

# Comparative Tax Law

Victor Thuronyi

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## Biographical Note

Victor Thuronyi received his undergraduate degree in economics from Cambridge University (M.A. Cantab.) and his law degree from Harvard Law School (J.D. cum laude, 1980), where he served on the Board of Editors of the Harvard Law Review. He has practiced tax law at Miller & Chevalier (Washington, D.C.), served in the Office of Tax Policy of the U.S. Treasury Department in 1983-86, where he participated in preparation of the tax reform proposals that led to the Tax Reform Act of 1986, and was thereafter associate professor of law at SUNY-Buffalo Law School until joining the Legal Department of the International Monetary Fund in 1991.

He is the author of several articles on taxation, a coauthor of *The Taxation of Income from Business and Capital in Colombia* (Duke University Press, 1990), and editor and co-author of *Tax Law Design and Drafting* (volume 1, IMF: 1996; volume 2, IMF: 1998, and combined edition, Kluwer Law International: 2000).

Since 1988, he has travelled to the following countries to study or advise on their tax systems (not including brief visits for seminars and the like): Albania, Argentina, Azerbaijan, Brazil, Chile, People's Republic of China, Colombia, Czech Republic, Dominican Republic, Estonia, Georgia, Guatemala, Kazakhstan, Latvia, Lesotho, Mongolia, Mozambique, Palau, Peru, Romania, Saudi Arabia, Sierra Leone, Slovak Republic, Tajikistan, Ukraine, and Yugoslavia, and has supervised tax law reform projects in some 20 other countries.

He is currently Senior Counsel, Legal Department, IMF, and Adjunct Professor of Law at Georgetown University. This book was prepared independently from his employment by the IMF, and the views expressed therein are the author's personal views and do not necessarily correspond to those of the IMF or its members.

## Preface

This book provides a framework for understanding tax law in other countries. It may also help you understand better your own system. Because tax law has become so complex, many tax professionals have specialized – even sub-specialized – but this book follows the opposite approach, taking a broad view of taxes as they work in many countries. It focuses on what tax systems have in common and on key structural differences. This orientation should help you deal with the details of other countries' laws in the future, as well as providing a starting point in researching any comparative tax problem. It is assumed that you already have an understanding of tax law and policy based on your own system. Therefore how taxes work and what they are about are not covered here, nor are modes of tax policy analysis, since a substantial literature already exists.<sup>1</sup> This book deals with core common

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<sup>1</sup> Those interested in learning how the various taxes work, with a particular emphasis on design issues for developing and transition countries, are referred to TLDD (for explanations of abbreviations and references, see Abbreviations, *infra* at xviii, Appendix 3, and note 3 *infra*.) That book also contains a fair amount of discussion on comparative tax law, which is cited here where relevant. An excellent introduction (or a handy reference) to basic tax policy analysis is Neil Brooks, *The Logic, Policy and Politics of Tax Law: An Overview, in Materials on Canadian Income Tax* (Tim Edgar et al. eds. 12<sup>th</sup> ed. 2000). See also Joel Slemrod & Jon Bakija, *Taxing Ourselves* (2d ed. 2000). There is a fair amount of literature on comparative tax policy, including: Cedric Sandford, *Why Tax Systems Differ* (2000); *The Tax System in Industrialized Countries* (Ken Messere ed. 1998); and Ruud Sommerhalder, *Comparing Individual Income Tax Reforms* (1996). Those interested in such tax policy questions as: income versus consumption taxation, progressivity, tax mix, effective tax rates on capital income, taxation of capital gains, tax expenditures, and so on, should consult the literature, which I do not attempt to summarize here, since my focus is on legal institutions and culture. From a conceptual point of view, the tools of tax policy analysis are pretty much the same no matter what country one is analyzing. Since I assume that the reader has a good grounding in tax law and policy from the point of view of their own country, I focus on matters where modes of thinking differ from country to country. There is little to include here on tax policy analysis, since in principle the methodology should be the same for each country, even if the factual background and the values shared by policymakers and the population will differ from country to country.

knowledge that any well-informed tax lawyer should have about comparative tax law in our times, and it has a fairly practical orientation.

While tax systems have much in common, there are also different ways of looking at things in different legal systems. This book identifies and explains some of the key differences. A better understanding of modes of thought and prevailing opinions in other countries can lead to a better appreciation of one's own system and can facilitate international dialogue.

