Tax Arbitrage Through Cross Border Financial Engineering The Use Of Hybrids Synthetics And Non Traditional Financial Instruments

Bilateral tax treaties are often, to a greater or lesser extent, based on the OECD Model Convention. Among the distributive rules with respect to taxation of income which are laid down in Chapter III of that model, Article 21 assigns the tax jurisdiction in respect of "other income" - understood to mean items of income which are not dealt with in other provisions of the tax treaty - to the residence state in accordance with the main rule underlying the OECD Model, thus ensuring that no income falls outside the scope of the treaty. This study provides a comprehensive analysis of Article 21 of the OECD Model. In extensive detail, and with reference to case law from a number of jurisdictions and to statements of various authorities and official documents, the author shows how Article 21 operates in relation to the other distributive rules of the OECD Model and bilateral tax treaties based thereon. The analysis considers such items of income as the following in relation to Article 21: - income from immovable property; - business profits; - profits from shipping, inland waterways transport, and air transport; - dividends, interest, and royalties; - capital gains; and - income from employment. In addition, the author examines the significance of the OECD Commentaries for the interpretation of tax treaties, the "other income" article in other model conventions, and notable deviations from Article 21 among bilateral tax treaties. An appendix offers well-grounded recommendations on how to potentially amend the wording of Article 21 and the related commentary and how the application of the article can be improved. Although underexposed in the tax law literature heretofore, the "other income" article raises important international taxation issues that remain problematic or unresolved. Tax lawyers, government officials, and other interested professionals will find here a penetrating analysis that goes a long way towards clarifying the characterisation of income that resists the standard categories defined in tax treaties.

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International tax arbitrage has come under intense scrutiny since the global financial crisis, and is usually portrayed as a form of aggressive tax avoidance. Press coverage has often shown little understanding of the distinction between tax avoidance and tax evasion, describing the legitimate behaviour of taxpayer banks, financial institutions and multinational businesses in emotive terms and often inaccurately. This book aims to look at tax arbitrage, and demystify its practice. In a world where tax competition rather than tax harmonisation is the predominant norm, international tax arbitrage is a form of legitimate tax planning. The book starts with a review of some of the press coverage (including of recent court cases) and also examines campaigns by the Uncut pressure group. It considers the confusion over the boundary between 'legality' and 'morality'. It covers the responses of tax authorities in major western economies to calls for tax reform. This includes the choices to favour: substance or form worldwide or source taxation targeted legislation or general anti-avoidance rules. It considers the role of jurisdictional competition in tax avoidance arbitrage and the approach taken by a number of countries (including the UK, Ireland and Netherlands) to fiscal policy. A review of recent law reports in the UK, Italy, France, New Zealand, Australia, United States and South Africa involving tax arbitrage, helps to explain how it works, with detailed descriptions from court cases and flow charts of the structured finance arrangements. The appendices include an extract from the OECD Report "Building Transparent Tax Compliance by Banks" on international arbitrage financing transactions, and the UK "Code of Practice on Taxation for Banks" with guidance notes.

With the ongoing expansion of outbound foreign direct investment (FDI) in the countries representing the BRICS economic bloc (Brazil, Russia, India, China, and South Africa) – and with all of them at the same time listed among the top seven countries plagued by tax evasion and avoidance in the guise of illicit out ows – the ve governments, both individually and through cooperative initiatives, have devised new international tax strategies that are proving to be of great interest and value to other countries, both developing and developed. The core of these strategies addresses the necessity of stemming the out ow of revenue while strongly supporting FDI, both inbound and outbound while complying with international obligations including those arising from human rights laws. This book is the rst in-depth commentary on this new and evolving area of international tax law. The detailed analysis covers the entire eld of BRICS international tax law, considering topics such as the following: – information exchange procedures and pitfalls; – response to the OECD’s Base Erosion and Pro t-Sharing (BEPS) initiative; – role of bilateral and multilateral double taxation conventions including the Multilateral Instrument and the Bilateral Investment Treaties; – thin capitalization; – transfer pricing; – controlled foreign corporation rules; – shortcomings related to authorities’ limited manpower; – international audit and investigation procedures; – the BRICS approach to residence and mandatory and binding arbitration; and – the BRICS approach to shaping the developing world’s international tax system. Notably, the author personally conducted interviews with senior international representatives of the BRICS tax authorities, as well as with leading BRICS academics and practitioners. Tax cases, together with human rights and investment cases and administrative guidelines in all ve countries are also included in the

analysis. The study concludes with recommendations for improving each of the ve countries' tax law and procedures, especially in the area of dispute resolution. The author's goal is to extend the existing body of knowledge of the BRICS' international tax laws in order to assist in developing an understanding of the BRICS approach to dealing with evasion and avoidance: an approach which facilitates both outbound and inbound FDI, simpli es tax authority administration and establishes a basis for resolving international disputes which is compatible with sovereignty. In achieving this objective, the author has produced a major work that is of immeasurable value to tax advisers, government and governance of cials, academics and researchers both in developing international taxation strategies and in helping to resolve disputes with tax authorities.

