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Fundamentals of Capital Taxation

FUNDAMENTALS OF TAXATION SERIES

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Fundamentals of Capital Taxation

Why this book?

Fundamentals of Capital Taxation is the fifth book in the Fundamentals of Taxation series. It completes the series' coverage of the tax base, after the volumes on (personal and corporate) income taxes and indirect taxes. This volume stands as a comprehensive primer on the legal and policy dimensions of capital taxation, offering readers a clear and accessible entry point into one of the most complex and debated areas of contemporary tax law.

The book opens with a substantive introduction that situates capital taxation within its historical, policy and legal context. It then proceeds to the core chapters, which are dedicated to the main forms of capital taxation: taxes on capital ownership (net wealth taxes, real estate taxes and others), capital transfers (estate, inheritance and gift taxes, financial transaction taxes, stamp duties and real estate transfer taxes), and capital gains. Further chapters explore the treatment of capital in tax treaties and address the issues of capital tax planning and avoidance.

Throughout, the volume underscores the multiplicity and fragmentation of capital taxes across jurisdictions, highlighting the legal, practical and policy challenges that arise from their lack of coordination. It emphasizes the importance of understanding the interplay between different capital taxes and their relationship with income and consumption taxes.

The book is conceived as a guide for students, academics and experienced professionals alike. It aims to provide conceptual clarity for anyone seeking a broad and nuanced understanding of capital taxation and its role in shaping fair and efficient tax systems.

Title:	Fundamentals of Capital Taxation
Date of publication:	March 2026
ISBN:	9789465290270 (print), 9789465290294 (PDF), 9789465290287 (e-pub)
Type of publication:	Book
Number of pages:	274
Terms:	Shipping fees apply. Shipping information is available on our website.
Price (print/online):	EUR 120 USD 132 (VAT excl.)
Price (eBook: e-Pub or PDF):	EUR 96 USD 105 (VAT excl.)

Order information

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Fundamentals of Taxation Series
Volume 5

IBFD

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ISBN 978-94-6529-027-0 (print)
ISBN 978-94-6529-028-7 (eBook, ePub); 978-94-6529-029-4 (eBook, PDF)
ISSN 3051-0074 (print); 3051-0732 (electronic)
NUR 826

Production of this Work

This is a multi-authored book. While each author was tasked with the initial drafting of aspects of the book, it is a collaborative single manuscript. The different chapters reflect the joint views of the authors as a whole but not necessarily those of each author. The initial division of work is recorded as Pasquale Pistone (Preface, section 1.1. and Chapter 5); João Félix Pinto Nogueira (section 3.2.); Craig West (Chapter 4); Alessandro Turina (sections 1.4. and 3.3. and Chapter 7); Ivan Lazarov (Chapter 6); Pedro Schoueri (sections 1.6. and 3.1.); Sergio Messina (sections 2.2. and 3.4.), Sam van der Vlugt (sections 1.5. and 2.1.), Marilena Pouliasi (sections 1.2., 1.3. and 2.3.).

Peer Review Process and Statement

This statement serves to confirm that the full manuscript of this book was subjected to external peer review. For this external peer review, three independent international academic experts in the field were tasked with reviewing the manuscript. In particular, the reviewers were asked to comment on whether the manuscript provides an original analysis based on a thorough knowledge of the existing literature on the subject. Upon receipt of the positive reviews, the manuscript was accepted for publication.

Fundamentals of Taxation series

The books in the Fundamentals of Taxation primer series are:

- (1) Fundamentals of Taxation: An Introduction to Tax Policy, Tax Law and Tax Administration (2019)
- (2) Fundamentals of Personal Income Taxation (2025)
- (3) Fundamentals of Corporate Income Taxation (2025)
- (4) Fundamentals of Indirect Taxation (2026)
- (5) Fundamentals of Capital Taxation (2026) (this book)

IBFD

December 2025

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Preface

The past decade has witnessed a significant increase in interest in capital taxation both among experts and the general public, possibly sparked by the seminal economic research of Thomas Piketty, published in 2013.

However, there has to date been no comprehensive legal analysis of such issues, nor of the complexity of its international implications.

This volume intends to fill this gap and complete the trilogy of “fundamentals” books on the tax bases, after the ones on (personal and corporate) income and consumption taxes.

The findings of this book show the extreme fragmentation that characterizes capital taxation, operating across taxes levied on its ownership, transfers and gains. The failure to perceive that all those taxes belong to a single cluster of tax bases might help explain the status quo of capital taxation and the extent to which it reflects the desirable (policy) goals of fairness and justice.

