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

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.

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 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.
Series on International Taxation, Volume 82 The economic value of China's mergers and acquisitions (M&A) market is exceeded only by that of the United States. However, China's rapid and somewhat chaotic economic transformation has made the task of taxing M&A transactions in a consistent and prudent manner difficult, leading to a patchwork of fragmented rules that are hard to grasp not only for taxpayers but even for tax professionals and tax officials. Responding to this complex situation, this groundbreaking book explores in detail how income derived from M&A transactions is taxed in China. Using empirical studies in order to provide a first-hand understanding of the context in which the tax law operates, the book critically examines China's income tax regime for M&A and, based upon this examination, sets out reform proposals. In six informative chapters of great practical relevance, the author thoroughly describes and explains the intersection of such aspects as the following: M&A transactions in the eyes of tax law; disparities between ordinary and special tax treatment; eligibility for special tax treatment; applying taxation principles such as neutrality and equity; continuity of interest doctrine; stock acquisition versus asset acquisition; and adjustment to tax basis. In addition to its empirical research, the analysis makes use of an examination of the rules and theories on taxing M&A in other jurisdictions such as Australia and the United States as part of its proposed blueprint for improving China's M&A taxation. Drawing on commonly recognized taxation principles, this book definitively sets up the normative criteria for evaluating the income taxation of M&A and reveals the

fundamental problems encountered by China's current regime. Its comprehensive analysis of the Chinese income tax rules for M&A and detailed disclosure of how they are both divergent from and convergent with that of some other major economies will prove of immeasurable value to in-house counsel for multinational corporations, business enterprises with interests in China, taxation consultants, taxation academics, and taxation authorities worldwide.

An International Comparison

Dokumentensammlung].

Cross-Border Tax Arbitrage, Economic Reality, and Anti-Avoidance Rules in New Zealand and Canada

Reforming Capital Income Taxation

Is it Possible to Harmonize Customs and Tax Rules?

Cross-border Tax Arbitrage and the Changing Structure of International Tax Law

The Making of Tax Law

Zeitungsausschnitte (1966-1980).

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.

This article reviews the social science literature on tax competition in three steps. The first step is to look at the baseline model of tax competition on which most of the literature implicitly or explicitly builds. The key feature is that governments in a context of open borders will engage in wasteful competition for mobile economic assets and activities through tax reductions. The second step is to focus more closely on tax-induced cross-border mobility. Do tax payers actually shift assets and activities across borders in response to differences in taxation? The main message of the literature is that the scope for tax arbitrage depends crucially on the legal rules governing the taxation of cross-border activities and that the intensity of tax arbitrage varies greatly across different taxes. The final step is to analyze government reactions to tax arbitrage. Do they engage in competitive tax cutting as predicted by the baseline model? The literature discusses various strategies of tax competition and demonstrates that different governments use them to different degrees across different taxes. It also shows, however, that governments increasingly engage in tax cooperation to reign in tax arbitrage and competition. While off to a slow start in the 1960s, tax cooperation has gained momentum in recent years, especially after the financial crisis in 2008.

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.

Tax Competition

Government Debt-to-GDP Ratio, Country Tax Competitiveness, and US-OECD Cross-Border M&As

Alesco and Mark Resources

Transnational Legal Orders

Cross-Border Taxation of Permanent Establishments

The Trawling of the International Tax System

A Multilateral Convention for Tax

This book surveys the theoretical issues that characterize the problem of reforming capital income taxes in an open economy. It explores the tax incentives and disincentives to investment in an open economy framework allowing cross-border portfolio and direct investment.

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.

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 exploding use of derivatives in the last two decades has created a major challenge for tax authorities, who had to develop appropriate derivatives taxation rules that strike a balance between allowing capital markets to function effectively by removing artificial tax barriers and at the same time protecting their countries' tax base from tax avoidance schemes that utilise these instruments. Derivatives exist in a vast variety and complexity and new forms or combinations of existing forms appear ad hoc as new risk categories emerge and companies seek to invest in or hedge these risks. This very thorough book discusses and analyses taxation issues posed by derivatives used in domestic as well as in cross-border transactions. In great detail the author presents approaches that can be adopted by tax legislators to solve these problems, clarifying her solutions with specific reference to components of the two most important domestic tax systems in relation to derivatives in Europe, those of the United Kingdom and Germany. Examples of derivatives transactions and arbitrage schemes greatly elucidate the nature of derivatives and how they can be effectively taxed. The following

