

Research Proposal – Doctoral Thesis

The “International” in International Taxation

On Customary International Tax Law and General Principles of Tax Law

(Working Title)

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1. The Issue

a.) Introduction

International tax law is a big, blind spot on the radar of public international law. This might stem, at least to some extent, from the misnomer that the term “international tax law” entails: it has been used to refer “to all international as well as domestic tax provisions relating specifically to situations involving the territory of more than one state, or so-called “cross-border situations” [...]”.¹ Hence, most of what is discussed as international tax law in the literature actually constitutes transnational tax law – which touches upon a second (and much more important) observation: traditionally, international tax has been studied almost exclusively by tax lawyers trained in domestic tax law, without any input by or cooperation with scholars of public international law.

Whatever the reason for this lack of comprehensive research within the field of international law, the existence of “international” tax law and its classification as part of international law is now mostly undisputed.² However, the implications of international tax being part of international law remain under-studied (see below, Chapter 2 on the current state of scientific research). There are various good reasons other than scientific curiosity why an engagement with the issue by international lawyers can be considered overdue: more and more people become more and more agitated by the sentiment that globalization’s promise of “making everyone better off” has not proven true.³ At least partly due to this discontent, protectionism and nationalism have been on the rise. The role of international tax in this context is easily identified: international tax should, in theory, facilitate positive spill-over effects of globalization by generating more tax revenues for all (but in particular for capital importing) countries through taxation of income derived from foreign investment within their territories. Through these additional tax revenues that would, hopefully, fund increased public spending the benefits of globalization would trickle down to the individual level and increase standards of living of the populations that had previously agreed to incentivize foreign direct investment and to open their borders to international competition. However, empirical data now exists that suggests that the current framework of international tax does not fulfil this goal but, to the contrary, that under the current framework both capital importing and capital exporting

¹ Klaus Vogel, ‘Double Tax Treaties and Their Interpretation’ (1986) 2 International Tax & Business Lawyer 1, 6-7.

² David Rosenbloom, ‘Cross-Border Arbitrage: The Good, the Bad and the Ugly’ (2007) 85 Taxes-The Tax Magazine 115; Matthias Herdegen, *Principles of International Economic Law* (2nd edn, OUP 2016) 398.

³ Joseph Stiglitz, ‘Globalization and its New Discontents’ (Project Syndicate, 5 August 2016) <<https://www.project-syndicate.org/commentary/globalization-new-discontents-by-joseph-e--stiglitz-2016-08>> accessed 3 June 2018.

countries are losing out on enormous amounts of tax revenues.⁴ While academics of other disciplines like macroeconomics and (international) tax law and policy have focused on these issues for many years, scholars of public international, although paying a lot of attention to other fields of international economic law, have not even started discussing potential solutions for such real life issues of international tax law. Expertise and awareness of international tax law is still missing within the bigger picture of international economic law. Thus, the topic of this thesis bears considerable practical relevance.

b.) Scope and Value of Research

As indicated in the preceding section of this proposal, public international law has not yet engaged in any thorough analysis of international tax law as a distinct field of international (economic) law. Accordingly, almost none of the many research questions relating to international law aspects of international tax have yet been answered after in-depth, empirical analysis from a perspective of international (as opposed to transnational) law. As with all under-studied topics, awareness of the risk of setting the stage for this thesis in a manner that is too broad and lacks focus is in order.

To avoid an overly broad, unfocused thesis, a good starting point for further research on international tax by international lawyers would be to address some open questions concerning the sources of public international law concerning international tax. The added value of this thesis would be more clarity on the content and origin of the actually “international” aspects of international tax. Future work on international tax by international lawyers will prove difficult if the question of sources is not addressed early on. Moreover, sources of international law are at the very core of classic public international law; analysing international tax in light of the plethora of solid academic work on sources of international law offers a robust foundation for research on such an under-studied issue as the “international” in international tax.

The often-cited catalogue of sources of international law, referred to in Article 38 of the ICJ Statute, consists of international conventions, international custom and general principles of law. However, this thesis does not (and probably cannot) aim at answering all open questions of these sources in relation to international tax; such an endeavour would also likely constitute a merely descriptive exercise, especially with regard to international conventions, which have been aptly described and discussed by international tax lawyers elsewhere.⁵ International custom and general principles of law, however, are the more elusive sources of international

⁴ Bruce Blonigen and Ronald Davies, ‘Do bilateral tax treaties promote foreign direct investment?’ in Sauvant and Sachs (eds), *The Effect of Treaties on Foreign Direct Investment* (OUP 2009) 461; Fabian Barthel and Eric Neumayer, ‘Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties’ (2012) 56 *International Studies Quarterly* 645.

