
International Tax Law

Edited by Andrea Amatucci

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PREFACE

Andrea Amatucci

The study of international tax law requires knowledge of tax law's evolution. On the threshold of the third millennium, tax law, originating as an independent legal discipline at the beginning of the last century, can now rely on a solid theoretical basis which will undoubtedly enable it to meet the difficult challenges implied in the current processes of internationalisation.

The complexities experienced up to now in all contemporary tax law systems, together with the theoretical implications arising from such changes, require prompt reflection on "new" principles which have emerged in the international legal scholarship. While providing the basis for further investigation, these principles show continuity even when the ongoing processes of internationalisation seem to be a pointer to a significant break with the old and consolidated relationship between the action of taxing and sovereignty of states.

As a result, the need is felt by the author to end this transition phase with a comparative analysis conducted by a sample of the best international tax law scholars, providing a systematic review of the fundamental themes of tax law and of the prospects in the near future of tax legislative systems. These systems are grouped according to the major homogeneous legal areas they belong to.

This leads us to perceive that a new systematic function has been acquired in legal theory by tax law, combined with the particular and, in some respects, original processes that have taken place in the development of specific legal systems.

In this context, there have been numerous analytical studies, concentrating on the interrelation between tax law and private law, and the specific types of legal sources according to their classification by legal categories. This has been done by using interpretative methods which require legal institutions to be properly qualified in order

to be adapted to technical formulations of tax rules, which are entirely influenced by the underlying economic process.

In celebrating the first centenary of the birth of tax law theory, recognising the progress already achieved in the 20th century, and which is bound to bear fruit in the present millennium, the events leading to the creation of the various tax systems have stimulated reflections and innovations as regards legal theory, opinions of academic commentators and case law, as well as profound and original legislative approaches, all revolving around the dissolution of those historical constraints which had managed to survive and be consolidated, i.e. the tenacious and strong relationship between the sovereignty of states and taxation.

This has been amply confirmed during the first years of the new millennium by emphasising, in the context of a far reaching process of globalisation, the growing internationalisation of tax institutions and relationships with a particular focus on those legal systems – above all those of Member States of the European Union – which pursued the aim of harmonisation for years as a prelude to modern forms of unification, which are not only required but guaranteed by methods based on the principle of full subsidiarity. As well as these interesting developments accompanying the start of the new millennium (which is not in contrast with, but complementary to the process of globalisation) the crisis and, in some cases, the disintegration of an ideology resting with centralised State, have suggested new forms of aggregation to come to the fore. While being inherently autonomous, these forms are consequently able to propose once again the compulsory system of leviable tax in significantly new terms capable of stimulating the development of hypotheses behind tax levying by relying on new forms, contents and institutions typical of tax law which, on the basis of past experience, evidence specific problems being closely related to the modern day.

The European Community system has been increasingly enriched by topics originating in different contexts in line with the specific features emerging from the various national legal systems. The Community system has proved able to interpret fundamental principles based on common ground, which require tax legal theorists of the modern day to seek (with intelligence and diligence) to ensure that these principles are properly identified and systematised.

In this context, a major emphasis in international tax law is given to the process of fiscal harmonisation in the EU Member States, and the implications of the relevant Treaties for the economic systems in the Americas and the Pacific Rim.

The reader will understand that a survey of the future of this branch of the law, together with the fundamental conceptual framework underlying this volume, does not aim at overcoming or even abandoning the framework which is inherent in the notion of “tax legal relation” or *rapporto giuridico tributario* (i.e. the legal situation whereby a mere act of levying a specific type of tax leads to an obligatory relation to arise between the taxpayer and the competent body in charge of imposing and collecting the tax), in particular when it comes to the analysis of the objective elements behind it. However, attention has also been focused further ahead by pointing out the correlation

with the considerable progress achieved in these specific topics in recent decades, and in similar problems covered in other branches of the law. By harmonising and correlating the elements mentioned above in relation to the procedures for the implementation of tax rules, the present analysis contains useful considerations on legislative systems which, while undergoing a chaotic process, are a reflection of long-term developments hinting at solid theoretical and practical outcomes in the future.

Looking back to recent achievements, it should be observed that the universal aspects of tax law have enabled schools of thought in various countries to contribute to this theoretical development, often in an independent manner.

