
In this superbly written and eloquently argued article, Vann offers his insights into the theoretical and structural reasons why transfer pricing is the dominant international tax issue and a source of tax avoidance, and how to address these problems. He relies on the theory of the firm developed by R.H. Coase as a policy backdrop for the overall analysis.

At the beginning of the article, Vann dismisses the views of tax administrators and tax practitioners that the current transfer-pricing rules can allocate business profits among countries on the basis of a market analogy (the “hard-boiled wonderland” camp) and the views of economists that the current system of taxing international business income is doomed (the “end-of-the-world” camp). In his view, both camps ignore the real world. The inside of a multinational firm is not like a market, although it is possible to use some market analogies to sensibly allocate profits among countries. The corporate tax shows no signs of coming to an end; on the contrary, it has remained remarkably buoyant in member countries of the Organisation for Economic Co-operation and Development (OECD). As a legal academic sitting between these two camps, Vann offers a “realistic” middle ground. He identifies three main structural problems in current transfer-pricing law:

1. the basis for defining whether a corporation is present in a country for tax purposes is too narrow;
2. too much emphasis is placed on intrafirm contracts; and
3. too much emphasis is placed on risk (which is a legal concept) and not enough on personnel and assets in dividing up international tax revenue.

Vann suggests limiting contractual freedom in transactions by putting more emphasis on other, substantive factors, such as people and assets, in locating profits. He also suggests using a form of profit split for the unallocated balance of profits.

J.L.

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Governments have been increasingly dissatisfied with the ability of multinational corporations to move taxable income among countries through transfer pricing and the location of debt. A solution being seriously considered by the European Union is to consolidate all corporations within a corporate group and then allocate the taxable income by a formula, such as the sales-salaries formula used in Canada for interprovincial income allocation. This is known as the common consolidated corporate tax base (CCCTB) proposal. A primary interest of Canadians in this issue is that a precedent in Europe could lead to the eventual adoption of a similar system for countries in the North American free trade agreement (Canada, the United States, and Mexico).

The article by Bettendorf et al. simulates the effects of the European CCCTB proposal using a computable general equilibrium model. The conclusion is that adopting such a formula produces a small welfare gain of 0.01 percent of gross domestic product (GDP) for the European Union as a whole. However, the article raises doubts as to whether enough countries would agree to the change to make it viable, since the effects of applying the formula vary tremendously across countries. For example, Belgium loses almost 1.5 percent of GDP, reflecting the large role of multinational firms in the Belgian economy and the degree of profit shifting taking place under existing law. On the other hand, Poland and Spain gain about 0.4 percent of GDP. Surprisingly, most of the low-tax countries would gain from the proposal.

The article by Hines approaches the issue from a statistical direction: Can the commonly proposed allocation formulas be justified as being a “correct” means of allocating taxable income in the sense that the relevant factors (sales, salaries, and tangible assets) perform well in statistically predicting profits (a proxy for taxable income) across a large sample of companies’ financial statement data? The answer is no—these factors explain only a fifth of the observed variation. The unanswered question, of course, is whether the existing system of separate accounting, with the associated ability of corporations to manipulate these allocations through transfer pricing and other means, is any better.

A.M.
The Institute of Fiscal Studies (IFS) in the United Kingdom is just completing a two-phase in-depth study of the tax system. The first phase was to commission 13 studies on the economics of the tax system, addressing key themes in tax design. The result, *Dimensions of Tax Design*, is a massive, and masterly, volume published in 2010. The second phase is a shorter volume, *Tax by Design*, making specific recommendations for change in the UK tax system. This volume is scheduled to be published in the spring of 2011, but its key findings were released in November 2010. The first book is available on the IFS Web site, and the second book is expected to be posted there later this year. Given the $200+ price of the first volume alone, this is a handy option.

