

Preface

Taxation of multinational corporate groups has become a major concern in the academic and political debate on the future of domestic and international tax law. This is particularly true in the field of transfer pricing where the arm's-length standard has provided a widely used yardstick for decades but has come under increasing pressure in recent years. In July 2010 the U.S. Congress held a hearing on the use of transfer prices for profit shifting to the detriment of the U. S. corporate tax base. In March 2011 the European Commission has published its draft directive on a Common Consolidated Corporate Tax Base which is meant to do away with the traditional transfer pricing regime within the European Union, using formulary apportionment as an alternative mechanism for the allocation of taxing rights among its Member States. Case law in major jurisdictions shows the increasing complexity of transfer pricing analysis, in particular in the field of intangibles, capital and risk allocation.

Against this background, the Max Planck Institute for Tax Law and Public Finance held an interdisciplinary conference in December 2010 on the fundamentals of transfer pricing in law and economics. The papers presented at this conference are (to a large extent) assembled in this book. Starting from the basic function of transfer prices to steer efficient allocation of resources within a multi-unit firm, the different aspects of transfer pricing under tax law (and corporate law) are explored, addressing also mutual distortions between the tax and the non-tax goals of transfer pricing. The merits of the traditional OECD approach and alternative concepts for the allocation of the international tax base are highlighted and discussed in several papers. Some articles deal with specific practical aspects of transfer pricing, including recent case law from different parts of the world. Taken together, this book offers the reader a concise presentation and analysis of transfer pricing in the international tax arena which is – in our view – hard to find elsewhere.

The conference has been set up in the context of the International Network on Tax Research. The editors are specifically thankful to Hugh Ault, Mary Bennett and Caroline Silbersztein from OECD for their substantial help in the design of this conference. Mauritz von Einem deserves our gratitude for his editing work. Our foremost expression of gratitude goes to the speakers and authors who have enabled us to assemble a collection of papers which we hope will provide readers with a full and current account of the fundamentals of international transfer pricing in law and economics.

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