The selection of the authors appearing in the present volume was made by taking account of their scientific and theoretical background, so that this volume would provide a useful view of their complex origin.

This is the reason why explicit reference was made to European countries (Germany, Italy and Spain) where, also due to their common, profound cultural and legal traditions based on Roman law, tax law literature had the best chance to consolidate and communicate internally, and produce fruitful results. Today, however, it is being pursued and addressed towards new goals. Scholars, inspired by the teachings and indications already given in the past, are now ready to deal with newly conceived legal frameworks behind tax systems operating in complex and open societies, characterised by major processes of internationalisation. We have therefore highlighted analytical studies in tax law emerging in these three homogeneous countries, rather than rely on a partial view of different research experiences gained in many countries of the old continent.

This volume is basically a collection of chapters or summaries of chapters of the work *Trattato di diritto tributario* (appearing in five volumes). This work was edited and co-ordinated by myself for the German authors (from W. Schick to C. Trzaskalik) and equally for the Spanish authors (from Eusebio González García to others), and was published in Italian by Cedam in 1994, with an Annual Review (*Annuario*) also being supplemented later in 2002.

At the beginning of the 20th century, strong premonitions emerged in Germany over the discipline of tax law originating in this country. The first specialised academic text on financial law was published in German by F. von Myrbach-Rheinfeld,¹ together with an essay on tax principles by B. Fuisting.² These contributions were coupled with others of equal standing in the tax field which appeared in the area of administrative law texts. From 1915, L. Waldecker, as an independent professor, taught courses in financial and tax law at the University of Berlin. In the years immediately after World War II, tax law studies developed in Germany to serve as a proper legal discipline. These studies, however underwent such a rapid and intensive growth that they acquired

¹ *Grundriß des Finanzrechts*, Leipzig, 1906.

² This work, entitled *Grundzüge der Steuerlehre*, was published in 1902.

a significant level of autonomy in a short time, allowing them to take their place next to other traditional legal disciplines. The 1920s, which coincided almost completely with the period of the Weimar Republic (1919-1933), deserve to be regarded as the golden age of studies in tax law in Germany. The fundamental theoretical contributions made in this decade came, in fact, from A. Hensel's manual,³ which represented the first systematically organised review of tax law, and the book by O. Bühler⁴ which, though less systematic, was of particular importance in terms of the general aspects of tax law being examined. In the same period, significant contributions of scientific value also emerged from research analyses made by German scholars outside the Universities, in particular E. Becker,⁵ a judge who was responsible for bringing the 1919 general tax law code (*Reichsabgabenordnung*) into existence. While it is true that the drafting of this code did not have the consensus of H. Nawiasky⁶ and L. Waldecker,⁷ it was however welcomed by E. Kaufmann,⁸ J. Jellinek⁹ and O. Bühler,¹⁰ despite the fact that it was not incorporated into a framework of general principles. E. Becker was a supporter of *wirtschaftliche Betrachtungsweise*, which is the essence of the methodology for interpreting tax laws. Together with the tax law theorists in this decade, mention should be made of the work by K. Ball,¹¹ an equally eminent scholar who was particularly resourceful in including the topic in the overall system. Mention should also be made of the work by H. Dorn,¹² who conducted research on double taxation; as well as R. Grabower¹³ and J. Popitz¹⁴ who provided an analysis of the laws instituting taxes on company income and trade. M. Lion¹⁵ provided an in-depth analysis of tax regulations applying to financial statements, while G. Strutz¹⁶

³ 1st edition in 1924; 2nd edition in 1927; 3rd edition in 1933.

⁴ *Lehrbuch des Steuerrechts, I. Allgemeines Steuerrecht*, Berlin, 1927. Oldenburg, 1990.

⁵ Cf. M.R. Theissen (ed.), *Gedenkschrift zum 50. Todestag von Dr. H.C. Enno Becker, 1869-1949*.

⁶ *Steuerrechtliche Grundfragen*, München, 1926, p. 8.

⁷ *Fin. Arch.*, XLII, 1925, pp. 69, 75.

