THE IMPACT OF THE OECD AND UN MODEL CONVENTIONS ON BILATERAL TAX TREATIES

This book provides an analysis of bilateral tax treaties concluded by thirty-seven jurisdictions from five continents and empirically ascertains the impact of the OECD and UN Model Tax Conventions on bilateral tax treaties. It therefore fills a major gap in the international tax literature, which has so far either studied the sole Model Tax Conventions or focused on bilateral treaties in the context of the tax treaty policy of single countries, and sets the pace for a new methodology in the analysis and interpretation of tax treaties. A general report outlines the key points of the analysis, highlights current trends and predicts future developments in multilateralism and global tax law. Academics, tax authorities and international tax practitioners, for whom a textbook based on Model Tax Conventions is insufficient, will find this an essential resource.

MICHAEL LANG is Head of the Institute for Austrian and International Tax Law and Academic Director of the LLM program in International Tax Law at the Vienna University of Economics and Business (WU), Austria.

PASQUALE PISTONE holds the Ad Personam Jean Monnet Chair in European tax law and policy at the Vienna University of Economics and Business (WU), Austria. He is also Associate Professor of Tax Law at the University of Salerno, Italy.

JOSEF SCHUCH is a professor of tax law at the Vienna University of Economics and Business (WU), Austria and a partner of Deloitte Austria.

CLAUS STARINGER is a professor of tax law at the Vienna University of Economics and Business (WU), Austria and a principal consultant for the law firm Freshfields Bruckhaus Deringer.
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THE IMPACT OF THE OECD AND UN MODEL CONVENTIONS ON BILATERAL TAX TREATIES

Edited by

MICHAEL LANG, PASQUALE PISTONE, JOSEF SCHUCH AND CLAUS STARINGER
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CONTRIBUTORS

WAĐIH ABOUNÂSR is a partner and has been the tax leader of PricewaterhouseCoopers Lebanon and Syria since July 2006. He is responsible for a dedicated tax department of fifteen professionals delivering taxation advisory and compliance services in both direct and indirect taxes as well as tax structuring, transfer pricing and mergers, and acquisitions work to local and international clients across the industry.

KRISTIÎNA ÄÍMÄ is a tax consultant at KPMG in Finland. In addition, she is a part-time teacher of tax law at the Aalto University School of Economics. She holds a Doctor of Laws degree from the University of Helsinki (2009) and an LLM degree from the University of Amsterdam (1996). She has published three monographs, twelve book contributions, twenty-three articles and six presentations in published form dealing mainly with international and European tax law.

FESTUS AKUNOBERA is a lecturer of international taxation and CEO at the East African School of Taxation. He is also a partner at the law firm of Akunobera & Akena Advocates & Tax Consultants in Uganda. His work focuses on international taxation, taxation of mineral resources, fiscal decentralization and capacity building in the area of fiscal reforms for governments in Africa.

IRENA ALAJBEG received a law degree (Mag. iur.) from the University in Zagreb. She worked as a senior advisor in the Tax Treaty Department of the Croatian Tax Administration, where her responsibilities included tax treaty negotiation, interpretation and exchange of information. She also worked as a senior consultant in the Tax Department at Ernst & Young Croatia. Currently, she is engaged by the Ministry of Economy, Labor and Entrepreneurship to negotiate bilateral investment treaties.

KATHRÎN BAIN is a lecturer at the Australian School of Taxation and Business Law in the Australian School of Business at the University of New South Wales.

xvii
Katarína Balogová graduated from the University of Economics in Bratislava, Slovakia in 1998. She completed her LLM programme on international taxation in Vienna in 2009. She has been working as a tax consultant since 2001, is a licensed tax advisor in Slovakia and works with BMB Leitner, currently as a tax manager in Slovakia.

Tanja Bender is Tax Partner at PricewaterhouseCoopers in Amsterdam and Professor of International Tax Law at the Faculty of Law, Leiden University.

