



Sam van der Vlugt

Rethinking Tax Sovereignty in the European Union

Towards Principled European Tax
Integration

IBFD DOCTORAL SERIES

79

Rethinking Tax Sovereignty in the European Union

Why this book?

This book presents a structuring of the argumentation in the debate on European integration, sovereignty and taxation in the European Union. In the search for an integrative agenda that closely aligns with the Treaties themselves, the book dismisses political arguments cloaked as legal arguments that do not find any legal grounding in the European Treaties or national constitutional law, thereby also respecting the distinct features of the national legal setting. A first descriptive theoretical chapter delves deeper into the historical context of the sovereignty concept in continental Europe and argues that the material form of sovereignty is different for each jurisdiction. The subsequent chapter grounds these different national traditions in the project of European integration, with specific attention paid to the role of taxation within that integrative project. Thereafter, a new integrative path is proposed that aligns more closely with the fundamental principles that guide the exercise of the governmental function of taxation in the Member States, and is transposed to the EU setting as European legal principles and common constitutional principles. This common constitutional core has not materialized in the tax setting, but could greatly enhance the legitimacy of the European integrative endeavours. Whether this is currently the case with the harmonization initiatives currently tabled or underway, is assessed in the final chapter. The conclusion presents a synthesis of the above, concluding that there is a principled way forward in terms of European tax integration that would legitimize the overall project and that would sufficiently respect national sensitivities surrounding tax integration.

Title:	Rethinking Tax Sovereignty in the European Union
Date of publication:	March 2025
ISBN:	9789087229474 (print), 9789087229498 (PDF), 9789087229481 (e-pub)
Type of publication:	Book
Number of pages:	692
Terms:	Shipping fees apply. Shipping information is available on our website.
Price (print/online):	EUR 130 USD 143 (VAT excl.)
Price (eBook: e-Pub or PDF):	EUR 104 USD 114 (VAT excl.)

Order information

To order the book, please visit www.ibfd.org/shop/book. You can purchase a copy of the book by means of your credit card, or on the basis of an invoice. Our books encompass a wide variety of topics, and are available in one or more of the following formats:

- IBFD Print books
- IBFD eBooks – downloadable on a variety of electronic devices
- IBFD Online books – accessible online through the IBFD Tax Research Platform

IBFD Doctoral Series

Editor-in-Chief: Pasquale Pistone

Deputy Editor-in-Chief: João Felix Pinto Nogueira

Managing Editor: Craig West

Editor: Sergio Messina

True to its mission of disseminating knowledge of international taxation and promoting the study of taxation in general, IBFD's Doctoral Series publishes volumes based on doctoral research, making this high-level research available to a wider audience.

The IBFD Doctoral Series accepts only contributions that enhance the international academic tax debate and meet the highest academic standards. In order to ensure top quality, every thesis published in the series underwent peer reviewing in line with the strictest selection standards.

Books published in the IBFD Doctoral Series should:

- achieve particularly original research results;
- include a significantly innovative component;
- be based on a thorough knowledge of the existing literature on the topic(s);
- have a particularly strong, long-lasting impact on European and/or international tax law.

Rethinking Tax Sovereignty in the European Union

Towards Principled European Tax Integration

Sam van der Vlugt

This book is based on the thesis submitted for a doctoral degree
at the University of Salerno and the University of Antwerp



Volume 79
IBFD Doctoral Series

IBFD

Visitors' address:
Rietlandpark 301
1019 DW Amsterdam
The Netherlands

Postal address:
P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Telephone: 31-20-554 0100

Email: info@ibfd.org
www.ibfd.org

© 2024 IBFD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written prior permission of the publisher. Applications for permission to reproduce all or part of this publication should be directed to: permissions@ibfd.org.

Disclaimer

This publication has been carefully compiled by IBFD and/or its author, but no representation is made or warranty given (either express or implied) as to the completeness or accuracy of the information it contains. IBFD and/or the author are not liable for the information in this publication or any decision or consequence based on the use of it. IBFD and/or the author will not be liable for any direct or consequential damages arising from the use of the information contained in this publication. However, IBFD will be liable for damages that are the result of an intentional act (*opzet*) or gross negligence (*grove schuld*) on IBFD's part. In no event shall IBFD's total liability exceed the price of the ordered product. The information contained in this publication is not intended to be an advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without considering appropriate professional advice.

