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**BASIC
PROBLEMS
IN
INTERNATIONAL
FISCAL
LAW**

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Basic Problems in International Fiscal Law

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TRANSLATOR'S PREFACE

When I first came across the original German version of the book I was struck by the thorough, systematic treatment of the subject which reduces the amorphous mass of details of International Fiscal Law to clear-cut principles and options, a treatment which necessitates, of course, a great deal of classification and precise definition. Since up to now this type of systematic treatment has been sadly lacking, I believe that Dr. Knechtle's book will fill a gap in English fiscal literature. Tax literature is normally concerned with a detailed exposition of the present state of fiscal legislation in order to give the tax subject the required information as to his tax liability and guidance on how to arrange his fiscal affairs so that his personal tax bill is minimised i.e. corporate after-tax profits are maximised (tax planning). This is clearly not the object of the present work; rather, it is concerned with the problems involved in reconciling the various national fiscal legislations and the effect which this reconciliation has on the individual or corporate taxpayer. The treatise refers frequently to the work of OECD, as embodied in the various Draft (Model) Conventions, the rules of which are being incorporated progressively into bilateral fiscal law. The endeavours of the greatest contemporary European institution, the EEC, to align and harmonize the fiscal laws of its member States are, of course, also dealt with 'in extenso'.

The author starts out with international economic facts and with a discussion on the meaning of 'IFL' (a term which is by no means clear-cut), and afterwards proceeds from relatively simple fiscal concepts to more elaborate ones; in other words, he examines the various building blocks of the edifice of IFL and then surveys the whole structure from various angles, exploring all its passages, nooks and crannies, as well as the 'roof' so to speak which is being formed by the double taxation agreements. It is, of course, only to be expected from a Swiss author that typical Continental European fiscal concepts such as taxation of the worldwide income and capital, and the residence principle, are given prominence. Likewise the author's sympathies lie with the exemption method rather than with the credit method which is generally favoured by the Anglo-American tax systems. All this shows up the divergent views on fiscal matters which still exist, and the deep-seated differences which are still inherent in the national fiscal laws, differences which have to be overcome in a process of legal alignment and fiscal harmonization.

This book is a translation of a work which was published in Switzerland in 1976 and appeared as volume 24 of the series of the Institute for International Law and International Relations at Basle University.

The original work in German, which was submitted as a doctoral thesis to the University of Fribourg (Switzerland), was written in 1972/74 and updated by the author to Dec. 1975. I have updated the translation to Dec. 1978, but I do not wish to pretend that this updating is complete; on the contrary: the speed with which fiscal law alters makes such an undertaking well-nigh impossible. Important changes have been taking place in the meantime (such as the Great German Tax Reform) which have affected whole chapters, but since this book deals with *basic* problems in International Fiscal Law, any omissions should not diminish unduly the stature of the work as an important treatise on the aims, concepts, operation and legal sources of IFL.

Apart from updating, I have added a number of explanatory notes, references to recent English fiscal literature, as well as three new sections, one on the German imputation system (ch. 10, I.2.f. (BRD)), one on the granting of the German imputation credit across the border (ch. 10, II.3.b./cc.), and one on the indirect credit relief for foreign underlying tax in the UK's corporation tax law (ch. 11, II.4.a./bb.). Furthermore four diagrams and one table have been included in order to bring out the text of certain chapters in full relief, especially where the author classifies certain aspects of IFL in ways which may perhaps be somewhat unfamiliar to English-speaking readers. Last but not least I have added a glossary on the various forms of 'double taxation', as well as an index. On the other hand, I have abbreviated a number of original footnotes, especially footnotes which referred to specific Swiss fiscal problems and literature. For all this I take full responsibility.

Translating a work on IFL is not an easy matter, the main reason being that, despite assistance from special dictionaries and glossaries, it is not always possible to find equivalent words in the other language. As Spitz has already pointed out ('International Tax Planning', p. 5 f.), similar terms frequently have quite different connotations in other (tax) systems. The literal translation of terms may prove treacherous. A prime example is the word 'holding company' (German Holdinggesellschaft) – at first sight a simple enough term. However, terminology tends to be confusing since most systems of the English type use the term 'holding company' in quite a different sense from that in which it is used on the Continent. In the UK a holding company is a company which controls another company, called its subsidiary. In Switzerland, on the other hand, a

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holding company is a company whose *main* object is to hold shares in other companies. When one tries to translate another German term, 'Wohnsitz' (defined in the Swiss Civil Code as 'the place where a person intends to stay permanently'), matters become even more complex, since in the UK we have two words instead of one, namely 'domicile' and 'residence'; 'domicile' being the country which a person regards as his natural home, his place of abode to which he intends to return in the event of his going abroad, whereas 'residence' depends on the facts of each case and is determined by the individual's presence in a country, his object in being there, and his future intentions regarding his length of stay (Hambro). Similarly, the German word 'Steuerflucht' (literally translated 'tax flight') can mean either 'tax avoidance' or 'tax evasion', a subtle, but nevertheless important distinction! Furthermore, the German term 'Aussensteuerrecht', meaning tax law regarding international transactions, law on tax relations with other countries, etc., has caused problems, and it has finally been translated as 'External' Fiscal Law for lack of an equivalent word in the English fiscal terminology. As for 'double taxation', there appears to be considerable terminological confusion in the English fiscal literature, despite the clear-cut definition of international double taxation in the OECD Draft (Model) Double Taxation Conventions. It is, in my view, one of the many merits of Dr. Knechtle's book that he has clearly defined the various forms of double taxation (German 'Doppelbesteuerung', 'Doppelbelastung', 'Mehrfachbelastung'), and, above all, has drawn a clear distinction between juridical and economic double taxation, a distinction which is important from the fiscal law point of view, although the practical effects of both types may, of course, often be similar.