aspects of the subject and more are covered: – basic economic concepts in the context of derivatives such as replication, put-call-parity, hedging and leverage; - designing a suitable definition of derivatives in domestic tax law; - achieving coherence in domestic tax rules by applying a 'special regime approach' versus an 'integrative approach' and the distinction of income and capital, equity and debt; - alignment of accounting standards and taxation rules and the application of fair value accounting for tax purposes; - how to tax hedged positions and post-tax hedging schemes; - taxation of structured financial products and hybrid instruments with focus on bifurcation and integration approaches and the recent BEPS discussion drafts on hybrid mismatch arrangements; - refining the 'beneficial ownership' – concept in domestic law and in tax treaties and an analysis of recent case law; - withholding taxes in the context of domestic and cross-border dividend tax arbitrage schemes; and - tackling derivatives tax arbitrage effectively in anti-avoidance legislation. By providing an in-depth analysis of corporate taxation issues that arise in domestic as well as in cross-border derivatives transactions, this book is not only timely but of lasting value in the day-to-day work of tax lawyers and tax professionals in companies, banks and funds, and is sure to be of interest to government officials, academics and researchers involved with financial instruments taxation.

Schriftenreihe IStR Band 94

Double Non-taxation and the Use of Hybrid Entities

The Development of the Swedish Tax System

A Literature Review

Cross-Border Investing with Tax Arbitrage

Evidence from Cross-Listed Firms in the U.S.

Speeding Up, Down the Hill

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) is the most forceful multilateral initiative to coordinate tax regimes on a worldwide basis since the dawn of modern income taxation over a century ago. This book evaluates two radically opposed viewpoints on the convention—a momentous and revolutionary paradigm shift versus a mechanism that merely continues an ongoing flow of limited policy coordination—with detailed investigations that bring to life the hopes and the realities of the current era of multilateral tax cooperation. Bringing together authors from national jurisdictions across the globe to scrutinize the MLI and its likely future ramifications, the book provides in-depth commentary and analysis in the

following sequence: first, a comprehensive discussion of the design and goals of the MLI as a treaty and an institutional framework; second, an overview of the structure of the convention and its take-up across the globe to date; and third, the substantive implementation of the MLI with a wide range of country reports. Practice areas covered include tax law, international law, and international relations. The legal workings and implications of the MLI might still seem mysterious to those whose daily work is impacted by it, and there is as yet little jurisprudence regarding its legal nature or ultimate effect on the bilateral treaties coming within its scope. For these reasons, this pathbreaking book will be warmly welcomed by in-house counsel and law firms advising cross-border investors and firms; nongovernmental organizations involved in policy analysis and issue advocacy; researchers working on technical areas of international tax law; and lawyers interested in international policymaking, including the creation and diffusion of consensus-based fiscal and related regulatory norms across jurisdictions of differing development levels.

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.

This module note describes the fifth module in the International Finance course at Harvard Business School. This module explores how segmented capital markets create financing opportunities for firms and the mechanisms that evolve to take advantage of those opportunities. The issues raised in the cases in this module include why and how firms seek foreign listings, how tax differences across countries can create financing opportunities, the kinds of arbitrage opportunities that arise from segmented markets, and how managerial incentives influence decisions to exploit cross-border financial opportunities. The note describes the framework developed in the International Finance course and explains its application to the cases in this module. The module note includes descriptions of the three cases in the module and the analysis required for each case; an explanation of the learning objectives and suggested assignment questions for each case; and information on additional materials useful in teaching the cases. The note concludes with references to the relevant academic literature and a bibliography.

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.

Cross-border Tax Arbitrage

Theoretical and Applied Analysis

Tax Arbitrage Through Cross-border Financial Engineering

An Alternative Approach in the New Era of BEPS

Exploring the Nexus Doctrine In International Tax Law

How the EU Shapes Corporate Tax Competition in the Single Market

An Analysis of the Case Law of the CJEU

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.

As European Union (EU) Member States seek to counteract base erosion and profit shifting (BEPS) practices while avoiding new obstacles to the EU's internal market such as double taxation, the credit method, also known as the foreign tax credit, is one of the essential tools in this balancing act, yet it is one that has given rise to various EU law challenges and questions. This invaluable book – the first in-depth study of the EU law constraints on designing the credit method – delineates the EU law boundaries within which the Member States must operate when they implement this method of tax relief. For the first time, the Court of Justice of the European Union (CJEU) cases that may affect, directly or indirectly, the credit method and its main components are systematically identified and analysed in order to extract the legal findings and principles that define the contours within which the Member States can manoeuvre when considering EU-compatible approaches to the credit method. To this end, among others, this book offers: an extensive study of the historical legal developments of the credit method; an overview of the key design features of the credit method, considering the optional, variable components, such as the credit limitation (maximum creditable amount), that tailor it to different legal and policy considerations; an analysis of the legal constraints on the key features of the credit method flowing from CJEU case law on the fundamental freedoms, considering the impact of landmark cases and concepts (e.g., Schumacker, neutralization); the EU law implications based on the type of credit method (direct, indirect, imputation) and the feature of the credit method (e.g., credit limitation, credit carryforward); and examples to clearly and concisely illustrate the basic operation of the credit method and some of the main calculation and EU law issues. The author's doctoral dissertation, on which the book is based, was awarded the Wolfgang Gassner Science Prize 2020 and the European Doctoral Tax Thesis Award 2020. As a timely, comprehensive and practical study of the relationship between the credit method and EU law, this book will be welcomed by lawyers and other professionals working with taxation matters, as well as by tax policymakers and academics in the fields of international and European tax law.