⁸ *Recht und Wirtschaft*, 1919, p. 211

⁹ *Verwaltungsrecht*, 3rd edn, Berlin, 1931

¹⁰ *Lehrbuch des Steuerrechts, I. Allgemeines Steuerrecht*, 1927, p. 83

¹¹ *Steuerrecht und Privatrecht*, 1924, p. 153.

¹² Cf. F. Klein, "Zur Erinnerung an Herbert Dorn", in *StuW*, 1987, p. 97.

¹³ 13 Cf. A. Pausch, "Rolf Grabower und die Steuerwissenschaften", in *StuW*, 1973, p. 189.

¹⁴ Cf. A. Pausch, "Im Konflikt mit dem Steuerpositivismus. Johannes Popitz; zwischen gesetzlichem Unrecht und übergesetzlichem Recht", in *StuW*, 1985, p. 54.

¹⁵ Cf. A. Pausch, "Max Lion, Pionier des Bilanzsteuerrechts. Aufstieg und Verfolgung eines deutschen Steuerwissenschaftlers jüdischer Abstammung", in *StuW*, 1979, p. 149.

¹⁶ *Grundlehren des Steuerrechts*, 1924.

published a manual on tax law. In this decade, works on administrative law¹⁷ no longer devoted space to taxation law.

From 1933 to 1945, during National Socialism, F. Reinhardt¹⁸ outshone all the others. His major contributions included proposals for legislation with his vital role being played within administrative financial authorities. In 1942, the first teaching chair in tax law was established at the University of Cologne, with O. Bühler being appointed there in 1945.

Bühler provided a considerable stimulus to the significantly scientific evolution of tax law which took place in the German Federal Republic, this evolution also being substantiated by the establishment of further teaching chairs in specific fields in the second half of the century.

German scholars of tax law can be divided into two groups, on the basis of their theoretical formation. Some come from the field of public law while others come from civil law. These experts rarely come from the field of criminal law. It is a fact that German professors of tax law usually deal with other branches of public or private law jointly.

In Germany, it is not easy to identify schools of thought in the area of tax law. Nevertheless, and in line with the full academic independence of German scholars, there are only few of the common elements which are there to evidence, though vaguely, the existence of schools being understood to conduct homogeneous research studies in specific areas in the sense already described above.

Broadly speaking, however, all German scholars are disciples of Klaus Tipke, but they have formed their own opinion and have not propagated Tipke's theories. Notwithstanding this, the University of Cologne, where systematic formulations have been made in this branch of the law, has tended more than other universities to form a school including Klaus Tipke's predecessors, such as Othmar Bühler and Armin Spitaler, whose scientific research and method did not achieve however the importance and reputation gained indeed by the ability and achievement of a teacher of tax law like Klaus Tipke.

The specialised journal *Steuer und Wirtschaft* of the Cologne school, the oldest one, devoted considerable attention, with a flattering book review, to the *Trattato di diritto tributario* on which this volume is based (1997, p. 80).

The Münster school pays special attention to the relationships with constitutional and administrative law. Ottmar Bühler, Klaus Vogel, Paul Kirchhof and Dieter Birk taught at the University of Münster, but they differ considerably from one other in terms of their published research analysis. Obviously, the University of Münster is not

¹⁷ Cf. *Vorträge auf der Salzburger Umschulungstagung*, 1941, *Bucherei des Steuerrechts* (edited by Fritz Reinhardt), vol V.

¹⁸ Cf. Those who held tax law to come within administrative law area, see: O. Mayer, *Deutsches Verwaltungsrecht*, 3rd edn, 1924, I, para. 27-32; P. Fleiner, *Institutionen des deutschen Verwaltungsrechts*, 8th edn, 1928, para. 27 and W. Jellinek, *Verwaltungsrecht*, 3rd edn, 1931.

the only academic centre where the relationships between tax law and constitutional and administrative law is fully taken into account: there is a difference in quality.

A special analysis of the relationship with private law is made by the Bonn school, whose members are Werner Flume, Wolfgang Schön and Brigitte Knobbe-Keuk.

Due to such considerably new amount of research analyses, the reference framework of this volume is further enhanced to provide complete answers to the subject of tax law, which is as yet in a process of constant and active evolution.

