# TABLE OF CONTENTS

**Preface**

v

**Acknowledgements**

ix

### Chapter 1 Introduction to the cross-border taxation of e-commerce

1.1. “... an Electronic Revolution ... will once again transform our lives” 1
1.2. What is electronic commerce? 4
1.3. International tax law 8
1.3.1. Taxes and charges 8
1.3.2. Does international taxation exist? 10
1.4. Concerns about tax base erosion, tax compliance and tax neutrality 13
1.5. Need for a special international taxation of e-commerce? 13
1.6. Purpose of this study 14
1.7. Outline 14
1.8. Sources 15

### Chapter 2 What has changed in comparison with traditional business?

2.1. Increase in cross-border activities, especially among SMEs 17
2.2. Virtual organizations and the development of global collaboration 18
2.3. Qualified professionals in a global market 19
2.4. Intermediaries 20
2.5. International banking more accessible 21
2.6. Easy to change the jurisdiction – easy to conduct business outside the home country 22
2.7. The difficulties in pinning down a business activity in one location 23
2.8. Mobile telecommunication 23
2.9. Anonymity 24
2.10. Electronic payment systems 25
Table of contents

2.11. Customer relationship management – a new marketing approach 26
2.12. Digitization on the supply side 27
2.13. Blurred distinctions between products and suppliers 28
2.14. Small packages with import goods 29
2.15. Exploiting differences in tax rates in the European Union 29
2.16. Conclusions 30

Chapter 3  Statements on tax policy and tax principles related to electronic commerce 31
3.1. National and multinational initiatives 31
3.2. To stimulate the development of electronic commerce 32
3.3. Concerns related to tax compliance and enforcement 33
  3.3.1. General concerns 33
  3.3.2. Difficulty in identifying the seller and the buyer and their transactions 34
  3.3.3. Easy to locate or relocate offshore 36
  3.3.4. Banking and other financial services are available offshore 37
  3.3.5. Access to accounts and other documents 37
  3.3.6. New possibilities for tax authorities 38
  3.3.7. Conclusions 39
3.4. Stick to accepted principles of taxation and refrain from new or additional taxes! 39
3.5. Neutrality with respect to electronic commerce and traditional forms of commerce 41
3.6. Disclosure of foreign transactions and other reporting requirements 41
3.7. Increased risk for tax avoidance and tax evasion 43
3.8. Legal and administrative framework 45
3.9. Make compliance simple! 46
3.10. Tax collection 49
3.11. International cooperation and coordination 50
3.12. Conclusions 51
## Table of contents

