

# Table of Contents

Principal Authors	v
Contributing Authors	vii
Foreword	xxvii
Preface	xxix
List of Abbreviations	xxxii
Introduction	1
An Introduction to European Tax Law	7
1 The Historical and Institutional Background	7
2 The Fundamental Freedoms	10
3 Directives	11
4 The CCCTB Project	11
5 Taxation of the Digital Economy	13
PART I	
General Description	15
Australia	
<i>Richard Vann &amp; Graeme S. Cooper</i>	17
1 History of the Income Tax	17
2 Constitutional Issues	19
3 Tax Rates	19
4 Composition of the Fiscal System	20
5 Basic Structure of the Income Tax	21
6 Tax Legislation	22
6.1 Legislative Process	22

## Table of Contents

	6.2 Statutory Style	23
	6.3 Statutory Interpretation	25
7	Courts Dealing with Tax Matters	26
	7.1 Appeal Processes	26
	7.2 Judicial Expertise	28
8	Tax Administration	28
9	General Principles	31
	9.1 Relation of Tax and Financial Accounting	31
	9.2 Respect for Legal Form	32
	9.3 Tax Avoidance and Anti-avoidance Legislation	33
10	Tax Treaties	37
11	Sources of Tax Law	39
Canada		
	<i>Brian J. Arnold</i>	41
1	History of the Income Tax Act	41
2	Constitutional Issues	41
3	Tax Rates	42
4	Composition of the Fiscal System	43
5	Basic Structure of the Income Tax	43
6	Tax Legislation	45
	6.1 Tax Legislative Process	45
	6.2 Statutory Style	46
	6.3 Statutory Interpretation	47
7	Courts Dealing with Tax Matters	49
8	Tax Administration	50
9	General Principles	52
	9.1 Relationship Between Tax and Financial Accounting	52
	9.2 Respect for Civil or Private Law Form	53
	9.3 Anti-avoidance Doctrines and Rules	53
10	Tax Treaty Network	57
11	Sources of Tax Law	58
China		
	<i>Jinyan Li</i>	61
1	History of the Income Tax	61
	1.1 Individual Income Tax	62
	1.2 Enterprise Income Tax	62
2	Constitutional Issues	62
3	Tax Rates	63
	3.1 IIT Rates	63
	3.2 EIT Rates	63
4	Composition of the Fiscal System	64
5	Basic Structure of the Income Tax	64
	5.1 Individuals	65
		65

	5.2 Corporations	65
6	Tax Legislation	66
	6.1 Legislative Process for Income Tax Matters	66
	6.2 Statutory Style	66
	6.3 Statutory Interpretation	67
7	Courts Dealing with Tax Matters	68
	7.1 Structure of the Courts	68
	7.2 Judicial Style	69
8	Tax Administration	69
9	General Principles	70
	9.1 Relation of Tax and Financial Accounting	70
	9.2 Respect for Legal Form	71
	9.3 Tax Avoidance and Anti-avoidance Legislation	71
10	Tax Treaties	72
11	Sources of Tax Law	73
France		
	<i>Guy Gest</i>	75
1	History	75
2	Constitutional Issues	77
3	Tax Rates	78
	3.1 Progressive IR	78
	3.2 Flat-Rate Individual Income Taxes	79
	3.3 Corporate Income Tax	79
4	Basic Structure of the Fiscal System	79
5	Basic Structure of the Income Tax	80
	5.1 Income Taxes on Individuals	80
	5.2 Corporate Income Tax	82
6	Legislation	83
	6.1 Legislative Process	83
	6.2 Statutory Drafting	84
	6.3 Statutory Interpretation	85
7	Courts Dealing with Tax Matters	85
	7.1 Structure of the Courts	85
	7.2 Judicial Style	87
8	Administration	87
	8.1 Tax Assessment, Collection, and Auditing	87
	8.2 Administrative Interpretations	89
9	General Principles	91
	9.1 Relationship Between Tax and Financial Accounting	91
	9.2 Respect for Civil or Private Law Form	91
	9.3 Anti-avoidance Doctrines and Rules	91
10	Tax Treaty Network	92
11	Sources of Tax Law	93