Martin Berglund holds an LLM from Uppsala University, Sweden and is currently employed as a doctoral candidate in Fiscal law at the same university. His research project concerns the Swedish foreign tax credit. He has also written a number of published articles on this topic.

Emmanuel Raingeard de la Blétière holds a PhD and an LLM and is a director at Landwell & Associés (PricewaterhouseCoopers). He specializes in international and EU tax law and also lectures in French international tax law and EU tax law at several European universities.

Bernhard Brielmaier is a PhD candidate and research assistant at the Chair for Tax Management and the Laws of International and Liechtenstein Taxation (Professor Dr Martin Wenz) at the University of Liechtenstein, Vaduz. He is also a tax professional in the Financial Services Tax Group of Deloitte in Munich.

Catherine Brown is a Professor at the Faculty of Law, University of Calgary, where she has been teaching in the areas of taxation and business planning since 1981. She has presented dozens of papers to professional forums on tax and related issues, including the Canadian Tax Foundation, the Canadian Bar Association, STEP and Insight. Her current research explores the interaction of tax and trade agreements in regulating tax discrimination. She is a member of the Ontario and Alberta Bars and is a former governor of the Canadian Tax Foundation.

Radu Bufan is Professor of Tax Law at the West University of Timișoara, Romania. He is the director of Taxes, Finances, Accounting Review published by Wolters Kluwer Romania. He is also a lawyer and tax advisor.

Mirela Violeta Buliga is a PhD student in European and international tax law. She is a member of the Board of Editors of Taxes, Finances, Accounting Review published by Wolters Kluwer Romania and is a senior tax adviser at Associated Business Advisors, Romania.
IRENE BURGERS is Professor of International and European Tax Law at the Faculty of Law at the University of Groningen and is Professor of Economics of Taxation at the Faculty of Economics and Business at the University of Groningen, the Netherlands.

SIMON BUSCH is a PhD candidate and research assistant at the Chair for Tax Management and the Laws of International and Liechtenstein Taxation (Professor Dr Martin Wenz) at the University of Liechtenstein, Vaduz.

BRIAN CLEAVE is a member of the Bar of England and Wales and an honorary Queen’s Counsel. He worked for thirty-two years in the Solicitor’s Office of the UK Inland Revenue and from 1990 to 1999 was the head of that Office. He specialized in international taxation and represented the UK in treaty negotiations and at meetings of the working party on direct taxes of the Council of Ministers of the EU. Following his retirement from the Inland Revenue in 1999, he has acted as a consultant on EU-financed projects assisting with the reform of taxation and tax administration in the Russian Federation and Ukraine. He is a regular contributor on international taxation issues to the British Tax Review, Bulletin for International Taxation and European Taxation and is the UK editor for the IBFD Tax Treaty Case Law Database.

WEI CUI is an associate professor at the China University of Political Science and Law in Beijing and directs the Center for Comparative Fiscal Research there. His current research interests include consumption tax theory and practice, tax treaties and other aspects of international taxation, the rule of law in tax administration and the taxation of real estate. He was a recent consultant to the National People’s Congress and the Ministry of Finance on VAT legislation, and to the MOF and State Administration of Taxation in drafting income tax rules for enterprise reorganizations. During 2009–10, he served as Senior Tax Counsel to the China Investment Corporation (China’s sovereign wealth fund), overseeing the tax aspects of its overseas investments. He received a BA degree from Harvard College, an MA (philosophy) from Tufts University, a JD from Yale Law School and an LLM (tax) from New York University Law School.