The presence of such a considerable amount of authoritative German literature likewise confirms the interest taken by scholars in the progress of the tax discipline and the need for them to carry out comparative analyses with others from different but communicating cultural backgrounds. Despite cultural differences, however, fruitful dialogue among them has never failed. These scholars have devoted considerable attention to the specialised aspects of tax law, though without losing sight of some of the frameworks of tax law which are in common with the institutions of private law or public law.

Let me now mention the names of those contributing to this volume. Joachim Lang, professor from the University of Cologne, a place which is known for providing the oldest tradition of teaching and research in tax law, is the author of a basic manual appearing in the 17th edition published in 2002; and his teacher Tipke,¹⁹ who expanded and revised the manual, thus producing an excellent work in three volumes. Lerke Osterloh, a constitutional judge from the University of Frankfurt a/M and Christoph Trzaskalik from the University of Mainz, are known respectively for their research in the areas regarding the relationship between tax law and private law, and the activity of administrative financial authorities.

* * *

Also in Italy (the schools of which are analysed in the first chapter), the first sporadic preparatory approaches to the study of taxation law as a legal discipline come from research contributions made by eminent experts in administrative law at the start of the 20th century. In fact, O. Ranalletti²⁰ examined methodically and in detail the legal nature of the *imposta* system (tax), while F. Cammeo²¹ did so in the area of the constitutional legitimacy of the system of whatever type of tax. During this stage of scientific research, the description of tax law received little space in the manuals of administrative law.²²

¹⁹ Cf. K. Tipke and J. Lang, *Steuerrecht, ein systematischer Grundriß*, 18th edn, Köln, 2005 and K. Tipke, *Die Steuerrechtsordnung*, in three volumes, Köln, 1993.

²⁰ “Natura giuridica dell’imposta”, in *Municipio Italiano*, 1898.

²¹ “Le tasse e la loro costituzionalità”, in *Giur. it.*, 1899, IV, p. 204.

²² S. Romano, *I principi di diritto amministrativo*, Milano, 1912 and L. Meucci, *Istituzioni di diritto amministrativo*, Torino, 1909.

Ranelletti,²³ A. D. Giannini's teacher,²⁴ founded the Neapolitan school being inspired as it was by the substantive and uniform nature of financial law, where G. Ingrosso²⁵ first received his academic training.

The 1930s can be defined as the golden age of tax scholarship in Italy. Considerable stimulus to financial studies should primarily be ascribed to B. Griziotti.²⁶ Though conducted with an "integralist" approach typical of the legal and economic studies of the time and rejected by subsequent legal theory, his studies were such as to produce not only eminent economists at the University of Pavia, but also an appropriate tax law school whose leading and representative figure is E. Vanoni.²⁷ He had the merit of contributing towards research progress, especially on general themes, such as the interpretation of tax law, and of later being the unchallenged protagonist of the modernisation process in the Italian tax law system.

M. Pugliese²⁸ also deserves mention, with his studies on international fiscal law and tax liability, as well as his general contributions. Experts in tax proceedings such as G.A. Micheli²⁹ and E. Allorio,³⁰ together with the eminent expert F. Carnelutti,³¹ paved the way to the analysis of court hearings on tax matters.

In the 1950s, the transfer of G.A. Micheli³² to the chair of tax law at the University of Rome and of E. Allorio to the chair at the University of Milan provided particular stimulus to the theoretical development of tax law. Both of them provided particular stimulus to research and analysis on a topic for which they provided a major theoretical framework. As experts on the law of civil court proceedings, they have significantly

²³ *Diritto finanziario*, Milano, with a 3rd edition already appearing in 1928.

²⁴ "La classificazione delle imposte nel diritto tributario", in *Studi dedicati alla memoria di Zanzucchi*, Milano, Vita e pensiero, 1927, p. 337, *Istituzioni di diritto tributario*, Milano, I, ed. 1938, and *Il rapporto giuridico d'imposta*, Milano, 1937.

²⁵ Distinguished academics of administrative law continued being attracted by tax law subjects. Cf. Zanobini, "La sistemazione delle sanzioni fiscali", in *Riv. dir. pubbl.*, 1929, I, p. 500. "La legge di imposta nel diritto pubblico", in *Riv. dir. pubbl.*, 1911, I, p. 145 and *Istituzioni di diritto finanziario*, II: *Le entrate dello Stato*, Napoli, 1937. In the same context: E. Scandale, *La riscossione delle imposte dirette*, Napoli, 1929; M. di Lorenzo, *Principi di diritto doganale*, Napoli, 1934; F. D'Alessio, *Corso di diritto finanziario*, Napoli, 1937 and G. Tesoro, *Principi di diritto tributario*, Bari, 1938.

