



Monograph Review

Peter Hongler – International Law of Taxation

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In September 2021, Oxford University Press published a fourth book in its Elements of International Law series titled International Law of Taxation which was authored by Peter Hongler. In line with the goal of the series, this book provides a relatively concise excursion into its subject matter yet does not compromise with regard to referenced case law or commentaries by academia.

As the publication is structured from general to more specific issues of the subject matter, it initially focuses on introductory subjects such as the historical development of the international law of taxation and its institutional background before proceeding to the second and most extensive part of the book, covering the sources of this area of international law.

Therefore, in the second chapter, the author provides a detailed description of the international treaties related to taxation, touches upon the sensitive issue of OECD and United Nation Commentaries' relevance for interpretation under the Vienna Convention on Law of Treaties and covers the functioning of the provisions of double tax treaties. In addition, attention is also drawn to customary international law (and explains that it has relatively limited applicability in the area of international tax law), general principles of international law relevant for the subject matter and soft law in the field of taxation and as an influence on EU law. In respect of EU law, the publication discusses the fundamental freedoms and their impact on taxation, in both general terms and in specific cases, state aid, including recent issues of tax rulings being granted to multinational enterprises, and secondary EU legislation in the area of both direct and indirect taxes, together with other legislative proposals and projects. As well as providing a comprehensive discussion of all essential aspects of international tax law, this chapter also reflects recent developments in the area, such as initiatives against tax avoidance, and provides both a theoretical and practical perspective on the issues discussed by providing numerous references and examples.

In the third chapter, the attention of the publication shifts to the relationship between the international law of taxation and other areas of international law, namely trade law where the publication mainly discusses limitations on importation taxes, investment treaty law and its tax-related expropriation aspect, and human rights law and its tax-related procedural and substantive elements.

In the fourth and final chapter, the publication delves into more conceptual problems of the international law of taxation and right from the outset quite rationally points out its weaknesses;

cross-border tax avoidance and disadvantaging the developing countries to name just two. Hongler puts forth that these failures are caused by an absence of values and international tax law principles, flawed international tax policy guiding principles and institutional problems. Subsequently, the publication focuses on four specific areas, first being aggressive tax planning, where the author discusses the outcome of the BEPS initiative and even recent developments regarding global anti-base erosion proposal and regarding minimum tax proposals following Pillar 2. After that, the challenges of taxing the digital economy are discussed, most importantly value creation and the related allocation of taxing powers, and potential solutions culminating in the unified approach of the OECD under Pillar 1. Finally, the publication discusses whether the formulary system may be the solution to the current failures of the international tax system instead of the arm's length principle, and simultaneously points out that neither of these allocation mechanisms currently fulfil distributive duties. In this regard, Hongler seems to argue that current allocation keys should be redrafted to achieve at least minimal distribution through the international tax regime. At the end, the publication briefly argues in favor of destination-based systems and also for environmental taxes and their coordination as a solution to the current environmental crisis.

In the light of the above, the publication can be considered logically structured, as it proceeds from rather general concepts to the very core of the international tax law and its key aspects prior to moving in the end to *de lege ferenda* and moral issues. While all the issues covered are discussed objectively and mostly not prescriptively, the author does not merely rely on the descriptive approach but also analyses the relevant views on various key subjects and provides numerous comments from both a theoretical perspective and practical examples, which corresponds to his combined academic and professional background. Considering the above, it could be concluded that the publication's goal, defined as providing objective insights into the international tax regime in a broader context, has been met and even exceeded and the publication should stand in both the faculty and the law firm libraries alongside other essential publications on the international law of taxation, such as Michael Lang's 3rd edition of his Introduction to the Law of Double Taxation Conventions.