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Comparative Tax Law Guide

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1. Comparative Tax Law: What It Is All About and Why It Is Important

The spirit of a people, its cultural level, its social structure, the deeds its policy may prepare – all this, and more is written in its fiscal history, stripped of all phrases. [They] who know[] how to listen to its message here discerns the thunder of world history more clearly than anywhere else The public finances are one of the best starting points for an investigation of society, especially though not exclusively of its political life.

Joseph Schumpeter

Importance of Comparative Tax Law:

- **Students**
 - All tax systems have to deal with the same basic issues
 - Comparing the different resolution of those issues increases one's understanding of one's own tax system
 - It also assists in learning the deep structure or theoretical map that underlies all taxes
- **Tax practitioners**
 - To learn how other countries tax laws might affect a planned international business restructuring
 - To learn about tax planning and avoidance opportunities
- **Tax policy analysts**
 - To learn of alternative ways of dealing with particular issues
 - To compare effects of different tax laws
- **Tax scholars**
 - To test hypothesis
 - relating to the effects of tax laws
 - relating to factors that influence tax legislative outcomes
 - To explain differences between countries
- **All curious individuals**
 - To learn about the fundamental values and policies of other countries through their use of one of government's most powerful and contentious policy instruments
 - To explore myriad practical policy issues – almost every social and economic policy has a tax angle
 - To gauge the direction and depth of one's own worldview – “Any intelligent thinking about taxes eventually reaches the ultimate purpose of life on the planet as each of us conceives it.” (Louis Eisenstein)

The reading materials, much of the commentary, and the fundamental organizational structure that follows was originally prepared by Neil Brooks. The materials have been further developed many thanks to Thaddeus Hwong and Okanga Ogbu Okanga.

1.1 Integrating a Comparative Law Perspective into Legal Education

The literature on comparative law contains huge debates over whether it is a truly independent field of study and if so what the aims and methods of such a study might be. The article below, by prolific comparative

law scholar Jaakko Husa, claims that comparative law should not be taught as a separate course, but instead it should be integrated in every law course. The discussion of the law should begin with a statement of a legal problem and then solutions in a number of countries examined. Husa argues that such an approach is a logical development of the globalization of the law and that teaching students the law in a particular jurisdiction makes it more difficult for students to envisage other approaches to particular legal problems and to adapt to transnational pluralism. He argues that students learn best when they are constructing their own knowledge and that students should be encouraged to construct their own legal understanding from multiple sources. He suggests that teachers must attempt to develop in students the “globalization of the mind.”

- Jaakko Husa, *A New Introduction to Comparative Law* (Oxford: Hart Publishing, 2015).
 - Jaakko Husa, “Turning the Curriculum Upside Down: Comparative Law as an Educational Tool for Constructing the Pluralistic Legal Mind” (2009) 10:7 German LJ 913: <https://perma.cc/U2VZ-RTAH>
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1.2 Methodology of Comparative Law Generally

Scholars of comparative law often complain that scholars who engage in comparative studies in particular areas of law ignore the methods and advances that have been developed in the discipline of comparative law. Mathias Siems, a corporate law scholar and a scholar of comparative law (see Mathias Siems (2014) has written an insightful chapter in a handbook on corporate law in which he categorizes articles on comparative corporate law into seven well-recognized and different approaches to the study of comparative law. Even though it is dealing with corporate and not tax law the article will provide you with a useful way of thinking about the different approaches one might take to comparative tax law.

- Mathias Siems, *Comparative Law: Law in Context*, 3rd ed, (Cambridge: Cambridge University Press, 2022).
 - Mathias M Siems, “The Methods of Comparative Corporate Law,” Working paper in preparation for Roman Tomasic, ed, Routledge Handbook of Corporate Law (2016): <https://dx.doi.org/10.2139/ssrn.2593420> or <https://perma.cc/3XB9-AG2U>.
 - Jan Engberg, “Comparative Law for Legal Translation: Through Multiple Perspectives to Multidimensional Knowledge” (2020) 33 IJSL 263.
 - Garbarino, Carlo, *Research Strategies in Comparative Taxation* (October 27, 2021). Bocconi Legal Studies Research Paper No. 3951352, <https://perma.cc/D7WT-QCKB>
-

1.3 The Methodology of Comparative Tax Law

Two recently published articles by Kim Brooks detail some of the purposes of comparative tax law and its intellectual history. These articles will facilitate your appreciation of the unique pedagogical and practical values of comparative tax law.

One of Kim Brooks' two articles specifically illuminates the enormous contributions of Victor Thuronyi as a comparative tax law scholar. Victor Thuronyi was for many years the senior tax counsel in the legal department at the International Monetary Fund (IMF). In that capacity for nearly 25 years, he advised and drafted tax legislation for countless emerging, transitional, and low-income countries. He wrote a leading text on comparative tax law and edited two outstanding collections of materials on all aspects of comparative taxation for the IMF. It would be particularly helpful to read through Thuronyi's article responding to the question "what can we learn from comparative law?" In the article he claims that comparative taxation "focuses on the main differences between how various legal systems conceptualize issues and function to solve problems." He also notes that "convergence of different legal systems is a key theme for comparative tax." He then provides a number of areas where he claims insights can be gained from the comparative approach. In chapter two of his book (link provided) he elaborates on his claims about the methodology of comparative tax and its usefulness.

Omri Marian's article (below), takes issue with Thuronyi and other comparative tax scholars he refers to as functionalists. The functional approach in comparative law rests on the assumption that the legal system of every society faces similar problems and that the law is a response to these problems. Some legal systems solve the problems better than others and hence tax reforms often involve one country adopting or transplanting a legal solution to a problem from another country that seems to have come up with a better solution. The article by Carlo Garbario (below) is an extremely sophisticated account of how these tax legal transplants typically occur. Omri Marian takes issue with these descriptions of the method of comparative tax law (or comparative law more generally). He argues that they ignore the fact that law is part of a broader cultural phenomenon in each society and therefore cannot be easily transplanted from one country to another or understood without reference to the legal (or tax) culture of a country. He refers to the work of Michael Livingston (below) as an illustration of a legal scholar whose work is sensitive to the unique tax cultures of each country. This debate between the functionalists and the cultural comparatists is ongoing in the general literature on comparative law. On the basis of your experience with tax laws in different countries, and your readings, do you think the functionalist approach accurately describes how one might compare tax laws between countries or that the unique tax cultures of each country makes comparisons of somewhat limited use?

In any event, as these readings suggest, two of the most important themes in comparative tax law deal with the questions of when tax transplants are likely to occur and when they are likely to be successful and the general question of whether or not tax systems are converging on the best resolution of common tax problems.

In what ways have tax systems converged over the past 30 years? What explains this convergence?

Without meaning to oversimplify the debates in comparative tax law methodology, I might note that there are three questions that someone interested in comparing tax laws across countries might ask themselves.

First, how can the tax laws (or the problems they are responding to) be conceptualized in order to facilitate a comparison? When the IFA, or any organization, wishes to compare some particular area of tax law

across a broad range of countries they usually begin by preparing a questionnaire that is circulated to leading tax commentators in each country. The questionnaire breaks down the tax law into a series of discrete details upon which the laws can then be compared. Thus, for example, the Institute for Austrian and International Tax Law of Vienna University of Economics and Business organized a comparative tax conference in 2014 on general anti-avoidance rules. There is a link below (under the sub-heading “General Anti-Avoidance Rules”) to the questionnaire they invited expert tax commentators in particular countries to respond to. Based on the individual responses to questionnaires such as this, a general reporter will prepare a general comparative report on the laws relating to general anti-avoidance rules. The value of these general reports as descriptions of some aspect of comparative law obviously depends upon how well the questions have been conceptualized, how knowledgeable the national reporters are in responding to them, and then, most importantly, how careful and insightful the general reporters are in writing the general report. Not surprisingly some are not particularly helpful in understanding the issues while others are so sophisticated that they allow us to see the issues discussed, if not the world, in a new way. An individual student or tax practitioner interested in making a comparison of tax laws between two or three or a larger number of countries does not have the resources to engage in this kind of comparative exercise. However, the point is that unless a comparison is simply going to be a description of the tax laws in each different country, in undertaking a comparative tax study it is important to try to conceptualize the differences and similarities between the laws in a way that makes the comparison meaningful. This is not always an easy task.