The European Union (EU) Merger Directive removes certain tax disadvantages encountered by companies and their shareholders in the course of a restructuring operation. However, in spite of amendments and European Court of Justice's (ECJ) interpretations of its provisions, various shortcomings remain. This thoroughgoing analysis, broader and deeper than any prior work on the subject, addresses all the Directive's subtopics methodically, following the paragraphs of Articles 1-15 in their logical succession. The author analyses the points in which the Merger Directive falls short of attaining its stated objective, and he also examines how these shortcomings could be scaled. To do so, he tests the Merger Directive against its own objective, primary EU law (the fundamental freedoms and the unwritten general principles of EU law) and non-discrimination provisions in relevant treaties. Each of the following questions is addressed and responded to in depth: – Which entities have access to the Merger Directive and which entities should have access to it? – Which operations are covered by the Merger Directive and which operations should be covered? – Which tax disadvantages to cross-border restructuring operations does the Merger Directive aim to remove, which tax disadvantages have been actually removed, which tax disadvantages remain, and how should the Merger Directive be amended to remove the remaining tax disadvantages? – How tax avoidance should be combated under Article 15(1)(a) of the Merger Directive, which possible types of tax avoidance can be identi¬fied, and how the Merger Directive should be amended? – Which cases of double taxation does a taxpayer engaging in cross-border restructuring operations potentially encounter, and how they can be taken away by the Merger Directive? The key shortcomings that are identifi¬ed are: the Merger Directive's objective is not stated precisely; minimum harmonisation does not lead to a common tax system; exhaustive lists are used as legislative technique; the Merger Directive does not add much to the outcomes reached through negative harmonisation; and the de¬finitions of qualifying operations are not fully aligned with corporate law. Chapter 6 contains a deeply informed and viable proposal for the amendment of the Merger Directive. This is the fi¬rst treatment not only to evaluate the Directive's effi¬cacy in detail but also to offer real solutions to its shortcomings. It will be welcomed by policymakers, judges, practitioners and academics, and the recommendations it contains are sure to affect ongoing amendments and jurisprudence on the Merger Directive.

The emergence of convertible decentralized virtual currency schemes confronts tax authorities with unprecedented questions, among them are the status of virtual currency for tax purposes, which virtual transactions may bene?t from a VAT exemption and determining the most optimal method of tax regulation. This ?rst book-length treatment of this major current topic provides an in-depth and comprehensive analysis of the tax implications of virtual currency transactions. Seeking to ascertain whether virtual currency requires additional regulation or whether the law as it stands is adequate to administer its usage, the analysis not only thoroughly explains the nature of the underlying blockchain technology and its regulatory and judicial treatment so far but also identi?es best practices for virtual currency transactions and makes recommendations for the improvement of the existing tax systems. Among the aspects of the phenomenon covered are the following: – particular aspects of virtual currency use such as smart contracts and initial coin offerings; – comparative review of income tax consequences of virtual currency transactions in Germany, the Netherlands, the United Kingdom and the United States; – VAT/sales tax treatment of transactions involving virtual currency in the European Union and the United States; – methodology for creating an effective regulatory framework for the taxation of virtual currency; and – the future of blockchain. The book has three parts and an annex that describes tax regulations, administrative rulings and court decisions concerning virtual currency in twenty countries. In its in-depth analysis of tax implications of virtual currency transactions in major economies, detailed overview of recent tax developments that affect virtual currency transactions and evaluation of tax policies related to virtual currencies, this book has no peers. Especially in view of the OECD's examination of the tax challenges presented by the digital economy as part of its base erosion and pro?t shifting (BEPS) project, this clear and comprehensive explanation of the functioning of virtual currency and blockchain technology will be welcomed by tax administration of?cials and by persons mining and transacting in virtual currencies needing to know their compliance obligations.

Hybrid Financial Instruments, Double Non-taxation and Linking Rules Félix Daniel Martínez Laguna Hybrid financial instruments (HFIs) are widespread ordinary financial instruments that combine debt and equity features in their terms and design and may lead to double non-taxation across borders. This important book provides a deeply informed and critical analysis and guide to the "linking rules" developed to combat double non-taxation stemming from HFIs within the framework of the Base Erosion and Profit Shifting project of the Organisation for Economic Co-operation and Development (OECD) and the anti-avoidance initiatives of the European Union (EU). These complex rules have now become essential in international taxation. The book deals incisively with crucial theoretical and practical issues as the following: Economic and legal reasons for financing business activity through debt instruments, equity instruments and/or HFIs. Qualification of financial instruments from different perspectives such as economics, corporate finance, corporate law, financial accounting law, regulatory law and tax law and their interrelation. The concept of double non-taxation as a mere outcome of parallel exercises of sovereignty by different states and the role it plays within the international debate. The concepts of tax planning, tax avoidance and the misleading concept of aggressive tax

planning within a tax competition international scenario and their relation with HFIs. Comprehensive policy, legal and technical detail and explanation of the linking rules proposed by the OECD (i.e., BEPS Project Action 2) and the EU (e.g., Anti-Tax Avoidance Directive). The (in)compatibility of linking rules with existing tax treaty rules and EU primary law. The author refers throughout to relevant model convention provisions, EU case law and a vast number of references of official documentation and literature. With its detailed attention to the concept and legal nature of HFIs and double non-taxation, the critical and comprehensive analysis of the linking rules developed by the OECD and the EU, this provocative book allows to reconsider the legality of these linking rules and will quickly become a much-used problem-solving resource for policymakers, tax practitioners, tax authorities and tax academics. This book allows to rethink whether linking rules relate to a solution or create actual legal issues.

