

INTERNATIONAL COMMERCIAL TAX

SECOND EDITION

International Commercial Tax (second edition) takes account of the substantial developments of the last decade. With more than 60 per cent new material, the book considers the outcomes of the OECD's BEPS project and the substantial consequential 2017 revisions of the OECD and UN Model tax treaties. With the continuing rise in the economic importance of non-OECD countries and the UK distancing itself from the EU, there has been a refocusing with less direct attention on UK domestic law and greater focus on the approaches of other significant countries, especially other common law jurisdictions. This provides greater flexibility as to how a particular point or issue is illustrated with practical examples. Greater attention is given to the UN Model, which is increasingly important. The book continues to compare the approach under model tax treaties with EU law and is updated with copious references and illustrations from the burgeoning jurisprudence of the EU Court.

PETER HARRIS is Professor of Tax Law at the University of Cambridge. He is the author of five international tax books and has advised for the IMF for more than twenty years, assisting more than a dozen countries in drafting and reforming tax law and tax treaty policy. Harris also served as a consultant to the DESA of the UN, contributing two chapters to its *Handbook on Protecting the Tax Base of Developing Countries*.

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PREFACE

It has been a decade since the first edition of this book, and it is with great regret that I have had to revise it without the watchful eye of my long-term colleague David Oliver. The course upon which this book is based continues to be taught at the Law Faculty of the University of Cambridge in essentially the same manner as it has since 2001. The publication of the first edition brought with it an increase in popularity of that course which has been maintained to the present day. More than ever, international tax has been making headline news, and its controversial nature shows no sign of abating.

The book is still designed for postgraduate students and junior practitioners. It is more than an introduction to the subject. It challenges the reader to think about tax issues conceptually and holistically, while illustrating the structure with practical examples. More-senior tax practitioners and academics may also find it useful as a means of refreshing their understanding of the basics, and the conceptual framework may challenge them to think more deeply about tax issues than they currently do. Given the ever-increasing importance of having a global perspective and recent constitutional turmoil, this edition has been substantially revised to reduce its former focus on the UK. Copious amounts of new material have been introduced (well over 60 per cent), which brings with it a more-balanced global view of developments.

While there has been an attempt to contain the size of this book to a manageable level, the burgeoning nature of the topic makes that a struggle. No doubt containment makes the reading a little dense at points. Where that happens, the reader should consider it an invitation for pause and collection of thoughts.

The law in this book is stated as at the end of 2019.

ABBREVIATIONS

General

1988 Multilateral Convention	1988 Convention on Mutual Administrative Assistance in Tax Matters
ACT	advance corporation tax
AOA	authorised OECD approach
Base Case	Figure 1 in the introduction
BEPS	base erosion and profit shifting
CBC	country-by-country
CFC	controlled foreign corporation
CJEU	Court of Justice of the European Union (including its predecessors)
CRS	common reporting standard
EEA	European Economic Area
EFTA	European Free Trade Association
EU	European Union
EU Law	Law of the European Union
FEU Treaty	Treaty on the Functioning of the European Union
GAAR	general anti-avoidance rule
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
HMRC	Her Majesty's Revenue Commissioners
LLC	Limited Liability Company
LOB	limitation of benefits
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD	Organisation for Economic Co-operation and Development
OECD Model	Organisation for Economic Co-operation and Development's Model Convention on Income and Capital
PE	permanent establishment
PPT	principal purpose test

LIST OF ABBREVIATIONS xvii

UN	United Nations
UN Model	United Nations Model Double Taxation Convention between Developed and Developing Countries
UK	United Kingdom
US	United States

Laws

Australia

ITAA 1936	Income Tax Assessment Act 1936
ITAA 1997	Income Tax Assessment Act 1997

Canada

ITA	Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.))
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EU

Anti-Tax Avoidance Directive	Council Directive 2016/1164/EU
Cooperation Directive	Council Directive 2011/16/EU
Interest and Royalties Directive	Council Directive 2003/49/EC
Mergers Directive	Council Directive 90/434/EEC (consolidated as 2009/133/EC)
Parent-Subsidiary Directive	Council Directive 90/435/EEC (recast as 2011/ 96/EU)
Tax Dispute Directive	Council Directive (EU) 2017/1852

Germany

EStG	Income Tax Law (<i>Einkommensteuergesetz</i>)
KStG	Corporate Income Tax Law (<i>Körperschaftsteuergesetz</i>)

UK

CTA 2009	Corporation Tax Act 2009 (UK)
CTA 2010	Corporation Tax Act 2010 (UK)
ITA 2007	Income Tax Act 2007 (UK)

xviii	LIST OF ABBREVIATIONS
ITTOIA 2005	Income Tax (Trading and Other Income) Act 2005
TCGA 1992	Taxation of Chargeable Gains Act 1992 (UK)
TIOPA 2010	Taxation (International and Other Provisions) Act 2010 (UK)
US	
IRC	Internal Revenue Code (26 U.S.C.)