## Table of Contents

---

Germany		95
<i>Christine Osterloh-Konrad &amp; Wolfgang Schön</i>		95
1	History	95
2	Constitutional Issues and the Influence of EU Law	95
	2.1 Legislative Powers	95
	2.2 Sharing of Tax Revenue	96
	2.3 Impact of Basic Rights on Taxation	96
	2.4 EU Law Influences	98
3	Tax Rates	99
	3.1 Individual Income Tax	99
	3.2 Corporate Income Tax	99
4	Composition of the Fiscal System	100
	4.1 Revenue Share of Specific Taxes	100
	4.2 Recent Trends in the Tax System	101
	4.3 Social Security Contributions	102
5	Basic Structure of the Income Tax	103
	5.1 Individual Income Tax	103
	5.1.1 Principles of the Tax Base	103
	5.1.2 Private Expenses	105
	5.1.3 Nonresident Taxpayers	106
	5.2 Corporate Income Tax	106
	5.2.1 Taxable Entities	106
	5.2.2 Tax Base	107
	5.2.3 Tax System	107
	5.3 Trade Tax	110
6	Tax Legislation	111
	6.1 Legislative Process	111
	6.2 Statutory Style	111
	6.3 Statutory Interpretation	112
7	Courts Dealing with Tax Matters	113
	7.1 Structure of the Courts	113
	7.2 Judicial Style	114
8	Tax Administration	114
	8.1 General	114
	8.2 Assessment and Audit	115
	8.3 Tax Compliance	116
	8.4 Administrative Style	118
	8.5 Taxpayers' Style	118
9	General Principles	119
	9.1 Relationship Between Tax and Commercial Accounting	119
	9.2 Respect for Legal Form	120
	9.3 Anti-avoidance Doctrines and Rules	120
10	Tax Treaty Network	121
11	Sources of Tax Law	122

India		
	<i>D.P. Sengupta</i>	125
1	History of Income Tax	125
2	Constitutional Issues	128
3	Tax Rates	130
	3.1 General	130
	3.2 Individuals: Senior Citizens	131
	3.3 Individuals and HUFs	131
	3.4 Surcharge and Cess (Surtax)	132
	3.5 Partnerships and Companies	132
4	Composition of the Fiscal System	133
5	Basic Structure of the Income Tax	134
	5.1 Basic Principles	134
	5.2 Treatment of Losses	136
	5.3 Section 14A	136
	5.4 Minimum Alternate Tax and Alternate Minimum Tax	137
	5.5 Business Taxation	137
	5.6 Presumptive Taxation	138
	5.7 Partnerships	139
	5.8 Dividends	139
6	Tax Legislation	140
	6.1 Tax Legislative Process	140
	6.2 Statutory Style	141
	6.3 Statutory Interpretation	142
7	Courts Dealing with Tax Matters	145
8	Tax Administration	147
9	General Principles	150
	9.1 Relationship Between Tax and Financial Accounting	150
	9.2 Respect for Civil or Private Law Form	151
	9.3 Anti-avoidance Doctrines and Rules	152
	9.3.1 General	152
	9.3.2 Judicial Anti-avoidance Rules	153
	9.3.3 General Anti-avoidance Rule	155
	9.3.4 Corporate Residence	156
10	Sources of Tax Law	157
Japan		
	<i>Minoru Nakazato, Mark Ramseyer, Takeshi Fujitani &amp; Yasutaka Nishikori</i>	159
1	History	159
2	Constitutional Issues	162
3	Tax Rates	163
4	Composition of the Fiscal System	164
5	Basic Structure of the Income Tax	166
	5.1 Individuals	166
	5.2 Corporations	167