IBFD and/or the author cannot be held responsible for external content, broken links or risks within the external websites that are referenced as hyperlinks within this publication

Where photocopying of parts of this publication is permitted under article 16B of the 1912 Copyright Act jo. the Decree of 20 June 1974, Stb. 351, as amended by the Decree of 23 August 1985, Stb. 471, and article 17 of the 1912 Copyright Act, legally due fees must be paid to Stichting Reprorecht (P.O. Box 882, 1180 AW Amstelveen). Where the use of parts of this publication for the purpose of anthologies, readers and other compilations (article 16 of the 1912 Copyright Act) is concerned, one should address the publisher.

ISBN 978-90-8722-947-4 (print)

ISBN 978-90-8722-948-1 (eBook, ePub); 978-90-8722-949-8 (eBook, PDF)

ISSN 1570-7164 (print); 2589-9619 (electronic)

NUR 826

Table of Contents

Acknowledgements	xix
Abstract	xxi
Chapter 1: Introduction to this Inquiry	1
1.1. Main research question	2
1.2. General approach to methodology and research	3
1.3. The scope of this book	5
1.4. Short introduction of the different research methods	8
1.4.1. Doctrinal research method	8
1.4.2. Theoretical/contextual legal research method	9
1.4.3. Legal-historical and legal-philosophical research methods	10
1.4.4. Comparative legal research method	10
1.4.5. Legal-normative or reform-oriented legal research	11
1.5. On language	11
Chapter 2: Mapping the Development of (Legal) Powers in Europe: A Legal-Historical Perspective	17
2.1. Introduction: overlapping legal forces in taxing power	17
2.2. Introduction to methodology and outline	17
Title I: Sovereignty, Constitutionalism, and Federalism in Historic Perspective	20
2.3. Sovereignty, constitutionalism and federalism: a brief synthesis on the maturation of highly contested concepts	20

2.3.1.	The progress of the discussion on the sovereignty concept throughout history: the early roots	20
2.3.2.	Shaping the relationship between the sovereign and the people	26
2.3.2.1.	From a citizenry that has nothing to say to a “social contract” of taxation	30
2.3.3.	Constitutionalism and sovereignty: the people and the state	31
2.3.4.	Different continental European experiences with sovereignty and constitutionalism	35
2.3.4.1.	The Italian case of 1848	36
2.3.4.2.	The case of the Polish-Lithuanian Commonwealth	38
2.3.4.3.	The pre-unification German experience	41
2.3.5.	Federalism as a part of constitutionalist struggles with divisibility of power and sovereignty	44
2.3.5.1.	The accommodation of federalism in the US	44
2.3.5.2.	Early federalism in Europe: the case of Switzerland	47
2.3.5.3.	A different taste: Italian Unitarianism after the unification	47
2.3.5.4.	The formation of Germany and its legal accommodation	50
2.3.5.5.	Take-aways from the national experiences	54
2.3.6.	The final formative era: post-Second World War sovereignty	55
2.3.6.1.	A wave of multilateralism around the globe	58
2.3.6.2.	Regional integration on the European continent	59
2.3.6.3.	The EU as the cut-off point for now	62
2.3.6.4.	The role of democracy in the development of sovereignty	63
Title II:	General Legal Constraints From Union Law in the National Legal Order	64
2.4.	General legal constraints from EU law for the exercise of legislative competences of EU Member States	64
2.4.1.	Introduction and demarcation of the discussion	64
2.4.2.	The Court of Justice of the European Union and the constitutionalization of the EU legal order	68
2.4.2.1.	Introduction	68
2.4.2.2.	The beginning: Van Gend en Loos and Costa v. ENEL	68
2.4.2.3.	Direct effect and supremacy as the lever to autonomy	70