Such an understanding can also be the basis for research on the development of tax law and its role in society. This book does not seek to undertake such a study, but it may provide some ideas that others will take forward.

Tax is an interdisciplinary field. In particular, the economic view is important to tax policy. This book focuses on legal issues, without prejudice to the substantial international and comparative literature on tax policy written from an economic point of view.

The text is highly selective and abbreviated,<sup>2</sup> so that it can be read and not only used as a reference, although there are footnotes for the latter purpose.<sup>3</sup> (Those wishing information on a specific country should look up that country in the index.) The focus is on the underlying currents of the law, not all the details. The details you can look up for yourself, or ask about, but to understand them it helps to know where the main currents are. Many of the sections conclude with questions (set in italics) that you might keep in mind in researching a particular country. These questions are consistent with the tentative nature of this book – I am well aware of the limitations of my knowledge of different tax systems. Likewise, the footnotes do not purport to be comprehensive, but just refer to sources used and those that might be a starting point for further research.

This book does not purport to set forth new theories or ideas that have not been stated before. What it does is pull together material which at present

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<sup>2</sup> The emphasis is on issues that are of particular interest from a *comparative* perspective; on matters whose treatment in different countries does not differ fundamentally I tend to be silent, avoiding an encyclopedic treatment, which would have made the book too heavy. This book is an introduction, not a treatise.

<sup>3</sup> For brevity, works included in the bibliography (Appendix 3) are cited by author and date only; in other cases the Bluebook style of legal citation is followed (abbreviations are shown in a Table of Abbreviations). Except as otherwise indicated, quotations from works not in English are given as translated by me (*caveat lector*). While tempted to follow my gut on spelling, I decided that that might be too distracting for the reader and therefore for the sake of consistency I have tried to follow American spelling.

is scattered over a somewhat disparate literature, much of which is not available in English. It is hoped that the book will serve:

- for advanced students in tax, as a primary text for a course or as supplementary reading;
- for practitioners (whether in the private sector or in government), as a book which is short enough and hopefully interesting enough that busy people will have the time and inclination to read it;
- for tax academics, as an introduction to opportunities for teaching and research in comparative tax; and
- for those academics and practitioners who already know a considerable amount about comparative tax, as a collection of key points and references.

On issues that are already dealt with in detail in *Tax Law Design and Drafting*<sup>4</sup> (or other literature readily available), I tend to summarize here and to footnote to that literature.

Tax law changes rapidly, and so specific references in this book can be expected to get out of date, although the fundamental structure should remain valid for some time, since that changes more slowly. My intention is to make updates available on the Kluwer Law International website (currently reachable at [www.kluwerlaw.com](http://www.kluwerlaw.com)). This will allow readers to keep up with current developments at no additional expense. It will also allow me to correct errors and omissions, which are almost inevitable in a book of this breadth, since I do not pretend to be an expert on all of the tax systems discussed here. For these, I beg the reader's indulgence in advance, and also make a request that readers spotting errors that have not already been corrected by update let me know about them (the above website will facilitate this).

Statements in this book should not be relied on for tax planning or other purposes, as they do not necessarily reflect the latest developments or all the nuances of the law in specific countries.

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<sup>4</sup> For further information, see Appendix I. Key literature is listed in the Bibliography (Appendix III).

## **Acknowledgments**

As the citations in this book attest, I am indebted to the many scholars who have written about taxation, either in their own countries or on a comparative basis. Of specific help in preparing this book have been several individuals who generously offered comments on portions of the text: Rick Krever, Ron Schultz, Geerten Michielse, Delphine Nougayrède, and Roland Ismer.

I thank Marci Hoffman of the Georgetown University Law Library for advice about international tax research, and for her assistance and her work in developing and maintaining the international law collection at Georgetown.

I am also grateful to Eric Zolt, Rita Gilligan, Yoram Margalioth, and Jeanette Yackle of Harvard Law School for support in doing my research (and to those who have financially supported Harvard Law School so that it could maintain its excellent library of international legal materials).