<table>
<thead>
<tr>
<th>Chapter 4</th>
<th>Basic principles of international taxation</th>
<th>53</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1.</td>
<td>Does e-commerce necessitate a change in traditional principles of taxation?</td>
<td>53</td>
</tr>
<tr>
<td>4.2.</td>
<td>Do Generally Accepted Taxation Principles exist?</td>
<td>53</td>
</tr>
<tr>
<td>4.3.</td>
<td>Principles of neutrality</td>
<td>57</td>
</tr>
<tr>
<td>4.3.1.</td>
<td>Common expression of the principles of neutrality</td>
<td>57</td>
</tr>
<tr>
<td>4.3.2.</td>
<td>Principles of neutrality applied to e-commerce</td>
<td>59</td>
</tr>
<tr>
<td>4.3.2.1.</td>
<td>General principles of neutrality</td>
<td>59</td>
</tr>
<tr>
<td>4.3.2.2.</td>
<td>Neutrality in respect of income taxation</td>
<td>60</td>
</tr>
<tr>
<td>4.3.2.3.</td>
<td>Neutrality in respect of consumption taxation</td>
<td>60</td>
</tr>
<tr>
<td>4.3.2.3.1.</td>
<td>VAT rates</td>
<td>62</td>
</tr>
<tr>
<td>4.3.2.3.2.</td>
<td>Definition of goods and services</td>
<td>64</td>
</tr>
<tr>
<td>4.3.2.3.3.</td>
<td>Composite or bundled supplies</td>
<td>64</td>
</tr>
<tr>
<td>4.4.</td>
<td>Principles of legal certainty</td>
<td>65</td>
</tr>
<tr>
<td>4.4.1.</td>
<td>The rule of law and the predictability of the authority to tax</td>
<td>65</td>
</tr>
<tr>
<td>4.4.2.</td>
<td>Predictable tax laws</td>
<td>67</td>
</tr>
<tr>
<td>4.4.3.</td>
<td>Interpretation of tax laws</td>
<td>67</td>
</tr>
<tr>
<td>4.4.4.</td>
<td>Principles of proportionality</td>
<td>69</td>
</tr>
<tr>
<td>4.5.</td>
<td>Principles of efficiency</td>
<td>71</td>
</tr>
<tr>
<td>4.6.</td>
<td>Principles of effectiveness</td>
<td>72</td>
</tr>
<tr>
<td>4.7.</td>
<td>Principles of simplicity</td>
<td>73</td>
</tr>
<tr>
<td>4.7.1.</td>
<td>Common expressions of the principles of simplicity</td>
<td>73</td>
</tr>
<tr>
<td>4.7.2.</td>
<td>Tax harmonization</td>
<td>74</td>
</tr>
<tr>
<td>4.8.</td>
<td>Principles of fairness and equity</td>
<td>74</td>
</tr>
<tr>
<td>4.8.1.</td>
<td>Common expressions of the principles of fairness and equity</td>
<td>74</td>
</tr>
<tr>
<td>4.8.2.</td>
<td>No double taxation or unintentional non-taxation</td>
<td>76</td>
</tr>
<tr>
<td>4.8.3.</td>
<td>Non-discrimination</td>
<td>76</td>
</tr>
<tr>
<td>4.8.4.</td>
<td>Combatting tax avoidance and tax evasion</td>
<td>79</td>
</tr>
<tr>
<td>4.8.5.</td>
<td>Harmful tax competition</td>
<td>80</td>
</tr>
<tr>
<td>4.9.</td>
<td>Principles of flexibility</td>
<td>82</td>
</tr>
<tr>
<td>4.10.</td>
<td>Principles of continuity and reciprocity</td>
<td>82</td>
</tr>
<tr>
<td>4.11.</td>
<td>Tax liability in an international context</td>
<td>83</td>
</tr>
</tbody>
</table>
4.11.1. Basic principles of domestic tax liabilities 83
4.11.2. Basic principles of international tax liability 83
4.11.3. Self-assessment by the taxpayer 84
4.11.4. May tax liability in international transactions be transferred to third parties? 85
4.12. Recognition of international conventions 87
4.13. Conclusions 88

Chapter 5 Which country has jurisdiction for income tax purposes? 89
5.1. Which country has the right to tax? 89
5.2. Basic principles of income taxation – residence or source state? 92
5.3. Taxation of individuals 94
5.4. Taxation of business income 95
5.4.1. Art. 7 of the OECD Model Convention 95
5.4.2. What does “state of residence” mean? 95
5.4.3. Ships or aircraft hosting servers, telecommunication equipment, etc. 98
5.4.4. Business entities carrying on business in their home country 99
5.4.5. Business entities carrying on business outside their home country 100
5.4.6. Tax treaty considerations of importance in determining jurisdiction 102
5.4.7. The concept of “permanent establishment” 103
5.4.7.1. Fixed place of business and the relation to the business activity carried on 103
5.4.7.2. Business activities carried on through a fixed place not considered a PE 106
5.4.7.3. Are there specific problems related to PEs in connection with e-commerce? 107
5.4.7.4. Lower thresholds for a PE in connection with e-commerce? 113
5.4.7.5. Maintaining the PE concept but extending the criteria for tax liability 115
5.4.7.6. Does private international law provide any solutions? 116
5.4.7.7. Agents constituting a PE 117
5.4.8. Business income not necessarily related to a PE – interest, dividend or royalties 120
5.4.9. Income characterization and the Fiscal Product Mix 123
5.4.10. Digitized supply 125
5.5. Methods for the allocation of business income between nations and the attribution of business income 127
5.5.1. Attribution of business income to the residence state and the source state 127
5.5.2. Problems related to the allocation of profits between associated enterprises – transfer pricing 127
5.5.3. The arm’s length principle 128
5.5.4. Other methods used for transfer pricing 131
5.5.5. Transfer pricing related to e-commerce 132
5.6. Reporting and withholding requirements 134
5.7. Offshore centres as bases for e-commerce 134
5.8. Conclusions 135