⁵ See, e.g., Reuven Avi-Yonah, ‘Double Tax Treaties: An Introduction’ in Sauvant and Sachs (eds), *The Effect of Treaties on Foreign Direct Investment* (OUP 2009) 99.

law and require thorough and empirical analysis of various types of evidence in order to be established.

Some literature on international tax law – written by (international) tax lawyers – has already identified a number of principles of international tax law that are claimed to form norms of customary international law.⁶ However, this existing literature does not offer satisfactory evidence to show, from a perspective of public international law, that the established principles constitute custom (see below, chapter 2 on current state of scientific research). As research on all and any potential norms of customary international law relating to international tax would be an unrealistic and hardly measurable aim, the strategy of this thesis would be to pick for further analysis two particularly significant norms with alleged customary character (the single tax principle and the principle of source primacy, see below), whose status as customary international law would bear actual consequences from a perspective of international law.

With regard to general principles of law, there is no existing literature that would suggest the existence of such principles concerning cross-border tax law or that would even identify any such principles. This thesis will necessitate a thorough analysis of domestic laws and decisions on cross-border tax for the evaluation of the two alleged customary international tax law principles. In the course of that research, it would be interesting to also look out for a pattern of reoccurring principles of law (in particular in the administration of domestic cross-border tax laws concerning the single tax principle and the primacy of source-based taxation). If such principles substantiate themselves, this thesis would constitute a first stab at identifying potential general principles of law on cross-border tax. This is not just sensible in order to make use of synergies that can be created when examining a large amount of domestic tax laws and decisions, but also in light of the relationship between customary international law and general principles of law: the line between these two sources of international law is considered blurry.⁷ Hence, it seems reasonable to leave the outcome of this thesis’s findings somewhat open in this regard and to include potential general principles of law regarding cross-border tax, especially in connection to the single tax principle and source primacy.

Lastly, this thesis will analyse the theoretical implications from the perspective of public international law if the discussed norms and principles do or do not constitute customary

⁶ Reuven Avi-Yonah, *International Tax as International Law* (CUP 2007); Chantal Thomas, ‘Customary International Law and State Taxation of Corporate Income: The Case for the Separate Accounting Method’ (1996) 14 *Berkeley Journal of International Law* 99; Jan Wouters and Marten Vidaal, ‘The OECD Model Tax Convention Commentaries and the European Court of Justice: Law, Guidance, Inspiration?’ in Sjoerd Douma and Frank Engelen (eds), *The Legal Status of the OECD Commentaries* (IBFD 2008) 195.

⁷ Malgosia Fitzmaurice, ‘The History of Article 38 of the Statute of the International Court of Justice’ in Jean d’Aspremont, Samantha Besson and Séverine Knuchel (eds), *The Oxford Handbook of the Sources of International Law* (OUP 2017) 179, 192.

international law or general principles of law and how likely these consequences would arise in reality.

c.) Overview: the Single Tax Principle and the Primacy of Source-Based Taxation

The following section will offer a short introduction to the main substance of this thesis proposal: the single tax principle and the primacy of source-based taxation.

The most obvious source of international tax law is the complex network of (overwhelmingly bilateral) 2.000-3.000 double taxation agreements (DTAs).⁸ In short, DTAs only coordinate the domestic tax laws of two countries that could otherwise both exert tax jurisdiction based on source or based on residence – DTAs generally do not contain substantive, “international” tax law provisions, but limit the application of domestic tax law.

At least according to the traditional view in the literature, the main rationale (and thus possibly the object and purpose) of DTAs is to avoid double-taxation of the same income by two countries.⁹ Another alleged *raison d’être* for DTAs has received increased attention since the 1980s: the avoidance of double non-taxation. The literature on international tax has dubbed the combination of these two principles the “single tax principle” – the principle that income should be taxed exactly once, instead of being taxed in both countries or nowhere at all.¹⁰ One of the leading US international tax lawyers has even claimed that the single tax principle is part of customary international law,¹¹ without, however, proving this claim with an analysis of corresponding state practice and *opinio juris*. If the single tax principle actually constitutes binding international law, violations of international law (through state conduct that has led to double taxation or double-non taxation) might have occurred that have not yet been addressed as an issue of international law.