The breadth of topics covered in *Dimensions of Tax Design* is revealed by the chapter titles:

- “Taxation in the UK,”
- “Means-Testing and Tax Rates on Earnings,”
- “Labour Supply and Taxes,”
- “Value Added Tax and Excises,”
- “Environmental Taxes,”
- “The Base for Direct Taxation,”
- “The Effects on Consumption and Saving of Taxing Asset Returns,”
- “Taxation of Wealth and Wealth Transfers,”
- “Taxing Corporate Income,”
- “International Capital Taxation,”
- “Small Business Taxation,”
- “Administration and Compliance,” and
- “The Political Economy of Tax Policy.”

Unfortunately, there are no separate tables of contents for these chapters.

The discussion is certainly in depth, with most chapters being 60 to 100 pages long, but it is presented in a way that makes it accessible to a broad audience. Mathematical formulas are set aside from the text in boxes, along with technical descriptions, so that they can be skipped without loss of continuity. Most chapters are accompanied by comments from two or three discussants, adding another 20 to 40 pages. The

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6 At www.ifs.org.uk/mirrleesReview.
focus is on broad principles, and knowledge of the UK tax system is not necessary for an understanding of the material.

Most chapters are written at a high level of generality and generally avoid the sort of questions that occupy the day-to-day tax reform process. For example, chapter 6, “The Base for Direct Taxation,” does not address medical expenses, charitable expenses, or whether the individual or the family should be the tax unit (the unit for filing tax returns). Instead, it asks how annual capital income should be taxed, whether savings should be tax-deductible, and whether taxes on earnings should depend on the age of the taxpayer.

This focus on basic questions and fearless investigation into ideas without regard for their political palatability produces some surprising results. For example, if there is a correlation between height and earning ability, perhaps taxes should be based on height—the advantage being that, since the tax cannot be avoided, there is no distortion of decision making. The authors of the chapter on direct taxation recommend against that, but they do suggest that there should be investigation of the possibility of different tax structures for different ages. Perhaps, for example, younger workers should pay less tax than older workers with the same ability to pay because younger workers are less able to borrow, if necessary, to pay the tax. Although this might seem inequitable, it is not so if equity is measured on a lifetime basis; most people will be old sometime.

Another aspect of this fearless investigation is that sometimes it leads an author to a change in mind. Thus, Robert Hall, the leading proponent of the flat tax, now says that tax schedules should have more than one rate “to preserve the desirable feature of current taxes that they are paid mainly by the prosperous.” Alberta remains the only province in Canada with a single-rate personal income tax, implemented in 2001.

The chapter of widest interest to Canadians is perhaps chapter 13, “The Political Economy of Tax Policy.” This chapter has more of a UK emphasis than most of the others—a focus that is welcome for Canadians, since both countries have a parliamentary system of government and thus have a similar decision-making process. A key insight of the chapter is why Margaret Thatcher’s government was able to propose and implement the poll tax in 1990, which replaced the property tax with a flat-rate charge for each adult in a household, even though it violated deeply held public beliefs in progressivity in taxation. The authors’ explanation is that the “first-past-the-post” electoral system makes majority governments likely, and the system of patronage produces strong party discipline. Hence, there is a great freedom of action for policy makers, with little parliamentary scrutiny of policies once they have been announced. Deeply unpopular policies can be implemented, resulting in

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7 The latter two issues are discussed briefly in other chapters.
8 James Banks and Peter Diamond, “The Base for Direct Taxation,” chapter 6, at 592-95.
severe punishment by a disgruntled public when elections are held. This insightful analysis appears to apply to the Canadian Progressive Conservatives’ decline from a 151-seat majority to 2 seats in the 1993 election, for which the implementation of the resented goods and services tax is widely believed to be a major cause. The saga of the harmonized sales tax in British Columbia (and perhaps Ontario?) provides another example.

The companion volume, *Tax by Design*, will be reviewed in this feature in a later issue.

A.M.