Second, normally someone who is engaged in a comparison of the tax laws across countries will want to hypothesize why the laws are different (or the same). This, of course, is a purely empirical question. It is a question about how the world works (in different countries). It could be that the tax policy outcome in both countries (or across countries) is different because each country made a different policy choice based on a rational weighing of the costs and benefits of different design features of the law as they apply in the particular country. However, this usually does not explain the differences between countries (although sometimes it clearly does). Instead, political scientists normally explain the legislative outcomes in different countries by resorting to one or more well-developed theories that they have discovered that explain legal and policy outputs. Political scientists tend to emphasize one or more of these factors:

- the importance of prevailing ideas or ideologies in the country,
- the environmental factors, such as demographics, or the stage of economic development a country has achieved,
- the distribution of economic power in the society (some argue that economic power is widely dispersed in most societies, others argue that it is highly concentrated),
- the structure of the economy,
- the immediate self-interest of civil servants, politicians and other proximate decision-makers,
- historically contingent reasons and path dependency (or political inertia).

Differences in tax laws between different countries can usually be explained by reference to differences in the influence of these variables across the countries. In terms of the general weight that should be given to these various variables, a well-known U.S. economist in the early part of the twentieth century, T.S. Adams, asserted that, “Modern taxation or tax-making in its most characteristic aspect is a group contest in which powerful interests vigorously endeavour to rid themselves of present or proposed tax burdens. It is, first of all, a hard game in which he who trusts wholly in economics, reason, and justice, will in the end retire beaten and disillusioned. Class politics is the essence of taxation.” Do you tend to agree?

Another link in this section is to a chapter of Guy Peters' book, *The Politics of Taxation: A Comparative Perspective* (1991). The chapter provides an overview of the variables that political scientists frequently resort to in explaining differences in tax laws between countries.

Finally, once a tax analyst has understood conceptually the important differences in tax laws between two countries and has developed an empirical hypothesis about why they might be different, the analyst might then want to make a normative assessment of which tax law is better, taking account of the traditional tax policy criteria of equity, neutrality and simplicity. Of course, based upon cultural or environmental factors the best law in country might not be the best for some other country (some would argue).

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1.4 Tax Transplants

As explained above, one of the central questions in comparative law is the extent to which the laws of one country can be transplanted into another. There is a rich and contentious literature in the discipline of comparative law relating to this issue, much of it referred to in Jinyan Li’s 2015 article. In the said article Li, an international tax scholar at Osgoode Hall Law School, Toronto, examines the general literature on legal transplants and attempts to explain by reference to China’s experience in transplanting tax laws when such transplants will be successful and when they will not.

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- Minas John et al, “Policy Forum: The Australian Experience with Preferential Capital Gains Tax Treatment - Possible Lessons for Canada” (2021) 69:4. *Canadian Tax J* 1213: <https://perma.cc/6QC5-Z3C4>

1.5 Sociocultural Approaches to Tax Exploration

How do sociocultural orientations impact tax law and tax practices in different countries? Perhaps we should look to study tax law from beyond a predominantly economic perspective. Drawing insights from anthropology, sociology, and other social sciences can deepen our appreciation of the different values that tax systems pursue.

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2. Broad Trends in Tax Policy and Structure across Countries

2.1 Tax Policy Trends in (mainly) OECD Countries

Every fall the OECD publishes an annual comparative statistical review of tax revenue data from all OECD countries from 1965 to the most current year for which statistics are available. The most recent is *Revenue Statistics 1965-2020*. Since the data from each country are presented in a conceptual framework that makes comparisons across countries easy and are as reliable as possible, this is the source most comparatists use for examining such questions as what percentage of GDP are taxes in each country and what percentage are different types of taxes as a share of total taxation. In the general tables all currencies are converted to US dollars, but detailed country tables show information in national currency values. The OECD has a web page “OECD Tax Database,” which you can google, which provides even more current information on tax revenues statistics across countries as well as information on tax rates. Also, incidentally, the OECD now also publishes *Revenue Statistics* from participating Latin American, Caribbean and African countries. Another useful source on trends in taxation is the annual *Tax Policies in the European Union: 2018 Survey*.

A publication called *Tax Reforms in EU Member States* used to be prepared jointly by the European Commission’s Directorate-General for Economic and Financial Affairs and the Directorate-General for Taxation and Customs Union. The most recent report (2015) is linked below. The report has a discussion of a full range of current issues such as the problem of debt bias in corporate taxation, budgetary and distributional effects of tax expenditures relating to pensions and housing, environmentally related taxation, and wealth and inheritance taxes from a redistributive perspective.

The working paper linked in the third reading by three researchers at the OECD Centre for Tax Policy and Administration reviews how tax policies across countries in the OECD have responded to the fiscal and macroeconomic developments over the past five years. However, the paper also reveals the longer-term trends in tax mix changes across countries and in the broad changes in individual taxes. (Just as a reminder, 36 member states comprise the OECD and it does not include Brazil, Russia, India, China, or South Africa. The OECD admits only countries that meet OECD standards in a wide range of policy areas and the accessions process can be arduous.)

What are the major trends in tax systems? What variables appear to account for these trends (such as increased globalization, climate change, growing inequality and population ageing)? Is there evidence of convergence among countries? Do some countries appear to be resisting the general trends? This working paper deals primarily with changes in the structure of tax systems, but are there other trends in taxation responding to for example the push for increased tax transparency, the public concern over tax avoidance by multinationals, and the use of tax havens? Jeffrey Owens’ article (below) provides an insightful and brief summary of some of these wider trends as well as reviewing changes in overall tax revenues.

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2.2 Effect of a Country’s Tax Structure on Economic Growth, Income Distribution, Redistribution and Efficiency

One important purpose of comparing countries’ tax systems is to draw conclusions about the effects of different tax regimes on a range of other variables, the two most common ones being the distribution of income and wealth in a country and its level and rate of economic growth. Over the past 35 years it is probably fair to assert that the conventional wisdom has been that a country’s tax system should be designed so that it does not hinder working behavior, savings and investment, so as to maximize the country’s rate of economic growth. The prevalent view was that countries that attempted to use their tax system to redistribute income – either by imposing higher rates of tax on high incomes and in particular income from capital or by raising significant amounts of revenue in order to finance generous government spending programs – would suffer lower rates of economic growth.

Along with many other international organizations, in the interest of promoting economic growth the International Monetary Fund (IMF) was somewhat notorious for supporting anti-equality economic policies such as low marginal income tax rates, reduced rates of tax on income from capital, austerity budgets, and weakened labour laws and strict limits on government social spending. Often its loans to distressed countries were coupled with conditions requiring the enactment of regressive taxes, such as a value-added tax and strict budget cuts.