The consequences of the single tax principle are logically connected to the principle of the primacy of source-based taxation, which has existed since the beginnings of international tax law in the 1920.¹² According to this principle, which is said to emanate from a compromise

⁸ DTAs assign the primary right to tax to one of the two DTA parties in relation to income with cross-border elements, which would, in the absence of a DTA, trigger both state parties’ tax jurisdiction. Income with cross-border elements can be taxed on the basis of two accepted types of tax jurisdiction: source-based taxation and residence-based taxation. The former reminds of territorial jurisdiction under classic public international law, establishing the right to tax income derived from sources within the taxing country’s territory. The latter, residence-based taxation, allows a country to tax its residents on their worldwide income, wherever they generate that income. Residence-based taxation is said to emanate from nationality jurisdiction, although it attaches to residence and not to citizenship (apart from the exception of the USA’s citizenship taxation).

⁹ Reuven Avi-Yonah, ‘Double Tax Treaties: An Introduction’ in Sauvant and Sachs (eds), *The Effect of Treaties on Foreign Direct Investment* (OUP 2009) 99.

¹⁰ Reuven Avi-Yonah, ‘Who Invented the Single Tax Principle?: An Essay on the History of US Treaty Policy’ (2015) 59 NYLS Law Review 305.

¹¹ Reuven Avi-Yonah, *International Tax as International Law* (CUP 2007) 8-10.

¹² Yoram Margalioth, ‘International Taxation’ in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (2011) 769.

of the four eminent economists who designed the architecture of international tax in a report for the League of Nations,¹³ the source country – where the source is located that gave rise to the income – has the primary right to tax that income. The residence country – where the individual is physically present or where the corporation is incorporated or where its management or control is based – only has a secondary right to tax. Following the single tax principle, the residence country can only tax income if and as far as the source country has not already taxed the income, as anything else would lead to double taxation. Consequently, DTAs shift the primary right to tax certain types of cross-border income (in general passive income, supposedly due to the benefit principle) from the source-country to the residence-country.¹⁴ Not just DTAs presuppose the primacy of source-based taxation: even in the absence of DTAs, many domestic tax laws provide for deductions or credits of worldwide income of residents if such income has already been taxed by the source country.¹⁵

Concluding a DTA pays off for the two DTA state parties if flows of investment from one country to the other more or less equals the flows in the other direction. As DTAs also contain provisions on mutual administrative and legal assistance for the administration and enforcement of domestic tax laws DTAs there is also an incentive for capital importing countries to conclude DTAs and forgo some source-based income tax. Moreover, DTAs have been said to incentivize foreign direct investment because of the increased legal certainty they are supposed to offer to foreign investors; however, it has been questioned whether DTAs actually increase foreign direct investment.¹⁶

The primacy of source-based taxation has been accepted as one of the main principles of international tax law and is enshrined in the two model tax treaty conventions (the OECD Model Tax Convention on Income and on Capital¹⁷ and the UN Model Double Taxation Convention¹⁸), which almost all DTAs mirror quite closely. Some scholars of international tax law have claimed that source primacy constitutes customary international law. Yet, there has not been any thorough research whether sufficient state practice and *opinio juris* actually exist for the

¹³ League of Nations, Economic and Financial Commission, Report on Double Taxation Submitted to the Financial Committee by Professors Bruins, Einaudi, Seligman and Sir Josiah Stamp (5 April 5 1923).

¹⁴ Yoram Margalioth, ‘International Taxation’ in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (2011) 769.

¹⁵ See Peter Harris, ‘Taxation of Residents on Foreign Source Income’ (2013) UN ITC Papers on Selected Topics in Administration of Tax Treaties for Developing Countries, 12.

¹⁶ Bruce Blonigen and Ronald Davies, ‘Do bilateral tax treaties promote foreign direct investment?’ in Sauvart and Sachs (eds), *The Effect of Treaties on Foreign Direct Investment* (OUP 2009) 461; Fabian Barthel and Eric Neumayer, ‘Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties’ (2012) 56 *International Studies Quarterly* 645.

