

Editor: Pasquale Pistone

Building Global International Tax Law

Essays in Honour of Guglielmo Maisto



IBFD

Building Global International Tax Law - Essays in Honour of Guglielmo Maisto

Why this book?

The ongoing global tax governance is bringing international tax law to unprecedented levels of coordination, backed up by technical consultations with stakeholders. This book in honour of Guglielmo Maisto is the outcome of a theoretical and practical research project involving all its contributors, which rank among the most authoritative experts of international tax law. The goal of this book is to supplement the process of international tax coordination with a comprehensive independent conceptual review of the current issues and future challenges of international tax law.

This book is structured into five parts, which address the most fundamental areas of international tax law. Part One focuses on Model Tax Conventions and addresses issues of tax treaty interpretation (Section 1), allocation rules (Section 2) and other clauses (Section 3). Part Two puts the emphasis on the more specific issues involving bilateral tax treaties and domestic tax law, including the relations with them. Part Three brings in the picture the interaction with supranational law of the European Union and allows the readers to see how the latter affects international tax law and tax treaties, providing a conceptual analysis that can also be of interest for global readers. Part Four analyses the relations with non-tax treaties, including in particular bilateral investment treaties. The latter treaties are being increasingly used by taxpayers, as non-State actors of international law, to overcome the shortcomings connected with the absence of effective legal remedies under tax treaties. Finally, Part Five presents topical studies on key issues of international tax law, which relate to the past, present and future (including reform) perspectives of international tax law.

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Preface

This book is a special token of friendship to Guglielmo Maisto in recognition of his commitment to explore the theoretical and practical implications of international tax law throughout several decades. This is a joint effort of all of its authors and of IBFD to help build up a theoretically sound global framework to face the present and future challenges of international tax law.

Being a book in honour of Guglielmo Maisto, the selection of invited contributors followed one criterion, namely the personal relations that each author has developed with Guglielmo over the years and decades. That criterion alone helped convene the most authoritative international tax law scholars from around the world to join forces on an ambitious scientific research project, the main scientific goal of which is to prompt the community and its stakeholders to take a step back and review the critical issues and future challenges of international tax law from an independent scholarly perspective.

About a century ago, comprehensive studies (including, in particular, the joint research conducted by Bruin, Einaudi, Seligman and Stamp, the so-called “Four Economists”, which is still consulted today by the international tax community) preceded the major developments of international tax law. Such studies set the pace for the rules that, whether to a major or minor extent, still apply today.

By contrast, the ongoing global tax governance is bringing international tax law to unprecedented levels of coordination, backed up by technical consultations of stakeholders (each pursuing its own agenda and often only focusing on specific implications of the proposed rules), but without being preceded by a comprehensive involvement of the scholarly community in the assessment of the fundamental implications of such changes.

This book certainly does not intend to question the validity of technical choices made in the framework of international tax coordination under the auspices of international organizations. The goal of the underlying scientific research conducted in the preparation of this book is instead to help international tax law address such issues and be conceptually fit to meet its challenges for a long-lasting future.

A large number of authors contributing to this book have shared the membership of the prestigious International Tax Group for several years and/or decades with Guglielmo Maisto, and this Group has produced some of the

most authoritative in-depth global studies on international tax law. Other contributors, including myself, have engaged with Guglielmo over the years in bilateral research activities.

Over decades, Guglielmo Maisto's own contribution to the development of international tax law has been unique. It will certainly remain a valid source of consultation for theoretical and practical specialists in international tax law for many more years to come. Besides his own accurate and original technical studies, which he has elegantly combined with his engagement as a top-notch practitioner, Guglielmo has provided a generous contribution to the growth of the international tax community and its international organizations. His annual conferences, held every November in Milan since 1999, have facilitated a systematic approach to the most critical issues of international and European tax law, nudging important contributions to the developments of studies in the volumes published by IBFD in a dedicated series.

Guglielmo's commitment and service to the international tax community has also been visible in support of international organizations. Such organizations include the International Fiscal Association (IFA), to which he indefatigably contributes to global, regional (IFA Europe) and national (IFA Italy) levels, and its sister organization, IBFD, which he first discovered during his university studies and to which he then dedicated endless efforts in various capacities, including as trustee and Chairman of the Board of Trustees, also in moments of hardship. In my capacity as IBFD Academic Chairman, I feel obliged to stress that IBFD shall never forget and shall always, also in the name of the international tax community, be eternally grateful to Guglielmo for his superb guidance.

Guglielmo's personality and unique role in the global international tax community is a magnet that attracts many distinguished international tax law scholars from around the world, nudging them to set aside time in their hectic agendas to produce top-notch studies that nurture the development of international tax law in line with his high standards of quality.

The tradition established by Guglielmo has made it very easy for the editor of this book to gather 29 excellent contributions, which address five core areas of international tax law, as described below in this preface.

Overlaps across the various chapters are intended, reflecting the different views by the authors and, accordingly, enriching scientific pluralism. Different approaches to similar critical issues of international tax law help

give this book a global touch, including some Italian elements with reference to Italian international tax law from domestic and treaty sources as a friendly way to salute Guglielmo's nationality.

The structure of this book reflects the overall goal of this research project.

Part 1 focuses on model tax conventions. It starts, in section 1, by addressing issues of treaty interpretation and history, one of the areas of particular interest for Guglielmo's own research. Section 2 continues with the analysis of specific critical issues involving allocation rules. Just like for all the content of this book, readers will appreciate the authors' efforts to take into consideration not only Guglielmo Maisto's research output but also that which has been possible in connection with the numerous research projects that he has led, prompted or encouraged. Section 3 then addresses issues concerning the remaining clauses of model conventions, some of which are also included as secondary content of other contributions included in the remaining parts of this book.

Part 2 includes contributions that predominantly address bilateral tax treaties and international tax law from domestic sources, including the relations between them and the impact of model tax conventions on both.

Part 3 puts emphasis on the issues of EU tax law. Even though the full understanding of such contributions requires thorough knowledge of technical issues related to how supranational law operates in the European Union, the conceptual importance of such issues has exponentially grown over the years and brings up concrete issues that are of interest to a global geographical audience in the field of international tax law.

Part 4 addresses the issues of non-tax treaties, covering, in particular, the relations with bilateral investment treaties. Despite their numerous tax carve-outs, such treaties have exponentially increased their relevance on matters of taxation, possibly due to the failure of tax treaties to secure the effective protection of the rights of taxpayers and intermediaries as non-state actors in international law.

Finally, Part 5 brings together the past, present and future of international tax law, with a symbolic value of reflecting the overall goals of the research project underlying this book, which has remained secret for the 2 years preceding its publication. We truly hope that our readers, starting with Guglielmo Maisto, will enjoy the content of this book and that it may

prompt further critical theoretical and practical research on the current and future challenges of international tax law.

Also on behalf of all the authors, I would like to symbolically offer it to Guglielmo with our best wishes for his 70th birthday!

12 March 2022
Pasquale Pistone

Notes



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