At the beginning of 2014 the IMF published two studies, in particular, that appeared to indicate a dramatic reversal of policy. These studies met with a good deal of public commentary. The first study was an IMF Staff Discussion Note, “Redistribution, Inequality, and Growth,” written by the IMF’s Deputy Research

Director Jonathan D. Ostry and two colleagues. Based upon the relationship between redistribution – measured by differences between pre-tax-and-transfer income distribution and the post-tax-and-transfer income distribution – and overall economic growth over five-year periods across countries and across time they conclude, “there is remarkably little evidence in the historical data used in our paper of adverse effects of fiscal redistribution on growth.” The IMF followed up that report the following week with an IMF Policy Paper “Fiscal Policy and Income Inequality,” which is linked below. In this paper the IMF reviews the trends in inequality and suggests the design features of an efficient redistributive fiscal policy. You might want to just quickly review their recommendations for a redistributive but efficient tax system. What, in your view, would an optimal tax system look like? What role would various taxes play in such a system?

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2.3 Tax Competition and Tax Harmonization

Tax competition is one of the most contested concepts in comparative tax law. Some distinguish between fiscal competition and harmful tax competition. Is this a meaningful distinction? What does tax competition mean? What is the case for tax competition and the case against it? A crucial reading on this topic is "The Trouble with Tax Competition: From Practice to Theory" by Lilian V. Faulhaber. It is an ambitious and sophisticated paper that clarifies many of the debates about tax competition and makes some provocative claims.

The second article listed below, "Tax Competition: To Welcome or Not?" was written by Jeffrey Owens. Jeffrey Owens was the director of the OECD Centre for Tax Policy and Administration from 2001 to 2012 and in 2012 was named the most influential international tax person of the year by *Tax Notes*. Now he is a professor at the Institute for Austrian and International Tax Law. In this review of the concept of tax competition he concludes by suggesting a number of steps that should be taken in order for countries to get the full benefit from tax competition. Do you agree with his prescriptions? On somewhat related issues – should the harmonization of tax systems and rules be encouraged? Does the world need a World Tax Organization somewhat analogous to the World Trade Organization to coordinate and prescribe tax rules in individual countries? Such a proposal has been made by a number of commentators. The article by the then Director of the International Tax Program at New York University School of Law, David Rosenbloom, and two law students advocates for a new International Tax Cooperation Forum.

There are many ways to slice into the issues surrounding tax competition and tax harmonization and the articles adumbrated below are representative of a vast literature. While you will not have time to even sample a few of them, you might read the abstract to the article by Peter Dietsch and Thomas Rixen for an interesting perspective on tax competition by a philosopher and political economist.

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 - Reuven S. Avi-Yonah, “Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State” (2000) 113:7 Harv L Rev 1573-676 <https://perma.cc/X7A2-HUDX>
 - Peter Denk “Tax Competition and the EU Anti-money Laundering Regime” (2022) 50:11 Intertax: <https://perma.cc/XTU7-NBM3>
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2.4 Taxation, Neoliberalism and the Welfare State

The article by Neil Brooks and Thaddeus Hwong has a simple premise. Over the past 35 years, particularly in Anglo-American countries, governments have been urged to cut back taxes and reduce government spending. The general premise of this movement was that high taxes have huge economic costs and that government spending programs are generally ineffective. We reasoned that if this neo-liberal story were true then one would expect to find that high-tax countries had no better social outcomes than low-tax

countries (since government programs are generally ineffective) and that their economies would have suffered (from the resulting high taxes).

So, the authors divided industrialized countries into low- and high-tax countries and then compared them on the basis of over 40 social indicators and 20 economic indicators. They found that the high-tax Nordic countries have achieved dramatically better social outcomes than low-tax Anglo-American countries in the pursuit of widely accepted social objectives. Of the 40 social indicators examined, for 21 Nordic country outcomes were significantly better and on 13 other measures they were better. On only six social indicators were the outcomes in Anglo-American countries better and for all of these the differences were trivial and could have been due to chance. With respect to economic outcomes, the differences were essentially a wash. Nordic countries ranked higher on 12 indicators and the Anglo-American countries on 10. In only one was the difference significant: from 1992 to 2002 the Anglo-American countries had a significantly higher rate of growth in employment.

If tax levels can be taken as a crude proxy for the responsibilities assigned to government (public ordering processes) as opposed to the markets, firms, families and the voluntary sector (private ordering processes) then one might conclude from this study that societies that assign a larger responsibility to public ordering processes are more successful in achieving their social and economic goals than those that assign a larger responsibility to private ordering processes. What is wrong with the study?

More specifically, why have the Nordic countries not apparently suffered from the alleged trade-off between social justice and economic growth? Why did the citizens of Nordic and Anglo-American countries adopt such different social contracts? Is the Nordic model exportable? Can the Nordic model (or any advanced welfare state) survive in the light of increased economic integration, an ageing population, post-industrialization, the increased economic and political power of business, and the continued vitality of neo-liberalism?

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 - Steffen Ganghof, "Tax Mixes and the Size of the Welfare State: Causal Mechanisms and Policy Implications," (2006) 16:4 J European Social Policy 360.
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- Henry Ordower, “Utopian Visions Toward a Grand Unified Global Income Tax,” (2013) 14:5 Florida Tax Rev 361: <https://perma.cc/HCV2-NM72>.
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2.6 Constitutional Limits on the Power to Tax

- Henry Ordower, “Restricting the Legislative Power to Tax: Intersections of Taxation and Constitutional Law: General Report,” (2007) 15:2 Michigan State U J Intl L (symposium issue) 169: <https://perma.cc/CR4U-D9H3>.
 - Richard M Bird, “Subnational Taxation in Large Emerging Countries: BRIC Plus One” (University of Toronto, IMFG Municipal Finance and Governance Paper No. 6, 2012): <https://perma.cc/PXU2-8YSV>.
 - Steffen Ganghof, *The Politics of Income Taxation: A Comparative Analysis*, (Colchester: ECPR Press, 2009).
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 - Anna Vertašova, Michal Radvan & Johan Schweigi, “Constitutional Aspects of Local Taxes in the Slovak Republic and in the Czech Republic” (2019) 17:3 J Local Self-Government 591: <https://perma.cc/T94D-RN28>
 - John R. Brooks & David Gamage, “Taxation and the Constitution, Reconsidered” (2022) Tax L Rev <https://perma.cc/R4FH-27B3>
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2.7 Consumption Taxes

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- Rita de la Feria & Anculien Shoeman, “Addressing VAT Fraud in Developing Countries: The Tax Policy-Administration Symbiosis” (2019) 47:11 Intertax 950: <https://perma.cc/76LU-29K9>.
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- Alastair GA Thomas, “The Distributional Effects of Value Added Taxes in OECD Countries” (PhD Thesis, Victoria University of Wellington, 2020): <https://perma.cc/JFS4-KKL7>.
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- James D Chindengwike, “The Influence of Value Added Tax Revenue on Private Domestic Investment in Developing Countries’ (2022) 18:4 J Global Economy: <https://perma.cc/SAY9-5A87>
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 - Tif Said Suhail Al Mazroui et al, “Bibliometric Analysis of Value Added Tax Research: A Comparative Study between European Union and Gulf Cooperation Council Countries” (2023) Intl J Law & Management: <https://perma.cc/SFQ4-CLTW>
 - Vladimir Panov, “Value Added Tax on Medicine in EU Countries’ (2020) 7:2 J Medical & Dental Practice: <https://perma.cc/4FPW-NNWP>
 - Ahmad Jafari Samimi, “Value Added Tax & Export: the Case of Selected Countries around the World” (2011) 2:6 J Economics & Behavioural Studies: <https://perma.cc/Y8RX-8E6A>
 - Md Noor U Milon, Kamal Yousuf & Tahmina A. Poli, “Supremacy of Value Added Tax: A Perspective from South-Asian Nations” (2023) 10:2 J Asian Finance, Economics & Business: <https://perma.cc/X4Z5-5QNB>
 - D Bachurin, “Legal and Regulatory Reform of Value Added Taxation in the People’s Republic of China and the Republic of India: Trends and Characteristics (2021) 8:3 BRICS Law J
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3 Income Tax

3.1 General

The paper by Walter Schwidetzky and Rolf Eicke is ambitious. They attempt to explain a number of differences between the United States and German income taxes on the basis of each country's differing values. They refer compendiously to American values as representing those of "the rugged individualist" and German values as representing those of a "social activist." Walter Schwidetzky is a professor at the University of Baltimore School of Law in the US; Rolf Eicke is a tax attorney in German who obtained a doctoral degree in tax law.