¹⁷ OECD Model Tax Convention on Income and on Capital (2017 Version) <<http://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>> accessed 3 June 2018.

¹⁸ United Nations Model Double Taxation Convention between Developed and Developing Countries (2011) <http://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf> accessed 3 June 2018.

principle of source primacy to reach customary status. This thesis strives to make up for this gap in scientific research.

This thesis should assess both of these principles as they are interconnected. The primacy of source-based taxation sets the stage for the correct application of the single tax principle; otherwise, the single tax principle would only establish that there is a conflict of tax jurisdiction that must be resolved under international law, but it would remain unclear whether international law also envisages a default solution for this conflict. On the other hand, if this thesis would only address the primacy of source-based taxation the question would arise why this primacy was relevant at all, if there was no binding single tax principle to disallow the residence country to also tax the respective income.

2. Current State of Scientific Research

So far, almost all scientific research on international tax law has been conducted by academics specialized in domestic and/or transnational tax law. Hence, there is ample literature on the topic of international tax law and international tax policy, but almost all of this research focuses on the transnational/cross-border aspects of specific domestic tax laws; there are almost no “global” analyses to establish the international aspects of taxation.

Reuven Avi-Yonah’s book “International Tax as International Law” from 2007 is the starting point for this thesis, as it was the first book that established certain principles of international tax as customary international law. Yet, the book discusses the international of international tax mainly from the perspective of a US tax lawyer, without paying much regard to other domestic legal systems as would be required to identify customary international law. Analysis on the newly identified customary international tax laws has been sparse, although some scholars have reproduced Avi-Yonah’s findings. However, at the end of 2017, a new book called “A Global Analysis of Tax Treaty Disputes”, edited by Eduardo Baistrocchi, appeared; this book contains a compilation of contributions by tax scholars on tax treaty disputes in 28 domestic legal systems (OECD and BRICS countries and six countries “beyond the OECD and BRICS”, while three of those six are nonetheless part of the G20). One of the aims of this book is to establish whether the international tax regime entails rules of customary international law character. Baistrocchi’s book will facilitate the research for this thesis by offering a large amount of evidence on state practice and *opinio juris*; nevertheless, he does not specifically target the single tax principle and the source primacy principle in the book and does not address potential general principles of law.

With regard to the “classic” topics of public international law, namely the identification of customary international law and general principles, there is a vast amount of academic literature and scientific research. The ILC has just concluded its work on the identification of customary international law,¹⁹ which will be a good, authoritative addition to, or at least a useful synopsis of, existing work on customary international law. General principles of law are still a somewhat abstract and quite controversial concept in scientific research; this thesis does not intend to add to the theoretical concept of general principles of law. Instead, this thesis would monitor whether patterns of certain principles reoccur in domestic legal systems; if sufficient (see chapter 3. on what “sufficient” means in this thesis proposal) domestic legal systems refer to the respective principle, it would be analysed whether it could constitute a general principle of law as discussed in existing academic literature.

¹⁹ ILC 70th Session, Identification of Customary International Law: Text of the draft conclusions as adopted by the Drafting Committee on second reading (17 May 2018) UN Doc A/CN.4/L.908.

3. Research Question and Methodology

The research questions of the thesis would be the following:

1. Do the single tax principle (A.) and the primacy of source-based taxation (B.) constitute customary international law?
2. Are there general principles of cross-border tax law that might be deduced from domestic legal systems, in particular concerning the administration of the single tax principle and the primacy of source-based taxation?
3. What are the theoretical implications from the perspective of public international law
 - a. if the single tax principle does/does not constitute customary international law,
 - b. if the primacy of source-based taxation does/does not constitute customary international law,
 - c. of general principle of law concerning cross-border tax law,

and how likely would these consequences arise in reality?

To find answers to these research questions the methodology will have to be closely tailored to the aim of assessing evidence for the two constituent elements of customary international law and to the aim of assessing evidence that might hint at the existence of a general principle of tax law. This thesis would mostly resort to an analysis of qualitative data, such as *inter alia* domestic court decisions and administrative decisions by tax authorities, domestic laws and regulations, DTAs and legislative commentaries, *travaux préparatoires* and other evidence on state conduct regarding tax treaties, documentation of tax treaty disputes, publications of responses of states on the work of the OECD or UN Tax Committee concerning international taxation. However, this thesis will also make an effort to back the analysis (especially but not exclusively on the *opinion juris* element) with quantitative data. This could, for instance, entail the tagging of certain terms and measuring their prevalence in domestic court cases or administrative decisions to assess whether domestic decision-makers are aware of or even feel bound by international law in their decisions (and suggest this by referring, for example, to the VCLT or custom).