✓ The above are only a few examples of the difficulties facing the translator. Turning from the particular to the general, I could not agree more with George Lüdi's dictum:

'For many reasons, the "ideal" translation, with simultaneous equivalence on all levels of the text (meaning, effect, structure, connotations, etc.) is an abstraction. Hence every translation is the result of a compromise between the different equivalency requirements, a compromise which depends on the purpose of the translation, the type of text and, last but not least, on the (linguistic) distance between the source language and the target language ...'

Having said all this, I wish to acknowledge the assistance the author and I have received from various quarters. The International Bureau of Fiscal Documentation, Amsterdam, has supplied useful

information on special dictionaries and glossaries. Through the good offices of Dr. A. Heining, General Secretary of the German Branch of the IFA, we were able to obtain the Glossary of Double Taxation Terminology ("Glossar der Doppelbesteuerungsterminologie"), compiled by the Sprachendienst des Bundesministeriums der Finanzen (Apr. 1967), and the Tax Glossary English-German, compiled by the Bundesfinanzministerium, Bonn, the Inland Revenue, London, and the Internal Revenue Service, Washington D.C. (1975). Dr. Lothar Hintzen, Bonn, has kindly put at our disposal his personal tax glossary. Our thanks also to Professor J. van Hoorn Jr., Managing Director, International Bureau of Fiscal Documentation, Amsterdam, for a copy of his paper "The proposal for tax harmonisation" which he read to the "Financial Times" Conference on "Business and the European Community Directives" which took place in London in April 1978. Furthermore my personal thanks to Mr. W. Meier-Ewert, Head of Legal Department, German Chamber of Industry and Commerce, London, for his memorandum on taxes in Germany, and to Dr. K. Kuncar, Austrian Commercial Delegate in Great Britain, London, for information on the present corporation tax system of Austria. Last but not least my thanks to the author, Dr. Knechtle, for a mass of additional information supplied and for his advice and support, as well as to Mr. F.B. Graham, General Manager and Managing Editor of the publishers, for valuable editorial assistance.

W.E. Weisflog.

Crowborough, Dec. 1978.

GLOSSARY OF ACRONYMS

DT	double taxation
DTA	double taxation agreement
IDT	international double taxation
IFL	International Fiscal Law
IL	International Law
PIL	Private International Law
BRD	Bundesrepublik Deutschland (German Federal Republic)
RI	Republic of Ireland
UK	United Kingdom
USA	United States of America
AP	Andean Pact
COMECON	Council for Mutual Economic Aid
EC	European Community
ECOSOC	Economic and Social Council (of the UN)
EEC	European Economic Community
EFTA	European Free Trade Association
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
LAFTA	Latin American Free Trade Association
OECD	Organization for Economic Co-Operation and Development
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNO	United Nations Organization
IBFD	International Bureau of Fiscal Documentation
ICC	International Chamber of Commerce
IFA	International Fiscal Association
UNICE	Union of the Industries of the European Community

Switzerland

BB	Bundesbeschluss (Federal Decree)
BG	Bundesgesetz (Federal Law)
BGE	Bundesgerichtsentscheid (Swiss Federal Court ruling)
BRB	Bundesratsbeschluss (Federal Council Decree)
BV	Bundesverfassung (Constitution of the Swiss Confederation)

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OG	BG über die Organisation der Bundesrechtspflege (Federal Law on the Administration of Federal Justice)
OR	Obligationenrecht (Commercial Code)
StG	Steuergesetz (Tax Law)
StGB	Strafgesetzbuch (Penal Code)
VStG	BG über die Verrechnungssteuer (Federal Law on the Anticipatory Tax)
WStB	BRB über die Erhebung einer Wehrsteuer; Wehrsteuerbeschluss (Federal Defence Tax Decree)
ZGB	Zivilgesetzbuch (Civil Code)

German Federal Republic (BRD)

AStG	Aussensteuergesetz; Aussensteuerreformgesetz (International Transactions Tax Law; International Transactions Reform Law)
ESTDV	Durchführungsverordnung zum EStG (Implementing Regulation to the Income Tax Law)
EStG	Einkommensteuergesetz (Income Tax Law)
KEST	Kapitalertragsteuer (Tax on Income from Capital)
KöSt	Körperschaftsteuer (Corporation Tax)
KStG	Körperschaftsteuergesetz (Corporation Tax Law)
StAnpG	Steueranpassungsgesetz (Tax Adjustment Law)

United Kingdom

ACT	Advance Corporation Tax
CGT	Capital Gains Tax
CT	Corporation Tax
CTT	Capital Transfer Tax
DTR	Double Taxation Relief
FA	Finance Act
FII	Franked Investment Income
ICTA	Income and Corporation Taxes Act
IT	Income Tax
PAYE	Pay as you Earn
SI	Statutory Instrument
TMA	Taxes Management Act
VAT	Value Added Tax

Dates are given in the British, not the American form. Thus 2.1.79 means 2nd January 1979, not 1st February 1979.

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