2.4.2.4.	The further establishment of legal autonomy by the Court	71
2.4.2.5.	Further steps towards the constitutionalization of the European legal order	72
2.4.2.6.	Putting a crown on the work: the continuing acknowledgement of the constitutional status of EU law	74
2.4.2.7.	Is constitutionalization juridical activism of the Court or a logical outcome when reading the Treaties?	75
2.4.3.	The status of Union law and procedures in the national legal order	77
2.4.3.1.	Direct effect and EU primary law	78
2.4.3.2.	Direct effect and EU secondary law	80
2.4.3.3.	The doctrine of consistent interpretation	82
2.4.3.4.	Direct effect and international agreements concluded by the Union	83
2.4.4.	Absorption of EU law as the role of the national judiciary: a brief outline of the judicial dialogue	85
2.4.5.	General introduction to the discourse on national constitutional courts' challenges of the supremacy of EU law	88
2.4.5.1.	Three national reactions to the primacy of Union law	90
2.4.5.1.1.	The Spanish case	90
2.4.5.1.2.	The German case	91
2.4.5.1.3.	The Polish case	92
2.4.5.2.	Specific national cases of non-compliance with EU secondary law	95
2.4.5.2.1.	Landtová and the Czech Constitutional Court	95
2.4.5.2.2.	Ajos and Denmark	96
2.4.5.2.3.	Germany and the Public Sector Purchase Programme	99
2.4.6.	Brief conclusions from the general legal framework	101
Chapter 3:	The Whirlwind of Multilateralism and the Consolidation of Integrative Patterns	105
3.1.	Introduction: European integration and the lack thereof	105
3.1.1.	Introduction to methodology	105
3.1.2.	Research techniques	108

Title I:	The Pre-Framework of the Contemporary History of European Integration	110
3.2.	Introduction: periodization and finding a starting point	110
3.2.1.	Integration in the pre-Pax Europaea phase: setting the timeframe	110
3.2.2.	The first signs of bilateral political cooperation in trade and taxation on the European continent	111
3.2.2.1.	Europe and the first wave of globalization: rise and decline of bilateralism	111
3.2.2.2.	The advent of tax bilateralism	114
3.2.3.	The post-First World War dawn of multilateral cooperation	117
3.2.3.1.	The League of Nations as a first sign of multilateralism	117
3.2.3.2.	International tax developments in the interwar period	120
3.2.3.3.	Brief conclusions from the pre-framework	124
Title II:	First Steps and First Struggles: the Roots of European Supranational Cooperation	110
3.3.	Rising from the ashes: the rebuilding of Europe and the dominance of regionalism	124
3.3.1.	Finding solid ground, Europe and the search for a working political framework: 1945-1966	127
3.3.2.	To OEEC or ECSC, that is the question	130
3.3.3.	Failing forward?	135
3.3.4.	From Messina to Rome	139
3.3.5.	Under the obligation of integration	145
3.3.5.1.	Finally, after all those years: a customs union, but not yet directly	148
3.3.5.2.	Political turmoil during the infant years	149
3.3.5.3.	The first real political test for the supranational framework from the inside	152
3.3.6.	On the role of the law in the foregoing analysis	154
3.3.7.	New institutionalism within the European project	155
3.3.7.1.	The national constitutional accommodation of the ability to participate in the European Economic Community	157
3.3.7.1.1.	France	160
3.3.7.1.2.	West Germany	161

3.3.7.1.3.	Italy	162
3.3.7.1.4.	The Netherlands	163
3.3.7.1.5.	Belgium	164
3.3.7.1.6.	Luxembourg	165
3.3.7.2.	The internal logic of the European Economic Community institutions and administrations and the struggle for building an institutional prerogative	169
3.3.7.3.	Do the political and legal developments match the theory?	173
3.3.8.	Specificities of the two Treaties	174
3.3.8.1.	The European Coal and Steel Community Treaty in brief	177
3.3.8.2.	The European Economic Community Treaty in brief	178
3.3.9.	The role of taxation in the development of European integration from 1946-1965	179
3.3.9.1.	The immediate post-war years and the UN and the Organization for European Economic Cooperation as facilitators of discussions on international taxation	180
3.3.9.2.	The relationship between the two frameworks of multilateralism	183
3.3.9.3.	Budgetary autonomy and taxing powers under the European Coal and Steel Community Treaty	186
3.3.9.4.	The difficult road to tax integration in the early years of the European Coal and Steel Community	190
3.3.9.5.	Fiscal harmonization in the European Economic Community early years	197
3.3.9.6.	The budget of the European Economic Community	198
3.3.9.7.	Tax integration in the European Economic Community	199
Title III:	Push and Pull: The Ambivalent Relationship Between the European Project and Its Members	205
3.4.	The long road to consolidation of the Common Market: a community coming to terms with its commitments from 1966-1993	205
3.4.1.	Introduction to the current timeframe	205
3.4.2.	After the dust settles: new modus operandi after the Luxembourg Compromise and the deepening and widening of integration	205