It is of great importance to be able to determine who or what is considered ‘resident’ within the meaning of tax treaty provisions. However, the concept of residence has never been fundamentally adjusted to current circumstances in which technological developments make it possible for corporations to explore the wide gap between their actual business operations and the ‘legalistic’ requirements for corporate residence. In this study of the OECD Model Tax Convention – the basis for most tax treaties – the author develops a clear understanding of the content of the residence concept as regards entities and proposes solutions to current problems, finishing with his own thoroughgoing definition. In seeking a definition of the term ‘resident’ that covers all uses in treaties, the analysis draws on, in addition to the current and earlier iterations of the OECD Model Law itself, such elements as the following: domestic law meaning of residence in the tax law of France, Germany, the Netherlands, the United Kingdom and the United States; Articles 31 and 32 of the Vienna Convention on the Law of Treaties; historical documents that uncover the ordinary meaning of treaty terms; tax treaty case law and court decisions; and fiscal, tax and legal scholarship surrounding the concept of residence for taxation purposes. The analysis includes a comprehensive description of tiebreaker rules, various perspectives on ‘place of effective management’ and policy considerations as to the further development of the treatment of entities under double tax conventions. Given the inordinate importance of the definition of ‘resident’, the differences in interpretation to which the current definition gives rise and the economic developments that call for an evaluation of the provision, this thorough examination of the treaty rules on residence of entities will be welcomed by tax lawyers, corporate counsel and policymakers and academics concerned with tax law. The author’s guidance on the concept of residence for tax purposes and his original proposals for reform will prove of great practical value for tax practitioners.

The topics of double non-taxation and hybrid entities have acquired a particular importance in a context where transformations within the tax world seem to be leading to an international commitment most materially manifested in the OECD Base Erosion and Profit Shifting (BEPS) project. In what is the first systematic in-depth critique of the BEPS Action Plan 2 with regard to hybrid entities, this timely book provides a critical review of the OECD’s approach and proposes a deeply informed alternative method based on the tax policy aims of simplicity, coherence and ease of administration. The author analyses the interaction between the double non-taxation outcome and the use of hybrid entities in an approach not strictly linked to any specific tax jurisdiction. To this end, the analysis includes case studies and examples from a range of jurisdictions emphasizing the international tax context, including the application of tax treaties. Among the seminal matters covered are the following: – foundations of the concepts of double non-taxation and hybrid entities, absent of the specific limitations of domestic tax legislation; – extensive analysis based on the rules of characterization of foreign entities for tax purposes in the United States, Spain, Denmark and Germany, as well as on the Poland/United States and Canada/United States tax treaties; – detailed analysis on the implications of Article 1(2) OECD Model Tax Convention and Article 3(1) Multilateral Instrument, especially having in mind the position of developing (source) countries; and – EU tax law as part of the international context, including an extensive analysis on the EU Anti-Tax Avoidance Directive (ATAD) I and ATAD II. Detailed comparisons between the author’s proposal and other existing rules elucidate common points and deviations. If merely for its unparalleled clarification of the issues, this book will prove of immeasurable value to practitioners, tax authorities, policymakers and academics concerned with international tax law. Beyond that, as an authoritative guide that promises to reorient the discussion to what really matters in the debate regarding double non-taxation and hybrid entities, this analysis elaborates solutions applicable to a generality of cases worldwide, and thus hugely promotes the urgent quest for alternative solutions.

We develop a tax competition model that allows for the setting of both an origin-based and a destination-based commodity tax rate in the presence of avoidance and evasion. In the presence of evasion, jurisdictions will give cross-border shoppers tax preferential treatment, thus not fully exploiting the potential of destination-based taxation. Moreover, the divergence between originbased and destination-based taxes is stronger when the incentives for consumers' tax-arbitrage opportunities increase. The United States is one example of many such systems. While sales taxes are due at the point of sale, use taxes are due on goods purchased out-of-state. We document that when able to set both rates, a majority of jurisdictions levy destination-based use taxes at a lower rate than origin-based sales taxes. In response to changes in state-level policies that increase tax avoidance opportunities, the results of the empirical model broadly confirm our theory.

The increasingly digitalized global economy is undermining the usefulness of many traditional tax concepts. In addition to issues of double taxation and double non-taxation, important questions arise concerning the allocation of taxing rights in respect of income from cross-border digital transactions. This is the first book to analyse what changes are possible, necessary and feasible in order to forestall the unravelling of the existing international tax framework. Focusing in turn on the legal framework, specific proposals for adapting tax concepts for the digital economy, types of transactions and administrative issues such as those around data protection and digital currencies, the expert contributors discuss such challenges to taxation as the following: the pervasiveness of intangible assets; new value creation models; the ascendance of the sharing economy and digital services; virtual currencies; the importance of user participation for digital platforms; cloud computing; the impact of Big Data on tax enforcement; virtual business presence; and the influence of robotization. Throughout, the authors describe and analyse proposals made by the Organisation for Economic Co-operation and Development (OECD), the European Union (EU) and individual countries and their likely impact going forward. They also attend to the limits imposed on reform possibilities by public international law, EU law and constitutional law. It is generally acknowledged that there is a need to monitor how the digital transformation may be impacting value creation. This book is a key milestone toward developing a durable, long-term solution to the tax challenges posed by the digitalization of

the economy. With its thorough scrutiny of proposals for digital services tax and virtual permanent establishments, insightful analysis of digital services and detailed description of the impact of big data on tax administration and taxpayer protection, it will quickly prove indispensable for tax practitioners and the international tax community more generally.