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**J. Paul Dubé, Proving Your Status: Establishing Eligibility for the Canada Child Tax Benefit**, Ombudsman Special Report (Ottawa: Office of the Taxpayers’ Ombudsman, 2010), 15 pages

**J. Paul Dubé, The Right To Know: Examination of the Sufficiency of Information in Decision Letters from the Appeals Branch of the Canada Revenue Agency**, Ombudsman Report (Ottawa: Office of the Taxpayers’ Ombudsman, 2010), 18 pages

The Office of the Taxpayers’ Ombudsman has had a low profile since it was established in 2008, and some people were beginning to wonder if it was a useful institution. In the autumn of 2010, the office issued two reports that proved its worth. Both of these reports make good use of taxpayer vignettes to illustrate systemic problems with the Canada Revenue Agency’s (CRA’s) communications with taxpayers. The reports are written in non-bureaucratic but accurate language, and they are a joy to read.

One of the findings noted in the report *Proving Your Status* is that although the Canada child tax benefit can be temporarily redirected from one parent to the other to accommodate a shift in custody (as might happen over the summer months), the CRA provides no indication that this is possible, either in its published guides or on its Web site. Further, the application for redirection of payment is rejected if it is made after the child has returned to the other parent. As the report drily observes, “*It is unfair to reject a taxpayer’s claim for benefits because they did not comply with a policy when they could not readily obtain information about the policy from any of the CRA’s publications or Web site.*”

The report *The Right To Know* provides similar findings about the decisions of the CRA’s Appeals Branch. In particular, taxpayers have only 90 days to file a notice of objection to the Tax Court of Canada if they disagree with an Appeals decision, yet it may take more than that amount of time to obtain the written reasons for the decision

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11 At 11.
through means such as the Access to Information Act. The report makes a convincing case that such reasons should be provided automatically with the decision. The minister of national revenue has stated that the necessary changes to implement both of these reports will be made.12

A.M.

François Vaillancourt, ed., *Prefilled Income Tax Returns: A Comparative Analysis of Australia, Belgium, California, Québec and Spain* (Vancouver: Fraser Institute, 2011)

The idea of prefilled tax returns is that the government takes the information from tax slips and prepares a preliminary tax return to provide to individual taxpayers, who can then add other information and file the return. The purpose is to reduce taxpayer compliance costs, although this would be at the expense of greater administrative costs for the government. In December 2007, the Quebec government announced a program that would start with a target group of 100,000 personal income tax filers, 80 percent of whom were to be seniors, with the goal of extending the program to all Quebec tax filers for the 2010 taxation year. This monograph uses information obtained from freedom-of-information requests to examine the Quebec experiment. Four other chapters analyze similar programs in four jurisdictions outside Canada.

The Quebec results were as follows. Of the 100,000 taxpayers selected for the 2007 taxation year, 93 percent accepted the offer of a prefilled return and 33 percent of those made use of it to file their return. This produced a takeup rate of 31 percent of the targeted taxpayers, which was a disappointment relative to the target of 50 percent. The targeting was effective in that 95 percent of the selected taxpayers submitted the prefilled return without adding any additional information. However, 86 percent of the recipients of the prefilled form who chose to use the standard form did not need to do so, since the prefilled form had exactly the same information. Reasons cited for not using the prefilled form were that it was received too late (52 percent) and that the respondent preferred to use the usual form (46 percent); these two groups overlapped, since more than one response could be given in the survey. The Quebec government ended the experiment after just the one year, although it continues to offer the prefilled form for those who used it in the 2007 experiment.

A.M.

This book examines the issues of statutory interpretation and methods of fact finding on the basis of a review of over 900 federal tax decisions by the United States Supreme Court. It is organized around three general premises:

1. tax laws are not different from other laws and do not require special legal processes, apart from standard statutory interpretation and fact finding;
2. the Supreme Court’s tax jurisprudence provides “a wealth of usually untapped guidance”; and
3. instead of episodically picking out phrases from the cases for citation, one should have a firm grasp of the progress of the jurisprudence and the meaning of certain high-profile decisions of the court, such as Gregory, Knetsch, Frank Lyon, and Cottage Savings.