²⁶ *Studi di diritto tributario*, Padova, 1931 and "Per il progresso scientifico degli studi degli ordinamenti finanziari", in *Riv. dir. fin. sc. fin.*, 1937, I, p. 1.

²⁷ *Natura ed interpretazione della legge tributaria*, Padova, 1932 and "I soggetti passivi del rapporto giuridico tributario", in *Foro It.*, 1935, IV, p. 325. On these general topics: Cutrera, "La norma tributaria", in *Riv. dir. pubbl.*, 1933, I, p. 596 and "L'accertamento tributario", in *Riv. dir. pubbl.*, 1935, I, p. 121.

²⁸ *L'imposizione delle imprese di carattere internazionale*, Padova, 1930, *L'obbligazione tributaria*, Padova, 1935 and *Istituzioni di diritto finanziario. Diritto tributario*, Padova, 1937.

²⁹ "Sull'ammissibilità di una decisione allo stato degli atti del processo tributario", in *Riv. dir. fin. sc. fin.*, 1939, II, p. 13.

³⁰ *Diritto processuale tributario*, Milano, 1942.

³¹ "Introduzione allo studio del diritto processuale tributario", in *Riv. dir. proc. civ.*, 1932, I, p. 105.

³² He later published an important work, *Corso di diritto tributario*, Torino, 1984.

influenced the definition of tax trial proceedings and the complex, controversial debate over the burden of proof. Starting from rather approximate initial solutions, they provided a complete system identifying a variety of persons recognised by law as the subjects liable to tax, legal relations and court proceedings allowing legal theory to confidently face the difficulties involved in the functioning of today's tax system.

This process of enrichment of the Neapolitan school was completed with the transfer of V. Romanelli-Grimaldi³³ from the chair of administrative law at the University of Pisa to the chair of economics and financial law at the University of Naples. In contrast with the Pavia school, he returned to the topic of methodology, which had been introduced by the founder of the Neapolitan school, Oreste Ranelletti, inspired by the uniform and substantive nature of financial law,³⁴ again taken up by G. Ingrosso³⁵ and which would be continued, with particular attention to constitutional principles, by V. Sica³⁶ and G. Abbamonte.³⁷ This active theoretical development was made easier by the inclusion of chairs in tax law in university public competitions starting from the 1960s.

Together with these luminaries there are other significant figures who, though being committed to theoretical work along other independent lines, have been able to establish a dialogue with the experts referred above, thus encouraging a fruitful debate. I am referring, in particular, to the theoretical and practical contribution provided by A. Uckmar,³⁸ who in this context paved the way to younger academics, starting from his son Victor, who has more than honoured the paternal traditions at the University of Genoa through the great prospects offered by the law on registry tax, with the enormous impact of tax law on civil law institutions. Here, I would also like to mention the valuable contribution provided by Vittorio Berliri³⁹ to the topic of “best tax” (or *ottima imposta*) with subsequent analytical contributions by his brother Antonio,⁴⁰ who was active in research for a particularly long time at the University of Bologna.

These experts have stimulated in-depth analyses which were conducted in the second half of the last century by increasingly numerous as well as second generation students.

³³ “Metodologia del diritto finanziario”, in *Rass. di dir. pubbl.*, 1960, I, p. 1

³⁴ *Corso di diritto finanziario*, 3rd edn, Milano, 1927. On the Neapolitan school, see my article “L'insegnamento del diritto finanziario”, in *Riv. dir. fin. sc. fin.*, 1999, p. 492

³⁵ *Istituzioni di diritto finanziario*, vol. II, *Le entrate dello Stato*, Napoli, 1937.

³⁶ *Bilancio dello Stato e programmazione economica*, Napoli, 1964

³⁷ *Principi di diritto finanziario*, Napoli, 1975.

³⁸ *Le leggi del registro*, including three volumes and appendix, Padova, 1928-1931. Cf. also D. Jarach, *Principi per l'applicazione delle tasse di registro*, Padova, 1937.

