax Law and International Trade Law* in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>6</sup> Polina Kouraleva-Cazals, *supra* n. 2.

<sup>7</sup> Servatius Van Thiel, *supra* n. 5.

legal comparison to make sense of the implementation of coordinated soft law rules into hard law systems that ultimately differ among each other.<sup>8</sup>

Part three of the book deals with selected issues on tax treaties and international tax law. It includes, in broad terms, two types of chapters. On the one hand, authors pick out particularly challenging technical topics of international taxation. Bizioli, Arginelli, and Berglund address, in their respective elaborations, (1) qualification conflicts and (2) triangular situations in a tax treaty context as well as the (3) mitigation of double taxation – the latter with a particular view on the impact of the two Pillars. In addition, the equally complex notions of beneficial ownership and the principle purpose test are analysed by Gosch & Altenburg as well as Danon with the latter's chapter containing a remarkably deep discussion of the matter. On the other hand, this part also includes elaborations on specific subject matters from the perspective of international taxation and tax treaties in particular. These chapters include the work of Hemels' on charities, Oberson's contribution on exchange of information, Baker's chapter on tax treaties and human rights, Stevens' inquiry into the taxation of international partnerships, West's analysis on regional double tax treaty models, and Jogarajan's treatise on agents in international tax treaties. More on a meta level is Steward's work dealing with uni-, bi-, and multilateralism in international taxation.

Part four is thematically close to its predecessor as, again, a very complex subject matter – transfer pricing – is at stake. Given the relative importance of transfer pricing for international taxation, it is well justified to dedicate a separate part to the four chapters dealing with, respectively, Article 9 of the OECD Model,<sup>9</sup> the OECD transfer pricing guidelines,<sup>10</sup> corresponding adjustments,<sup>11</sup> and again, on a more principled level, the issue of transfer pricing versus formulary apportionment.<sup>12</sup> The latter chapter proficiently covers the changing tides regarding the overall role of the arm's length principle in international taxation and, in addition, provides conceptual critique on formulary apportionment. While I am

personally not always inclined to follow the argument, the author nonetheless succeeds well in provoking the readers thoughts, which I consider highly valuable.

Part five of the book deals with the Europeanization of direct taxation. Paying tribute to the important role that negative integration has had in shaping the EU direct tax landscape, the first three chapters deal with the impact of the relevant jurisprudence of the European Court of Justice (ECJ): first in general terms<sup>13</sup> and thereafter through focusing on two selected fields of tax treaties<sup>14</sup> and state aid.<sup>15</sup> In addition, Schwarz Martinez's contribution on European anti-tax avoidance regimes and the (particularly well written) elaboration by Richelle on alternative dispute resolution in the EU both demonstrate the influence of the court and the EU legislature on the development of harmonized tax rules. Apart from that, however, there are no further contributions on the starkly growing impact of EU harmonization endeavours in direct taxation. This is not further problematic, however, as this aspect is well discussed in various other contributions of the book. In addition, via Knörzer's work on international tax law and the European Economic Area (EEA)/EFTA and Mihalova-Goleminova's contribution on tax challenges for the EU candidate countries, the chapter expands its view beyond the EU-27.

Part six deals with selected issues of cross-border indirect taxation. To begin, Scalia elucidates the core principles, evolution, and ECJ case law regarding the concept of a fixed establishment. Thereafter, Bieber elaborates on the VAT treatment of imports from the perspective of the General Agreement on Tariffs and Trade (GATT) after which he focuses on the EU approach on the matter. Heidi Friedrich Vache discusses unintended double taxation and double non-taxation in VAT, and Kristofferson closes the part on indirect taxation with a chapter comparing EU VAT law and the OECD international VAT/GST guidelines.