CECILIA DELGADO RATTO is a lawyer and partner of AFISCA S.A.C., an independent consulting company dedicated to providing fiscal, legal, accounting and corporate governance advisory services to individuals and corporations. A graduate of the University of Lima, with specialization courses in international taxation given by the University of Vigo, Spain, she is a member of the Lima Bar Association and of the Board of the Instituto Peruano de Derecho Tributario (IPDT). She is a frequent speaker at numerous international and national tax law conferences.
Nada Elsayed has been with PricewaterhouseCoopers for six years and is a senior tax manager where she provides tax advisory and international tax structuring services. She has extensive experience in advising foreign businesses and multinational companies in establishing and financing legal structures in Lebanon. She also works on tax planning and tax structuring projects for leading companies in the advertising, telecoms, contracting and trading sectors in the Middle East region, and is overseeing cases of application of double taxation treaties signed by Lebanon.

Joakim Frände is a doctoral candidate in tax law at the Faculty of Law at the University of Helsinki. He holds a Licentiate in Laws (2008) degree and a Master of Laws degree (2005) from the University of Helsinki. He has written numerous articles on domestic and international tax law, and has lectured in tax law at the Faculty of Law at the University of Helsinki.

Eivind Furuseth holds a law degree (cand. jur.) from the University of Oslo and an advanced masters degree in international tax law from Leiden University, the Netherlands. He is currently working as a research fellow at the University of Oslo and as a lawyer at KPMG Law Advokatfirma DA, Oslo. He previously worked as a senior tax advisor at the Central Tax Office for large enterprises in Moss.

Carlo Garbarino is Professor of Taxation at Bocconi University, Milan. He has been a visiting scholar at Yale University Law School and a visiting professor at the Université Sorbonne-Paris, the University of Michigan Law School and the University of San Paolo. He is a member of the Steering Committee of the PhD Program in International Economic Law of Bocconi University. He earned a PhD in comparative and international taxation and a Master of Laws from the University of Michigan. He is a member of International Network for Tax Research at the OECD, Paris, Director of Osservatorio Fiscale e Contabile at SDA Bocconi, editor-in-chief of Fiscalità Internazionale and member of the Board of Editors of the EC Tax Review.

F. Alfredo García Prats is Professor of Financial and Tax Law at the University of Valencia, Spain. He specializes in international taxation, EU tax law and business taxation. He has been a visiting professor at the Universities of Bergamo, Harvard, Leiden, Leuven and London, is Senior Counsel of the IMF at the Legal Department and is the author of more than a hundred books, book chapters and articles in specialized reviews and journals.

Charles Gustafson is Professor of Law at Georgetown University, Washington DC. He is the author of several articles on taxation and
international law issues, and is co-author of three casebooks on taxation. He has been active in various committees on tax and international law at the American Bar Association and the American Law Institute. Before joining the Georgetown University Law Center faculty in 1972, his professional experience ranged from acting as attorney advisor at the State Department to being a lecturer in law at the A. Bello University in Nigeria. He also practised privately with firms in New York and Washington DC.

Lidiija Hauptman is Assistant Professor of Accounting, Taxation and Auditing at the University of Maribor, Faculty of Business and Economics, where she also received her PhD. Her current research interests are in taxation and accounting. She was the recipient of a Marie Curie fellowship in 2004 at the Department of Austrian and International Tax Law, Vienna University. She is a member of CETAX (2000) and has contributed to several national and international publications.

Kenneth Hellsten is a doctoral candidate in tax law at the Faculty of Law at the University of Helsinki. He holds a Master of Laws degree (2008) from the University of Helsinki and a Master of Science degree (2008) from the Swedish School of Economics. He is the author of a number of articles on domestic and international tax law.

Carol Khouzami graduated with a Diplôme d’Etudes Approfondies (DEA) in International Law from University Paris II-Assas and with an Executive MBA from ESA/EAP-ESCP. She is the senior legal advisor at the UNDP technical assistance and policy advice project at the Ministry of Finance of Lebanon. Since 1997, she has been in charge of negotiating tax conventions and investment agreements, as well as advising on various other issues. She taught a graduate-level course in international taxation and lectured on investment agreements in international forums.

Inga Klauson holds an LLM, is Chief Specialist of the Tax Policy Department of the Ministry of Finance of Estonia and is the Estonian correspondent for Tax Analysts.

