Double Taxation Conventions and International Tax Law

SECOND EDITION

PHILIP BAKER

Sweet & Maxwell

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DOUBLE TAXATION CONVENTIONS
AND
INTERNATIONAL TAX LAW

A Manual on the OECD Model Tax Convention on Income and on Capital of 1992

Second Edition

by

PHILIP BAKER

of Gray's Inn

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INTRODUCTION

The publication of this second edition has been prompted primarily by the appearance of the 1992 OECD Model. While the changes to the Model Articles and the Commentary in 1992 were relatively limited, and had been largely forecast by interim reports of the OECD Committee on Fiscal Affairs, it seemed appropriate for a new edition to include the 1992 Model. This book contains the Model as published in 1992, together with Commentary and with the French text (which has equal standing as a text of the Committee on Fiscal Affairs). The Notes under each of the Articles contain a short description of the major changes from the 1977 Model to the 1992 OECD Model.

There have been several other significant developments since the first edition appeared in 1991. The publication in English translation of Professor Klaus Vogel's *Doppelbesteuerungsabkommen*[1] deserves particular mention. The book is a store house of information and analysis on double taxation conventions. The last few years have also seen a continuing increase in the number of court decisions on tax treaties from around the world. This edition contains references to more than 80 new decisions, mostly from superior courts and mostly decided since the last edition was published. Several dozen more cases were rejected for inclusion.

As in the first edition, the inclusion of cases in the Notes has been highly selective; cases on provisions of treaties which differed significantly from the OECD Model have been excluded, as have cases which did not appear to establish general principles. For comprehensive coverage of decisions and rulings on tax treaties, the reader is strongly recommended to consult Michael Edwardes-Ker's excellent work *International Tax Treaties Service*[2].

Aside from including the 1992 OECD Model and updating the cases, this edition also contains several new sections, primarily in the Introductory Topics; these include material on European Community Law and tax treaties, state succession and tax treaties, and some issues of procedure. Also, a very basic explanation of the working of tax treaties has been included in Introductory Topic B.

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[1] Klaus Vogel, *Double Taxation Conventions* (Kluwer, 1991, Deventer), here abbreviated simply as "Vogel".
[2] (In-Depth Publishing, Dublin, looseleaf), referred to here as "TTS".

There are many people I should like to thank for their assistance. My colleagues at Grays Inn Chambers have posed stimulating (and, generally, unanswerable questions) about tax treaties. Professors David Williams, John Avery Jones and Brian Houghton (with whom I have taught International Tax Law at London University) have also stimulated much discussion and reflection; also my thanks to the students on this course over the past years. I am very grateful to those who have supplied me with the originals of foreign court decisions, particularly John Avery Jones, Marc van Grimbergen, David Hinds, Eamonn McGregor and Robert Mikelsons. My thanks also to Elizabeth Allen, Jane Georgitsis, Rachel Hickman and Stephanie Talbot, all of whom had a hand in the typing. Thanks also to my parents for encouragement, and to the team at Sweet and Maxwell for their patience. Finally, more than thanks to my wife Bing-Sum, who alone knows just how taxing I can be. Needless to say, all errors and omissions are my responsibility and not that of any of the above.

The law is stated, so far as possible to confirm, as at May 1, 1993. Certain cases reported after that date have been included, however.

The first edition was dedicated to Wang Dan, Chinese student leader, who was sentenced to four years imprisonment for his part in the peaceful, pro-democracy movement of 1989. Wang was released in early 1993. This edition is dedicated to Wang Jun-tao, Chen Zi-ming and the lesser known activists of 1989 who are still languishing in prisons and labour camps.

P.B.

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