TABLE OF CONTENTS

Preface

Kari Tikka Memorial Lecture: Accounting and taxation
Claes Norberg

1. Introduction
2. Terminology and delimitations
3. Accounting as a starting point for taxation
   3.1. Theoretical and practical motives for using financial accounting as a starting point for tax accounting
   3.2. The connection between financial accounting and tax accounting
4. The impact of IFRS on financial accounting
   4.1. Theoretical developments in financial accounting
   4.2. IFRS and the European Union
   4.3. IFRS and financial accounting in Member States
5. IFRS in Member States from a tax perspective
   5.1. Choice of financial accounting standards and the effects on tax accounting
   5.2. Changes in tax legislation
      5.2.1. Timing differences from a tax perspective
      5.2.2. Changes in basic tax accounting rule
      5.2.3. Changes in specific tax rules
   5.3. Interpretation of tax law
6. Future developments
   6.1. IFRS as a starting point for a common tax base in the European Union
   6.2. Tax accounting in small and medium-sized entities
7. Conclusions

The relation between accounting and taxation: the example of emission rights – accounting aspects
Päivi Räty

1. Introduction
   2. Scope and contents of the IFRIC 3 Guidelines
      2.1. Cap and trade schemes
      2.2. Relevant IFRSs
      2.3. Gross vs. net method of reporting
   3. Non-acceptance of IFRIC 3 in the EU endorsement process
3.1. EFRAG’s views on the mismatches
3.2. ARC advice
4. Finnish accounting and taxation guidelines
   4.1. Guidelines by the Finnish Accounting Board
   4.2. Guidelines by the Finnish Tax Board
5. Reporting practices of emission rights by Finnish listed companies
   5.1. Survey on IFRS reports for 2005
   5.2. Examples of disclosures about the emission rights
6. Prospects of the international guidelines for emission rights reporting
7. Summary

Emission trading: accounting and tax aspects
Isabelle Richelle

1. Introduction
   1.1. The United Nations Framework Convention on Climate Change and the Kyoto Protocol
   1.2. The EU Emission Trading System
   1.2.1. Emission trading
   1.2.2. Project-based or flexibility mechanisms: Clean Development Mechanism (CDM) and Joint Implementation (JI)
   1.3. General considerations on the EU Emission Trading Scheme
2. Accounting aspects
   2.1. The IFRIC 3
   2.2. Accounting treatment in the absence of international guidance?
   2.2.1. Two sets of rules for compliance and financial operations?
   2.2.2. Characterization of ETRs for accounting
   2.2.3. The counterpart: provision or liability?
   2.2.4. Valuation rules
   2.2.5. Accounting methods
   2.2.6. Conclusion
3. Tax aspects
   3.1. Tax aspects for ETRs
   3.1.1. Accounting v. tax
   3.1.2. Characterization of ETRs for tax purposes
   3.1.3. Intangible assets v. subsidies
   3.1.4. Valuation
   3.1.5. Net method v. gross method
   3.2. Penalties

4. Conclusion

EC law and direct taxation: towards a coherent system of taxation?
F. Alfredo Garcia Prats

1. Introduction
2. Where we will stay and where we are coming from
2.1. Where we will stay
2.2. Point of departure: Where we came from
3. Inter-nation tax equity, inter-taxpayer equity and EC law
4. Effect of income tax cases and amendment of tax laws
5. Coherent approach to tax treatment of income and expenses
6. Inter-nation tax equity and exit taxes
7. Tax avoidance, tax abuse and EC law
8. Taxation of cross-border dividends
9. Double taxation, double tax treaties and EC law
10. The double side-effect of territorial tax incentives
11. Final considerations

Tax-related difficulties of State aid rules
Raymond H.C. Luja

1. Introduction
2. Are facilities limited to intra-group activities selective as such?
3. Do fund regimes lead to sector-specific tax benefits?
4. Where does regional autonomy end (or start)?
5. Article 87 EC as primary law: how does/should it influence asymmetrical VAT cases?
6. How to protect beneficiaries of aid against themselves and their governments?
7. Should we benchmark the EU’s State aid regime?
8. Concluding remarks