The working paper is somewhat lengthy but it is an easy read. Much of it is a basic overview of the two tax systems. You can browse through it and look for the differences they claim are accounted for on the basis of different cultural values. Although a number of differences are accounted for by differing values, they claim, they contend that in a number of instances the position taken in one country is superior to that in the other. Are you persuaded by their arguments? Do you agree with their assessment of which rules are a superior choice?

The working paper was subsequently published in two parts in vols. 27 and 28 of the *Journal of Taxation of Investments* (2011).

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- Walter Schwidetzky, "A Comparison of the Income Tax Systems in the United States and Germany: The Rugged Individualist Meets the Social Activist," (March 2010) Working Paper.
 - Jonathan Di John, "The Political Economy of Taxation and Tax Reform in Developing Countries" (UNU WIDER Research Paper No. 2006/74, 2006).
 - Eunyoung Ha & Melissa Rogers, "What's Left to Tax? Partisan Reallocation of Trade Taxation in Less Developed Countries" (2017) 70:3 Pol Res Quarterly 495.
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 - Autilia Arfwidsson & Louise Fjord Kjærsgaard, "Taxation of Cryptocurrencies from the Danish and Swedish Perspectives" (2019) 47:6/7 Intertax 620: <https://perma.cc/SVU8-27TC>.
 - Hassan Amjad, "The Role of International Agreements in Organising Tax Imposed on Intellectual Property Rights in Egypt, Palestine, and Jordan" (2020) 33:4 Arab L Qtly 381.
 - VV Ponkratov, NN Bashkirova & EV Ryabova, "Comparative Analysis of the Main Features of the Professional income Tax: Russian and Foreign Experience" (2020) 128 Advances in Eco, Bus and Mgt Res 2382: <https://perma.cc/4AKN-HNSJ>.
 - C Man, "An International Comparison of the South African Tax Treatment of Crossborder Retirement Fund Payments" (North-West University LLM Dissertation, 2021): <https://perma.cc/ZAK7-FWUP>

- Sarka Sobotovicova & Jana Janouskova, “Specifics of Real Estate Taxation in the Czech and Slovak Republics” (2020) 26 Int’l Advances in Econ Res 273: <https://perma.cc/N7Q4-9CKZ>.
 - Myck, Michal & Trzciński, Kajetan, “Income Tax Policy in Europe between Two Crises: From the Great Recession to the COVID-19 Pandemic” (2022) IZA Discussion Paper No. 15302 <https://perma.cc/7ZD7-ZC35>
 - Andrian J Sawyer, “Individual Income Tax Reform in China: An Evaluation Through a New Zealand Lens” (2020) 26 New Zealand J Taxation L & Policy: <https://perma.cc/GG8U-KC4P>
 - William Barker, “Comparative Approach to Income Tax Law In the United Kingdom and the United States” (1996) 46:1 A. Cath. UL Rev 7: <https://perma.cc/RN34-XVAU>
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3.2 Global versus Scholastic Systems

- Henry Ordower, “Schedularity in U.S. Taxation, its effect on Tax Distribution, Comparison with Sweden,” Saint Louis University School of Law, Legal Studies Research Paper Series, No. 2012-31 (2012): <https://perma.cc/9KV8-45KU>.

3.3 Flat Taxes and Progressivity

Whether and to what extent the rates of the income tax should be progressive is one of the oldest, most contested, and interesting issues in taxation. Enormous amounts have been written about it, although few people have attempted a serious comparative analysis. A few of such articles are outlined below.

Miroslav Beblavy’s article tries to explain why the flat taxes adopted in Western Europe appear to have been sustained while private pension incentives, which were adopted at about the same time and arguably reflected, in part, the same neoliberal ideology, have been mitigated and restructured. The author tests an interesting hypothesis.

- Miroslav Beblavy, “Why has the crisis been bad for private pensions, but good for the flat tax? The sustainability of ‘neoliberal’ reforms in the new EU member states,” CEPS Working Doc, No. 356 (October, 2011): <https://perma.cc/6DQ3-VBRA>.
- Michael A. Livingston, “From Mumbai to Shanghai, with a Side Trip to Washington: China, India and the Future of Progressive Taxation in an Asian-Led World,” (2010) 11:2 Theoretical Inquiries in Law 539: <https://perma.cc/QA7J-SDZK>.
- Michael A. Livingston, “From Milan to Mumbai, Changing in Tel Aviv: Reflections on Progressive Taxation and ‘Progressive’ Politics in a Globalized but Still Local World,” (2006) 54:3 American J Comp L 555: <https://perma.cc/ETK9-TFBU>.
- Alexander Batur & Julia Gray, “Flatliners: Ideology and Rational Learning in the Diffusion of the Flat Tax,” Discussion Paper, Institute for International Integration Studies, 2007.: <https://perma.cc/G2F4-42RX>.

- Vincent A. Mahler & David Jesuit, “Fiscal Redistribution in the Developed Countries: New Insights from the Luxembourg Income Study,” (2006) 4 Socio-Economic Rev 483: <https://perma.cc/FPH9-SULW>.
 - Jacob Lundberg & Gustav Fritzon, “Taxing High Incomes: A Comparison of 41 Countries”, *Tax Foundation* (October 2019): <https://perma.cc/TQW3-VFYB>.
 - Madalina Ecaterina Popescu, *et al*, “Flat-Rate versus Progressive Taxation? An Impact Evaluation Study for the Case of Romania” (2019) 11:22 J Sustainability 1: <https://perma.cc/L6PK-VLKQ>.
 - Emina Jerlovic, “Advantages and Disadvantages of Models of Personal Income Taxation Concerning Employment Income and Independent Personal Services Income” (2017) *Economic and Social Development: Book of Proceedings* 76.
 - Stiers, Dieter, et al. "Support For Progressive Taxation: Self-Interest (Rightly Understood), Ideology, And Political Sophistication." (2022) 29.4 J European Public Policy 550-567. <https://perma.cc/VS4Q-T6FW>
 - Kovács, Borbála. "Flat-Rate Personal Income Tax In Lithuania, Romania and Hungary: A Revolutionary Policy Idea Without Revolutionary Outcomes." (2022) 32:1 J European Social Policy 60-74: <https://perma.cc/F9BH-QLUC>
 - Salvador Barrios et al, “Progressive Tax Reforms in Flat Tax Countries” (2020) 58:2 *Eastern European Economics* 83 <https://perma.cc/Y9E9-L29D>
 - Gancho Ganchev & Stoyan Tanchev, “Why Post Communist Countries Choose the Flat Tax: A Comparative Welfare Approach”(2019) 69:1 *Acta Oeconomica* 41 <https://perma.cc/MR2M-66QT>
 - Magdalena Rădulescu, “The Fiscal Reforms and Flat Tax in Europe and CEE Countries” (2011) 10:2 *Economic Sciences*: <https://perma.cc/5LZG-NSVX>
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3.4 Capital Gains: General

Trying to get the taxation of capital gains correct or even coherent has bedeviled every country. Every aspect of the tax makes a wonderful topic for comparison.