Cummings intends the book to be an objective reference book with “deeper” analysis and a stated point of view. It is heavily annotated (containing 2,670 footnotes). To serve as a reference, the book has a detailed table of contents, an appendix listing the representative authorities in the history of the economic substance doctrine (up to March 31, 2010), and a table of federal tax cases. In going deeper, the book not only examines the tax jurisprudence but also draws insights from three other sources of information—general legal principles as applied outside the tax law, legal history, and academic viewpoints on statutory interpretation. Cummings argues that general principles and legal history are very important to a understanding of the evolution of the tax jurisprudence, but he is critical of most of the academic work as being unhelpful to the “users” of the tax code—that is, taxpayers, practitioners, and the government.

The book has seven chapters. Chapter 1 reviews the general principles of statutory interpretation and fact finding in the United States. Cummings notes the changes in the interpretation style of the US Supreme Court, from the “grand” style at the beginning to a more formal precedential style by the end of the 19th century, and back toward creativity in the first part of the 20th century (especially during the “New Deal” era), with a more current emphasis on formality and text. According to Cummings, the court is proud of its own decisions and will follow them to a near fault, and very few of the current problems of tax-law application are of a new variety. Although he argues that tax should not be divorced from the more general law,
he acknowledges that tax-specific common-law doctrines have been created over the years.

Chapter 2 addresses issues of statutory application unique to the Internal Revenue Code. After a brief discussion of the confusion about the role of taxation, it reviews the evolution of interpretive presumptions, such as substance and form, discusses the general principles governing “intentional tax reduction” (Cummings’s term for tax avoidance), and presents a comparison with non-tax statutes. Cummings is critical of US lower courts for generally applying the economic substance doctrine as an uncodified general anti-abuse rule. In his view, tax shelter cases can be dealt with by applying particular methods of fact finding, such as substance over form.

Chapter 3 surveys the Supreme Court tax cases. It notes that the court’s tax opinions play three primary roles within the federal tax system:

1. Congress regularly takes into account the court’s decisions by frequently confirming them and sometimes overriding them;
2. lower courts “attempt to drain every drop of meaning out of the Court’s opinions”;\(^\text{15}\) and
3. the court itself is prone to cite and rely upon itself first.

According to Cummings, the court's decisions are relevant not only to statutory interpretation but also to methods of fact finding; notably, the court has incorporated important factual requirements into Code rules (such as the requirement of business purpose for reorganizations) and has shown how common-law fact finding should apply in tax cases. This chapter makes some interesting points about the tax cases. For example, it is critically important to properly identify whether the case outcome is based principally on issues of fact or issues of law. In this respect, Cummings notes that Gregory was a statutory construction case, seeking the meaning of the expression “in pursuance of a plan of reorganization,” whereas the British case Commissioners of Inland Revenue v. Westminster (Duke)\(^\text{16}\) was simply a fact-finding case.

Chapters 4 and 5 discuss the reactions of Congress and the US Treasury to intentional tax reduction, including the economic substance doctrine. Chapter 5 shows that the economic substance doctrine lacks authority in Supreme Court decisions, in the Internal Revenue Code, or in Treasury regulations, except to the extent that it reflects standard methods of fact finding and statutory interpretation that are found in many Supreme Court opinions. Cummings claims that the role of equitable and common-law fact finding is key to the fact-finding roots of the tax-specific doctrines, but has been completely overlooked. A special 40-page section of the chapter provides the most in-depth analysis available to date of the new codification of the economic substance doctrine.