³⁹ “La giusta imposta. Appunti per un sistema giuridico della pubblica contribuzione. Lineamenti di una riforma organica della finanza ordinaria”, in *Annuario di diritto comparato e studi legislativi*, edited by Salvatore Galgano, volume XIX, III; edited by *Istituto di Studi Legislativi*, Rome, 1930-1933.

⁴⁰ *Il processo tributario amministrativo*, Reggio Emilia, 1940 and *I principi di diritto tributario*, I, Milano, 1952, II Milano, 1957; III, Milano, 1964.

With this solid and complex theoretical basis, this book contains contributions by Italian authors representing the schools of tax law and financial law in the context of the specific topics being dealt with. This volume contains chapters on tax law by myself, as representative of the Neapolitan school, and by Nicola D'Amati (who taught at the University of Bari and is a student of A. D. Giannini) and on international tax law by V. Uckmar, an important figure also outside this school. They share the greatest experience in Italy both on the research and teaching level, having started their respective careers during the 1950s.

* * *

F. Sainz de Bujanda undoubtedly has the merit of encouraging research on financial law with particular reference to tax law. The theoretical development of tax law in Spain can be divided into three basic phases.

The first phase was only theoretical in character, basically characterised by contributions from the 1950s and 1960s, and collected in six volumes of the series *Hacienda y Derecho*. In the second part of the 1960s, Bujanda's and other Spanish scholars' research provided significant contributions to the progress of tax legal science.

The second phase was both theoretical and legislative in character, coinciding with the study of the legislative draft of the 1963 (revised in 2003) *Ley General Tributaria*. A Commission worked on this draft for two years, with the participation of eminent tax law experts of the time.

The third phase was theoretical and didactic in character. After 1970 the combined teaching of economics, finance and tax law was abolished, and the first five university chairs embracing only "financial and tax law" subjects were established. In the 1970s the publication started of Sainz de Bujanda's magnificent work consisting of three volumes.⁴¹

The consistent and constant scientific evolution in the last 30 years of the 20th century resulted in research activity being carried out by a growing number of Spanish experts who dealt with all the basic topics of tax law. As regards the Spanish tax law research community, with the contribution of Eusebio González García, this volume includes authors representing the current tax law schools in Spain. These are included in two categories: the first one is the important school founded by Sainz de Bujanda and includes approximately two-thirds of the academic world evenly distributed in three areas (Andalusia, Valencia and Madrid). The second school groups together the other third of the professors, some of whom are inspired by Calvo Ortega and others by Pérez de Ayala.

This volume is an expression of such a complete scientific reality; in fact, the school of Sainz de Bujanda is represented by Casado Ollero, from the Andalusia school, while the minority area is represented by González García.

⁴¹ *Sistema de derecho financiero*, Madrid, I, 1977.

In any case, the reference to the above schools is appropriate also to consider that a Spanish translation of the revised edition of *Trattato di diritto Tributario*, published by Temis Bogotá and edited by myself, did not come as a mere chance. This mirrors the process by which the “concepts” formulated by the academic Achille Donato Giannini crossed the ocean. They were included in the Spanish *Ley General Tributaria* of 1963, thanks to the Madrid professor Fernando Sainz de Bujanda. This model, thanks to Montevideo professor Ramón Valdés Costa, was then implemented in the Tax Code (MCTAL, 1967) adopted by many countries in Latin America. The other contemporary line of Italian tax law theorists, developed by the Pavia school, was disseminated in the faculties chaired in Argentina by Mario Pugliese and Dino Jarach, both students of Benvenuto Griziotti.

* * *

The author intended to integrate this view of tax law scholarship with the rules of the EU treaties governing the relationships of European tax systems with the other most important economic areas, i.e. the Americas and the Pacific Rim countries. I am sure that the analysis of the effects of the EU Treaty on tax rules on Western and Eastern countries will enable the reader to complete the world panorama provided in this volume.

In the USA, tax law has undergone highly interesting developments.

In this regard, however, I would like to say that tax law and policy became an important element of legal scholarship as early as the 1930's. Since that time, tax law has become increasingly important and complex. Today, tax law is taught in virtually every Law School in the United States, which means that there are professors at every Law School who specialise in tax law and policy. Moreover, there is a question about federal tax law on the Bar Examinations of every state of which I am aware.