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.

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.

Tax Treaty Residence of Entities

International Economic Law and the Challenges of the Free Zones

Escape from the USA

A Chinese Perspective

Hybrid Financial Instruments, Double Non-Taxation and Linking Rules

Taxation of Derivatives

Cross-Border Financial Opportunities

During the last few years Cross Border Leases have become an important source of liquidity for European companies. Transactions have been closed on a wide variety of assets. American investors that use the transactions as a tax shield like to close deals with best rated European companies.In the first part of the paper we describe how a U.S. Cross Border Lease is designed as a vehicle for tax arbitrage between the United States and an European lessee. In the second part we describe what determines the profit of the lessee as well as the potential risks from the long term transaction.

"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"--

German dividends typically carry a tax credit which makes the dividend worth 42.86% more to a taxable German shareholder than to a tax-exempt or foreign shareholder. This results in a penalty for foreign investors who buy and hold German dividend-paying stocks. I document that, as a result of the credit, the ex-day drop exceeds the dividend by more than one-half of the tax credit, and show that futures and option prices embed more than one-half of the tax credit. The existence of the credit creates opportunities for cross-border tax arbitrage-in which foreign holders of German stock transfer the dividend to German shareholders-and implies that it is tax-efficient for foreign investors to hold derivatives rather than investing directly in German stocks. The empirical findings are consistent with costly tax arbitrage activity by German investors, who face tax risk due to anti-arbitrage rules. Since dividend tax credits exist in many other countries, the findings are potentially of broad interest.

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.

Tax Arbitrage

Principles of International Taxation

The Allocation of Multinational Business Income: Reassessing the Formulary Apportionment Option

Hybrid Financial Instruments in International Tax Law

Non-Discrimination in European and Tax Treaty Law

Development, Practice and Policy

Bischoff Otto (1896-1980).

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.

We study how differences in target country-US tax competitiveness influence acquirers' share price reactions to US cross-border acquisitions, the tax savings after acquisition

completion, and the US cross-border acquisition deal flows. We employ two-stage least-squares regressions and use the fitted component of the government-debt-to-GDP ratio difference between the US and a target country as a proxy for the target country-US tax-competitiveness difference. Using a sample of US acquisitions of targets in other OECD countries, in which around one-tenth of the target firms are publicly listed firms while the rest are private and subsidiary firms, our findings suggest that tax arbitrage (a) increases the shareholder wealth of US acquirers and (b) is likely an important driver of US-OECD cross-border acquisition deal flows.

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.

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.

The Role of Tax Law in Mergers and Acquisitions

a comparative analysis using the cases of hybrid financial instruments and cross-border leasing

The International Tax Law Concept of Dividend

International Taxation of Income from Services under Double Taxation Conventions

The Case of German Dividend Tax Credits

Capital Gains Taxes, Pricing Spreads and Arbitrage

Some International Issues in Commodity Taxation

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.

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.

We examine how shareholder-level taxes affect the contemporaneous pricing of foreign firms' U.S. cross-listed and underlying home-country securities surrounding the 1997 reduction in U.S. capital gains tax rates. Consistent with tax capitalization, we find that the performance of cross-listed shares is negatively related to dividend yield, suggesting an abnormal price increase for shares with greater anticipated taxable capital gains. Due to barriers to cross-border arbitrage, underlying home-country securities, on average, do not react during the event, creating a temporary tax-induced pricing spread. When costs of arbitrage are low, the pricing disparity quickly dissipates and home-country shares closely mirror the pricing of their cross-listed counterparts. In further tests, we are unable to document lock-in behavior, which predicates a decrease in prices attributable to a surge in volume for shares with greater accrued taxable capital gains. Overall, our findings suggest that an exogenous shock to the U.S. tax regime reverberates in international asset prices, thereby affecting foreign firms' costs of capital.

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.

Customs Valuation and Transfer Pricing

Will Destination-based Taxes be Fully Exploited when Available?

International Taxation of Banking

U.S. Cross-Border Leases as a Tool for Corporate Finance

A Law and Economic Approach

Taxation and Migration

Topics in Public Economics

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.

The dilemma of international tax arbitrage

Credit Method Compatibility and Constraints under EU Law
An Application to the U.S. Commodity Tax System
From Theory to Implementation
Tax Sovereignty in the BEPS Era