

CONTENTS

List of Figures x
Preface xi
Acknowledgements xiv

Part I

1 Taxing Cross-Border Business Income 3

1.1 What Is Cross-Border Taxation? 3

1.2 Fundamental Concepts of International Taxation: Residence and Source 5

1.3 The History of International Double Taxation: The “1920s Compromise” 9

1.4 Justifying Source and Residence Taxation 16

1.5 The Benefit Theory and Its Relationship to Value Creation 34

1.6 Observations about Source and Residence Taxation in the Context of Cross-Border Business 41

1.7 Exploring the Limits of Domestic Source-Based Taxation 46

1.8 Base Erosion and Profit Shifting and the Emerging Threat of Digitalisation in Business 55

2 The Development of Digital Business 57

2.1 The Dynamic Information Age 57

2.2 The Defining Characteristics of Digital Markets 63

2.3 Doing Business Using a Multi-sided Platform 68

2.4 Using the Reseller Model 76

2.5 Using Vertically Integrated Firms 77

2.6 Using Firms That Are Input Suppliers 77

2.7 Observations about the Key Characteristics of Digitalised Business Models 77

3 Challenges to the Tax System Posed by the Digitalisation of Business 84

3.1 Introduction to the Challenges 84

3.2	The Vanishing Ability to Tax Business Profits	89
3.3	The Use of Data, the Contribution of Users and the Measurement of Their Value	97
3.4	The Reliance on, and Mobility of, Intellectual Property	102
3.5	The Characterisation of Transactions and Income	104
3.6	The Failure of Transfer Pricing with Certain Multinational Enterprises and Their Transactions	106
3.7	The Inadequacy of Residence-Based Taxation	108
3.8	Competition by States	110
4	Responding to the Challenges: Legal Constraints on Any Changes to the Current Framework	112
4.1	Introduction	112
4.2	International Tax at the Crossroads	113
4.3	Interim Measures	119
4.4	Constraints Imposed by the Scope of Double Tax Agreements (DTAs)	121
4.6	Constraints Imposed by the Membership of the WTO	146
Part II		
5	The OECD Secretariat’s and Inclusive Framework’s Proposals for Multilateral Reforms	167
5.1	Introduction	167
5.2	Pillar One: Allocation of Taxing Rights and Nexus	167
5.3	Pillar One: What Is Proposed in the Unified Approach Proposal? Three Components of Income: Amount A	176
5.4	Amount B: Fixed Remuneration for Marketing and Distribution	193
5.5	Amount C: The “Top-Up”	198
5.6	Dispute Prevention and Resolution	200
5.7	Pillar Two: Global Anti-base Erosion Proposal	204
5.8	Conclusion	211
6	Examining the Proposals for Multilateral Reforms	213
6.1	Does the 2020s Compromise Address the Challenges of the Digital Economy to the International Tax Framework?	213
6.2	Dealing with the Vanishing Ability to Tax Business Profits	216
6.3	The Use of Data, the Contribution of Users and the Measurement of Their Value	223
6.4	The Reliance on, and Mobility of, Intellectual Property	226
6.5	The Characterisation of Transactions and Income	227

CONTENTS ix

6.6	The Failure of Transfer Pricing with Certain Multinational Enterprises and Their Transactions	228
6.7	Tackling the Inadequacy of Residence-Based Taxation	232
6.8	Competition by States	233
6.9	Conclusion	235
7	Implementing the Proposals for Multilateral Reforms	237
7.1	Issues with the Implementation of the 2020s Compromise?	237
7.2	Implementing the Changes Proposed by Amount B	251
7.3	Issues with Implementing Amounts A, B and C	253
7.4	Issues with Implementing Key Elements of Pillar Two	254
7.5	Common Pillar One and Two Implementation Issues	260
8	The Influence of Alternative Policy Strategies on the 2020s Compromise	263
8.1	Where Do the Strategies of the 2020s Compromise Originate?	263
8.2	Destination-Based Cash Flow Taxation	265
8.3	Residual Profit Allocation by Income	272
8.4	Formulary Apportionment	280
8.5	Expanding the Concept of Permanent Establishment	285
9	Interim Solutions and Long-Term Reforms	305
9.1	Crossroads: Responding in a Unilateral or a Unified Way?	305
9.2	Key Generic Design Issues with DSTs	306
9.3	Significant Areas of Change in the 2020s Compromise	313
	<i>Index</i>	322