3.4.3.	Institutional and constitutional development in the European Economic Community in the “dark ages” of European integration	213
3.4.3.1.	Introduction and state of play	213
3.4.3.2.	Legal face of the European Economic Community: supranational in Brussels and Luxembourg while intergovernmental in the national capitals	214
3.4.3.3.	Accommodation of changes to the legal architecture in the national context	217
3.4.3.3.1.	National constitutional situation in the initial six Member States post-accession to the European Economic Community	218
3.4.3.3.2.	The constitutional basis of membership and the status of European Economic Community law in the new Member States constitutional setting	219
3.4.3.3.3.	The Kompetenz-Kompetenz question in the national constitutional context	221
3.4.3.4.	Single European Act and the Maastricht Treaty: a reshuffling of the cards?	228
3.4.4.	Tax integration from 1966 to Maastricht	232
3.4.4.1.	Tax integration after the beginning years: introduction to the years from 1966-1993	232
3.4.4.2.	Tax integration from 1967 to the Single European Act: only little light at the end of the tunnel	233
3.4.4.3.	The Single European Act as the impetus for tax integration	238
Title IV:	A Whirlwind of Changes in an Ever Closer Union?	241
3.5.	Optimism, enlargements, pessimism, crisis: the rollercoaster of the EU from 1993-2016	241
3.5.1.	Introduction to the current timeframe	241
3.5.2.	A Union in development in good and in bad times	242
3.5.2.1.	Convergence and crisis	243
3.5.2.2.	The rapid expansion of the Union	244
3.5.2.3.	Treaty revisions, the failed constitution and conclusions of the political review	246
3.5.3.	Legal-institutional and constitutional developments in the post-Maastricht and Lisbon era	247
3.5.3.1.	The Copenhagen criteria as an expression of a common identity?	248

3.5.3.2.	The national reception of the Court of Justice of the EU doctrine in new Member States and their inclusion in a pluralistic constitutional legal order	250
3.5.3.3.	Institutional changes in the EU and expansion of competences	254
3.5.4.	Tax integration from 1993-2016	256
3.5.4.1.	New avenues of tax integration in the 1990s	256
3.5.4.2.	The 2000s and beyond: more of the same and/or a turn in tax integration?	260
3.6.	Conclusion	262
Chapter 4:	Deconstruction and Reconstruction of an Integrative Path for Direct Tax Integration in the EU	265
4.1.	Introduction: does a Union of principles also mean unity in applying principles?	265
4.1.1.	Introduction to a new phase within this study	265
4.1.2.	A variety of principles in the EU legal order	271
4.1.3.	Filling the gaps with legal principles: the constitutional governance of future EU tax policy	276
4.1.4.	On the nature of a more material constitutionalism	277
4.1.5.	Research methodology for the current chapter	279
Title I:	The current legal framework of the internal market	282
4.2.	Exercising taxing powers in an internal market	282
4.2.1.	Introduction: how to comprehend the internal market in direct taxation	282
4.2.2.	Goals, principles and legal value of the EU internal market as reflected in the Treaty provisions	282
4.2.3.	Searching for the political and economic spirit of the internal market	288
4.2.3.1.	Politics and the Treaties: how the legal and political run hand-in-hand	288
4.2.3.2.	The economic internal market: the same diseases to be found in economic definitions?	292
4.2.3.3.	Legal-economic expressions of a principled rationale for the internal market	294