While I may sound boastful of my colleagues working in the area of tax law, it is necessary to remind the reader that an important contribution of tax law scholarship in the United States lies in the recognition that a proper understanding of tax law equally depends on a proper understanding and examination of the economic, political and social consequences, whether from a macro or micro point of view.

Charles H. Gustafson, who is an excellent representative of this highly important area of scholarship in international tax law, has been involved in this project. Gustafson is a professor at the Georgetown University Law Center in Washington, D.C. He teaches in various areas of public international law, international trade and investment and federal taxation. He is the co-author of several casebooks on federal income taxation, including his *Taxation of International Transactions* (West 2001, 2nd edition). He is an active member of the American Law Institute and has served on a number of committees for the American Bar Association.

* * *

Before World War II, there was less academic activity being conducted in the area of tax law. Japanese academic research into this field substantially began after 1945, accepting Professor C. Shoup's Tax Mission from the US.

Professor Hiroshi Kaneko is the leading scholar. He is a Professor Emeritus of the Faculty of Law at the Tokyo University. Professor Kaneko is a representative of the IFA, Japanese Branch and a member of Trustees for IBFD. He has already retired from Tokyo University, although he is still committed to academic research activity.

The Shoup Mission recommended university lectures in tax law both at the Tokyo and Kyoto University. The professor who first covered a tax teaching chair at the Tokyo University was Shozaburo Sugimura, with Professor Shuichi Sugai covering the same teaching at the Kyoto University. Professor Kaneko is a successor to Professor Sugimura. Professor Yoshihiro Masui is now in the teaching position which was covered by Professor Kaneko before his retirement.

In Japanese universities, only some law faculties require teachers to lecture in tax law. At the Faculty of Commerce and Business Administration, for example, tax accounting courses are taught by professors of accounting. The academic tax law association is represented by the Japanese Society for Tax Law. The number of members of this association amounts to over 300 and they provide purely academic activities for the public.

Yasujuki Kawabata⁴² is the author of the chapter dealing with the effects of the EU Treaty on the Pacific Rim countries (Tax Law, International Taxation); he is a significant figure in Asia, being Professor of Law from the Department of International Law and Business Law at the International Graduate School of Social Sciences of Yokohama National University in Japan.

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While stressing the aim of providing a complete volume, considerable space has been devoted to the topics which have aroused the greatest research interest in recent decades, in relation to the scholarship trends in specific areas of tax law in general and

⁴² He is the author of numerous publications. Some of the most recent co-written works are: *Textbook on International Taxation* (Volume I: *Texts*), edited by Tadaschi Murai, Shinzasha, 165 pages, (2001) (Japanese); with others, *Technology Innovations and International Taxation: Kyoto International Taxation forum 2nd Symposium*, edited by Hiroshi Kaneko and Masahide Nakamura, Seibunsha, 279 pages, (2001) (Japanese); with others, *Interpretation of Tax Law and Treaties and Transfer Pricing in Japan and Germany*, edited by Klaus Vogel, Kluwer Law International, The Hague, 256 pages, (1998) (English); with others, *Study on International Taxation: Theory and Policy on International Tax Avoidance* (Kyoto Comparative Law Center Monograph No. 2), Hokensyuppan, 282 pages, (1990) (Japanese); *Pass-Through and Pay-Through: View from Income Taxation on SPV*, *International Tax Study* No. 8 (2002), pp. 265-271 (Japanese); *Tax Systems on Interest, Dividends and Capital Gains*, *Zeikei Tsushin* Vol. 55 No. 12 (2000), pp. 101-107 (Japanese); *Legal Issues on Environmental Taxes*, *Zeiken* No. 92 (2000), pp. 23-28 (Japanese); *Income Taxation for Repackaging and Pass-Through*, *Sozei Kenkyu* No. 609 (2000), pp. 121-136 (Japanese); "Taxation of Non-Profit Organizations", *Cahiers de droit fiscal international* Vol. 84a (1999), pp. 539-569 (English); "Reviews on Taxation on Financial Instruments and on International Taxation", *Zeikeitsushin* Vol. 52, No. 15 (1997), pp. 129-135 (Japanese).

of international tax law in particular, towards which the various schools are oriented. The authors have each been asked to examine topics on which they conducted specific research analysis.