European direct tax law: quo vadis?
Pasquale Pistone

1. Introduction
2. Tax treaties
3. Abuse
4. Procedural issues
5. Third countries
6. The search for an effective and homogeneous protection of taxpayers throughout Europe

Is the limitation of tax jurisdiction a restriction of the freedom of movement? The ECJ should show more respect for the principle of territoriality and for its own basic assumptions
Dennis Weber

1. Introduction
2. Taxation on the grounds of territoriality rather than universality
   2.1. In general
   2.2. The principle of territoriality in the ECJ’s case law
2.3. CLIN (territoriality) and CLEN (universality): which principle fits the Internal Market best?

3. The consequence of tax sovereignty: the freedom to limit tax jurisdiction
   3.1. Insufficient respect for a Member State’s right to limit its taxation rights: Bosal Holding, Marks & Spencer, Manninen and Ritter
      3.1.1. Bosal Holding
      3.1.2. Marks & Spencer
      3.1.3. Ritter
      3.1.4. Manninen
   3.2. Pending cases before the ECJ
      3.2.1. Orange European Smallcap Fund: refund of foreign dividend withholding tax
      3.2.2. Lidl Belgium, SEW and Deutsche Shell: set-off of foreign PE losses
      3.2.3. The Dutch Renneberg case: the Ritter case issues once again before the ECJ
   4. Conclusion: the ECJ’s case law is incorrect from a dogmatic point of view because the Court does not pay heed to the consequences of its own basic assumptions

Comments on the conference papers
John F. Avery Jones

1. Introduction
2. The situation from the UK point of view
3. Professor Pistone’s paper
4. Professor García’s paper
5. Professor Weber’s paper
6. Capital import or export neutrality

Summary of comments
Andrew Park

Comments
Charles H. Gustafson

Comments on the papers by the Young Lions
Frans Vanistendael

1. Introduction
2. Some preliminary questions on State aid
3. The criticisms levelled at the ECJ
   3.1. Radical criticism based on territoriality and sovereignty in determining tax jurisdiction:
      3.1.1. CLIN as the best solution for the internal market
      3.1.2. Territoriality as a consequence of CLIN
      3.1.3. By negating territoriality the ECJ is creating new “taxing rights”
3.1.4. The wrong decisions: Bosal, Ritter-Coulais, Marks & Spencer and Manninen
3.1.5. Conclusion with regard to Weber
3.2. Moderate criticism based on basic principles of national and international taxation
3.2.1. The need for guidance by substantive principles of taxation
3.2.2. Inconsistencies in the relationship between income and expenses or deductions
3.2.3. The D. case seen as State aid
3.2.4. Conclusion with respect to García
3.3. Criticism, sotto voce: Pasquale Pistone
3.3.1. Do we know where we are going?
3.3.2. The significance of the D. case
3.3.3. Anti-abuse 164
3.3.4. The relationship between procedural issues and material tax law in the area of withholding tax on non-residents, the Scorpio case
3.3.5. Free movement of capital in relation to third countries
3.3.6. The unequal protection of European taxpayers in different Member States
3.3.7. Conclusions with respect to Pistone

4. What should the ECJ do in the face of all these criticisms?
4.1. Should the ECJ exclusively enforce CLIN?
4.2. The consistency of the ECJ in applying the basic principles
4.2.1. Bosal
4.2.2. Ritter-Coulais
4.2.3. Marks & Spencer
4.2.4. Manninen
4.3. The creation of new rights for taxpayers without a legal basis
4.3.1. Fiscal sovereignty is neither exclusive nor absolute: the EC Treaty
4.3.2. Fiscal sovereignty is neither exclusive nor absolute: the case law
4.3.3. Consequences of court decisions on the basis of fundamental legal texts
4.4. In which direction should the ECJ go?
4.4.1. The concept of the internal market does not resolve all policy issues
4.4.2. The concept of the internal market is decisive in the choice between CLIN and CLEN
4.4.3. The consequences of CLIN on the substantive tax law of the Member States
4.4.4. The consequence of CLIN on the one or two country approach

5. Concluding remarks