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15 At 80.
16 [1936] AC 1 (HL).
Chapter 6 is a major part of the book. It restates how the Supreme Court has applied the federal tax laws. Two of the cardinal tax doctrines are that the taxpayer has the burden of proving that the tax it owes is not what the Internal Revenue Service (IRS) says it is, and that the taxpayer must report its income according to the form of its transaction except where specifically directed otherwise by the IRS. On the principles of statutory interpretation, chapter 6 discusses the primacy of the legislative text, methods of finding the textual meaning (such as by relying on the words, context, legislative structure, extrinsic evidence, legislative history, and interpretive presumptions and maxims), the court’s role in filling legislative gaps, and judicial deference to administrative interpretation. On the issue of fact finding, chapter 6 reviews the origin and meaning of the substance-over-form doctrine and its relationship to other doctrines such as “step transactions,” “economic substance,” and “business purpose,” as well as the general “bona fide” requirement. Cummings places in context the most widely cited Supreme Court tax decisions and brings to light many more opinions of the court that are sometimes overlooked.

Chapter 7 concludes the book with a brief discussion of other solutions to problems of application of the Internal Revenue Code.

Overall, this book makes an original contribution to the literature by using the federal tax opinions of the US Supreme Court as its primary guide in analyzing how tax laws have been applied in practice, with special emphasis on statutory interpretation and fact finding. It should be useful to both students and practitioners.

J.L.

Peter Harris and David Oliver, *International Commercial Tax*  
(Cambridge, NY: Cambridge University Press, 2010), 483 pages

This is an excellent book that provides a conceptual and holistic framework for understanding international taxation of cross-border commercial transactions. Harris is a professor teaching at the University of Cambridge and Oliver is one of the leading international tax practitioners. Drawing on their divergent backgrounds, the authors skilfully illustrate the conceptual framework with practical examples, making the book accessible to students and junior practitioners while providing food for thought to senior practitioners and academics.

The book is organized into seven chapters and a separate “Conclusions” section. The first four chapters discuss the “typical” issues of international taxation—the fundamentals and sources of international tax law, the jurisdiction to tax, source-country taxation, and residence-country taxation. Chapters 5 through 7 deal with the more controversial or challenging issues, such as the limited scope of treaties, tax problems arising from changes of source and residence, and bilateral administrative issues.

Several features distinguish this book from other works on international taxation. One is the use of a simple base case to illustrate the conceptual framework and the problems with this framework. A second feature of the book is its integrated approach in discussing the law of the European Union, treaty law, and domestic law
and exposing the overlaps and gaps between them. A third feature is its seamless reference to the case law in various countries to make a point. Finally, the authors expose the inherent problems in the current structure of international taxation by demonstrating how each of the fundamental building blocks (the source of income/location of activities, the residence of persons, and the bilateral nature of treaties) can be easily manipulated to defeat the international tax system.

According to the authors, the current system was not designed to deal with today’s highly integrated world, and countries are crumbling under the weight of their ever-expanding tax laws. The authors offer several thoughts about improving the system. One is to plead for a greater role for lawyers and accountants in international tax policy because the role of economists has become disproportionate to their utility. Another is to turn the OECD model tax convention into a set of standards and to create an independent international body to periodically assess and publicly report on countries’ tax systems by reference to these standards. Readers who are looking for an accessible study of the bigger structural picture of the international tax system cannot go wrong with this book.

J.L.

Organisation for Economic Co-operation and Development, 
Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (Paris: OECD, July 2010), 375 pages

The latest version of the OECD’s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, published in July 2010, is the most authoritative source of information to guide taxpayers and tax administrations in managing transfer-pricing issues. This version builds upon its predecessors (the 1979 transfer-pricing report and the 1995 guidelines) and incorporates the recent discussions on business restructuring.