The permanent establishment (PE) is a legal form of cross-border direct investment whereby a business presence is maintained as an integral part of the foreign investor. Due to the growing intensity and complexity of international business relations, the PE defi¬nition and the allocation of profi¬ts between head units and PEs have become highly contentious, especially from the perspectives of the major emerging economies of the BRIC countries (Brazil, Russia, India, and China). Unsurprisingly, the potential for tax avoidance and the scrutiny of tax authorities have increased enormously. Against this background, this work illustrates and compares the OECD Model Tax Convention with country-specifi¬c source taxation rules, focusing on possible tax system changes and offering reform proposals. Emphasizing the taxable implications of the various rules upon country-speci¬fic PE concepts, the author's treatment covers such issues and topics as the following: – the PE de¬finition of the OECD MC and from the perspective of selected countries; – allocation of business pro¬fits under the Authorised OECD Approach (AOA); – avoidance of PE status; – implementation of a service PE proposal; – construction site PEs established by subcontractors; – existence of an agency PE; and – the OECD project on Base Erosion and Profi¬t Shifting (BEPS). The author uses simulated cross-border national and treaty cases to highlight qualifi¬cation conflicts, thus reinforcing his detailed discussion of source taxation rules of business profi¬ts and relevant case law in Germany, the United States, and the BRIC states. There is also a checklist detailing how companies can avoid unintentionally setting up a PE. The author's deeply informed proposals provide much-needed guiding tax criteria and open the way to greater feasibility and transparency in PE taxation. Because the defi¬nition of PEs has enlarged and the treatment of profi¬t allocation has become more complex, the clari¬fication of the PE concept presented in this book is of inestimable importance for lawyers, of¬ficials, policymakers, and academics concerned with international business taxation in any jurisdiction.

The Allocation of Multinational Business Income: Reassessing the Formulary Apportionment Option Edited by Richard Krever & François Vaillancourt Although arm's length methodology continues to prevail in international taxation policy, it has long been replaced by the formulary apportionment method at the subnational level in a few federal countries. Its use is planned for international profit allocation as an element of the European Union's CCCTB proposals. In this timely book – a global guide to formulary apportionment, both as it exists in practice and how it might function internationally – a knowledgeable group of contributors from Australia, Canada, the United Kingdom and the United States, address this actively debated topic, both in respect of its technical aspects and its promise as a global response to the avoidance, distortions, and unfairness of current allocation systems. Drawing on a wealth of literature considering formulary apportionment in the international sphere and considering decades of experience with the system in the states and provinces of the United States and Canada, the contributors explicate and examine such pertinent issues as the following: the debate about what factors should be used to allocate profits under a formulary apportionment system and experience in jurisdictions using formulary apportionment; application of formulary apportionment in specific sectors such as digital enterprises and the banking industry; the political economy of establishing and maintaining a successful formulary apportionment regime; formulary apportionment proposals for Europe; the role of traditional tax criteria such as economic efficiency, fairness, ease of administration, and robustness to avoidance and incentive compatibility; determining which parts of a multinational group are included in a formulary apportionment unit; and whether innovative profit-split methodologies such as those developed by China are shifting traditional arm's length methods to a quasi-formulary apportionment system. Providing a comprehensive understanding of all aspects of the formulary apportionment option, this state of the art summary of history, current practice, proposals and prospects in the ongoing debate over arm's length versus formulary apportionment methodologies will be welcomed by practitioners, policy-makers, and academics concerned with international taxation, all of whom will gain an understanding of the case put forward by proponents for adoption of formulary apportionment in Europe and globally and the counter-arguments they face. Readers will acquire a better understanding of the implications of formulary apportionment and its central role in the current debate about the future of international taxation rules.

The evolving modern world is characterized by two opposing trends: integration and segregation. On the one hand, we witness strong forces for segregation on the basis of nationality, ethnicity, religion, and culture in the former Soviet Union, the former Czechoslovakia, the former Yugoslavia, as well as in Northern Ireland, Spain, and Canada. These forces are quite strong and, in some cases, violent. On the other hand, the European Union and NAFTA represent the tendency for integration motivated primarily by economic considerations (such as gains from trade and scale economies). In fact, these opposing trends can be explained by the concepts developed in modern club theory, local public finance, and international trade.

Over the past few decades, the concentration of wealth and property in the hands of a few has been facilitated by tax evasion, tax avoidance, and above all by tax competition. Fortunately, a determined move toward international cooperation among tax authorities is gathering its forces to do battle. This invaluable book shows how the globalization of trade, the digitization of the economy, tax competition between sovereign states, the erosion of the tax base, and the transfer of pro ts have all revealed the weaknesses of a traditional tax system that has reached its limits, and how numerous states and groups of states have joined efforts in creating a new international tax system designed to restore fairness and stability in the levying of taxes worldwide. Stemming from a 2016 conference initiated by the Canadian non-pro t organization TaxCOOP, convened by the World Bank and bringing together well-known taxation experts from prominent international organizations, the book presents outstanding contributions highlighting the impacts of tax competition and viable solutions. Among the issues and topics covered are the following: – electronic commerce and electronic money; – transfer pricing; – derivatives and hedge funds; – protecting tax whistle-blowers; – offshore tax investigations; – possibility of an international tax court; – impact of tax competition on developing countries; – carbon pricing; – tobacco taxation; and – effective taxation of the ultra-wealthy and their nancial capital. The chapters include details of country experiences and results, in some cases analyzed by key protagonists themselves. Collectively, the contributions take a giant step toward reinforcing the power of sovereign states in sectors such as the environment, education, and health. As an authoritative guide to increasing the level of transparency and accountability of private and public economic actors and restoring citizens' trust in the fairness of our global governance systems, this peerless volume will be warmly welcomed by tax lawyers, taxation authorities, and interested academics worldwide.