4.2.3.4.	An internal market with fundamental freedoms as fundamental rights?	298
4.2.4.	Placing taxation within the internal market	307
4.2.4.1.	Is there an internal market concept for taxation?	307
4.2.4.2.	The distorted legal development of the internal market in taxation: consequences of underdevelopment in terms of principles	308
4.2.4.3.	Extrapolation of economic neutrality to the legal setting of the internal market in direct taxation	313
4.2.4.4.	Peculiarities of an unharmonized system of tax laws, and why double taxation continues to exist even with harmonization	320
4.2.4.5.	Member States' tax sovereignty and the internal market	324
4.2.5.	Brief preliminary conclusion to the internal market analysis in taxation	332
Title II:	The purest water is to be found in the spring	333
4.3.	A positive, principled agenda for the reallocation of taxing powers	333
4.3.1.	The difficulty in identifying a moving target	333
4.3.2.	EU essential values and their legal scope	336
4.3.2.1.	Legalizing the values or the philosophy of EU law: discerning legal principles that are of relevance to the integration process	339
4.3.2.1.1.	The values of article 2 of the TEU taken together	340
4.3.2.1.2.	Principle per principle: the discernible differences between the principles embedded in the values clause	342
4.3.2.2.	Specific application in terms of future EU tax harmonization	346
4.3.3.	The connection between the Union values, taxation, and the exercise of power by public authority	354
Title III:	A common European constitutional tax framework: the drum of the structural principles	357
4.4.	The creation of a common principled framework: lessons and consequences from the legal integration paradigm	357
4.4.1.	Structural principles and their place in a constitutional reconciliation of tax principles	357

4.4.2.	The structural integration paradigm: a question of competence and the exercise thereof	362
4.4.2.1.	Conferral	362
4.4.2.2.	Subsidiarity	367
4.4.2.3.	Proportionality	369
4.4.3.	The supranational constitutional consequences of a principled tax agenda	370
4.4.3.1.	On primacy, direct effect and autonomy	371
4.4.3.2.	On mutual trust and effectiveness	375
Title IV:	The difficulties of integration within multiple constitutional spheres	377
4.5.	The constitutional space “in between”	377
4.5.1.	Opening the doors: upstreaming national law in the European context	379
4.5.2.	On the value of article 6 (3) of the TEU for tax law	382
4.5.2.1.	Principles that article 6 (3) of TEU has promoted to general principles of EU law: Can they have programmatic value?	383
4.5.2.2.	The protection of individual rights	384
4.5.2.3.	The protection of procedural rights, and the relationship with procedural autonomy of the Member States	385
4.5.2.4.	The protection of rights related to the rule of law	387
4.5.2.5.	Conclusion for article 6 (3) of the Treaty on European Union and tax law	388
4.5.3.	Common tax principles: inspiration or burden	390
4.5.3.1.	How to work with pre-legislative principles of EU tax law	392
4.5.3.2.	Process-instructive principles relevant to EU tax integration	393
4.5.3.2.1.	Democracy, the rule of law, and taxation in EU Member States	394
4.5.3.2.2.	The separation of powers and checks and balances in relation to taxation in EU Member States	400
4.5.3.2.3.	The principle of legality of taxation in the Member States and the EU legal order	404
4.5.3.3.	Content-instructive principles and their value for European tax integration	411
4.5.3.3.1.	Ability to pay on a European level: the difficulty of upstreaming	413

4.5.3.3.2.	Equality and non-discrimination: in search for an extension or a new framework?	417
4.5.4.	Interim conclusion: the first contours of an integrative paradigm	420
4.5.5.	Article 4 (2) of the Treaty on European Union and the integration of taxation in the EU	421
4.5.5.1.	The provision in the Treaties	423
4.5.5.2.	The CJEU and the national identity provision	426
4.5.5.3.	Briefly revisiting national highest courts and national identity within European integration	429
4.5.3.3.1.	On the language used	432
4.5.3.3.2.	The German Federal Constitutional Court doctrine and its influence	434
4.5.5.4.	The boundary of integration: how must the national tax identity be interpreted?	438
4.5.5.4.1.	Ability to pay and eliminating reverse discrimination in the Italian context	440
4.5.5.4.2.	Belgian federalism and national identity	441
4.5.5.4.3.	Analogous reasoning with the Federal Constitutional Court	443
4.6.	Brief conclusions	444
Chapter 5:	Principle-based Integration as the New Indispensable Horizon for EU Direct Tax Law	447
5.1.	Introduction	447
5.2.	New life for the European tax integration project by means of enhanced legitimacy	448
5.2.1.	Main research objectives of this chapter	451
5.2.2.	Methodology	453
5.2.3.	Outline of this chapter	455
Title I:	Revisiting the sovereignty discussion	456
5.3.	Sovereignty and European tax law	456
5.3.1.	A brief recap of chapter 2: reconstructing sovereignty	456
5.3.1.1.	Working with a pluralistic conception of sovereignty: The connection between power, politics and the law	458
5.3.1.2.	The federal structure revisited and applied to the European tax setting	461

