

Preface

This volume in the “Series on International Tax Law” includes the master’s theses of the full-time students attending the 2021-22 class of the postgraduate LL.M. programme in International Tax Law at WU (Vienna University of Economics and Business). The general topic for this year is “Justice, Equality, and Tax Law”. The questions about the legal meaning of equality and justice in tax law – but also in other areas of law – and how these postulates can be achieved are well-known topics. In times of digitalization and globalization, however, these issues are once again gaining in relevance and importance. Increasing digitalization and globalization have made it easier for taxpayers to engage in aggressive tax planning and thereby reduce their effective tax burden. With the initial BEPS Action Plan published in 2013, which addressed the fight against aggressive tax planning in particular, it was intended to increase tax fairness and restore equality between taxpayers. “Paying the fair share” is one of those phrases that served as guidelines. Since the publication of the BEPS Action Plan, however, proposals from international organizations (especially the OECD) with the aim of avoiding (aggressive) tax planning have been continually developed (e.g. Pillar I and II). Obviously, the relevant goal of adequate tax fairness and equality between taxpayers has not yet been achieved. This seems to be the view of the EU as well which, in the past, has strongly followed the OECD’s suggestions and has issued (proposals on) legal acts (Proposed Directive on a Common [Consolidated] Corporate Tax Base, Proposed Directive to implement Pillar Two, Anti-Tax Avoidance Directive I and II).

Against this background, the need for a renewed comprehensive analysis of the issue of justice and equality in tax law is apparent. Hence, this volume aims to develop (critical) academic insights and enable an in-depth analysis of the specific aspects of this topic. At the beginning, the reader obtains a general overview of how the understanding of fairness in tax law has changed within the last years and which regulatory developments and proposals there have been in the OECD and on the EU level to create fairer legal systems. In addition, in this part, the ability-to-pay principle that is a fundamental principle at both and international level and mostly on a national level will be described. This principle is intended to ensure that taxpayers with the same income pay the same amount of tax and is often included by courts as part of the decision-making process.

In the second part, the focus is placed on international tax law aspects in light of the general topic. For that, in particular, tax treaty developments that have occurred since the publication of the BEPS Project and are interesting from a justice and equality perspective will be elaborated. Following the interpretation of the general prohibition of discrimination under Article 24 OECD MC, specific issues such as the MLI, arbitration, and general/specific anti-avoidance rules that have been increasingly expanded by national legislatures in recent years are addressed.

The third part deals specifically with current EU issues that take on significance from the perspective of the general topic. In doing so, the requirements of equal treatment that can be especially found in the Charter of Fundamental Rights of the European Union (CFR) and the Treaty on the Functioning of the European Union (TFEU) are highlighted. In this context, the reader gains also comprehensive insight into the case law of the CJEU that interprets the respective relevant provisions in the treaties and has also developed a general principle of abuse in tax law.

The fourth part addresses the general topic from a procedural point of view. Both at the OECD and EU levels, new measures have been taken to ensure and strengthen tax compliance. In particular, measures have been taken to increase cooperation between individual countries. Examples include amendments of the Directive on Administrative Cooperation (DAC) adopted by the EU legislator that provides for a further exchange of information between Member States as well as other instruments that enable cooperation between two or more countries (e.g. cooperative compliance programs, improved audit procedures). However, some of these measures have been met with criticism in some circles as they partially restrict the fundamental rights of taxpayers. For this reason, the legal limits of such measures should also be conveyed to the reader.

In part five, the role of the VAT/GST in the modern tax system is being investigated. In this sense, the principles justifying taxation of consumption at origin or at destination as well as the importance of legal certainty for the taxpayer in determining tax obligations vs. the right of the administration to requalify the facts are addressed. Finally, the latest developments in the field of VAT, such as the OSS and the intermediary collection model, are being scrutinized in view of their role as tools for achieving more tax justice.

Without any doubt, the complexity of these topics provided the students with a steep challenge; the students have risen to the occasion with an impressive academic compilation on this topic. It was our pleasure to provide them with the support they needed for completing their research endeavours. We thank all of the students for their commitment and congratulate them on the successful completion of their studies. In addition, we would like to express our sincere gratitude to the Linde Publishing House for the opportunity to publish this volume. Having Linde as a partner provides the professional cooperation needed to make a project such as this a success. Sincere thanks also to Ms Jenny Hill and Margaret McKinney who contributed to the completion of this book by revising the master's theses from a linguistic perspective. As a final remark, the opinions expressed in this book are personal opinions of the authors of each chapter and do not reflect the position of any organization to which the authors or editors are affiliated.

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