In line with prior volumes within this series, this one does not contain a comparative analysis. It follows a legal methodology that highlights the essential features and brings in elements of positive legislation from different countries of the world, supplemented with practical examples, selected literature and case law.

From a conceptual perspective, the clear delimitation of capital represents the initial challenge of this book, which acknowledges the reasons for differentiating capital from wealth but chooses to equate the two when examining the applicable tax burden and the relations with taxes levied on income and consumption.

After outlining the role that fairness and justice play in taxing capital, this book focuses its three core chapters on taxation of capital ownership (Chapter 2.), transfers (Chapter 3.) and gains (Chapter 4.). It continues with an analysis of how international treaties apply to capital taxation (Chapter 5.), the reaction to tax planning and tax avoidance (Chapter 6.) and some policy outlook (Chapter 7.).

The core chapters clearly show the complexity and fragmentation of capital taxation, addressing them along a common outline that deals with the taxable event, the objective and subjective scope, the rate, the procedural

elements and the international dimension, i.e. the domestic law rules applicable to cross-border situations.

Chapter 2. analyses taxation of capital ownership in three main blocks, focusing respectively on the various types of net wealth taxes (levied on individuals and corporate entities, including in the form of special or extraordinary contributions); real estate taxes, applicable at national or sub-national levels of government; and other taxes on capital ownership, with focus on *zakat*, vehicle taxes and taxes on financial institutions. Even though only four countries (Colombia, Norway, Spain and Switzerland) currently levy a comprehensive net wealth tax, the presence of the other taxes opposes a possible perception of undertaxation of capital, for the technical reasons that are addressed in the various sections of Chapter 2.

Chapter 3. focuses on the three main blocks of taxes levied on capital transfers, namely estate, inheritance and gift (EIG) taxes, financial transaction taxes (FTT) and stamp duties and similar levies. Each of those blocks seems siloed in the technical complexity of its own categories, which makes such taxes operate in three completely separate clusters. However, addressing these under the common framework of capital transfers shows the potential for multiplying taxation of capital upon transfer, which might even be higher when bundled with taxes levied on capital gains.

Chapter 4. reviews taxation of capital gains, showing its complex interaction with income taxation and addressing the delicate overlaps, which are the primary reasons for overtaxation of capital. Even though this book does not intend to argue that the latter phenomenon occurs, it wants to raise awareness of a methodological approach to capital taxation that looks at the overall impact of all the taxes levied on it.

The international scenario shows a clear underdevelopment of cooperation through tax treaties, which would not *prima facie* appear if one only considers the clauses contained in income and capital tax treaties. International tax cooperation might be needed especially for estate and inheritance and gift taxes, and their coordination with the other tax treaties in force might be necessary.

Especially considering the plethora of taxes levied across the world on capital ownership, transfers and gains, the failure to achieve a reasonable degree of coordination might end up producing undesirable results of overtaxation. This might run against the goals of global fairness and justice currently pursued by those who argue in favour of a stronger reliance on capital taxation.

This phenomenon also generates a stronger inclination of taxpayers to develop forms of capital tax planning that might generate tax avoidance. Chapter 6. explores those issues with a dedicated analysis of their implications for capital ownership, transfers and gains, also outlining the measures that react to such practices.

Finally, Chapter 7. brings in a comprehensive assessment of capital tax policy and reform, reviewing the proposals for a stronger reliance on capital taxation and giving the readers the opportunity to make their own assessment of those technical issues in the light of the overall content of the book.

On behalf of all the authors, I would like to note that this volume, like each of the four preceding books in the Fundamentals of Taxation series, is suitable for standalone use in any part of the world by readers who are interested in a meaningful comprehensive introduction to the legal and policy aspects of capital taxation.

At IBFD, we pledge to use our methodology as an instrument for disseminating technical education on legal and policy matters of taxation to different categories of readers worldwide.

More books in this series are forthcoming, and we trust that they will all be welcomed by the global community with an interest in taxation.