5.3.1.2.1.	Revisiting the Kelsenian position	461
5.3.1.2.2.	Revisiting the Schmittian position	464
5.3.1.3.	Dynamic democracy as the essential promise of the valid exercise of tax sovereignty	466
5.3.2.	Tax sovereignty and normative framework principles	468
5.3.3.	Sovereignty and constitutional peculiarity	470
Title II:	The pendulum of European tax integration and the direction in which it is swinging	471
5.4.	Current substantive initiatives in European tax integration	471
5.4.1.	The principled differences between the use of the internal market competence and the own resources discussion	472
5.4.1.1.	Assessing the exercise of the internal market competence	473
5.4.1.2.	Assessing the exercise of the own resources competence	475
5.4.2.	A principled framework for the assessment of new proposals	478
5.4.2.1.	A democratic assessment framework for critical review: how to optimize?	480
5.4.2.2.	Returning to the process- and content-instructive value of principles	481
5.4.2.3.	Legitimacy as an indicative tool, but what legitimacy?	482
5.4.2.4.	Legitimacy: input, output and throughput	484
5.4.3.	A close observation of the “new” winds in the sails of European tax integration	487
5.4.4.	The Organization of Economic Co-operation and Development’s base erosion and profit shifting programme and EU direct tax law	488
5.4.4.1.	Pillar One and the European implementation	489
5.4.4.1.1.	The functional split for the taxation of digital activities and the European possibility to go at it alone	492
5.4.4.1.2.	The European digital services taxes	493
5.4.4.1.3.	Assessing the legitimacy of Pillar One	496
5.4.4.2.	Pillar II and the European implementation	501
5.4.4.2.1.	The rationale of Pillar Two in relation to sovereignty	502
5.4.4.2.2.	Testing Pillar Two in light of the legitimacy indicators	505

5.4.4.3.	Vida as the “contrast fluid” to other fields of tax harmonization	507
5.4.4.3.1.	Vida and VAT: bringing the European indirect tax landscape up to speed	509
5.4.4.3.2.	Assessing the merits of the Vida legislative agenda in line with the legal basis and legitimacy indicators	511
5.4.4.4.	Administrative cooperation and tax harmonization	514
5.4.4.4.1.	A legitimacy test for the harmonization of administrative provisions that deal with tax matters	516
5.4.4.5.	The Code of Conduct Group as the harmonization mechanism	520
5.4.4.5.1.	The Code of Conduct Group: The institutional basics and new rules	521
5.4.4.5.2.	Input, output, and throughput legitimacy in the Code of Conduct Group	524
5.4.4.5.3.	The legal legitimacy issue of the Code of Conduct Group	526
5.5.	Interim conclusion from the legitimacy discussion on the internal market tax agenda	528
5.5.1.	Summarizing the main concerns	528
5.5.2.	The legitimacy of the direction in which the integrative pendulum is swinging	531
5.5.3.	Business in Europe: a framework for taxation as the antidote to earlier identified problems (?)	535
5.5.4.	The Debt-Equity Bias Reduction Allowance proposal: Difficult to identify	536
5.5.5.	Business in Europe: Framework for Taxation and a comprehensive tax system for corporate income taxation	537
Title III:	The use of the own resources competence and its interplay with the tax harmonization agenda	540
5.6.	Introduction	540
5.6.1.	Finding a path in the development of own resources	540
5.6.2.	On the shift within the European budgetary financing structure and the role of sovereignty considerations	543
5.6.3.	The practicalities of implementing new own resources and the use of legal instruments	545
5.6.4.	The emissions trading system as a new own resource	548