New Zealand does not have a general (economy-wide) tax on capital gains although the imposition of this form of tax has been in consideration for years. To assist with that consideration, Chris Evans and Richard Krever wrote an article suggesting what lessons New Zealand might learn by studying capital gains taxes in other countries, “Tax Capital Gains: A Comparative Analysis and Lessons for New Zealand.” Will policymakers in New Zealand (or similar countries) find Evans and Krever’s comparative study useful in deciding whether to impose a capital gains tax in New Zealand and if so in designing its features?

The next reading in this section is the “General Report” written following a conference on “Taxation of Companies on Capital Gains on Shares under Domestic Law, EU Law and Tax Treaties.” The conference papers, which included a number of general papers on capital gains and then 15 individual country reports, were published as vol. 10 in the IBFD *EC and International Tax Series*. The book is a staggering 1,276 number of pages in length. Like all of the books in this series it is based on multijurisdictional research carried out by leading tax scholars and practitioners. In this case, Professors Guglielmo Maisto and Jacques Malherbe wrote the general report.

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- Chris Evans and Richard Krever, “Taxing Capital Gains: A Comparative Analysis and Lessons for New Zealand,” (2017) 23:4 New Zealand J Taxation L & Policy 486: <https://perma.cc/6MVF-4LS9>.
 - Guglielmo Maisto and Jacques Malherbe, “Trends in the Taxation of Capital Gains on Shares under Domestic Law: General Report,” in Guglielmo Maisto, ed., *Taxation of Companies on Capital Gains on Shares under Domestic Law, EU Law and Tax Treaties* (Amsterdam: IBFD, 2013), Ch. 1.
 - Michelle Harding, (2013) “Taxation of Dividend, Interest, and Capital Gain Income,” OECD Taxation W.P. 19 (OECD Publishing): <https://perma.cc/J3EJ-SG57>.
 - Rainer Zielke, “Taxation of Capital Gains in the European Union, Norway and Switzerland: An Empirical Survey with Recommendations for EU Harmonization and International Tax Planning,” (2009) 37:6/7 Intertax 382.
 - William B. Barker, “Expanding the Study of Comparative Tax Law to Promote Democratic Policy: The Example of the Move to Capital Gains Taxation in Post-Apartheid South Africa,” (2005) 109:3 Penn State L Rev 101: <https://perma.cc/2UK2-5PBJ>.
 - Marjorie Kornhauser, “Gender and Capital Gains Taxation,” in Kim Brooks, Asa Gunnarsson, Lisa Phillipps, Maria Wersig, *Challenging Gender Inequality in Tax Policy Making* (Oxford: Hart Publishing, 2011) 275.
 - Alvin Cheng, Keith Hooper & Howard Davey, “A Capital Gains Tax for New Zealand: A Comparative of the UK and Australian Models” (2000) 8:2 Asian Rev Accounting: <https://perma.cc/7SGY-H6WY>
 - Rajesh Chakrabarti & Alexander Gruzin, “The Impacts of Taxation on Capital Structure in BRICS Countries” (2020) 13:3 J Corporate Finance Research: <https://perma.cc/EV7Q-FLJX>
 - Mervyn A. King & Don Fullerton, *The Taxation of Income from Capital: A Comparative Study of the United States, the United Kingdom, Sweden and West Germany* (Chicago: University of Chicago Press; 2010)
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3.5 Capital Gains: Indirect Transfers

Many countries tax nonresidents who realize capital gains on the sale of resource or other real property in the country. Further, many countries have rules allowing the tax department to look through corporations and tax the sale of shares held by nonresidents if the share’s value is derived primarily from resource or other real property situated in the country. But what if the sale is shares of a corporation that was three or four or more tiers above the corporation holding the resource or other real property situated in the country? Then matters start getting interesting. Countries have struggled with whether and how to formulate rules governing these transactions. The widely discussed Vodafone tax case in India raised this issue.

In the first reading, Wei Cui, who is a tax professor at the Faculty of Law, University of British Columbia, analyzes how both India and China have tried to deal with the problem of so-called indirect transfers. In the course of that discussion, he makes a number of interesting observations not only about capital gains tax but also about corporate interests and the situs of shares, piercing the corporate veil, the role of tax avoidance doctrine, and generally the use of comparative tax law in formulating tax rules.

- Wei Cui, “Taxing Indirect Transfers: Improving an Instrument for Stemming Tax and Legal Base Erosion,” in Guglielmo Maisto, ed., *Taxation of Companies on Capital Gains on Shares under Domestic Law, EU Law and Tax Treaties* (Amsterdam: IBFD, 2013), Ch. 9: <https://perma.cc/7PFF-6JYU>.
 - Marc M Levey et. al., “Vodafone: An Analysis Under Internationally Recognized Tax Principles,” (2012) 40:8/9 Intertax 477.
 - Richard Krever, “Tax Treaties and the Taxation of Non-resident’s Capital Gains,” in Arthur Cockfield, ed., *Globalization and Its Tax Discontents: Tax Policy and International Investment* (Toronto: University of Toronto Press, 2010) 212: <https://perma.cc/DA46-4EUU>.
 - Meyappan Nagappan & Srikanth Vasudevan, “Indirect Transfer Taxation in India: From Vodafone to Cairn (2017) 45:10 Intertax 665
 - Annet Wanyana Oguttu, “Preventing Tax Base Erosion and Profit Shifting Occasioned by Offshore Indirect Transfer of Assets: Perspectives from Africa” (2022) 14:4 World Tax J <https://perma.cc/TC75-Y9VA>
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3.6 The Significance of Conjugal Relationships in Income Tax Policy

This is another perennial tax issue – to what extent should conjugal relationships be taken into account in assessing income tax liability. The variations are almost endless but beginning over 40 years ago there appeared to be a general shift from some form of family-unit taxation to individual-based taxation. In recent years, aspects of family-based taxation have reentered into the income tax base in a number of countries.

The articles outlined in this section are a sample of the truly rich comparative tax literature in this area of tax policy.

- Stephanie Hunter McMahon, “London Calling: Does the UK’s Experience with Individual Taxation Clash with the US’s Expectation,” (2010) 55 Saint Louis ULJ 159: <https://perma.cc/8A5G-RHRY>.
- Edward McCaffrey, “Where’s the Sex in Fiscal Sociology? Taxation and Gender in Comparative Perspective,” in Isaac Martin, Ajay Mehrotra and Monica Prasad, eds., *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective* (Cambridge University Press, 2009), Ch. 13: <https://perma.cc/KJT2-XSKX>.