Special economic zones (SEZs) have become a permanent feature of the world trade scene. This book, the first to provide a critical and comprehensive analysis of SEZs covering a wide spectrum of countries and regions, shows how SEZs, albeit established at the domestic level by different countries, raise multiple legal issues under international economic law. This first-rate book is the product of the Asia FDI Forum IV held in Hong Kong in 2018. Thoroughly exploring the development of the SEZ phenomenon and its players, the contributing authors (all leading economic law experts) review the issues raised by SEZs in the context of international trade law, international investment law and investment arbitration. They identify the extent to which SEZs have been coherent in their design and policymaking, in particular with regard to domestic law reforms. They address such aspects (both core themes and specific examples) as the following: investment protection in China's SEZs; state-owned enterprises regulation; dispute settlement; under what circumstances incentives available in SEZs count as export subsidies prohibited under World Trade Organization (WTO) rules; compliance with internal market rules in European Union (EU) free zones; local populations as victims of land expropriation; Brazil's Manaus Free Trade Zone; India's experience with multiple SEZs; the administrative approval system in the Shanghai Free Trade Zone; economic corridors and transit routes as SEZs; 'refugee cities': SEZs for migrants; how China's Supreme People's Court serves national strategy; how foreign investors challenge free-zone regimes; impacts of the establishment of SEZs on tax revenues; SEZs and labour migration; and management models. The chapters also include insights into the new emerging generation of international investment agreements; WTO accession, transparency, and case law materials clarifying specific trade issues associated with SEZs; and new rules to protect the environment and labour rights, as well as analysis of crucially significant cases such as Goetz v. The Republic of Burundi, Lee Jong Baek v. Kyrgyzstan and Ampal-American and Others v. Egypt. With its critical and comprehensive analysis of the dynamic SEZ phenomenon across legal, economic, investment, regulatory and policy matrices – including a thorough analysis of the success factors and required policies for SEZs – this book takes a giant step towards answering the question whether SEZs fundamentally contradict norms of international law or whether SEZs have to be considered as laboratories which facilitate the implementation of international economic policies. Its careful examination of theory and practice and its approach to lessons learned from case studies will reward trade and investment officials, policymakers, diplomats, economists, lawyers, think tanks, business leaders and others interested in this ever more important area of law and economics.

The distribution of profits between corporations resident in different jurisdictions gives rise to both significant tax planning opportunities and tax risks. As cross-border transactions between corporations grow in number and complexity, the question of how a profit distribution is classified for corporate income tax purposes becomes increasingly important, particularly in the context of issues such as double taxation, non-taxation and tax neutrality. The OECD BEPS project has only increased the relevance. This unique work discusses the international tax law rules determining which transactions may be classified and taxed as dividends and how possible classification conflicts may be resolved. The author examines the tax classification of various inter-corporate transactions, including: – Payments made under dividend-stripping arrangements. – Fictitious profit distributions. – Economic benefits in the context of transfer pricing. – Returns on debt-equity hybrids. – Interest payments in thin capitalization situations and distributions following liquidation. The analysis of each transaction refers to international tax law. Most weight is given to tax treaties and EU tax law, including the BEPS development. The approaches adopted in different states' national tax law are covered by a more general analysis. The comprehensive coverage and the practical nature of The International Tax Law Concept of Dividend make it an essential acquisition for tax practitioners, researchers and tax libraries worldwide.

Selected issues of the various non-discrimination concepts Non-discrimination plays an important, if not crucial, role in many areas of law, such as constitutional law, human rights law, world trade law, EU law and tax treaty law. Both direct and indirect taxation are affected by the various types of non-discrimination provisions. From a practical point of view, the non-discrimination provisions within the EU legal framework and the non-discrimination concept under Article 24 of the OECD Model are important examples in this respect. In both areas of non-discrimination law, there are many open issues which have been debated for a long time and have evolved as evergreens of non-discrimination in the area of taxation; examples are the meaning of the ECJ's case law on the "finality" of losses or the compatibility of group regimes with Article 24 of the OECD Model. Other problems have emerged only recently, because of current developments at the OECD level, notably the BEPS project. Therefore, non-discrimination suggested itself as a general topic for the master theses of the full-time LL.M. program in 2014/2015. This book takes up and deals with selected issues in depth. Although the relevant non-discrimination provisions are different in wording and context, often the same issues can be analyzed under both the EU fundamental freedoms and Article 24 of the OECD Model. The results under these non-discrimination provisions may differ. However, similar policy considerations and arguments often influence the final decisions. With this book, the authors and editors contribute to the discussion on selected issues of the various non-discrimination concepts and the challenges they present.

In international tax law, the term 'beneficial ownership' refers to which parties involved in a cross-border transaction are entitled to tax treaty benefits. However, determining beneficial ownership is a complex and often disputed issue, subject to different meanings in different countries. Archival research on its early use in tax treaties and in the developing OECD Model reveals that its meaning has changed dramatically over the decades, leading to new interpretations significantly affecting current tax practice and scholarship. This book, dedicated to establishing how beneficial ownership should ideally be interpreted, compares the use and interpretation of benefi-cial ownership, both current and historical, in a wide range of national jurisdictions as well as the EU, ultimately shedding a clearer light than has heretofore been available on the meaning of the term. In her very thorough analysis of the application of beneficial ownership, the author touches on such aspects as the following: – historical development of the beneficial

ownership requirement as used in tax treaties and in the OECD Model Tax Convention on Income and on Capital; – rules of double taxation conventions; – application of the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS); – the problem of so-called 'white income'; – use of the substance-over-form principle; – attribution-of-income rules; and – the role of agents, nominees, and conduit companies. Specific analysis of the use and interpretation of beneficial ownership in a domestic law and treaty context in numerous jurisdictions – with particular emphasis on the United Kingdom, Australia, the United States, and Germany – is a major feature of the presentation. As a thorough guide to determining whether a person claiming tax treaty benefits is the true owner – and which parties are excluded from treaty benefits and to what extent – this book will be of immeasurable value to lawyers, tax authorities, policymakers, and other professionals working with taxable international transactions of any kind.