Table of Contents

---

6	Tax Legislation	168
	6.1 Legislative Process for Income Tax Measures	168
	6.2 Statutory Style	169
	6.3 Statutory Interpretation	169
7	Courts Dealing with Tax Matters	170
	7.1 Structure of the Courts	170
	7.2 Judicial Style	171
8	Tax Administration	172
9	General Principles	174
	9.1 Relation Between Tax and Financial Accounting	174
	9.2 Respect for Legal (Civil Law) Form	174
	9.3 Anti-avoidance Doctrines or Legislation	175
10	Tax Treaties	175
11	Sources of Tax Law	176
	11.1 Sources of Tax Law	176
	11.2 Available Materials	177
The Netherlands		
<i>Kees van Raad &amp; Frank Pötgers</i>		
		179
1	History of the Netherlands Income Tax System	179
2	Constitutional Issues	180
	2.1 In General	180
	2.2 Impact of Human Rights Conventions and EU Treaty Fundamental-Freedom Provisions	181
3	Income Tax Rates	181
4	Composition of the Fiscal System	183
5	Basic Structure of the Income Tax	183
	5.1 Individuals	183
	5.2 Corporations	184
6	Tax Legislation	185
	6.1 Tax Legislative Process	185
	6.2 Statutory Style	186
	6.3 Statutory Interpretation	186
7	Courts Dealing with Tax Matters	187
8	Tax Administration	188
	8.1 In General	188
	8.2 Taxpayer Bill of Rights: Ombudsman	189
	8.3 Release of Government Information to Taxpayers	189
	8.4 Advance Rulings	190
	8.5 Assessment, Administrative Appeal, and Appeal to Courts	191
9	General Principles	192
	9.1 Relationship Between Tax and Financial Accounting	192
	9.2 Respect under Tax Law for the Civil (Private) Law Form of Contracts	192
	9.3 Anti-avoidance Doctrines and Rules	193

10	Tax Treaties	194
11	Sources of Tax Law	195
Sweden		
<i>Peter Melz &amp; Jérôme Monsenego</i>		197
1	History	197
2	Constitutional Issues	198
3	Tax Rates	199
4	Composition of the Fiscal System	200
	4.1 Types of Taxes	200
5	Basic Structure of the Tax System	201
	5.1 Individuals	201
	5.1.1 Earned Income	201
	5.1.2 Income from Capital	202
	5.2 Corporations	203
6	Tax Legislation	205
	6.1 Legislative Process	205
	6.2 Statutory Style	205
	6.3 Statutory Interpretation	206
7	Courts Dealing with Tax Matters	207
8	Tax Administration	207
9	General Principles	209
	9.1 Relation of Tax and Financial Accounting	209
	9.2 Respect for Legal Form	209
	9.3 Anti-avoidance Doctrines and Rules	210
10	Tax Treaties	210
11	Sources of Tax Law	211
The United Kingdom		
<i>Glen Loutzenhiser</i>		213
1	History: Income Tax	213
	1.1 Corporation Tax	215
2	Constitutional Issues	216
3	Rate Structure and Reliefs: 2018-2019	219
4	Composition of the Fiscal System	220
5	Basic Structure of the Income Tax	221
	5.1 Individuals	221
	5.1.1 Capital Gains Tax	222
	5.2 Corporations	224
6	Tax Legislation	224
	6.1 Statutory Style	225
	6.2 Statutory Interpretation	226
7	Courts Dealing with Tax Matters	227
	7.1 Structure of the Courts	227
	7.2 Judicial Review	228