Borbála Kolozs holds a doctorate degree and is a researcher in taxation. She is currently a guest lecturer at the Corvinus University of Budapest and at the ELTE Institute of Postgraduate Legal Studies.

Svetislav Kostić is an assistant (tax law) at the Faculty of Law at the University of Belgrade and also works as a senior tax manager with Deloitte Serbia. He holds two LLM degrees from the University of Belgrade and from
New York University School of Law (LLM in international taxation). He is one of the founders and a member of the Executive Board of the Serbian International Fiscal Association (IFA) branch.

Richard Krever is a professor and Director of the Taxation Law and Policy Research Institute at Monash University.

Eva Kútková graduated from the University of Economics in Bratislava, Slovakia in 2004. She has been working as a tax consultant since 2007, is a licensed tax advisor in Slovakia and works with BMB Leitner, currently as a senior consultant in the tax department in Slovakia.

Steffen Lampert holds a junior professorship for public law and international tax law at the Institute of Financial and Tax Law of the University of Osnabrueck, Germany. His main fields of research are European and international tax law as well as public economic law.

Matthias Langer received a degree in business administration from the Catholic University of Eichstaett-Ingolstadt and an LLM from the University of Münster. He has worked as a research assistant at the Chair for Tax Management and the Laws of International and Liechtenstein Taxation (Professor Dr Martin Wenz) at the University of Liechtenstein, Vaduz. Currently, he is working at Thomas Hosp, a tax firm in the principality of Liechtenstein.

Alexander Linn holds a doctorate degree and is an assistant professor at the Chair for Tax Management and the Laws of International and Liechtenstein Taxation (Professor Dr Martin Wenz) at the University of Liechtenstein, Vaduz. He is also a manager and certified and licensed German tax advisor in the International Tax Outbound Services Group of Deloitte in Munich.

José Madariaga Montes obtained his law degree at the Pontifical Catholic University of Chile. He received an LLM in international taxation from Queen Mary, University of London. He is currently legal advisor at the International Taxation Department of the Chilean Internal Revenue Service.

Lukáš Moravec is a tax tutor and researcher at the Czech University of Life Sciences in Prague and a lecturer at the College of European and Regional Studies in Ceske Budejovice. His previous experience includes having practised as a tax consultant and project manager in the field of international tax planning.

Danuše Nerudová is an associate professor and Head of the Department of Accounting and Taxes, Faculty of Economics and Business, Mendel
University Brno, the Czech Republic, and a researcher at the Research Center of Faculty of Economics and Business, Mendel University Brno.

João Félix Pinto Nogueira holds a PhD from the University of Santiago de Compostela and is currently a guest researcher at the Institute of Austrian and International Tax Law, Vienna University of Economics and Business (WU), benefiting from a postdoctoral fellowship of the FCT (Portuguese Ministry for Higher Education and Science). He lectures on several courses in international and European taxation in Master's programmes both in Spain (University of Santiago de Compostela) and in Portugal (University of Porto, Catholic University of Oporto and Lusíada University).

Martha O'Brien is Professor of Law at the Faculty of Law, University of Victoria, Canada. She holds an LLB from the University of Victoria and an LLM in law of the European Union from the Université libre de Bruxelles. She practised Canadian and international tax law in Vancouver with leading Canadian national firms from 1992 to 2000, and has published widely on taxation and EU law subjects in Canadian and European journals.

Amanda O'Connor is a fellow of the Taxation Law and Policy Research Institute at Monash University.

Faustina Peters is Senior Staff Member at the Directorate-General for the Tax & Customs Administration, Appeals team, Ministry of Finance, The Hague.