Migration has become an increasingly important phenomenon for societies, especially given its highly controversial political dimension. The complexity of the migrant integration process and its many varieties present challenges to policymakers who need high-quality information on which to base decisions. Nowhere is this necessity more pressing than in the development of relevant tax rules that meet the basic requirements of efficiency and equity. Moreover, the ascent of the so-called emerging economies coupled with the stagnation of the richest economies of the world implies reform of the current competition-based international tax regime and the adoption of a more cooperative paradigm. This important and timely book, for the first time in such depth, explores such aspects of the problem as the following: - migration for tax reasons, especially corporate "inversions" (change in corporate residence for tax purposes); - tax consequences related to individuals who receive free or subsidized education in one country and profit from it in another; - taxing cross-border retirement income; and - migration-related aspects of tax preferential treatment of the elderly. With particular emphasis on the effects and opportunities created by the changing international tax regime - and with attention to the role of tax treaties and recent court cases - chapters by well known tax experts present evidence on the consequences of migration in all its facets and simulate the effects of several recently enacted and proposed changes in tax law in European countries, the United States, and other jurisdictions. The grounded propositions and recommendations offered in this deeply informed book will allow policymakers to draft tax-residence rules that minimize distortion and promote fairness. The book will also be of interest to tax law practitioners and other tax specialists, migration experts, and academics investigating one of the crucial political issues of our time.

Banking is an increasingly global business, with a complex network of international transactions within multinational groups and with international customers. This book provides a thorough, practical analysis of international taxation issues as they affect the banking industry. Thoroughly explaining banking's significant benefits and risks and its taxable activities, the book's broad scope examines such issues as the following: taxation of dividends and branch profits derived from other countries; transfer pricing and branch profit attribution; taxation of global trading activities; tax risk management; provision of services and intangible property within multinational groups; taxation treatment of research and development expenses; availability of tax incentives such as patent box tax regimes; swaps and other derivatives; loan provisions and debt restructuring; financial technology (FinTech); group treasury, interest flows, and thin capitalisation; tax havens and controlled foreign companies; and taxation policy developments and trends. Case studies show how international tax analysis can be applied to specific examples. The Organisation for Economic Co-operation and Development Base Erosion and Profit Shifting (OECD BEPS) measures and how they apply to banking taxation are discussed. The related provisions of the OECD Model Tax Convention are analysed in detail. The banking industry is characterised by rapid change, including increased diversification with new banking products and services, and the increasing significance of activities such as shadow banking outside current regulatory regimes. For all these reasons and more, this book will prove to be an invaluable springboard for problem solving and mastering international taxation issues arising from banking. The book will be welcomed by corporate counsel, banking law practitioners, and all professionals, officials, and academics concerned with finance and its tax ramifications.

The provision of international services has increased enormously, mainly due to the precipitous growth of the digital economy. Accordingly, the interpretation and application of double taxation conventions (DTCs) to income from services has become a dominant focus in the international taxation. This multiple-award-winning book is an indispensable tool for practitioners and a major contribution to the debate about tax reform. It responds to the need for a comprehensive overview of the tax opportunities and risks relating to the provision of international services. It also offers the rst in-depth analysis of the taxation of income from services vis-à-vis the multilateral instrument (MLI) resulting from the OECD's Base Erosion and Pro t Shifting (BEPS) initiative. With the thorough analysis of the international taxation of income from services over the last two centuries, the author sheds new light on present tax policy debates and develops workable proposals for bringing brick-and-mortar DTCs into the digital reality. With an abundance of case studies, treaty interpretations, appraisals of policy discussions, and practical solutions, the author examines every aspect of the subject, including the following: – the Model DTCs of the OECD, the United Nations, Germany, and the United States, their similarities and differences; – relationships among the MLI, the Model DTCs, and speci c DTCs; – development of the provisions dealing with services in the DTCs; – how tax authorities and courts of different countries (e.g., the United States, Germany, Brazil, India, and China) apply DTC provisions on the taxation of international services; – opportunities and risks relating to different business practices, such as the subcontracting of services provisions, the hiring-out of labour, the secondment of employees, and the engagement of contract and toll manufacturers; – practical questions about the taxation of different distribution models – from fully edged distributors to commissionaires; – challenges and proposals relating to the differentiation between various types of services under DTCs; – the permanent establishment concept; – to what extent the structure, purposes, and scope of DTCs differ from those of the General Agreement on Trade in Services (GATS); – how changes in

the US Model DTC of 2016 affect international service provisions; and – proposed changes to amending the OECD and UN Model DTCs. Viable proposals to simplify DTC provisions dealing with service income and align them with current challenges such as the digital economy and the increasing volume of remote services are offered, particularly in light of the likely impact of the ‘BEPS package’ and its subsequent MLI. This book is poised to become one of the key practice resources for tax lawyers, in-house counsel, and policymakers in the coming years. Interested academics too will bene t from the author’s skill in recognizing the ongoing role of taxation fundamentals in the major revolution currently underway.