Table of Contents

---

	7.3 Judicial Style	228
	7.4 Legislative History	229
	7.5 Precedent	229
8	Tax Administration	229
9	General Principles	231
	9.1 Relationship Between Tax and Financial Accounting	231
	9.2 Respect for Legal Form	233
	9.3 Anti-avoidance Doctrines and Rules	234
10	Tax Treaties	238
11	Sources of Tax Law	239
	11.1 Legislation and Materials and Cases	239
	11.2 Official Practice and Rulings	239
	11.3 Secondary Sources	240
The United States		
	<i>James R. Repetti &amp; Diane M. Ring</i>	243
1	History of Federal Income Tax	243
2	Constitutional Issues	245
3	Tax Rates	247
4	Composition of the Fiscal System	248
5	Basic Structure of the Income Tax	249
	5.1 Individuals	249
	5.2 Corporations	254
6	Tax Legislation	255
	6.1 Legislative Process	255
	6.2 Statutory Style	256
	6.3 Statutory Interpretation	257
7	Judicial Structure and Style	259
8	Tax Administration	260
	8.1 Administrative Style	260
	8.2 Taxpayer Style	261
9	General Principles	262
	9.1 Relationship Between Tax and Financial Accounting	262
	9.2 Respect for Legal Form	263
	9.3 Anti-avoidance	263
10	Tax Treaties	264
11	Sources of Tax Law	265
PART II		
	Basic Income Taxation	269
SUBPART A		
	Global Versus Schudular Design of Income Tax	271



## SUBPART B

Inclusions in the Tax Base	273
1 Income from Employment	275
1.1 General	275
1.2 The Distinction Between Employees and Independent Contractors	276
1.3 The Taxation of Fringe Benefits	286
2 Imputed Income from Owner-Occupied Housing	296
3 Gifts	298
3.1 Gifts Outside a Business Setting (“Personal” Gifts)	299
3.2 Gifts in a Business or Employment Context	301
4 Prizes and Awards	303
5 Scholarships and Grants	305
6 Cancellation of Indebtedness	308
7 Gambling	311
8 Illegal Income	312
9 Windfalls	313
10 Subsidies	314
11 Pensions	316
12 Realization and Recognition of Gain	330
13 Capital Gains and Losses	337

## SUBPART C

Deductions	349
1 Mixed Business and Personal Expenses	350
1.1 Commuting	353
1.2 Moving Expenses	356
1.3 Clothing	359
1.4 Business Travel	360
1.5 Business Entertainment	363
1.6 Childcare	365
2 “Hobby Losses” and the Criteria for Determining Business Versus Personal Activities	368
3 Capital Costs and Recovery Methods	373
3.1 Determining Capital Costs	373
3.2 Capital Cost Recovery Systems	375
4 Educational Costs	382
5 Deduction of Personal Costs	384
5.1 Interest	384
5.2 Personal Losses	388
5.3 Medical Expenses	390
5.4 Charitable Donations	392
6 Limitations on Deductions and Losses	394
6.1 Illegal Payments, Fines, and Penalties	394
6.2 Expenses Associated with Tax-Exempt Income	397

## Table of Contents

---

6.3	“Quarantining” and Other Limits or Restrictions on Certain Categories of Expenses	399
SUBPART D		
	Accounting	407
1	Basic Accounting Methods	408
2	Inclusion of Advance Payments	414
3	Income Treatment of Deferred Payments	416
4	Original Issue Discount Obligations and Other Complex Financial Instruments	418
SUBPART E		
	Attribution of Income	427
1	Definition of Taxable Unit	427
2	Alimony and Child Support	433
3	Limitations on Assignment of Income	437
PART III		
	Taxation of Business Organizations	443
SUBPART A		
	Corporate-Shareholder Taxation	445
1	Overview of Corporate Tax Systems	445
2	Defining Entities Subject to Tax	454
3	Issues in Corporate Formation	457
4	Issues Involving Capital Structure	463
5	Taxation of Corporate Distributions	468
	5.1 Basic Structure of Distribution Rules	468
	5.2 Relating Distributions to Corporate Earnings	472
	5.3 Constructive Dividends	473
	5.4 Intercorporate Dividends and Capital Gains	476
	5.5 Distributions of Appreciated or Depreciated Property	480
	5.6 Distributions Involving Changes in Corporate Capital Structure	482
	5.6.1 General	482
	5.6.2 Stock Dividends	484
	5.6.3 Redemptions	487
6	Liquidations	490
7	Corporate Reorganizations and Restructuring	494
	7.1 General	494
	7.2 Merger Transactions	496
	7.3 Share Exchanges	502
	7.4 Nonmerger Asset Reorganizations	505
	7.5 Corporate Divisions: “Demergers”	508
8	Transfer and Limitations on Transfer of Corporate Tax Attributes	513
9	Consolidated Corporate Taxation	518