Pasquale Pistone is EURYI-ESF Professor of European and International Tax Law (as of 1 October 2010 holder of the Ad Personam Jean Monnet Chair on European tax law and policy) at the Vienna University of Economics and Business (WU, Austria); Associate Professor of Tax Law at the University of Salerno (Italy); 2010 Visiting Professor at the Schools of Law of the University of Melbourne and Monash University (Australia), the University of Lisbon (Portugal) and Paris 2 Panthéon-Assas (France). He is a member of the Junge Kurie of the Austrian Academy of Sciences; of the Editorial Board of Intertax, the World Tax Journal, Diritto e Pratica Tributaria Internazionale and of other distinguished international tax journals. In addition, he is author and editor of numerous publications on European and international tax law published in several languages around the world.

Natalia Quiñones Cruz is a partner at Quiñones Cruz Ltda in Bogotá, Colombia. She holds an LLM in international taxation from New York University (Wallace Scholar, 2008), a JD from Universidad del Rosario (Diploma for excellence, 2006) and a philosophy degree from Universidad de los
Andes (summa cum laude, 2007). She currently advises the Colombian Tax Administration in her capacity as the Academic Secretary of the Colombian Tax Institute.

Linghui Ren obtained an LLM degree at Sun Yat-Sen University in China and a doctorate degree in law at the University of Hong Kong. After graduating from the University of Hong Kong, she began her practice in taxation law at Ernst & Young (Hong Kong). She is a member of the Doctoral Candidates in Tax Law Network and a research fellow with the Taxation Law and Policy Research Institute at Monash University. She was an Ernst Mach visiting scholar at the Institute for Austrian and International Tax Law of the Vienna University of Economics and Business in 2009. She researches in the area of taxation law and policy with a focus on PRC taxes. Her recent publications relate to China’s reform of the income tax and transfer pricing.

Isabelle Richelle is Professor of Tax Law at HEC-Business School of the University of Liège and a lawyer at Liedekerke Wolters Waelbroeck Kirkpatrick (Brussels). She holds a PhD from the Free University of Brussels and a special degree in tax law from the University of Liège. She is deputy judge at the Tribunal of 1st Instance of Namur. She specializes in business tax law, European and international tax law and registration duties.

Adrian Sawyer is Professor of Taxation at the University of Canterbury and holds an SJD from the University of Virginia and MCom (Hons) and LLB degrees from the University of Canterbury. He is a chartered accountant, barrister and solicitor. He has an extensive publication record, with articles appearing in scholarly and professional journals and chapters in books published in Asia, Australasia, Europe and North America. He is on numerous editorial boards and is Chair of the Editors of the New Zealand Journal of Taxation Law and Policy. His research interests include tax administration and compliance, international taxation (including international organizations), e-commerce taxation, environmental taxation, tax history, taxpayers’ rights, tax rulings and individual insolvency.

Luís Eduardo Schoueri is Professor of Tax Law at the University of São Paulo and at the Presbyterian University Mackenzie in São Paulo, and a partner of Lacaz Martins, Halembeck, Pereira Neto, Gurevich & Schoueri Advogados. He is the author of Normas tributárias indutoras e intervenção econômica (2005) and Preços de Transferência no Direito Tributário Brasileiro (2006).

D. P. Sengupta joined the Indian Revenue Service in 1975 and retired as Chief Commissioner of Income Tax (Central), Delhi. He served as Joint
LIST OF CONTRIBUTORS

Secretary in the Tax Policy and Legislation Division of the Ministry of Finance. He was also the former Joint Secretary of the Foreign Tax Division in the Ministry of Finance and was the Competent Authority for India.

NATALIE MATOS SILVA is a Master’s degree student at the University of São Paulo and practises as a lawyer in São Paulo.

ANDREW SMITH is an associate professor in the School of Accounting & Commercial Law, Faculty of Commerce and Administration, Victoria University of Wellington, New Zealand. His research interests relate to international and corporate tax and he has authored numerous papers and articles on tax in a wide range of international journals. He is a member of the Editorial Board of the Journal of the Australasian Tax Teachers’ Association and is a member of the Advisory Board of the New Zealand Journal of Taxation Law and Policy. He is also a member of the New Zealand Institute of Chartered Accountants.