In preparing this volume, I thought it appropriate to reconcile the need for uniform analytical criteria with independent analytical approaches provided by the authors. Therefore, and in line with the purposes of the volume, I opted for the size of individual contributions to be left up to authors to decide within a previously agreed length of pages, taking account of what they themselves believed the specificity of the theme being dealt with might require in terms of writing length.

This volume is also designed to express the fundamental achievements gained by tax law experts at the end of the first centenary in this discipline, and which have allowed for the opening up of new horizons already in sight at the start of the third millennium.

In this sense, the comparison between the various methodological approaches already adopted and the achievements gained by international tax law scholars in their own country systems of law under investigation, has proved to be extremely useful for the growth of the resources of international research, in which the need for a better knowledge of domestic legislations cannot be disregarded. All the more so in this case, since this comparison may provide further stimulus to bringing the various schools closer together, in such a way as to conduct assessments of the current status of scholarship in other countries.

This is the most useful path for international tax law experts as well as those of other branches of the law to embark upon. There is no doubt that any cooperative and comparative effort made to assess scientific achievements will, as a result, increase the progress of tax law studies globally. It is important that these achievements be assessed closely with the improvement of the methods for analysis and knowledge of the field.

We are familiar with the process which makes it easy for legal theorists to acquire a better knowledge of the purposes behind the command or provision enacted by a legislature and, consequently, the real dimensions of taxation arising out of the fact in this case, thus making it possible for them to come up with careful examination of the legitimate grounds underlying tax levying acts of administrative tax authorities, including, of course, their procedural law aspects.

Incidentally, these are the reasons why a volume like this has been designed for practitioners in the legal profession, i.e. to provide them with adequate and updated information on the basic aspects of international tax law, and to reliably and fully express the theoretical approaches adopted by the relevant schools in this area, as well as to express the main contributions of jurisprudence.

This book is intended to fulfil the above purposes, and at the same time, to provide all the most recent bibliography and jurisprudence references in order to go more deeply into specific topics.

W. Schick, J. Trzaskalik and E. Gonzáles, co-ordinating this volume together with various authors, have the merit of covering new areas of study with the fullest scholarly quality, combining significant contents with improved dialogue between scholars from different nationalities and languages, but inspired by the common purpose of ensuring that the academic discipline they have investigated and acquired knowledge on can advance towards a better, more complete theoretical understanding.

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This exciting venture began with the planning of the *Trattato di diritto tributario* and ended with the publication of this work. The first was mostly experienced in the relaxing and understanding company of my wife Mary whose life, dedicated to the family and students, ended due to an incurable illness before this hard task was completed. However, I would like to dedicate the results now achieved to her, being indebted for the affection, comfort and support she was able to provide even when it was she who needed it more.

CONTENTS

Preface	xv
----------------	-----------

PART I

Chapter I

The Scientific Autonomy of Tax Law: A Methodological Approach	3
--	----------

Andrea Amatucci

1. Oreste Ranelletti, the Founder of the Neapolitan School of Public Finance Law	3
2. The Three Phases of Ranelletti's Experimental Methodology	5
3. The Testing and Analysis of Ranelletti's Methodology, Conducted by the Scholars of the Neapolitan School	9
A. Francesco D'Alessio	9
B. Gustavo Ingrosso	10
C. Romanelli-Grimaldi	12
D. Vincenzo Sica	13
E. Giuseppe Abbamonte	14
4. The Pavia and Milan Schools of Tax Law and their Relationship to Ranelletti's Scientific Achievements	16
5. Methodological Rigor as the Foundation of the Scientific Autonomy of Tax Law	21

Chapter II

Tax Law	23
----------------	-----------

Nicola D'Amati

1. Theoretical Construction of Tax Law	23
2. From <i>Steuerrecht</i> to Tax Law	24
3. Tax Legal Relation as a Coherent and Systematic Expression of Tax Law	27
4. Unity and Autonomy of Tax Law as Most Recently Advanced by Legal Theorists	29
5. The So-called Power to Levy Tax as a Presumed Object of Tax Law	30
6. The Question of Autonomy	32
7. The Position of Tax Law within the Context of Financial Law	35