---

10	Special Tax Regimes for Closely Held Corporations	524
11	Integration of Corporate and Shareholder Taxes	528
	11.1 General	528
	11.2 Treatment of Capital Gains on Shares	532
SUBPART B		
	Partnership Taxation	541
1	Qualification for Pass-Through Taxation	542
2	Basic Structure of Pass-Through Taxation	545
3	Liabilities, Tax Cost, and Losses	549
4	Transactions Between Partners and Partnership	551
5	Disposition of a Partnership Interest	553
6	Liquidation of a Partnership	555
PART IV		
	International Taxation	559
SUBPART A		
	Residence Taxation	563
1	Bases for the Assertion of Personal Taxing Jurisdiction	563
	1.1 Individuals	563
	1.2 Corporations	567
2	Change of Status	570
	2.1 Change of Status of Individuals	570
	2.2 Change of Status of Corporations	575
	2.3 Dual Residence	579
	2.4 Temporary Residents	581
3	Mechanisms for Relief of Double Taxation	582
	3.1 Issues in the Structure of a Foreign Tax Credit System	590
	3.1.1 Creditable Taxes	590
	3.1.2 Limitations on the Credit	592
	3.1.3 Allocation of Expenses to Foreign Source Income	596
	3.1.4 Treatment of Losses in the Credit Computation	599
	3.1.5 Carryover of Excess Credits or Limitations	601
	3.1.6 Indirect Credit for Foreign Taxes Paid by Foreign Subsidiaries	603
	3.1.6.1 Share-Ownership Requirements	603
	3.1.6.2 Tier Limitations	604
	3.1.6.3 Computation of the Indirect Credit	604
	3.1.7 Interaction Between Indirect Credit and Limitation System	605
	3.2 Issues in the Structure of an Exemption for Foreign Income	606
	3.2.1 Structure of the Exemption	606
	3.2.2 Classes of Exempt Income	606
	3.2.3 Allocation of Deductions to Tax-Exempt Income	611
	3.2.4 Treatment of Foreign Losses	613

## Table of Contents

---

4	Limitations on Exemption or Deferral of Income of Foreign Corporations	615
4.1	Limitations on Exemption or Deferral for Foreign Source Income Earned by Foreign Corporations with Significant Domestic Share Ownership	617
4.2	Controlled Foreign Corporation Rules	618
4.3	Special Provisions Dealing with Domestic Portfolio Investment in Foreign Investment Companies	628
5	Outbound Transfers to Foreign Branches or Subsidiaries	631
SUBPART B		
	Source Taxation	639
1	Issues in the Structure of Net-Basis Taxation of Business Income	639
1.1	Threshold of Activity	639
1.2	Attribution of Business Income for Net-Basis Taxation	644
1.3	Determination of Deductions in the Net-Basis Taxation of Business Income	648
1.4	Taxation of Income from Services Including Employment	652
1.5	Other Situations Involving Net-Basis Taxation	655
2	Issues in the Structure of Gross-Basis Taxation	657
3	Branch Profits Tax	664
4	Limitations on Base-Eroding Payments to Non-residents	666
5	Restrictions on Source-Based Taxation of Non-residents Within the EU	671
SUBPART C		
	Additional International Topics	679
1	Special International Avoidance Rules	679
2	Selected Intercompany Pricing Issues	684
3	Corporate-Shareholder Taxation in the International Context	693
3.1	General	693
3.2	International Aspects of Capital Gains	696
4	Selected Treaty Issues	697
4.1	Relation Between Domestic Law and Treaties: Treaty Override	698
4.2	Approach to Treaty Interpretation	702
4.3	Anti-treaty Shopping Policy	705
4.4	Nondiscrimination	709
4.5	“Model” Tax Treaties	711
4.6	Tax Sparing by Treaty	713
5	Patent Boxes	715
6	Indirect Transfers	718
7	Measures to Deal with the Digital Economy	724
	Index	731