KATHERINA STEININGER worked as an assistant at the Institute for Austrian and International Tax Law at the Vienna University of Economics and Business (WU). She received her LLB from the University in 2010. Since March 2011, she has worked at the Austrian Federal Ministry of Finance.

SABINA TAŠKAR BELOGLAVEC completed her graduate and postgraduate studies at the Faculty of Business and Economics at the University of Maribor. Her postgraduate research field relates to two major issues in banking and international taxation.

EDOARDO TRAVERSA is Professor of Tax Law at the Catholic University of Louvain (Belgium) and of Counsel at Liedekerke Wolters Waelbroeck Kirkpatrick (Brussels). He holds a joint PhD from the University of Bologna (Italy) and the Catholic University of Louvain (Belgium), and was a visiting researcher at the Department of Tax Law of the Vienna University of Economics and Business in 2007. His areas of interest cover International and European tax law, including VAT, as well comparative and constitutional tax law.

MARTA USS holds a Master of Laws degree from Nicolaus Copernicus University and is a PhD candidate there. She was TPA Horwath Fellow at the Vienna University of Economics and Business in the 2008/9 academic year. She is a lecturer at the Economic University in Wrocław and is also a trainee solicitor, working as a tax specialist in a legal office.

ERKI UUSTALU holds an LLM and is teaching international and European tax law at the Law Faculty of Tartu University, Estonia.
HUGUES PERDRIEL VAISSIÈRE holds a PhD in private law from the University La Sorbonne (Paris-I). His thesis relates to the theme of ‘exchange and tax law’, in which he puts forward new ideas on how to deal with the taxation of exchange situations. He has an extensive knowledge of French and international tax law and is currently working at GE Capital Global Banking as Tax Director for GE Money Bank, after having begun his professional career in a French law firm.

ELENA VARIYCHUK obtained a Master’s degree in law from the Voronezh State University, Russia, and is currently a PhD student at the Institute for Austrian and International Tax Law, Vienna University of Economics and Business (WU).

AXEL A. VERSTRAETEN received a law degree, with specialization in tax law, from the University of Buenos Aires (2004). He received an LLM in international taxation from the University of Florida (2008). Currently he works as a tax advisor in Buenos Aires and is a teaching assistant of public finance and tax law at the University of Buenos Aires. He is pursuing a Master’s degree in economic policy at FLACSO (OAS University – Buenos Aires).

MARTIN WENZ is a full-time professor and holds the Chair for Tax Management and the Laws of International and Liechtenstein Taxation, and is Head of the Institute for Financial Services at the University of Liechtenstein, Vaduz, Chairman of the Liechtenstein working group of tax experts and provides advice to the Government of the Principality of Liechtenstein for developing a draft for a total revision of the Liechtenstein tax law and different drafts for negotiating double tax treaties and tax information exchange agreements between Liechtenstein and foreign nations and jurisdictions.

FELIPE YÁÑEZ VILLANUEVA graduated from the University of Chile and holds a Master in Tax Law from the University of Cologne in Germany. He is a lecturer of tax law and in the Master in Enterprise Law program at Universidad de los Andes, Santiago, Chile. He is also a lecturer in the Master and Management program at the Universidad Católica de Valparaíso and in the Tax program at the Faculty of Economics and Business, University of Chile. He is a member of the Chilean Institute of Tax Law and of the International Fiscal Association (IFA) – Chilean Branch. In addition, he practises as an attorney at Allende, Bascuñán y Cía, Attorneys-at-Law.
PREFACE