International taxation from the perspective of selected countries – the United States,<sup>16</sup> China,<sup>17</sup> India,<sup>18</sup> Brazil,<sup>19</sup> Germany,<sup>20</sup> and Japan<sup>21</sup> – as well as the East African

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<sup>8</sup> Marco Barassi, *Comparative Tax Law*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>9</sup> Miguel Teixeira de Abreu, *The Role of Article 9 OECD MC*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>10</sup> Yuri Matsubara & Clemence Garcia, *OECD Transfer Pricing Guidelines and International Tax Law*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>11</sup> Matthias Hofacker, *Corresponding Adjustments*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>12</sup> Georgios Matsos, *Transfer Pricing versus Formulary Apportionment* in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>13</sup> Adrian Cloer, *The Role of the ECJ in the Development of International Tax Law*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>14</sup> Marjaana Helminen, *Tax Treaties and EU Fundamental Freedoms*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>15</sup> Patricia Lampreave Márquez, *State Aid and International Taxation*, in *The Oxford Handbook of International Tax Law* (Haase & Kofler eds, Oxford University Press 2023).

<sup>16</sup> Márquez Kimberly Clausning, *The US Perspective on International Tax Law*, in *The Oxford Handbook of International Tax Law* (Name ed., Oxford University Press 2023).

<sup>17</sup> Bristar Mingxing Cao, *The Chinese Perspective on International Tax Law*, in *The Oxford Handbook of International Tax Law* (Name ed., Oxford University Press 2023).

<sup>18</sup> Kuntal Dave, *The Indian Perspective on International Tax Law*, in *The Oxford Handbook of International Tax Law* (Name ed., Oxford University Press 2023).

<sup>19</sup> Fernando Souza de Man, *The Brazilian Perspective on International Tax Law*, in *The Oxford Handbook of International Tax Law* (Name ed., Oxford University Press 2023).

<sup>20</sup> Gerhard Kraft, *The German Perspective on International Tax Law*, in *The Oxford Handbook of International Tax Law* (Name ed., Oxford University Press 2023).

<sup>21</sup> Masao Yoshimura, *The Japanese Perspective on International Tax Law*, in *The Oxford Handbook of International Tax Law* (Name ed., Oxford University Press 2023).

Community<sup>22</sup> is the focus of part seven. I found this to be a very interesting section of the book because it shows how the preferences and conceptions of international tax fairness are (still) so different. These diverging positions will continue shaping the international discourse also beyond global agreements. Furthermore, it was interesting to learn about the Japanese corporate environment, including its, according to Yoshimura, relative reluctance to engage in aggressive tax planning strategies.

The last part of the book looks at emerging and future issues. A critical discussion of the concept of value creation by Christians is followed by elaborations on policy proposals that the political reliance on this term has been causing: Navarro carefully details the allocation of taxation rights under Pillar 1, Englisch focuses on Pillar 2 upon which Quinones discusses the challenges that this emerging international consensus has been bringing for low and middle income countries. This is followed by Mosquera Valderrama dealing with global tax governance and Kofler, in a very well researched chapter, thinking about the future of labour taxation and the rise of robots. The book concludes with a contribution by Tumpel on digitalization and the future of VAT in the EU.

Up to this point, the book fills me with admiration for the authors and editors that have created this standard work of international taxation. For the sake of upholding the credibility of the book review, it would now be time to express at least some critique, yet, this does not seem to be easily done. Certainly, one could

get the impression of it being redundant that many chapters include text on the same contemporary developments in international taxation. However, at stake is not a textbook but a handbook. The latter is not meant to introduce newcomers into the field but to open up complex subjects in order to educate readers aiming to delve more comprehensively into a certain subject. Sparing the reader from searching for information throughout the book, it makes sense to embed the various topics into the overarching global developments. With this goal in mind, it also becomes clear that chapters need to have a certain level of descriptive study. Moreover, it is also obvious that not even fifty-seven chapters and 1100 pages can cover everything in a field as incredibly broad as international taxation. Still, with the very well thought through structure, the editors manage to ensure that the added value of the book increases the sum of its parts. The only challenge that the book faces is that, if the pace of change in international taxation continues like it is, we may need a second edition in the medium run. Although via editing the Oxford Handbook of International Tax Law, Florian Haase and Georg Kofler have already created an additional monument to their astonishing careers, I hope that they are up to gifting our discipline with another landmark work of this kind.

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<sup>22</sup> Afton Titus, *The Perspective of the EAC on International Tax Law*, in *The Oxford Handbook of International Tax Law* (Name ed., Oxford University Press 2023).