

Marjaana Helminen

**EU**

**TAX LAW**

*Direct Taxation*

**2024 EDITION**

**IBFD**



# EU Tax Law – Direct Taxation 2024

## Why this book?

EU tax law substantially impacts the domestic tax laws of the EU Member States and the way in which those laws should be interpreted and applied. The effect of EU tax law on national legislation is becoming increasingly complex. Today, anyone working with or interested in tax law or tax planning is confronted with EU tax law issues.

The 2024 edition of EU Tax Law – Direct Taxation provides a clear picture of the EU law norms that are relevant from the perspective of direct taxes. It explains how these norms are, and should be, interpreted and how they affect national tax laws and the tax treatment in EU Member States. The book describes the legal remedies available against tax treatment that is in conflict with EU law.

The study begins with a comprehensive overview of the basic principles and concepts of EU tax law and relevant articles of the Treaty on the Functioning of the European Union, analysing them in the light of direct tax case law. A discussion follows covering relevant EU directives and recommendations and other soft law material on direct taxes. Reference is made to all relevant judgments of the EU Court on direct taxes. The book includes a chapter on the tax treatment of the different EU entity forms and the future of corporate taxation. A separate chapter is dedicated to the EU law issues related to transfer pricing and to the EU law norms on administrative cooperation in tax matters. An extensive bibliography is included that directs the reader to further material on the topic.

The book is a handy reference tool for tax practitioners, judiciaries, tax administrations and university students alike. Its structure allows quick and easy access to essential information and facilitates a better understanding of the direct tax issues of EU tax law.

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# **EU Tax Law – Direct Taxation**



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2024 Edition

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## Preface

I got hooked on EU tax law in the early 1990s when I was writing my doctoral thesis. I have had a great passion for teaching and researching EU tax law ever since. Today, no one who is interested in, or working with, tax law or tax planning can avoid dealing with EU tax law issues. EU tax law has a huge impact on the domestic tax laws of the EU Member States and on the way in which the domestic tax laws and tax treaties of the Member States must be interpreted and applied.

There is a substantial body of literature on the different EU tax law issues. However, in my professional endeavours, I missed having a clear and comprehensive work on EU tax law available. There was a need for a reader-friendly, complete presentation of the direct tax law issues of EU tax law. As a professor of international tax law, I felt that it was my duty to remedy this defect. As a consequence, the first edition of this book was published in 2009. The book has been written keeping in mind the needs of practitioners, judiciary, tax administrations, scholars and university students. It provides a complete, in-depth yet easily manageable presentation of the direct tax law issues of EU law. The layout, headlining, figures, tables, bibliography and index are designed to allow fast and easy access to the information needed and to facilitate understanding and learning.

EU tax law develops rapidly, especially because of the growing number of judgments from the CJEU on direct tax matters. Therefore, regular updates of the book are necessary. The most recent judgments have clarified many remaining, unclear issues concerning the impact of EU law on direct taxation. This 2024 edition takes into account the judgments of the CJEU on direct tax matters issued by 1 June 2024. The new case law includes, for example, *Commission* (C-457/21 P), *SC Cartrans Preda SRL* (C-461/21), *BA* (C-670/21), *RF* (C-15/22), *FL* (C-312/22), *GE Infrastructure Hungary Holding Kft* (C-318/22), *Cofidis* (C-340/22), *Commission v. the Netherlands* (C-360/22), *Commission v. the Netherlands* (C-459/22), *NO* (C-472/22) and *Finanzamt Köln-Süd* (C-627/22).

The Commission has also issued new corporate tax directive proposals. On 12 September 2023, the Commission adopted the BEFIT proposal, which lays down a new, single set of rules to determine the tax base of groups of companies in the European Union (Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) 12.9.2023 COM (2023) 532 final). The BEFIT package also included a proposal for a

Council Directive establishing a head office tax system for micro, small and medium-sized enterprises and amending Directive 2011/16/EU (12.9.2023 COM (2023) 528 final), as well as a proposal for a Council Directive on transfer pricing (12.9.2023 COM (2023) 529 final).