Tax treaties have existed for well over a century and have undoubtedly improved the legal framework for the exercise of taxing powers on cross-border economic relations. They are usually bilateral in scope and result from the negotiation of package deals that have yielded a highly diversified constellation of agreements. Since the 1920s the desire to achieve internationally accepted tax treaty practice has led international organisations to undertake activities in this domain, aimed at developing a reliable and policy-sound tax treaty framework that states would be able to take into account when concluding their own bilateral treaties. However, it was only after decades of activity by the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN) in this field that a convergence in the content of tax treaties could be seen. Meanwhile, the number of bilateral tax treaties around the world as well as their complexity have been increasing dramatically, giving rise to a highly varied set of rules in the absence of a proper customary international tax law and opening up room for a considerable growth in international tax planning. Some academics have successfully supplemented the efforts of the international organizations by writing works that have guided the evolution of scholarly legal debate over the interpretation of tax treaty clauses following the Models.1 However, the international academic legal thinking on tax treaties has so far generally focused only on such clauses, neglecting those that depart from them. Clauses deviating from the Models have been relegated to the area of regional dialogue or even to each country's national tax scene and have then been examined solely with a view to ascertaining their consistency with the respective national tax treaty policy. From the time the editors began to carry out interdisciplinary research activities with other scientists on international tax coordination and tax treaties, further repercussions have become evident. In particular, due to the needs of economists to streamline the information they analyse for the purpose of obtaining results from their research, they sometimes

1 The editors hereby wish to acknowledge the outstanding contribution by Professor Dr Klaus Vogel, whose works have brought the entire international tax world much closer together and have educated generations of international tax experts.

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equate tax treaties with the clauses contained in the Models, simply assuming that no relevant differences exist with the bilateral treaties actually in force around the world. This book aims to fill a gap in legal tax literature by providing an innovative scientific support for establishing the boundaries of the influence of the OECD and UN Models on the drafting and interpretation of bilateral tax treaties around the world. From this perspective, it supplements the documentation activities carried out by the Institute in cooperation with other universities, scientific institutions and the OECD (www.taxtreatieshistory.org) on the travaux préparatoires on the OECD Model. However, the book also contains relevant information on bilateral tax treaties that depart from the pattern of the Models and nevertheless also achieve some degree of convergence.

The editors are confident that this book (the first of its kind to cover over forty countries and to contain this type of analysis), which is based on papers which were presented at a conference organized in July 2010 in Rust, Austria by the Institute for Austrian and International Tax Law of the WU Vienna University of Economics and Business, will be of use to academics for their research on international tax matters in the legal and economic fields of the social sciences, as well as to practitioners who need more refined and detailed information on the wording and interpretation of tax treaties, which is often not accessible in the English language. The selection of authors reflects this goal and includes a balanced mix of academics (including some doctoral students with a research focus on tax treaties) and practitioners, who have drafted the chapters on the basis of a questionnaire prepared by the editors together with their research team in order to achieve a standard structure that makes the text more user-friendly. Furthermore, a general report enhances access to the national chapters and highlights the common and differing features, which could be of interest to the readers from certain areas of the world (such as the EU) or who are working in certain specific technical domains covered by tax treaties.

The book presents to the international tax community the results of a long period of research activity and is current to 1 January 2011. This research was carried out in the framework of various high-level research projects (including the EURYI Project for the European Science Foundation and the SFB on International Tax Coordination) by an international team based at the Institute for Austrian and International Tax Law of the Vienna University of Economics and Business, composed of the editors and several researchers, including in particular João Félix Pinto Nogueira and Elisabeth Pamperl, whom the editors warmly thank for their enthusiasm, initiative and support. However, the editors also regard this book as an important phase in their cooperation with the authors of the national chapters from around the world. They have patiently revised their chapters in order to enhance the scientific quality of this book, which will hopefully become an essential tool for
activities involving tax treaties, both in research and in practice. All chapters have been linguistically edited by Richard Casna and Margaret Nettinga. Finally, special thanks go to Renée Pestuka, who has brought the whole team together and indefatigably supported the project, showing in practice how the international tax world can be coordinated and making it possible for the editors to present a further concrete product of their joint scientific endeavours.

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The Editors
Michael Lang
Pasquale Pistone
Josef Schuch
Claus Staringer
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