This paper reviews issues and evidence concerning tax-motivated, cross-border commodity transactions. A distinction is drawn between "arbitrage trades" (driven by cross-country differences in tax rates) and "tax not paid" transactions (motivated by the opportunity to pay no tax at all on transactions with international aspects). Assessment of the severity of the associated policy problems faces the difficulty that the observed extent of cross-border transactions conveys no information on the induced inefficiency that the possibility of such transactions may generate. Given the difficulty of securing coordination of national tax policies, much of the emphasis in dealing with these problems in the coming years is likely to be on administrative cooperation.

In an age when cross-border business transactions are increasingly effected without the transference of physical products, revenue concerns of states have led to a multitude of tax disputes based on the concept of ‘nexus’. This important and timely book is the most authoritative to date to discuss one of the major tax topics of our time – the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among jurisdictions. Demonstrating in prodigious depth that it is the economic nexus of the tax entity or activity with the state, and not the physical nexus, which meets the jurisdictional requirement, the author – a leading authority on this area who is a Senior Commissioner of Income Tax and a Member of the Dispute Resolution Panel of the Government of India – addresses such dimensions of the subject as the following: whether a strict territorial nexus as a normative principle is ingrained in source rule jurisprudence; detailed scrutiny of such classical doctrines as benefit theory, neutrality theory, and internation equity; comparative critique of the Organisation for Economic Co-operation and Development (OECD) and United Nation (UN) model tax treaties; whether international law and customary principles mandate a strict territorial link with the source state for the assumption of tax jurisdiction; whether the economic nexus-based tax jurisdiction and absence of a physical presence breach the constitutional doctrine of extraterritoriality or due process; and whether retrospective tax legislation breaches the principle of constitutional fairness. The book offers a politically informed analysis of the nexus principle and balances the dynamics of physical presence and economic nexus standards, based on an in-depth survey of the historical evolution of judicial pronouncements and international practices in this regard. Dr Singh’s book exposes an urgently needed missing link in the international source rule literature and takes a giant step towards solving the thorny question of appropriate tax apportionment. It sheds brilliant light on the policies states may adopt when signing new tax treaties, so that unintended results may be foreseen and avoided. Tax practitioners, taxation authorities, and academic researchers in the field of international tax law and policy will greatly appreciate the book’s forthright enhancement of the ability to defend challenges based on the nexus doctrine.

This superb book will guide the reader through the key issues and practical aspects of international tax practice. It demonstrates how different global tax systems interact and how to prevent paying more tax than necessary. The basic principles of each aspect of international taxation are outlined and then examined in greater depth and detail. This updated third edition includes coverage of both UK and EU legislation and regulation, as well as the key cases and rulings. Complicated double taxation concepts are clearly illustrated with examples and diagrams to help the reader quickly understand how they'll apply in practice. Examples of policies adopted in other countries are included, along with specialist commentary and guidance.

Issues of transfer pricing have come to the fore in both international tax and customs regimes. In particular, the problem of how to apply the two systems of valuation to the same transaction is of widespread concern. This well-known book, now in a fully updated second edition, is a problem-solving guide for professionals charged with valuating transactions in their client’s or company’s best interests. Through detailed examination of relevant guidelines, transfer pricing methodologies, and business realities prevailing among multinational enterprises, it offers a cogent and convincing account of how tax and customs transfer pricing regimes may be harmonized. Among other essential elements, the author discusses the following in depth: – the OECD Transfer Pricing Guidelines; – the GATT/WTO Customs Valuation Code (GVC) and other valuation rules in key jurisdictions and regional agreements; – the OECD and UN model tax conventions; – the arm’s length principle; – methods, both traditional and new, of determining whether the parties’ relationship in uenced the price; and – additions to and deductions from the customs value. This second edition discusses new developments in the eld, including a chapter on Commentary 23.1 and Case Study 14.1 of the Technical Committee on Customs Valuation of the World Customs Organization (WCO) – the rst international instruments linking transfer pricing and customs valuation. The book concludes with an analysis of the circumstances and conditions under which the introduction of transfer pricing year-end adjustments to transaction value would be consistent with Article 1 of the GVC. The book will continue to provide practitioners, customs administrations, and academics with a highly practical analysis of the intersection of transfer pricing and customs valuation. It will be welcomed by customs administrations charged with examining the acceptability of a transaction value xed between related parties and by multinational companies as a truly actionable tool they can use to optimize decision-making as it relates to transfer pricing and customs valuation in a “real world” setting.