The 2010 guidelines are presented in nine chapters:

- chapter 1, “The Arm’s Length Principle”;
- chapter 2, “Transfer Pricing Methods”;
- chapter 3, “Comparability Analysis”;
- chapter 4, “Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes”;
- chapter 5, “Documentation”;
- chapter 6, “Special Considerations for Intangible Property”;
- chapter 7, “Special Considerations for Intra-Group Services”;
- chapter 8, “Cost Contribution Arrangements”;
- chapter 9, “Transfer Pricing Aspects of Business Restructurings.”

While the 2010 guidelines continue to steadfastly endorse the arm’s-length principle and the comparable transactional approach to the implementation of the principle, they are more flexible and pragmatic than the earlier guidelines in several important respects. For example, the hierarchy of methods (the traditional comparable uncontrolled price, resale, cost-plus, transactional net market, and profit-split methods) is replaced with “the most appropriate method,” authorizing the expansive use of profit-based, as opposed to price-based, methods. In other words, profit-based methods are no longer the methods of last resort, although there is still a preference for traditional methods if equally reliable. The new guidelines on the selection of the most appropriate method and on the use of the profit-split method emphasize “objective” factors (costs, assets, or other relevant contributions of the parties to the transactions) and allow the use of “internal data,” such as financial accounting/cost accounting.

The chapter on business restructurings is new. It deals with the cross-border allocation of functions, assets, and/or risks in the case of a transfer of something of value (such as assets) or the termination or substantial negotiation of existing contractual arrangements. The emphasis on contracts in allocating risks suggests that multinational enterprises can rely on contracts (which generally do not represent hard bargains between independent parties) to shift income to tax-favoured jurisdictions. However, the guidelines do state that contracts are respected only to the extent that they reflect actual behaviour and an arm’s-length relationship in describing the role of comparables and of people functions, control, commercial rationality, etc.

The 2010 guidelines deal with transfer-pricing aspects of intangibles in chapters 6 and 8. The OECD recognizes that many key issues are to be addressed, such as the definition and scope of “marketing intangibles,” the identification and characterization of intangible transfers, the legal and economic ownership of intangibles, and the valuation of intangibles. The OECD hopes to release a discussion draft of further revisions to chapters 6 and 8 in 2013.

J.L.


Ainsworth’s paper reviews the two leading international tax cases, UPS v. Commissioner18 and DSG Retail Ltd. v. HMRC,19 on the application of transfer-pricing rules to business restructurings that involve valuable intangibles, and provides a commentary on the OECD’s position in respect of restructurings and intangibles.

18 TC Memo 1999-268; rev’d. 254 F. 3d 1014 (11th Cir. 2001).
UPS is a US decision; DSG Retail is a UK decision. Both cases involve the establishment of a captive insurance company in a low-tax jurisdiction with the assistance of a friendly third-party facilitator. Functionally speaking, no changes occurred in the business model of UPS or DSG. In other words, to the customers of UPS or DSG, there was no functional difference before and after the creation of the offshore captive insurance company.

In the UPS case, the US Tax Court found that arm’s-length prices were not used, and further that the transactions constituted an economic sham. The 11th Circuit of Court of Appeals overturned the Tax Court’s decision. It found that there was a genuine and enforceable insurance contract with a bona fide third-party insurer and that, even though the chances that the insurer would suffer a loss were remote, they were nevertheless real. However, on the issue of arm’s-length prices, the 11th Circuit remanded the case to the Tax Court for reconsideration. UPS settled with the government.

The decision of the Special Commission of Income Tax (now the First Tier Tax Tribunal) in DSG Retail was the United Kingdom’s first substantive transfer-pricing decision. The case looks in detail at how to determine the appropriate methodology for a transfer-pricing adjustment, especially the comparability threshold for data. Her Majesty’s Revenue & Customs argued that all the comparables offered by the taxpayer were inadequate and a profit split should be used instead. The Special Commission agreed and required that the profit be distributed among the parties in accordance with their relative contributions.