5.6.4.1.	Introduction to the emissions trading system	548
5.6.4.2.	The relationship to taxation and the legitimacy of the emissions trading system from a tax perspective	549
5.6.5.	Carbon border adjustment mechanism as a new source of revenue	551
5.6.5.1.	Introduction to the carbon border adjustment mechanism	551
5.6.5.2.	Assessing the legitimacy of the carbon border adjustment mechanism	553
5.6.6.	Pillar One as an own resource	555
5.6.6.1.	The legitimacy aspects of Pillar One as an own resource	555
5.6.7.	Interim conclusion from the framework of own resources	556
Title IV:	Conclusion	560
5.7.	A principled framework for European tax integration: Realignment with the essential democratic promise of the Treaties	560
5.8.	The question of materialization of a principled tax agenda, with or without Treaty change	564
5.8.1.	The internal market and the need to change the Treaties	564
5.8.2.	The own resources and the need for Treaty change	568
Chapter 6:	Conclusion	571
6.1.	On the fundamentals of this book	571
6.2.	Chapter 2: sovereignty, legal constraints, and the demands of a dual framework	573
6.3.	Chapter 3: a grand synthesis of the historical materialization of the European legal framework, specifically for tax laws	574
6.4.	Chapter 4: ruptures and breaks: the specifics of tax law in the European and national setting	580

Table of Contents

6.5.	Chapter 5: the current integrative agenda and the lost road to legitimate tax harmonization	586
6.6.	Answering the main research question	591
	Bibliography	595
	Case law register	631

Acknowledgements

This dissertation started with a desire to work with Professor Pasquale Pistone in Italy and a move to Salerno. My expectations before embarking on this adventure have unimaginably been surpassed, and Professor Pistone's warm and passionate guidance has made that possible. I could not have been in better hands. Similarly, Professor Bruno Peeters welcomed me in Antwerp and helped shape my ideas with unmatched care and patience. Both have proven invaluable in forming my thoughts and (academic) persona.

On both the professional and personal fronts, I am deeply grateful to have met so many great colleagues along the way in so many countries and even more happy to see those people stick around and become good friends. Their enthusiasm, thirst for knowledge, and ways to escape this exciting but demanding line of work have stimulated me throughout.

Several institutions hosted me and generously funded me. This dissertation would not have been possible without funding from the Italian government and the University of Salerno, the Austrian government and Vienna University of Economics and Business, the University of Antwerp, and several conference organizations that allowed me to travel the continent to meet other scholars and test my ideas.

Embarking on this adventure would not have crossed my mind without the continuous support I received from friends and family at home. My mother has always stimulated me to search and pursue things that inspire me. One person, in particular, has been there along every step of this road despite dealing with my absence for a long time; she has always been a source of inspiration and sparked my curiosity. I am happy that the future will be spent together and in the same place.

Unfortunately, some have not lived to see the tangible result of this hard work, namely, a PhD diploma and this book. Still, by dedicating this book to them, and especially my father, I am moved by the idea that through these pages, a part of their spirit will travel this continent to different libraries and live on.

Chapter 1

Introduction to this Inquiry

*The rich history of the European continent as
a source of continued inspiration for this book*

Everyone knows that introductions to vast bodies of work are not the starting point of the writing process and usually are jotted down at the end of the process. This Introduction is no exception to that rule, and whereas usually, the Introduction discloses the particular personal interest of the author that led to the choice of a specific topic or field of study, thus presenting it as a solid choice that has provided a clear horizon throughout, this would be a misrepresentation of the facts in this specific case. The truth is that this Dutch author went to Italy, and thereafter to Belgium and Austria, and was lucky enough to be in caring hands that channelled all the energy, enthusiasm and discipline required to write a vast work like this one in the right direction.

The peculiarity of this book is that it is vast and does not encompass a sole object such as a single article of a tax law convention, a specific line of case law of a court, or even a doctrine. This book, right after the formulation of the main research question that has guided it through every step, had the potential to encompass nearly an entire discourse. In that sense it has delivered, as it is vast and presents a large amount of material that might not at first reading seem to be of the utmost importance for the interpretation of that single rule of tax law, court case, or doctrine on a specific topic. However, after the formulation of the main research question and the acknowledgement that this book would deal with general European Union (EU) law and the constitutional law of each Member State's national legal orders that carry profound significance for tax legislation and its interpretation, this distinguishing factor was felt as a strength.

Generality and completeness thus became virtues throughout, especially now that discourse breeds hyper-specialization, often specialization that misses the bigger picture. This bigger picture could, however, not be general or shallow in its own nature, which pushed towards a contextualization of tax law, an uncovering of its deepest roots in relation to the state that materialized throughout history, and the tracing of the application of general Union law that has given way to four chapters that perhaps could already have given rise to books in their own respect. However, it is within their harmony that one emerges within the full difficulty and fundamental

connectedness of this complex world, as well as its ordering and the answers to its problems.