The representativeness and number of jurisdictions that must be examined in order to answer research questions 1 and 2 in the positive or the negative is crucial. To make this research international, instead of displaying an unbalanced focus on a certain group of states, special attention will be paid to typically under-researched countries as far as feasible. Concerning the analysis of qualitative data, a few jurisdictions of each of the eight groups of domestic legal systems would be the very minimum to establish circumstantial evidence that international custom or general principles exist. At least the quantitative part of the research will cover as many jurisdictions as possible with regard to the available data.

4. Outline

The tentative structure of the thesis would be as follows:

- I. Introduction
- II. Theoretical Framework of International Tax Law
 - A. Tax Law
 - B. Public International Law [esp. sources of international law]
 - C. International Tax Law
- III. Customary International Tax Law
 - A. Methodology and Data
 - B. Single Tax Principle
 - C. Primacy of Source-Based Taxation
- IV. General Principles of Tax Law
 - A. Methodology and Data
 - B. [General Principles]
- V. Implications of Findings
 - A. Implications of the Single Tax Principle
 - B. Implications of the Primacy of Source-Based Taxation
 - C. Implications of General Principles of Tax Law
- VI. Conclusion

5. Bibliography

Vincent Arel-Bundock, ‘The Unintended Consequences of Bilateralism: Treaty Shopping and International Tax Policy’ (2017) 71 *International Organization* 349

Hugh Ault and Brian Arnod, *Comparative Income Taxation: A Structural Analysis* (2nd edn, Kluwer 2004)

Hugh Ault and David Bradford, ‘Taxing International Income: An Analysis of the U.S. System and Its Economic Premises’ in Assaf Razin and Joel Slemrod (eds), *Taxation in the Global Economy* (University of Chicago Press 1990) 11

Reuven Avi-Yonah, ‘Double Tax Treaties: An Introduction’ in Sauvant and Sachs (eds), *The Effect of Treaties on Foreign Direct Investment* (OUP 2009) 99

Reuven Avi-Yonah, ‘Full Circle? The Single Tax Principle, BEPS, and The New US Model’ (2016) 1 *Global Taxation* 12

Reuven Avi-Yonah, ‘International Tax as International Law’ (2004) *Law & Economics Working Papers Archive: 2003-2009*

Reuven Avi-Yonah, *International Tax as International Law* (CUP 2007)

Reuven Avi-Yonah, ‘Tax Competition, Tax Arbitration and the International Tax Regime’ (2007) *Bulletin for International Taxation* 131

Reuven Avi-Yonah, ‘The Structure of International Taxation: A Proposal for Simplification’ (1996) 74 *Texas Law Review* 1301

Reuven Avi-Yonah, ‘Who Invented the Single Tax Principle?: An Essay on the History of US Treaty Policy’ (2015) 59 *NYLS Law Review* 305

Eduardo Baistrocchi (ed), *A Global Analysis of Tax Treaty Disputes* (CUP 2017)

William Baker, David Hartnett, Frank Ng and Deborah Nolan, ‘Session 2: Tax Administrator’s View of Global Tax Issues’ (June 2009) *Taxes-The tax Magazine* 45

Fabian Barthel and Eric Neumayer, ‘Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties’ (2012) 56 *International Studies Quarterly* 645

Bruce Blonigen and Ronald Davies, ‘Do bilateral tax treaties promote foreign direct investment?’ in Sauvant and Sachs (eds), *The Effect of Treaties on Foreign Direct Investment* (OUP 2009) 461

Yariv Brauner, ‘An International Tax Regime in Crystallization’ (2002–2003) 56 Tax Law Review 259

Yariv Brauner, ‘International Trade and Tax Agreements May Be Coordinated, but not Reconciled’ (2005) 25 Virginia Tax Review 251

Wei Cui, ‘Minimalism About Residence and Source’ (2017) 38 Michigan Journal of International Law 245

Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens & Sons Limited 1953)

