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The History of Double Taxation Conventions in the Pre-BEPS Era

20

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The History of Double Taxation Conventions in the Pre-BEPS Era

Why this book?

The design of international tax law cannot be described without recourse to its extensive history. By looking at the evolution of tax treaties, valuable insight is gained as regards the causes behind the most recent shift towards renewed international tax coordination in the framework of the BEPS Project. This book analyses how tax treaties have evolved, from the early days of the history of international taxation until the beginning of the BEPS era, by collecting the outcome of joint research on the development of international tax law. It consists of a wide range of papers bridging the existing gap between the history of international law, economic history and the history of international cooperation.

In this context, it also spells out the importance of the role of early institutions such as the International Chamber of Commerce and the League of Nations, as well as the International Fiscal Association and the OEEC/OECD, and helps to highlight their fundamental influence. The book is the result of the conference "History of Double Taxation Conventions", which took place from 3-5 July 2008 in Rust/Neusiedler See. It consists of 30 contributions exploring the development of the tax treaty practices of 30 countries and, additionally, three cross-sectional contributions.

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Preface

In many of its rules, methodology and economic implications, the design of international tax law cannot be explained without a profound recourse to its history. The *Arbeitskreis Steuergeschichte*, a German-Swiss research group on tax history, and the Institute of Austrian and International Tax Law of the WU (Vienna University of Economics and Business) have committed themselves to analyse the original intent, economic conditions, milestones and changes in the development of international tax law. For this purpose an international research project, involving several authors from around the world, was carried out between 2008 and 2012. This book is unique in its kind, since it analyses how treaties have evolved from the early days of the history of international taxation until before the start of the BEPS era. By looking at the evolution of tax treaties we expect to gain a more precise idea of the reasons that have caused the most recent shift towards renewed international tax coordination in the framework of the BEPS project. The papers collected here bridge the existing gap between the history of international law, economic history and the history of international cooperation. It sheds some light on early institutions, most notably the International Chamber of Commerce and the League of Nations as well as the International Fiscal Association and OEEC/OECD – and it might help to track and trace their fundamental influence until the dawn of our century.

Accordingly, in line with a scientific methodology for historical studies, the output of this research on tax treaties was kept exactly as it stood at the time in which the survey was conducted by all its authors. For this reason, unless otherwise specified, all references refer to the 2008 OECD Model Convention and its Commentaries, the 2008 state of bilateral double taxation conventions and accompanying literature.

In this process, two fields of research were examined: in first instance the tax law of nations, as it has developed since an 1843 Belgian-French treaty on administrative assistance in tax matters and later with the appearance of early bilateral double taxation conventions in the last third of the 19th century; second, intra-federal instruments to coordinate competing and conflicting taxing powers within federalist systems.

This book collects the outcome of joint research on the first of these two fields of focus. It basically consists of 30 contributions tracing the development of tax treaty practices of 30 countries. In addition, three initial chapters collect significant cross-sectional contributions. They identify landmarks within the history of international tax law and disclose the enormous

impact of multilateral work on its development. Moreover, the authors analyse selected legal concepts and their diffusion between domestic law, bilateral treaties and model conventions. Parts 2 to 7 supplement these cross-cutting analyses by thorough country chapters of different regions. All chapters have been enriched by numerous suggestions and inspiration that the authors received during the conference “History of Double Taxation Conventions” which took place from 3 to 5 July 2008 in Rust/Neusiedler See.*

Two digitalization projects were very instrumental: useful materials concerning the constitution of the first published OEEC/OECD Model Tax Convention in 1963 were provided on www.taxtreatieshistory.org by a consortium of the Institute of Austrian and International Tax Law of the WU, IBFD, the Università Cattolica del Sacro Cuore, the Canadian Branch of IFA and the Canadian Tax Foundation. With a particular view to the late 19th and early 20th centuries, a parallel project, www.steuergeschichte.de, provided the full texts of early rules and available conventions, beginning with the 19th century, as well as literary works in German.

We hope this book will be helpful reading for those who strive towards a historically informed understanding of double taxation conventions. We wish to thank the Deutsche Vereinigung für Internationales Steuerrecht e.V., the Austrian IFA branch and the Swiss National Science Foundation for their generous support of our research project. We owe particular gratitude to Dr Franz Koppensteiner in Vienna as well as to Anđela Milutinović, Dr Matthias Roth, Michael Wenderoth and the team of student assistants in Heidelberg for their editorial assistance. Johannes Kippenberg, LL.M., provided valuable input at a later stage of the editorial process. Above all, however, our gratitude is due to the authors for their pioneer research as well as for their patience during the editing process.

The chapters represent the situation as it was in 2008.

Michael Lang
Ekkehart Reimer

* See Matthias Valta/Daniel P. Rentzsch, Conference Report: History of Double Taxation Conventions, Rust 4-7 July 2008, 36 *Intertax* (2008), p. 533 et seq.

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