- Allstair Pearson & David Binder, *The Taxation of Families: International Comparisons 2011*, CARE Research Paper (London: CARE, 2012).
- Kathleen A Lahey, “The ‘Capture’ of Women in Law and Fiscal Policy: The Tax/Benefit Unit, Gender Equality and Feminist Ontologies,” in K Brooks, A Gunnarsson, L Phillipps, & M Wersig, *Challenging Gender Inequality in Tax Policy Making* (Oxford: Hart Publishing, 2011) 11.
- Maria Wersig, “Overcoming the Gender Inequalities of Joint Taxation and Income Splitting: The Case of Germany,” in Kim Brooks, Asa Gunnarsson, Lisa Phillipps, Maria Wersig, *Challenging Gender Inequality in Tax Policy Making* (Oxford: Hart Publishing, 2011) 213.
- Joel S Newman, “Taxation of Households: A Comparative Study,” (2010) 55:1 St Louis ULJ 129: <https://perma.cc/BR4S-Y8DF>.
- James Alm & Mikhail Melnik, “Taxing the ‘Family’ in the Individual Income Tax,” (2005) 5:1 Public Finance & Mgt 67: <https://perma.cc/C634-K2M9>.
- Osman Fatih Saraçoğlu, Eren Çaskurlu & Haydar Lütfü Ejder, “Minimum Subsistence Allowance and Family Taxation: Examining of the Efficiency of Comparison with Some Country Experience and Turkish Case” (2014) 5:2 Mediterranean J Soc Science: <https://perma.cc/ZE6C-U3NT>
- Dario Alenjandro Rossignolo et al, “Making the Invisible Visible Applying a Gender Perspective to Strengthen Tax Policy in Latin America and the Caribbean” (2022) Inter American Development Bank: <https://perma.cc/Z7NJ-2V8Y>
- Rajul Awasthi et al, “Gender-Based Discounts on Taxes Related to Property” (2023) World Bank Group Policy Research Working Paper 10287 <https://perma.cc/H68Q-ZRT6>
- Manuel Schechtel, “The Taxation of Families: How Gendered (de) Familialization Tax Policies Modify Horizontal Income Inequality” (2023) 52:1 J Soc Policy 63-84 <https://perma.cc/NA27-FCJK>
- Ann Mumford, *Tax Policy, Women and the Law: UK and Comparative Perspectives*. (Cambridge: Cambridge University Press, 2010).
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3.7 Income Tax Inclusions

- Yoram Margalioth, “The Social Norms of Tipping, Its Correlation with Inequality, and Differences in Tax Treatment Across Countries,” (2010) 11:2 Theoretical Inquiries in Law 561: <https://perma.cc/LMB6-FFCV>
- Benjamin Alarie and Matthew Sudak, “The Taxation of Strike Pay,” (2006) 54:2 Canadian Tax J 426: <https://perma.cc/X6KA-MG9B>.
- Hugh Ault & Brian Arnold, *Comparative Income Taxation: A Structural Analysis*, 3rd ed. (The Hague: Kluwer, 2010), “Inclusions in the Tax Base,” 199.

3.8 Income Tax Deductions

We could choose any one of a number of basic income tax rules to compare across countries, but the taxation of company cars (a rule of inclusion) and commuting expenses are particularly interesting since most countries are concerned about the effect of their tax rules on the environment. As well as being fiscally important, these rules can clearly affect the amount of cars that are driven and, therefore, their environmental effect can be substantial. The paper from the OECD provides an excellent comparison of these rules and their possible environmental impact.

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- Michelle Harding, “Personal Tax Treatment of Company Cars and Commuting Expenses: Estimating the Fiscal and Environmental Costs,” OECD Taxation Working Papers No. 20 (Paris: OECD, 2014): <https://perma.cc/4MAG-BL44>.
 - Tsilly Dagan, “Ordinary People, Necessary Choices: A Comparative Study of Childcare Expenses,” (2010) 11:2 Theoretical Inquiries in Law 589: <https://perma.cc/69VV-TRSS>
 - Hugh Ault & Brian Arnold, *Comparative Income Taxation: A Structural Analysis*, 3rd ed. (The Hague: Kluwer, 2010), “Deductions,” 249.
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3.9 Exit Charges

- Vikram Chand, “Exit Charges for Migrating Individuals and Companies: Comparative and Tax Treaty Analysis,” (2013) 67:4/5 Bulletin for Intl Tax’n: <https://perma.cc/8YA4-5B99>.
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3.10 General Anti-Avoidance Rules (GAAR)

Over the past 25 years much has been written about tax avoidance. Arguably, tax avoidance causes huge revenue losses, leads to perverse distributional consequences, results in activities that are irredeemably inefficient (since such activities do not create new wealth but simply result in the transfer of wealth from one set of persons to another), increases the complexity of the tax system, and diminishes the legitimacy of the tax system. For reasons like these in recent years countries have tried hard to minimize tax avoidance. In most cases this has resulted in countries adopting, among other things, a general anti-avoidance rule (GAAR).

In July 2014 the Institute for Austrian and International Tax Law held a conference on “General Anti-Avoidance Rules (GAARs) – A Key Element of Tax Systems in the Post-BEPS Tax World?” The papers presented at the conference were published in the book of essays. Rick Krever wrote the opening chapter to the book in which he synthesizes the other chapters. There is commonly a general report of this kind in these comparative collected essays of how a particular tax problem is dealt with in different countries. Krever begins his essay with the following observation:

While they are very recent additions to some countries’ tax laws, GAARs have played a central role in other tax systems for well over a century. Quite possibly no other feature of tax law provides a better insight into a nation’s tax psyche than its anti-avoidance rules. The intersection

of general anti-avoidance rules (GAARs) – as well as their ancillary specific anti-avoidance rules (SAARs) – with operative provisions of tax law reveals much about all aspects of a country's tax system: citizens' tax morale; judicial perspectives on taxation and legal interpretation; drafters' inclinations towards technical or principled drafting; and legislators' willingness to confront politically sensitive issues or their tendency to delegate the tough decisions to administrators and courts. A comparative analysis of the role of GAARs (or the lack of any GAAR) in tax systems such as that found in this volume can thus offer unique perspectives on tax law across jurisdictions.

The next reading is an excellent comparative tax law article in which the author critiques the relatively recently enacted GAAR in China by comparing it with that in the UK and the Netherlands. The following article by Wei Xiong and Chris Evans deals with a related issue.

The next article raises the interesting question as to whether most countries are converging on the appropriate design of a GAAR. In some countries a GAAR asks just three questions in defining an abusive tax avoidance scheme: Did the taxpayer derive a tax benefit? Was the transaction undertaken primarily to derive a tax benefit? If the transaction was tax motivated, whether it amounted to an abuse of misuse of the tax rules? If this is the case, why shouldn't a GAAR be just three (or so) sentences long and why shouldn't every country adopt the same rule?

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4.3 Corporate Taxes and Business Investment

One of the most talked about issues in corporate tax is the effect of corporate taxes on investment. On the understanding that high corporate taxes might reduce business investment, countries around the world have reduced their corporate tax rates. Countries are continually comparing their corporate tax rate structure with those in other countries. One of the most important concepts for making this comparison is the Marginal

Effective Tax Rate (METR) on capital in a country. The concept of marginal effective tax rates was developed in the late 1970s by two American economists, Alan Auerbach and Dale Jorgenson, and the literature on the concept grew at an exponential rate over the next number of years. It is now in standard use in making corporate tax rate comparisons. The concept is useful in part because it summarizes in a single number the interplay of many complex tax provisions and their incentive (or disincentive) effect on the decision to invest in particular assets. It allows analysts to make simple comparisons of tax consequences across the full range of investment opportunities.

Although refinements of the concept are complex, the intuition underlying it is straightforward. The neoclassical model of investment behaviour assumes, among other things, that a firm will seek to maximize its profits over time. This implies that a firm will invest in capital up to the point where its marginal product of capital (the amount of extra output the firm gets from an extra unit of capital) exactly equals the cost of using that capital. The cost of using one unit of capital for one time period, or, as it sometimes referred to, the user cost of capital or the rental rate of capital, is its opportunity cost – basically, the interest cost of borrowing to finance the investment and, if the asset declines in value over the period, the investment's loss in value due to depreciation. In this model of investment behaviour, taxes affect investment decisions by changing the user cost of capital to the firm. Because the revenue earned by the additional capital in the firm is taxed, the user cost is generally increased by taxes and thus investments are reduced. In the phrase “the marginal effective rate of tax,” the term “marginal” refers to the fact that the concept is a measure not of the total or average taxes paid by the firm but of the taxes paid on the firm's marginal investment, expressed as a percentage of the investment's pre-tax rate of return. The term “effective” refers to the fact that the concept takes into account not only the statutory rate of tax but also all of the major design features of the tax base that might affect the taxes to be paid, such as the availability of investment tax credits or accelerated capital cost allowances. The concept thus offers an easy-to-understand measure of the incentive (or disincentive) that the tax system provides to undertake a particular project. Since taxes inevitably vary depending on the type of asset purchased, the industry in which the investment is made, the method of financing the investment, and the nature of the investor supplying the funds, all of these variables will affect the marginal effective rate of tax.