Ainsworth applauds the OECD’s business restructuring analysis dealing with the transfer of a going concern or of intangible assets among related parties as being “right on point with the dynamics in a captive insurance fact pattern.”20 On the other hand, he warns that the OECD’s approaches are vulnerable to a sustained attack on comparability grounds, since DSG Retail makes it clear that market power taints what would normally be considered good comparables.

J.L.

Roger H. Gordon, ed., Taxation in Developing Countries: Six Case Studies and Policy Implications (New York: Columbia University Press, 2010), 305 pages

Through an assessment of tax policy in six developing countries (Argentina, Brazil, India, Kenya, Korea, and Russia), this book demonstrates how the tax systems in these countries are strikingly at odds with what the public finance literature recommends as the optimal design of a country’s tax structure. For example, the public finance literature focuses heavily on the optimal rate structure under the personal income tax as a means of best trading off equity and efficiency considerations in the collection of tax revenue. In these six countries, however, the personal income tax plays little role, presumably because of the government’s inability to monitor

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20 At 21.
enough of the income accruing to each individual to make the personal income tax a feasible option. The optimal tax literature also suggests that a country that is small relative to the world capital market should not distort international flows of capital through imposing corporate income tax. And yet, the corporate income tax is an important source of tax revenue in these six countries.

The book also identifies the common features of the tax structure in these countries and various reform measures attempted by each country. One striking common feature, for example, is the low tax revenue relative to GDP. While the average tax/GDP ratio in OECD countries is over 34 percent, the ratio in the six countries varies from 16.4 percent in India to 25 percent in Korea and 35 percent in Brazil. The low tax/GDP ratios do not reflect a choice of relatively low tax rates, but rather greater difficulties in tax administration and enforcement.

In addition to the six country chapters, the book includes two general chapters: chapter 1, “Development-Oriented Tax Policy,” by Joseph E. Stiglitz; and chapter 2, “Taxes and Development: Experiences of India vs. China, and Lessons for Other Developing Countries,” by the editor, Roger Gordon. Both chapters recommend tax policies geared to promoting economic growth.

Stiglitz argues that “no public policy issue is more important than the structure and level of taxes.”21 He attributes the problems facing developing countries to the fact that international tax advisers are insensitive to the differences in economic and political structures both among developing countries and between these countries and more developed countries, to the administrative difficulties faced by developing countries, or to their differing objectives. For example, standard textbook expositions of tax policy objectives for developed countries emphasize efficiency and, more recently, tax avoidance and evasion, but seldom note corruption. As a fact, corruption is a major challenge in developing countries. Designing institutions and policies, including tax structures, that reduce the scope for corruption should be a central concern. And yet, international tax advisers often just lecture moralistically on the need to improve tax administration and reduce corruption; they seldom address corruption as part of the tax design. Stiglitz suggests the possibility of using more “observable” and “verifiable” tax bases, such as the number and size of cars per household or the floor area of the home.

Gordon provides an excellent comparison of the tax policies in India and China. He notes that the two countries had similar economic positions at the beginning of their economic reforms and comparable tax policies during the early years, and that both continue to struggle with similar fiscal problems (such as low overall tax revenue and poor-quality local public services). The similarities in tax structure in India and China are remarkable, given their dramatically different political structures. It suggests that shared economic pressures overwhelmed the implications of the countries’ different political decision-making processes.

J.L.

21 At 11.
Dieter Endres, Clemens Fuest, and Christoph Spengel, eds.,
*Company Taxation in the Asia-Pacific Region, India, and Russia*
(New York: Springer, 2010), 83 pages

This short book is a study of the corporate tax systems of 13 jurisdictions in the Asia-Pacific region—Australia, Cambodia, China, Hong Kong, Indonesia, Japan, Malaysia, the Philippines, Singapore, South Korea, Taiwan, Thailand, and Vietnam—plus India and Russia. It presents estimates of the effective levels of company tax burdens on domestic investments and cross-border investments in these countries by multinationals located in Germany or the United States. The book includes a chapter on tax incentives and maintains that tax incentives play a role in attracting foreign direct investment.