Turku, 1 June 2024

Marjaana Helminen



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## Abbreviations and Terms

Anti-Tax Avoidance Directive	: Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market; as amended by Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries
APA	: Advance Pricing Agreement
Arbitration Convention	: The Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (1990/436/EEC)
Directive on Administrative Cooperation	: Council Directive (2011/16/EU) of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, amendments 2014/107/EU of 9 December 2014, 2015/2376/EU of 8 December 2015, 2016/881/EU of 25 May 2016, 2016/2258/EU of 6 December 2016, 2018/822/EU of 25 May 2018, 2021/514/EU of 22 March 2021 and 2023/2226/EU of 17 October 2023
BEFIT	: Business in Europe: Framework for Income Taxation
BEPS	: OECD/G20 Base Erosion and Profit Shifting project
CBT	: Common-base taxation
CCCTB	: Common Consolidated Corporate Tax Base
CCTB	: Common Corporate Tax Base
CFC	: Controlled foreign corporation
CFC regime	: Controlled foreign corporation regime
Charter	: Charter of Fundamental Rights of the European Union, 2010/C 83/02, OJ, 30 March 2010
CJEU	: Court of Justice of the European Union
Commission	: Commission of the European Union
Council	: Council of the European Union (former Council of the European Communities)
DEBRA	: Debt-equity bias reduction allowance
Dispute Resolution Mechanisms Directive	: Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union
EBITDA	: Earnings before interest, tax and amortization
EC	: European Community, European Communities

ECHR	: Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECJ	: European Court of Justice, Court of Justice of the European Union
ECSC	: European Coal and Steel Community
ECtHR	: European Court of Human Rights
EC Treaty	: Treaty Establishing the European Community (the name of the treaty was changed to the Treaty on the Functioning of the European Union by the Treaty of Lisbon, which was signed on 13 December 2007 and which entered into force on 1 December 2009)
EEA	: European Economic Area
EEA Agreement	: The Agreement creating the European Economic Area
EEC	: European Economic Community
EEC Treaty	: Treaty establishing the European Economic Community (signed on 25 March 1957, also known as the Treaty of Rome)
EEIG	: European Economic Interest Grouping
EFTA	: European Free Trade Area
EFTA Court	: Court of the European Free Trade Area
EPC	: European Private Company
EU	: European Union
EUCIT	: European Union Corporate Income Tax
EU Code of Conduct for Business Taxation	: Council conclusions on the reform of the Code of Conduct for Business Taxation, approved by the Council at its meeting held on 8 November 2022, 12252/22 FISC 214 ECOFIN 1131
EU law	: Law of the European Union
Euratom	: European Atomic Energy Community
EU tax law	: Tax law of the European Union
EUTPD	: EU transfer pricing documentation
GloBE Model Rules	: Global Anti-Base Erosion Model Rules (Pillar Two Model Rules)
GloBE Rules	: Global Anti-Base Erosion Rules
HST	: Home State Taxation
IFA	: International Fiscal Association
IFRS	: International Financial Reporting Standards
IIR	: Income Inclusion Rule

- Interest-Royalty Directive : Council Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (3 June 2003)
- JFT : *Tidskrift utgiven av Juridiska Föreningen i Finland* (law periodical published by the Juridical Association of Finland)
- KHO : Supreme Administrative Court of Finland (*korkein hallinto-oikeus*)
- KKO : Supreme Court of Finland (*korkein oikeus*)
- KVL : Central Tax Board of Finland (*keskusverolautakunta*)
- Merger Directive : Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States. The codifying version of 2009 repealed the original directive with its amendments (Council Directive 90/434/EEC) on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchange of shares and to the transfer of the registered office, of an SE or SCE, between Member States (23 July 1990)
- MNE : Multinational enterprise
- Money Laundering Directive : Council Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
- OECD : Organisation for Economic Co-operation and Development
- OECD Model : OECD Model Tax Convention on Income and on Capital
- Parent-Subsidiary Directive : Council Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (30 November 2011)
- Pillar Two Directive : Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union

- Pillar Two Model Rules : The Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion (GloBE) Model Rules (Pillar Two), approved on 14 December 2021 by the OECD/G20 Inclusive Framework on BEPS
- Recovery Directive : Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (16 March 2010)
- Savings Directive: Council Directive 2003/48/EC on Taxation of Savings Income in the form of Interest Payments (3 June 2003); amendment Council Directive 2014/48/EU, 24 March 2014; repealed, effective from 1 January 2016 (Council Directive (EU) 2015/2060 of 10 November 2015)
- SCE : *Societas Cooperativa Europaea*, European Cooperative Society
- SE : *Societas Europaea*, European Company
- SK : Official gazette of the Statutes of Finland (*säädös-kokoelma*)
- TEU : Treaty on European Union (TEU is used in this book to refer to the Treaty on European Union in the form as amended by the Treaty of Lisbon of 13 December 2007, which entered into force on 1 December 2009)
- TFEU : Treaty on the Functioning of the European Union (i.e. the EC Treaty as amended and renamed by the Treaty of Lisbon, which was signed on 13 December 2007 and which entered into force on 1 December 2009)
- TPD : Transfer pricing documentation
- UCITS : Undertakings for collective investment in transferable securities authorized in accordance with Council Directive 85/611/EEC
- UTPR : Undertaxed Profit Rule
- Verotus : *Verotus-lehti* (Finnish tax periodical)









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