## ABBREVIATIONS

A.C.	Appeal Cases (U.K.)
All ER	All England Reports
A.I.R.	All India Reports
Am.	American
AO	Abgabenordnung (German tax code)
BFH	Bundesfinanzhof (German Federal Tax Court)
BGE	Entscheidungen des Schweizerischen Bundesgerichts
BIFD	Bulletin for International Fiscal Documentation
B.T.R.	British Tax Review
BAO	Bundesabgabenordnung (Federal Tax Code) (Austria)
BStBl	Bundessteuerblatt
B.T.A.	Board of Tax Appeals (U.S.)
BVerfGE	Bundesverfassungsgerichtsentscheidungen (Decisions of the Federal Constitutional Court – Germany)
Cahiers	Cahiers de droit fiscal international (published by International Fiscal Association)
Can.	Canadian
C.B.	Cumulative Bulletin
CC	Constitutional Council ( <i>Conseil constitutionnel</i> )
C.E.	Conseil d'Etat (Council of State – France)
CFC	controlled foreign corporation
C.G.I.	Code Générale des Impôts (General Tax Code) (France)
CGT	Capital Gains Tax
Ch.	Chancery
CIR	Commissioners of Internal Revenue
C.M.L.R.	Common Market Law Reports
Cons. const.	Conseil constitutionnel (Constitutional Court -- France)
Const.	Constitution
C.R.R.	Canadian Rights Reporter
C.T.C.	Canada Tax Cases
D.C.	Décision constitutionnel
D.O.	Diário oficial (Brazil)
D.T.C.	Dominion Tax Cases
ECHR	European Convention on Human Rights (European Convention on the Protection of Human Rights and Fundamental Freedoms)
EC	European Community

ECJ	Court of Justice of the European Communities
E.C.R.	Report of Cases Before the Court of Justice of the European Communities
EEC	European Economic Community
e.g.	<i>exempli gratia</i> (for example)
E.H.R.R.	European Human Rights Reports (Sweet & Maxwell)
EStG	Einkommensteuergesetz (Income Tax Law)(Germany)
EU	European Union
Eur.	European
Fallos	Fallos de la Corte Suprema de Justicia de la Nación (Argentina)
FinStrG	Finanzstrafgesetz (Germany) (financial crimes law)
GAAR	General anti-avoidance rule
GST	Goods and Services Tax
GYIL	German Yearbook of Int'l L.
H.L.	House of Lords
H.R.	Human Rights
IAS	International Accounting Standard
ICTA	Income and Corporation Taxes Act 1988 (U.K.)
i.e.	<i>id est</i> (that is)
I.L.R.M.	Irish Law Reports Monthly
IMF	International Monetary Fund
Int'l	International
I.R.	Irish Reports
I.R.B.	Internal Revenue Bulletin (United States)
I.R.C.	Internal Revenue Code (United States), Internal Revenue Commissioners (U.K.)
IRS	Internal Revenue Service (United States)
ITAA	Income Tax Assessment Act (Australia)
ITLR	International Tax Law Reports
J.	Journal
J.S.C.	Judgments of the Supreme Court of Cyprus
L.	Law; or used in referring to articles of the L.P.F.
Law.	Lawyer
LGT	Ley General Tributária (Spain)
L.P.F.	Livre de procédures fiscales (France)

NZLR	New Zealand Law Reports
OECD	Organisation for Economic Cooperation and Development
OID	Original Issue Discount
OJ	Official Journal
Q.B.	Queen's Bench
R	Regina (or Rex)
Rec.	Recueil des Décisions du Conseil constitutionnel (Dalloz) (France)
Rev.	Review
R.T.C.	Reportorio Aranzadi del Tribunal Constitucional (Spain)
R.U.	Raccolta ufficiale delle sentenze e ordinanze della Corte costituzionale
S.C.	Supreme Court
SCJ	Supreme Court Journal (India)
S.C.R.	Supreme Court Reports (Canada or India)
S.T.C.	Simon's Tax Cases (U.K.); Sentencias del Tribunal Constitucional (Spain)
Tax'n	Taxation
T.C.	Reports of Tax Cases (U.K.), Tax Court (U.S.)
TCGA	Taxation of Capital Gains Act
TLDD	Tax Law Design and Drafting ( <i>see</i> Appendices 1, 3)
Treas. Reg.	Treasury Regulation (U.S.)
UNTS	United Nations, Treaty Series
U.S.	United States (or United States Supreme Court Reports)
U.S.C.	United States Code
VAT	Value Added Tax
WLR	Weekly Law Reports

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