The following study relies on the concept of METR in comparing corporate taxes across a range of countries and in support of its argument that Australia should reduce its corporate tax rate in order to encourage new business investment. A study published at the same time, again relying on international tax comparisons, argues that there is little evidence that lower corporate taxes will bring benefits to the Australian economy.

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4.5 Taxation of Small Businesses

One of the most contentious issues in corporate tax is the treatment of small businesses. Every country provides a range of tax preferences for small businesses. In a study on the taxation of small business in OECD and G20 countries, the OECD studied the taxation of small businesses in detail. In chapter 3 they reviewed the tax preferences for small businesses across a range of countries.

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4.6 Treatment of Corporate Losses

Aspects of the corporate tax system are subject to constant comparisons across countries as business and other groups argue for changes in domestic tax in order to make their domestic tax system competitive with those of foreign countries. In the context of the corporate tax reform debate in the United States, Omri Marian has an article illustrating how difficult and often meaningless these comparisons are. See the link above under heading 1.3 General. Since the corporate tax system is the subject of a number of other courses, here we will just look at one aspect of the corporate tax system – namely the problem of providing relief for corporate losses. It is an important element in a tax system designed to encourage risk taking.

In theory, in a year that a corporation suffers a business loss arguably it should be entitled to a tax refund. But no country provides for the full refundability of tax on corporate losses – instead presumably out of a concern for tax avoidance opportunities and the revenue consequences, countries generally provide for a system of loss carryback and carryforward. In implementing such a system, it is important that tax loss trading be prevented or else the country will have, in effect, a system of privatized full refundability as loss companies sell their losses to profitable companies.

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5 International Tax Issues

International economic integration comes with different kinds of tax-related issues, one of which is “harmful” tax competition. But countries do not just compete. They also learn from the experiences of one another in designing tax rules and policies that apply to international economic activities. Tax scholars have dedicated considerable effort to studying how countries confront common issues of international tax. These studies range from the original problem of international tax – how to allocate tax jurisdiction (generally with the objective of reducing the multiple layers of tax and to ensuring tax is collected somewhere) – to emergent international tax issues like tax transparency and base erosion. To address these issues, countries have increasingly drawn on multilateral solutions that are developed by or through institutions like the OECD, the UN, and the IMF. Even multilateral solutions often evolve and benefit from domestic experimentation. For instance, consider the role played by unilateral US measures like FATCA and controlled foreign affiliate rules in driving global tax transparency initiatives like the CRS and CbCR. These trends tend to justify the concerted efforts of tax scholars to study the tax systems of other countries as they relate to international tax.

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5.5 Transfer pricing

Transfer pricing is undoubtedly one of *the* dominant international tax issues. On the one hand, a good number of tax attorneys and other highly paid professionals make a handsome living assisting in the determination of transfer prices for the over 60% of all world trade that is now thought to take place between multinational corporations and their subsidiaries. They, and a number of international organizations, have traditionally defended the traditional arm’s length method for setting these prices and hence for allocating a multinational’s profits to different countries in which it does business. However, a relatively small number of tax reformers, and in recent years a growing number of tax justice and international tax organizations, have realized that attempting to use transfer prices to allocate the profits of multinationals to individual countries is unworkable, incoherent, and does not reflect compelling economic or moral principles.

As an indication of the recent interest in reexamining the system of transfer pricing, four of the 15 actions established by the OECD in their Base Erosion and Profit Shifting (BEPS) Action Plan deal with it. The editor of the *Tax Notes International*, Ajay Gupta, declared that for 2013 “in the light of ... multiple demonstrations of dysfunction and decay, we have selected the persisting vegetative state of global transfer pricing enforcement as the international tax development of the year.” Lee Sheppard, the inimitable contributing editor at Tax Analysts, writing on the “twilight of the international tax consensus” noted that with respect to transfer prices, “it has been an open secret for some time that multinationals – led by the Americans and their huge tax departments – have abused these privileges. The affected countries are no longer limited to corrupt, badly governed, resource-exporting countries. They now include European states with sophisticated tax administrations and the home governments of multinationals. Every country is just another country to be exploited.”

The concluding chapter in a collection of essays edited by Eduardo Baistrocchi (the author of the chapter) and Ian Roxan, *Resolving Transfer Pricing Dispute: A Global Analysis* (2013) is provided below. The chapter is based upon, in large part, the 18 chapters of the book which highlight the transfer pricing law and practices in countries around the globe. Some represent countries that have a long history of transfer pricing regulation, while others represent countries that are just starting to grapple with the issue. The chapters were all written by recognized scholars, and it is evident that instead of each chapter being a stand-alone study there was considerable collaboration between the authors. The book is not only comprehensive but also tightly integrated. Although the individual authors were responding to a questionnaire about the law and practices in their jurisdiction each was allowed to develop a narrative that gave a sense of the law and practice in their country before responding to the individual questions.

The general theme developed in the reading is that there has been an historical trend from a rules-based to a standard-based approach to transfer pricing. In developing this theme, the author divides the adoption and reformulation of transfer pricing rules in each country into six stages. The chapter traces how these six stages were traversed in each country and draws some fascinating generalizations. Even if you do not agree with the author's analysis, it clearly represents a substantial contribution to the comparative tax literature.

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5.7 Tax Transparency

5.7.1 General

Tax secrecy and tax transparency are not issues of interest to only taxpayers and practitioners but also have become one of the major issues in international tax reform and policy. The “General Report” below resulted from a major international tax conference at which over 37 country reports were presented. The conference was held in Rust, Austria in July 2012. It was co-sponsored by the Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business) and the Örebro University, Örebro, Sweden. The purpose of the conference was not only to describe the ways in which different countries protect tax information from disclosure but also to assess the impacts of the different regimes. The General Report was written by Eleonor Kristoffersson (Sweden) and Pasquale Pistone (Italy). Like the papers on which it is based, the general report deals with a large number of topics related to the collection of tax data, the sharing of tax information both domestically and internationally, and the public and individual taxpayers access to tax information. One important question that is the subject of ongoing debates is the extent to which corporate tax returns should be made publicly accessible. Of course, a form of disclosure, and one that is now being implemented, requires country-by-country reporting by multinationals. A contentious issue is whether these reports should be public. An important multilateral player in international tax policy, the EU, has embraced public country-by-country reporting. A new EU directive would require certain multinational entities to publish certain income tax information, in certain prescribed circumstances.

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6 Wealth Tax

In recent years there has been renewed interest in the need for and design of wealth taxes. In part this interest has been accounted for by the increase in top-end income and wealth inequality over the past 40 years and by the provocative proposal by Thomas Piketty in his best-selling book, *Capital in the Twenty-First Century*, for a global wealth tax.

The authors Oh and Zolt propose that instead of imposing a comprehensive wealth tax, which is difficult to design and enforce, most countries could achieve the same objectives by enacting what they call “wealth tax add-ons.” In addition to elaborating on their proposal, their article illustrates the importance of considering the particular economic environment of different countries in proposing tax reforms.

