

Foreword

Particular intelligent beings may have laws of their own making, but they have some likewise which they never made. Before there were intelligent beings, they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal.

Montesquieu, *The Spirit of Laws*, 1758, translated by Thomas Nugent

International taxation presently lies at the crossroads between two fundamental – yet contradictory – developments.

The first one is the progressive emergence of a supranational legal order in tax matters, under the initiative of global or regional organizations, such as the WTO, the OECD and the European Union. In the last century, states have agreed upon a set of common rules, with the aim of facilitating cross-border activities and removing obstacles, such as double taxation or discriminatory taxation, while safeguarding their taxable base and their power to use tax instruments to carry out effective policies in the economic, social and environmental areas. The main effect of these rules is to establish a level playing field, by eliminating (or, at least, strongly reducing) taxes which are targeted at imported products or foreign taxpayers and ensuring equality of treatment between domestic and cross-border taxpayers and transactions in the framework of a general system of taxation. At the same time, in order to avoid some taxpayers taking undue advantage of this situation, states have adopted cooperation instruments, whether on a bilateral or multilateral basis, in particular in the field of exchange of information and administrative assistance between tax authorities. Moreover, they have entered into agreements to address issues of global concern, such as the protection of the environment, which illustrates that the international legal order has broadened its objectives beyond the preservation of peace and the development of international trade.

The second development is more recent, and more preoccupying. We are indeed witnessing, in various parts of the world, a shift towards

political nationalism and economic protectionism, which also impacts tax policy. Some are now openly advocating the return of tax borders as an adequate instrument to safeguard economic wealth and social cohesion, while questioning the need or the opportunity to address global issues at the international level, when not in some cases openly challenging the very existence of those issues, such as climate change. These renewed ambitions inevitably clash with, if not the words, at least the spirit of the existing international (tax) rules.

In this context, the research of Alice Pirlot is extremely timely. Based on a thorough investigation of the existing law, and a deep understanding of its historical and economic rationale, it offers a remarkably sound and well-balanced analytical framework to define the exact limits in international law to the application of cross-border taxes, namely for environmental purposes. The research manages to stay resolutely away from (unfounded) ideological reasoning, which would either blindly support interpretations rejecting the very idea that cross-border trade should be the object of specific taxes, or systematically support sovereignty arguments, which would undermine the legitimacy of supranational rules. One of its most original features is the reconstruction of the concept of 'border tax adjustment', which has been often misunderstood by the general public, by lawmakers and even in the scholarly literature. The research indeed unfolds into a policy analysis of the legal controversies surrounding the notion of border tax adjustment in environmental taxation. This analysis shows that it is often easier to hide behind legal arguments than to oppose the very principle of a measure. From that perspective, the book calls for legal experts to adopt a societal perspective when interpreting the law and its limits, acknowledging that the difference between action and passivity is more a question of political will than of respect for the law. A very stimulating lesson for a piece of research that makes an important contribution to the comprehension of the conundrum faced by states wishing to develop their tax policies while remaining open to trade with the rest of the world.

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