11-15-2004

Introduction, Comparative Income Taxation: A Structured Analysis

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Recommended Citation
Hugh J. Ault , Brian J. Arnold. "Introduction" in *Comparative Income Taxation: A Structured Analysis* 2nd ed. The Hague: Kluwer Law International, 2004.

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COMPARATIVE INCOME TAXATION: A STRUCTURAL ANALYSIS (2nd ed.), 471 pp.
(Kluwer Law International, 2004) (also published as in a paperback edition by Aspen Publishers)

Introduction

This work presents a comparative analysis of some of the structural and design issues which are involved in mature income tax systems. It is aimed primarily at professors and students of tax law, both in the United States and abroad, whose central concern lies naturally in working with the concepts and principles of their own domestic systems. For them, the material is intended both to provide information on what other systems actually do, which is interesting in itself, and to suggest other approaches which might represent alternative ways of dealing with corresponding issues in a domestic setting. By introducing a comparative dimension, the materials can be used both to enrich the classroom discussion of domestic problems and to give a starting point for further research and study. For example, who has not wondered, when discussing an interesting question like the child care deduction or the taxation of imputed income, what other countries do in their systems. While the answers are there, they are hard to find and harder to evaluate. This work is at least a beginning in making the approaches of other systems more accessible.

The countries selected for the study, Australia, Canada, France, Germany, Japan, The Netherlands, Sweden, the United Kingdom and the United States, all have relatively mature and sophisticated tax systems. One would expect a priori that many similar issues and questions would emerge and this intuition is confirmed by the materials. The responses to the issues, however, vary substantially in many cases though also showing some areas of congruence. Several of the systems belong to the same broad legal "family." The approaches of the United Kingdom, Canada and Australia all display some of the expected degree of similarity, given their common historical roots. The Continental systems likewise, though to a lesser extent, have similarities in structure and result. The United States system has developed without much influence from other systems and the Japanese system has both Continental, especially German, features as well as displaying a strong influence from American ideas in the postwar developments.

Thus while the details differ, there are some recognizable "family resemblances." The Commonwealth systems all have, in varying degrees, schedular features. Different classes or categories of income may be taxed in different ways and at different rates, with varying rules for inclusion and deduction. Trust notions of "income" and "corpus" have also played an important role in developing tax concepts. Partly as a result of this latter phenomenon, the taxation of capital gains has been the subject of special legislation, often structured as a separate tax regime.

Continental systems, as well, have significant points of resemblance. Financial accounting rules have often been important in the development of tax principles, especially in the computation of business income. In addition, and unlike the Commonwealth tradition, capital gains realized in a business setting have usually been subject to the normal tax rules dealing with business profits. Capital gains of individual investors, however, have at least initially escaped tax, though the traditional approaches have often been modified, extending taxation to certain limited classes of gains.

Beyond these broad features, each of the systems has evolved its own particular set of approaches and principles. These are outlined in some detail in the individual

Country Descriptions contained Part One. These individually-authored pieces present the overall structure of the systems being considered and try to provide some feel for the "tax culture" or climate and institutional framework in which the substantive rules operate. They can be read as "stand alone" descriptions of the systems or referred to subsequently for a better understanding of the later discussion of a particular rule. It is essential to keep in mind some of the basic features outlined in the Country Descriptions when dealing with the later substantive material. For example, in thinking about the structure of the rules on corporate liquidations, it is crucial to remember that in some countries private capital gains of an individual will not be taxed while business gains will be subject to full taxation. Similarly, in considering items included in the tax base, taxation may depend on into which, if any, of the various taxable categories the item can be fitted. To facilitate the necessary cross-references, some of the more important features of each system are summarized in tabular form at the end of the Part One.

The remaining three Parts deal with Basic Income Taxation, Taxation of Business Organizations and International Taxation respectively. As will be apparent, the organization is based on an American format and follows in broad outline the issues and questions typically covered in an American law school course on each particular topic.

Within each Part, the various substantive Subparts and Sections begin by outlining some of the structural issues or problems which have arisen in the area under consideration. The responses of the countries to the problems are described together with an attempt to identify common patterns or approaches and to highlight unique or interesting solutions. The descriptions of the substantive rules vary in completeness and not every issue is discussed in connection with every country. The focus is on structural and design issues, though there is some consideration of extra-fiscal measures.

The analysis reflects state of the law in the Spring of 2004 and no attempt has been made to include developments since that time, though reference is occasionally made to anticipated future trends. Given the nature of the materials, they clearly should not be used to give legal advice; they are intended to be solely of "academic" interest.

The materials conclude with a Bibliography which will enable the interested student or teacher to pursue a particular topic in more detail. In many of the jurisdictions there is little material in English and some foreign language references have been supplied.

There is of course always a danger in attempting to relate legal rules or concepts in one system to a seemingly similar situation in another system. The institutional and cultural backgrounds may be different and the actual operation of each individual rule depends on the overall structure of both the tax system and the legal system generally. Doing meaningful comparative analysis is especially difficult in the tax area, where political pressure, chance and historical accident have all had an important influence on the development of the systems. However, with appropriate caveats and cautions, there is much to learn in the tax field from a comparative analysis of common problems. One need not believe in the existence of a Platonic Tax Form to find useful insights in the experience of others.