J.L.


Tax reform agendas in developing countries have focused overwhelmingly on increasing public revenue in an economically efficient manner, with some attention to redistributive tax structures. This paper argues for more emphasis on the linkage between tax reform and state building, and suggests specific tax reform strategies that may strengthen this linkage.

On the linkage between taxation and state building, Prichard agrees with the conclusions in the existing literature:

1. because governments are dependent on taxes and therefore on the prosperity of taxpayers, they will have stronger incentives to promote economic growth;
2. dependence on taxes requires states to develop a complex bureaucratic apparatus for tax collection, which may become the leading edge of broader improvements in public administration; and
3. taxation engages taxpayers collectively in politics and leads them to make claims on government for reciprocity, accountability, and responsiveness.

Prichard suggests two sets of measures for using taxation as a catalyst for state capacity development and the expansion of responsiveness and accountability:

1. measures that place relatively less emphasis on simply expanding revenue collection and more emphasis on how revenue is collected and how this can contribute to broader state-building goals, such as building linkages within government, improving data gathering and transparency, improving equity and fairness in tax enforcement and administration, improving taxpayer services, and using tax earmarking to strengthen tax-expenditure linkages; and
2. measures that focus on the importance of supporting civil society actors to engage in debates about tax issues.
The paper draws upon case studies from a small number of developing countries to make the various points. Prichard acknowledges that there remains significant scope for further research on these issues, and few of his suggestions have been rigorously and specifically tested in practice. Nevertheless, the paper does an excellent job of highlighting the issues and integrating the theoretical literature with some preliminary practical experience.

J.L.


With the increasing levels of concern in society about diet-related chronic disease, some people have urged that governments should have a special higher tax on soft drinks or other foods that are considered to be unhealthy. This paper suggests that taxes and government interventions are most appropriate where there is a market failure, and it looks to behavioural economics for reasons why this might occur in food markets. One reason could be an externality, in that individuals do not consider the impact of their food consumption choices on publicly financed health costs. Another reason is a lack of information (or the ability to process that information) on the effect of food choices on health outcomes.

Given that such market failures seem likely to occur, the paper goes on to investigate three broad groups of corrective policies: improving information provision, altering food prices through taxation, and regulating food manufacturers and retailers. Tax measures seem to be the least appropriate, in that foods like soft drinks do not appear to be associated with either type of market failure unless they are consumed in excess relative to foods with high health value. Also, the market failures are particularly associated with children’s consumption of unhealthy foods, and it hard to differentiate tax policies in that way. Banning advertising to children or keeping “junk food” out of schools might be more appropriate.

A.M.


This article argues that making different forms of income equally subject to tax is not enough to achieve tax fairness; withholding and information reporting must also be applied equally, since forms of income not subject to these requirements are likely to escape taxation. The history of failed attempts to extend withholding to investment income in the United States is contrasted with court-mandated withholding on such income in Germany.

The German court’s rulings stemmed from a wide interpretation of the constitutionally enshrined principle that “[a]ll persons shall be equal before the law.”

22 Article 3(1) of Germany’s Basic Law.
The equality rights guaranteed under section 15 of Canada’s Charter of Rights and Freedoms\(^{23}\) appear to be less extensive, and generally apply only to unequal treatment based on personal characteristics that cannot easily be changed.\(^{24}\)

A.M.


Australia is similar to Canada in that distances between urban centres make it impractical to have face-to-face learning for some types of advanced tax courses. Thus, the Atax division of the University of New South Wales has pioneered a teaching method in which almost all of the work is done by students on their own time, using paper-based study materials. This paper discusses the method used and the related question of the proper assessment of teaching quality in this program. The paper also discusses assessment at a traditional program at the University of Auckland and makes suggestions for improvement.

A.M.

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