This book principally aims to unravel this complexity in a field of study that is particularly known for its complexity. The direction thereof being the EU and tax law specifically is a choice of passion, which is explained with some difficulty in an introductory page, but hopefully breathes through the subsequent by means of its utmost respect for the rich history of the continent, its States, its people, its traditions and its laws.

1.1. Main research question

This book deals with taxation in the EU and its Member States. More specifically, it delves into the interactions between two (semi-)autonomous systems in exercising this very significant governmental function. In the reality of the modern-day EU, taxation becomes more and more subject to the interplay of a supranational legal system and national legal systems, which present both a plurality, a dichotomy, and a harmony at the same time. With two competing platforms to choose from to address contemporary challenges in the world of taxation, the possibilities to profit optimally from these different forums will be explored in the forthcoming analysis. However, before embarking on this exercise, the stage will be set by the exploration of the role of taxation in the contemporary state setup by looking at both the levying and the spending side of government. Subsequently, the current influence of EU law on the exercise of national powers in matters of taxation will be investigated, whereafter the exploration begins with possibilities that might be used to alter the current state of the art to achieve a more optimal functioning of this multi-layered system. As a benchmark, these will adhere to the main principles that lie at the heart of the EU. To deal with the components of (i) national taxing powers in EU Member States; (ii) the influence of EU law on the exercise of these powers; and (iii) the possibility of better aligning this exercise with contemporary challenges and common principles of (supranational) government, the following overarching main research question will be leading throughout this study, whereafter the author aims to answer this question at the end of this book:

Is there a need to alter the interaction of EU law and national taxing powers to better align with the goals laid down in the Treaties of the European Union, and if so, what measures are required to achieve a more appropriate allocation of taxing powers between the EU and its Member States?

1.2. General approach to methodology and research

Since every chapter starts with an introduction and the specifics of the methodology underpinning the research in that chapter, it seems reasonable (if not necessary) to provide a framework that serves as a general benchmark for these methodological concerns, as well as a more in-depth analysis of the core of this project, i.e. the main research question. Therefore, this section aims to delve into the specific connotations seen in the main research questions which, e.g. imply normativity of analysis or can be seen as break-off points that guide both the research and the method towards the final answer to this overarching research question. In a sense, this section aims to provide a general frame of reference for the methodological considerations that are evaluated at the beginning of each chapter. The latter is necessary since there is a multitude of approaches thinkable with the different research questions that are posed in the introductions to the different chapters. However, since these all serve the same goal, namely, answering the main research question, it is here that this main research question is further examined on its specific connotations for the rest of the research. This means that this section is essentially asking three basic questions: (i) what are the general rules that are adhered to when conducting research; (ii) what are the general rules that guide legal research; and (iii) what are the rules that are followed specifically to answer the main research question, and therefore, in each chapter's research questions? The idea of providing normative legal arguments to alter the interaction of EU law and national taxing powers already undisguisedly shows the willingness to take a position since it is accompanied by the search for measures required to achieve a more appropriate allocation of taxing powers within the EU. This section also aims to deconstruct the parts of the arguments that require choice by the author and that provide accountability for the choices made.

Fundamentally, the question as to what is science, or acceptable as science, has such a wide scope that an analysis of the relevant literature on this subject would cover this entire book on its own. From the literature, however, it is possible to take certain elements that can serve as main guiding points in this book. In this sense, the question can be rephrased to ask what makes this specific text a product of scientific research instead of a piece of informative literature. In other (simpler) words, and by making use of an example: Why are some texts written by Johan Wolfgang von Goethe considered literature,¹

1. E.g. Rothmann, K. (1971). Johann Wolfgang Goethe: die Leiden des jungen Werthers. Stuttgart: Reclam. In fact, it could even be argued that this work of Goethe contains scientific



The Home of International Taxation

Contact

IBFD Head Office

Tel.: +31-20-554 0100 (GMT+2)

Email: info@ibfd.org

Visitors' Address:

Rietlandpark 301
1019 DW, Amsterdam
The Netherlands

Postal Address:

P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Order online at ibfd.org/Shop/Book