Financial innovation allows companies and other entities that wish to raise capital to choose from a myriad of possible instruments that can be tailored to meet the specific business needs of the issuer and investor. However, such instruments put increasing pressure on a question that is fundamental to the tax and financial systems of a country – the distinction between debt and equity. Focusing on hybrid financial instruments (HFIs) – which lie somewhere along the debt-equity continuum, but where exactly depends on the terms of the instrument as well as on applicable laws – this book analyses their treatment under both domestic law and tax treaties. Key jurisdictions, including the EU, some of its Member States, and the United States, are covered. Advocating for a broader scope of application of HFIs as part of the financing of companies in Europe alongside traditional sources of debt and equity financing, the book addresses such issues and topics as the following: • problems associated with the debt-equity distinction in international tax law; • cross-border tax arbitrage and linking rules; • drivers behind the use and design of HFIs; • tax law impact of perpetual and super maturity debt instruments, profit participating loans, convertible bonds, mandatory convertible bonds, contingent convertibles, preference shares and warrant loans on HFIs; • financial accounting treatment; • administrative guidance; • influence of the TFEU on Member States' approaches to classification of HFIs; • interpretation of the Parent-Subsidiary Directive by the European Court of Justice; • applicability of the OECD Model Tax Convention; and • implications of the OECD Base Erosion and Profit Shifting (BEPS) project. Throughout this book, the analysis draws upon preparatory works, case law, and legal theory in English, German, and the Scandinavian languages. In conclusion, the author considers tax policy issues, and identifies and outlines possible high-level solutions. Actual or potential users of HFIs will greatly appreciate the clarity and insight offered here into the capacity and tax implications of HFIs. The book not only examines whether existing legislation is sufficient to handle the issues raised by international HFIs, but also provides an in-depth analysis of the interaction between corporate financing and tax law in the light of today's financial innovation. Corporate executives and their counsel will find it indispensable in the international taxation landscape that is currently coming into view, and academics and policymakers will hugely augment their understanding of a complex and constantly changing area of tax law.

The most thorough treatment of its subject available, this book introduces and analyses the international tax issues relating to international manufacturing and distribution activities, extending from the tax regime in the country where the manufacturing activities are located, through to regional purchase and sales companies, to the taxation of local country sales companies. The analysis includes the domestic tax laws relating to manufacturing and distribution company profits as well as international tax issues relating to income flows and the payment of dividends. Among the topics and issues analysed in depth are the following: – foreign tax credits; – taxation in the digital economy; – tax incentives; – intellectual property; – group treasury companies; – mergers and acquisitions; – leasing; – derivatives; – controlled foreign corporation provisions; – VAT and customs tariffs; – free trade agreements and customs unions; – transfer pricing; – role of tax treaties; – hedging; – related accounting issues; – deferred tax assets and liabilities; – tax risk management; – supply chain management; – depreciation allowances; and – carry-forward tax losses. The book includes descriptions of 21 country tax systems and ten detailed case studies applying the analysis to specific examples. Detailed up-to-date attention is paid to the OECD Action Plan on Base Erosion and Profit Shifting (BEPS) and other measures against tax avoidance. As a full-scale commentary and analysis of international taxation issues for multinational manufacturing groups – including in-depth consideration of corporate structures, tax treaties, transfer pricing, and current developments – this book is without peer. It will prove of inestimable value to all accountants, lawyers, economists, financial managers, and government officials working in international trade environments.

"This book offers an empirically grounded theory that reframes the study of law and society from a predominantly national context, which dichotomizes the study of international law and national compliance into a dynamic perspective that places national, international, and transnational lawmaking and practice within a coherent single frame. By presenting and elaborating on a new concept, transnational legal orders it offers an original approach to the emergence of legal orders beyond nation-states. It shows how they originate, where they compete and cooperate, and how they settle on institutions that legally order fundamental economic and social behaviors that transcend national borders. This original theory is applied and developed by distinguished scholars from North America and Europe in business law, regulatory law and human rights"--

The power of a country to freely design its tax system is generally understood to be an integral feature of sovereignty. However, as an inevitable result of globalization and income mobility, one country's exercise of tax sovereignty often overlaps, interferes with, or even impedes that of another. In this collection of essays, internationally respected practitioners and academics reveal how the OECD's Base Erosion and Pro t Shifting (BEPS) initiative, although a major step in the right direction, is insuf cient to resolve the tax sovereignty paradox. Each contribution deals with different facets of a single topic: How tax sovereignty is shaped in a post ,BEPS world. The contributors provide in ,depth analysis of such relevant issues as the following: hy multilateral cooperation and soft law consensus are the preferred solutions to a loss of autonomy over national tax policy; – how digital commerce has upended traditional notions of source and residence; – why residence and source continue to be the two essential building blocks of tax sovereignty and the backbone of the international tax system; – how developing countries can take advantage of the new international tax architecture to ensure that their voices are truly shaping the standards; and – transfer pricing reform. Collectively, the authors provide an authoritative commentary on the necessary preconditions for exercising the power to tax in today's world. Their perspectives and recommendations will prove of great value to all policymakers, legislators, practitioners, and academics in the international taxation arena.

Characterisation and Taxation of Cross-Border Pipelines provides a comprehensive analysis of the issues related to the taxation of cross-border pipelines. It offers solutions to the various tax issues that a cross-border pipeline might raise. The book concludes by recommending changes to the OECD Model Tax Treaty and its Commentaries to reduce uncertainty, avoid double taxation or less than a single taxation, and establish a more common international approach for the characterisation and taxation of cross-border pipelines and their allocation."--Publisher description.

Zeitungsausschnitte (1966-1980).

Tax Arbitrage Through Cross-border Financial EngineeringCross-border Tax ArbitrageA Law and Economic ApproachCross-border Tax Arbitrage and the Changing Structure of International Tax LawTax

ArbitrageThe Trawling of the International Tax SystemSpiramus Press Ltd

This book covers a broad range of the most challenging topics in US international taxation laws before breaking into separate discussions of the issues related to both inbound and outbound taxes. Real examples and selected seminal cases are analysed at the end of each chapter to simplify even the most abstract tax provisions. Practitioners, academics, and advanced students specializing in specific areas of international finance will welcome this comprehensive overview of the US tax system's international laws.