As mentioned, Piketty had proposed a global wealth tax to deal with increasing top-end inequality. Many considered his proposal utopian. Richard Bird in “Are Global Taxes Feasible?” carefully reviews past attempts at imposing global taxes and concludes that “there can be no global taxes without a global government.” Do you agree? This is the second reading in this section. The issue is important not only in relation to a global wealth taxes but also other types of global taxes that are often proposed to deal with the problems of collecting taxes posed by increased globalization.

For those unfamiliar with Piketty’s work the next two short essays are by Thomas Piketty: one arguing for a European wealth tax in order to meet fiscal adjustment needs and the other setting out the case for rethinking capital and wealth taxation. Here is a brief note about his work on inequality more generally.

Thomas Piketty is a relatively young, but very well-known, French economists who published *Capital in the 21st Century*, with which many of you are likely familiar. The title is an allusion to Marx’s book on capital. The book was a bestseller in several countries and has been hailed as one of the best economic books of the past century. It has captured the attention of economists of every political persuasion. Basically, Piketty argues that wealth inequality is endemic to capitalism and that unless public policies are enacted to stem rising wealth inequality the rich will continue to get richer. Although he admits there are alternative solutions – if capitalism is to be saved from itself – his solutions are steeper progressive income taxes (chapter 14) and a global tax on wealth (chapter 15).

I suppose one way of framing the issue that we might discuss in relation to his thesis and suggested solutions is what does comparative tax law tell us about the political likelihood or viability of a serious wealth tax.

Countless reviews of Piketty’s book have been written but just one is linked – by Branko Milanovic, the former lead economist at the World Bank and now visiting professor at several universities, “The Return of Patrimonial Capitalism.” It is comprehensive and thoughtful. If you are particularly interested in his thesis you might read this review (or of course the book itself, and especially chapter 14 on the global capital tax). However, our primary interest here is in what comparative tax can tell us about the viability and workability of wealth taxes.

The central claim of Picketty’s book is simple. In his introduction Picketty explains why in a capitalist economy the richer are destined to get richer:

Over the long run, ordinary labor income grows at about the same rate as the broader economy. That's about 2-3 percent per year these days. Capital, however, tends to produce real returns of 4-5 percent. This means that over the course of, say, 50 years, labor income will increase about 3x while capital stocks will increase about 9x. That in turn means that income from

capital will also increase 9x. And since rich people have by far the bulk of all capital income, income inequality inevitably grows forever unless something stops it.

If “r” is taken as representing the return on capital and “g” as representing the rate of economic growth, then his claim can be simply stated, as it is throughout the book, as historically $r > g$. If this is correct, then people with capital will always see their incomes grow faster than ordinary workers.

It is the case that from the period of about 1930 to the mid-1970s the rate of economic growth exceeded the return to capital and during this period inequality dropped dramatically. Piketty claims, however, that this was an unusual period in history. He ascribes the drop in inequality primarily to the effects of the world war on inherited wealth and to the very high tax rates that were enacted during and following the war. Since the mid-1970s, he claims, we have returned to the more usual circumstances in which $r > g$ and the rich continue to get richer.

Obviously, if this historical claim is true, there are only a few things that can be done to halt the inevitably increasing concentration of wealth. One would be to enact policies or for market conditions to cause the rate of return on capital to decline. Another would be to enact policies or to count on market conditions to increase the rate of economic growth (such as most countries experienced in the so-called golden age of capitalism (1945 to 1970)). Or, thirdly, to tax or use other policy instruments to reduce the after-tax rate of return that capital owners experienced. With his suggestions for steeper progressive income tax rates and a global tax on wealth, Piketty is obviously convinced only this third solution is viable.

Naturally, this brief summary does not do justice to his sophisticated argument. Some economists have taken issue with almost every step in his analysis. However, hopefully it will start us on a discussion of the use of wealth taxes across countries and the need for and possibility of enacting a global wealth tax.

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7 Tax Expenditures

7.1 General

It is now well understood that governments use the tax system as an instrument for achieving their various social and economic objectives. When they use specific provisions in a broad-based tax to indirectly subsidize taxpayers in order to encourage them to engage in particular types of behavior these provisions are referred to as tax expenditures. The concept of tax expenditures is now so widely understood that probably there is no need to explain it further. However, just briefly....

The concept rests on the premise that the income tax (for example) in every country is comprised of two types of provisions – technical tax provisions and tax expenditures. Technical tax provisions are those provisions that establish the basic structural elements of the tax system: the tax base, the filing unit, the accounting period rules, the rates, and the rules of administration. These rules are necessary in order to make the statute effective for raising revenue and redistributing income. They are drafted and evaluated using the traditional technical tax policy criteria of equity, neutrality and simplicity.

But there are invariably countless provisions in most (all) income taxes that cannot be explained by reference to these technical tax policy criteria. These provisions have nothing to do with defining the basic elements of the tax system. Instead, their purpose is to provide an implicit subsidy to either those who behave in ways that the government wishes to encourage or to those who are deemed to be entitled to some form of government transfer payment because of their personal circumstances. These are the provisions that are now widely referred to as tax expenditures. They take the form of special tax exemptions or deductions, tax credits, lower rates of tax or provisions that allow taxes to be deferred.

Many countries prepare an annual accounting in some form of these tax expenditures. In such a document the tax expenditures are listed, described, and estimates of their cost to the government are reported. In theory these provisions should be treated the very same as direct budgetary spending programs in the governments budgetary process, though few (if any) countries have gone that far. Nevertheless, tax reformers and international organizations have been urging low-income countries to prepare tax expenditure accounts and to embed them in the budgetary process.

Lisa Phillips, a tax professor at Osgoode Hall Law School in Toronto, argues that we should be cautious in attempting to impose the tax expenditure concept and tax expenditure accounting as understood in high-income countries on low-income countries. She argues that cultural and other differences between countries should be taken into account in defining tax expenditures and accounting for them. Simply for your convenience, I have copied here the conclusion of her article. Do you agree that cultural and other variables unique to particular countries should inform the definition and accounting for tax expenditures? In addition to reading her article for the support of her claim, you might want to read it since it has a nice summary of the development of the tax expenditure concept and its spread across countries.

In [the conclusion], I suggest several reasons why foreign experts and international organizations ought to choose our words carefully in recommending tax expenditure analysis to countries of the Global South. Law and development literature has documented the problems that can arise when institutional reform prescriptions are not sufficiently contextualized to local politics, economies and culture. I argue that these concerns apply with equal force to the quest for universal tax expenditure reporting. At a minimum, advocates should openly acknowledge that tax expenditure analysis remains contested and has limited political purchase in the OECD

countries usually held out as models of best practice. Caution is also needed to ensure that normative biases about ideal tax policy are not smuggled in through an ostensibly technocratic exercise in transparency, thereby distorting or sidestepping the domestic policy making processes of the receiving country. Finally, before investing scarce administrative resources in a particular model of tax expenditure reporting developing countries should be encouraged to weigh its potential benefits and costs, including the opportunity costs of foregoing other possible activities of finance and revenue personnel. I argue that without an explicit strategy for naming, analyzing and tackling these challenges as they arise in context, tax expenditure reporting is even less likely to impact positively on either policy formation or democratic accountability than in the high-income countries where it was first established.

It would be wonderful if we had time to compare how different countries implement some common types of tax expenditures such as those to attract skilled workers, to encourage innovation and foreign direct investment, and those to provide an incentive to support contributions to the voluntary sector. The bibliography below lists some readings that deal with particular forms of tax expenditure.

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