IBFD - Amsterdam, 8 December 2025

Pasquale Pistone, on behalf of all the authors

Abbreviations and terms

AEOI	Automatic Exchange of Information
BEPS	Base Erosion and Profit Shifting
BITs	Bilateral Investment Treaties
CARF	Crypto-Asset Reporting Framework
CCP	Central Counterparty
CFC	Controlled Foreign Corporation
CJEU	Court of Justice of the European Union
CRS	Common Reporting Standard
DAC	Directive of Administrative Cooperation
DeFi	Decentralised Finance
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
EIB	European Investment Bank
EIG	Estate, inheritance and gift taxes
EMIR	European Market Infrastructure Regulation
EU	European Union
FAT	Financial Activities Tax
FATCA	Foreign Account Tax Compliance Act
FCC	Federal Constitutional Court
FIFO	First in First Out
FSC	Financial Stability Contribution
FTT	Financial Transaction Tax
GAAR	General anti-avoidance rules
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IFI	Impôt sur la Fortune Immobilière
IGA	Inter-governmental agreement
IMF	International Monetary Fund
IMU	Imposta Municipale Unica
IPTU	Importo sobre Propriedade Territorial Urbana
ISF	Impôt de solidarité sur la fortune
IVIE	Imposta sul Valore degli Immobili Esteri
LIFO	Last in First Out
LOB	Limitation of Benefits
LPT	Local Property Tax
MAP	Mutual Agreement Procedure
NOK	Norwegian Krone
OECD	Organisation for Economic Co-operation and Development
OTC	Over the Counter
PAYE	Pay as you earn

PPT	Principal Purpose Test
SDRT	Stamp Duty Service Tax
SHS Income	Schanz-Haig-Simons Income
STT	Security Transaction Tax
TCGA	Taxation of Chargeable Gains Act
TFEU	Treaty on the Functioning of the European Union
TIEA	Tax Information Exchange Agreement
TSA	Tax on Securities Accounts
UBO	Ultimate Beneficial Owner
UBR	Uniform Business Rate
UK	United Kingdom
UN	United Nations
US	United States
USD	United States Dollar
VAT	Value-Added Taxes
VHT	Vacant Home Tax
WB	World Bank
WTO	World Trade Organization
ZATCA	Zakat, Tax and Customs Authority

Chapter 1

Introduction

1.1. The notion of capital

1.1.1. What is capital?

In the 18th and 19th centuries, the concept of capital became central in economic literature, featuring prominently in the work of classical economists, including Adam Smith (Smith, Adam, *The Wealth of Nations* (1776)), David Ricardo (Ricardo, David, *On the Principles of Political Economy and Taxation* (1817)) and Karl Marx (Marx, Karl, *Das Kapital: Kritik der politischen Ökonomie* (1867)). While the intricacies of their analyses go beyond the scope of this book, their work is foundational for the modern understanding of the functions of capital, particularly its role in economic productivity and the generation of income and its broader social impact. Although their definitions and perspectives on capital differ, they collectively established capital as a key driver of economic activity and a central indicator of economic capacity.

At its core, the notion of capital refers to the aggregate of assets capable of satisfying human needs. More specifically, capital relates to financial, physical, intangible and, according to some definitions, human assets that are or can be used in production. In this way, capital is often described as a subset of wealth: while capital refers specifically to productive assets, wealth also includes unproductive assets, such as idle land or luxury goods. The distinction is relevant to the extent that economic literature may favour taxing unproductive wealth, or unearned capital (Keynes, John Maynard, “Am I a Liberal?”, in *Essays in Persuasion* (1931)), for being less likely to contribute to economic growth, while holding that taxation of capital might discourage investment and innovation.

Tax policy choices concerning capital and unproductive wealth are not within the focus here. What matters instead is that both are, in essence, one and the same indicator of economic capacity, namely the stock of assets and rights endowed with economic value. Both capital and (unproductive) wealth express economic status and accumulated resources and might raise liquidity constraints, and their taxation may produce deprivation effects by requiring the owner to (partly or fully) sell the asset to settle the tax liability.

Based on those common structural features, this book addresses them both under the concept of capital, which might include so-called human capital to the extent that it has an economically valuable dimension.

This unitary concept that equates capital to wealth is useful in setting its delimitation from income and consumption. The latter refer respectively to the accrual of wealth and use of wealth (or disposal of wealth) for satisfying human needs. These concepts interact to the extent that income earned can be applied either in consumption or in savings, leading to the notion that income equals consumption plus wealth accretion (further, see section 1.6., interaction of capital taxation with income and consumption taxation).

Despite this apparent conceptual clarity, drawing the conceptual contour of capital in (tax) practice raises significant challenges, generating a relevant exposure to overlaps (further, see section 1.6., interaction of capital taxation with income and consumption taxation). Three main factors determine this situation.