Tsilly Dagan, ‘The Costs of Cooperation in International Taxation’ in Eyal Benvenisti and Georg Nolte (eds), *The Welfare State, Globalization, and International Law* (Springer 2004) 49

Jean d'Aspremont, Samantha Besson and Sévrine Knuchel (eds), *The Oxford Handbook of the Sources of International Law* (OUP 2017)

Vladimir Degan, *Sources of International Law* (Martinus Nijhoff Publishers 1997)

Frank Engelen, *Interpretation of Tax Treaties under International Law - A study of Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties and their application to tax treaties* (IBFD 2004)

Michael Graetz, *Foundations of International Income Taxation* (Foundation Press 2003)

Michael Graetz, ‘Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfying Policies’ (2001) 54 Tax Law Review 261

Michael Graetz and Alvin Warren Jr, ‘Income Tax Discrimination and the Political and Economic Integration of Europe’ (2006) 115 Yale Law Journal 1186

Robert Green ‘The Future of Source-Based Taxation of the Income of Multinational Enterprises’ (1993–1994) 79 Cornell Law Review 18

Charles Gustafson, Robert Peroni and Richard Pugh, *Taxation of International Transactions: Materials, Texts and Problems* (4th edn, West 2011)

Matthias Herdegen, *Principles of International Economic Law* (2nd edn, OUP 2016)

James Hines Jr, ‘Tax Policy and the Activities of Multinational Corporations’ in Alan Auerbach (ed), *Fiscal Policy: Lessons from Economic Research* (MIT Press 1997) 401

Herwig Hofmann, ‘Double Tax Agreements: Between EU Law and Public International Law’ in Alexander Rust (ed), *Double Taxation within the European Union* (Kluwer Law International 2011) 75

Mitchell Kane, ‘A Defense of Source Rules in International Taxation’ (2015) 32 Yale Journal on Regulation 311

Charles Kingston ‘The Coherence of International Taxation’ (1981) 81 Columbia Law Review 1151

Michael Lang, Jeffrey Owens, Pasqual Pistone, Alexander Rust, Josef Schuch and Claus Staringer (eds), *The Impact of Bilateral Investment Treaties on Taxation* (IBFD 2017)

Yoram Margalioth, ‘International Taxation’ in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (2011) 769

Ruth Mason, ‘U.S. Tax Treaty Policy and the European Court of Justice’ (2005) 59 Tax Law Review 65

Lynne Oats, Angharad Miller, Emer Mulligan, *Principles of International Taxation* (6th edn, Bloomsbury Professional 2017)

Clive Parry, *The Sources and Evidences of International Law* (Manchester University Press 1965)

Alain Pellet, ‘Article 38’ in Andreas Zimmermann et al (eds), *The Statute of the International Court of Justice: A Commentary* (2nd edn, OUP 2012) 731

Diane Ring, ‘International Tax Relations: Theory and Implications’ (2007) 60 Tax Law Review 83

David Rosenbloom, ‘Cross-Border Arbitrage: The Good, the Bad and the Ugly’ (2007) 85 Taxes-The Tax Magazine 115

Dan Shaviro, ‘Money on the Table?: Responding to Cross-Border Tax Arbitrage’ (2002) 3 Chicago Journal of International Law 317

Hans-Werner Sinn, ‘Tax Harmonization and Tax Competition in Europe’ (1990) 34 European Economic Review 489

Chantal Thomas, ‘Customary International Law and State Taxation of Corporate Income: The Case for the Separate Accounting Method’ (1996) 14 Berkeley Journal of International Law 99

Victor Thuronyi, *Comparative Tax Law* (Kluwer 2003)

Klaus Vogel, ‘Double Tax Treaties and Their Interpretation’ (1986) 2 International Tax & Business Lawyer 1

Klaus Vogel, *On Double Taxation Conventions* (3rd edn, Kluwer 1997)

Jan Wouters and Marten Vidaal, ‘The OECD Model Tax Convention Commentaries and the European Court of Justice: Law, Guidance, Inspiration?’ in Sjoerd Douma and Frank Engelen (eds), *The Legal Status of the OECD Commentaries* (IBFD 2008) 195

George Zodrow, ‘Capital Mobility and Source-Based Taxation of Capital Income in Small Open Economies’ (2006) 13 International Tax and Public Finance 269