Chapter 6 Which country has jurisdiction for consumption tax purposes? 139

6.1. Basic principles of consumption taxation 139
6.1.1. The benefit principle and the related principle of taxation in the state of destination 139
6.1.2. The concept of consumption 140
6.1.3. Where does consumption or utilization take place? 143
6.1.4. Comparison of income and consumption taxation 146
6.2. Federal systems 148
6.2.1. General pattern 148
6.2.2. EC law 149
6.2.3. US state sales and use taxes 154
6.2.4. The Canadian Goods and Services Tax (GST) and Harmonized Sales Tax (HST) 158
6.3. Does the place of establishment influence the place of taxation on consumption? 160
Table of contents

6.4. What does the involvement of an agent in the supply of services mean? 162
6.5. Supply of goods or services relevant to e-commerce 163
   6.5.1. Supply of goods relevant to e-commerce 163
   6.5.2. Supply of services relevant to e-commerce 165
   6.5.2.1. Taxation of bundled services 165
   6.5.2.2. Digitized supply 166
   6.5.2.3. ISPs 167
   6.5.2.4. Telecommunication services 168
   6.5.3. General remarks on the place of taxation 169
6.6. Assessment at the point of consumption 170
   6.6.1. Business-to-business (B2B) trade: reverse charge or tax shift mechanisms 170
   6.6.2. Assessment in connection with business-to-consumers (B2C) e-commerce trade 174
6.7. Withholding of consumption taxes as a means of enforcement 175
6.8. Conclusions 177

Chapter 7 A special tax treatment of e-commerce? 179
   7.1. Are there arguments in favour of a special tax treatment of e-commerce? 179
   7.2. The Internet as a tax-free environment 182
   7.3. Bit tax 187
   7.4. Transaction tax on cross-border payments 191
   7.5. Other transaction taxes such as the telecommunications tax 193
   7.6. Banks or credit card companies as withholding agents 193
   7.7. Conclusions 194

Chapter 8 The general regulatory framework – a legal structure for e-commerce 197
   8.1. The rapid development of a legal structure for e-commerce 197
   8.2. Why self-regulation? 200
# Table of contents

8.3. Basic legal problems in respect of cross-border taxation of e-commerce 202
8.4. Consumer protection 202
8.5. Contract law 206
8.6. Identification of parties to a transaction 209
8.6.1. Authentication, encryption and digital signatures 209
8.6.2. IP addresses and domain names 212
8.7. Identification of a transaction 216
8.8. Intellectual property law 216
8.9. Protection of personal data 219
8.10. Electronic payment systems 220
8.11. To which state does the right to tax belong? 221
8.12. Conclusions 222

9.1. New taxes or no taxes? 225
9.2. A fair sharing of the tax base among states 227
9.3. A general, legal structure for e-commerce 228
9.4. A taxation framework for e-commerce 229
9.5. A new marketing approach 229
9.6. Combine accepted principles of taxation with pragmatism! 230
9.7. Administrability versus principle 231
9.8. The responsibility of the taxable person 232
9.9. A new era in the taxpayer – tax authority relationship 233
9.10. The taxation of income 233
9.10.1. The main concerns in relation to income taxation of cross-border e-commerce 233
9.10.2. The risk of tax base erosion in respect of income taxes 234
9.10.3. The difficulties in determining the applicable jurisdiction in respect of income taxes 235
9.11. The taxation of consumption 236
9.11.1. The main concerns in relation to income taxation of cross-border e-commerce 236
### Table of contents

9.11.2. The risk of tax base erosion in respect of consumption taxes 237  
9.11.3. The difficulties in determining the applicable jurisdiction in respect of consumption taxes 237  
9.11.4. The need for national and international harmonization 238  
9.12. The difficulties in securing tax compliance in respect of income and consumption taxes 239  
9.13. The need for new cross-border relationships – international coordination instead of international cooperation 240  

#### Chapter 10 The future 243

Abbreviations and glossary 245

#### References 253

- Bibliography 253  
- Official documents 289