First, capital is not taxed unitarily, but through different taxes. This might reflect the different rationale of those taxes, but generates significant overlaps. This might occur in systems that apply net wealth taxation and also tax capital gains and/or on transfers of capital. All those taxes might be triggered by different events, but in fact largely share the same taxable basis, or at least a portion of it. Those three categories of capital taxation (i.e. taxation of capital ownership, capital transfer and capital gains) require more in-depth analysis and will be addressed in different chapters of this book (namely Chapter 2. for taxes on capital ownership, Chapter 3. for taxes on capital transfer, and Chapter 4. for taxes on capital gains).

Second, taxes on capital may overlap with those levied on income and raise critical issues in various situations. This is for instance the case for taxation of deemed income from capital and land, which might end up affecting the stock of capital too. Further, see section 1.6., interaction of capital taxation with income and consumption taxation.

Third, overlaps may also arise when taxing positive variations in the capital stock. This might originate from a transfer of capital upon donation or death, but also from an increase in the value of assets, as in the case of capital gains, which are often equated to income in various tax systems. Further, see Chapter 4. on the taxation of capital gains.

All those overlaps cannot be avoided based on the delimitations of the concept of capital. The overlaps just confirm that, even though capital is a unitary concept, in practice, tax systems apply different taxes to it. What matters here is to make a comprehensive analysis of those taxes to prevent unintended forms of overtaxation of capital, which might otherwise severely undermine fairness and justice, or of the opposite phenomenon, i.e. under- or non-taxation. The exposure to such risks becomes higher in cross-border situations, where the potential for overlaps further increases and the limited number of tax treaties (on which see Chapter 5. of this book) does not satisfactorily address it.

1.1.2. Capital as a tax base

1.1.2.1. Taxing capital as a matter of fairness and justice

Fairness and justice are also fundamental to understanding why it makes sense to have capital as a tax base. The author shall now briefly review them before shedding some light on how capital can operate as a tax base. A different section of this chapter will analyse the reasons for having or not having capital taxation (see section 1.3.).

The aim is not to take a normative position as regards the differences in sources of these principles and how they enter legal systems through respective traditions, nor to engage with the debate regarding whether one flows from the other (for which the works of Aristotle, Rawls and Dworkin can be instructive). Rather, they are used here as a first explanation of abstract justifications for the introduction of capital taxes, which should be supplemented by a positive mandate in law (see also section 1.5.).

Fairness is used here to designate the existence of valid underpinnings that justify the taxation of capital. From this perspective, the fairness argument justifies capital taxation for the greater economic capacity that capital expresses from the three perspectives of capital ownership, capital transfer and capital gains – which also explains why different taxes apply.

More specifically, the taxation of capital ownership is fair because of the greater economic capacity of those who have accumulated assets and rights compared to other taxpayers who have not.

Two main reasons explain why taxing capital transfer might be fair too.

On the one hand, transfer might be a way to trigger taxation of capital ownership, which itself is justified on the basis of economic capacity (as indicated above). This applies regardless of whether the transfer occurs against consideration, upon donation or death. This argument outlines the exposure to an overlap between the taxation of capital ownership and capital transfer – and, therefore, imposes caution on the legislator to prevent overtaxation, which would otherwise clearly run against fairness.

On the other hand, transfer might be an instrument to seize the economic capacity of the parties to the capital transfer, i.e. the seller and buyer of the assets. In the first case, taxation of capital upon transfer presents an overlap with taxation of capital gains; in the second, it might partly interfere with consumption taxes, at least to the extent that the same assets will also be liable to the latter. However, both approaches could lead to instances of overlap. This might occur when a tangible asset, for instance immovable property, is sold and the transfer triggers taxes on capital gains (on the seller), capital transfer (on the seller and/or on the buyer) and consumption taxes (borne by the buyer, but usually due or paid by the seller).

The fairness of taxation of capital gains might be explained by its function of complementing taxation of income. Typically, capital gains are based on the difference between the acquisition cost and the fair market value of an asset. Whether or not this difference will materialize can only be ascertained at the time of the disposal of the asset, which is why the taxation of capital gains is typically deferred to that moment (i.e. upon “realization”). The disposal of the asset, however, is the same triggering event used by capital transfer taxes, such as inheritance, estate and gift taxes. This overlap may be justified by the need not to discriminate between different types of income or wealth transfers. Still, determining the capital gains’ tax base requires once again caution to prevent effects of indirect overtaxation of capital.

The different fairness arguments contribute to explaining why tax systems apply different taxes to capital and navigate through the complexity of the interaction of such taxes.

In turn, justice is used here to designate the ability of a tax base to fall more heavily on those with greater economic capacity. This applies to capital taxation, as it allows states to make those who most benefit from the economic system contribute to a greater extent to fund the public budget. This operates in fact as a kind of general equalization mechanism that corrects structural inequalities and favours redistribution of resources. From a justice perspective, what matters most is that capital taxation makes wealthier

taxpayers pay more taxes than all others. In this sense, the justice rationale still holds when some forms of taxes levied on capital yield a more limited revenue due to their high cost of enforcement.

The analysis of fairness and justice grounds leads to the conclusion that there are good reasons for taxing capital ownership, transfer and gains, that the corresponding three types of taxes are not necessarily alternative, but that their close interaction requires cautious coordination to avoid overtaxation. The flip side of this reasoning is that the complete absence of capital taxation might be totally unreasonable and create an irrational framework for a country's tax policy, leading to unfair and unjust effects. Therefore, the tax policy choice is not whether to tax capital, but how to ensure that this form of taxation harmoniously operates with the goals of fairness and justice, as well as with the other applicable taxes.

Due to the fragmentation of capital taxation and the overlaps between taxes levied on it in the different countries, introducing a comprehensive system of capital taxation requires major efforts of coordination to prevent, especially in cross-border situations, the levying of this tax from failing to achieve the objectives of fairness and justice that it pursues.

1.1.2.2. Common elements in determining the taxable base of taxes levied on capital

After outlining the reasons for having capital as a tax base, it is consequential to investigate how the actual determination of capital as a tax base might concretely be established.

Two related elements make it very difficult to identify some common criteria: first, the absence of a clear-cut concept of capital for taxing purposes; second, the presence of various taxes levied on capital, which operate along different mechanisms and pursue only partly common goals.

However, it is worth engaging in this exercise to prevent unintended disparities across the applicable taxes, which might generate unintended tax loopholes (and the related undertaxation), or overtaxation across capital ownership, transfers and gains, and in the relations with taxation of income and consumption.

The common core of the notion of capital as identified earlier in this chapter (see section 1.1.1.) is the starting point for this search to concretely

identify the stock of assets upon which taxes are levied, evaluate the worth of such assets and address common liquidity and enforcement issues.

The identification of the stock of assets liable to any form of capital taxation should reflect the primary goals and scope of this tax. However, all such taxes should not go beyond the capital component of the assets, i.e. their dimension of wealth.

For immovable property, this might mean for instance that no higher capital tax should apply according to whether the asset is at the disposal of the owner, leased or used in production. By contrast, in the latter case, it might actually imply that incorporation in the production process might justify detaxing asset ownership and just taxing the overall net worth of businesses in which the capital assets are used. After all, if both the immovable property and the business are taxed, this could entail unintended double taxation of the same underlying capital.

An analogous issue is that of the indirect transfer of assets, i.e. assets held by the company whose shares are being transferred. This type of strategy could be used to mask the nature of the assets being transferred, potentially changing the applicable tax treatment. This should be addressed in the broader framework of the valuation of the tax base, usually requiring an expert appraisal.

For financial assets, in the presence of income taxation, this might imply that capitalized interest should not be taxed when earned, but only once it has turned into accumulated capital stock. The same reasoning applies regardless of the accounting classification of those assets, whether treated as fixed or circulating capital, provided of course that such assets are at least liable to income and/or capital gains taxes.

Timing also plays an important role in recording the taxable base. Some capital taxes operate periodically, leaving taxation on an accrual (i.e. as the value of the asset increases) or realization (i.e. deferred to the moment of transfer) basis as reasonable options for their levying. Their different implications might have important repercussions for liquidity constraints: periodical taxation on accrual might lead to modest amounts of tax, mitigating the risk that the taxpayer needs to sell the asset to cover the tax liability. By contrast, taxation upon realization might trigger larger tax bills. Especially in the case of inheritance and gift taxes, this might raise the risk that the taxpayer needs to sell (other) assets to pay the tax.

In addition to the identification of the assets to be taken into account, their actual valuation as part of the tax base is usually a complex activity.

For valuation purposes, tax systems might rely on accounting books' recording, where available, or use deeming rules or proxies such as fair market value. The latter two options might prove particularly important to prevent possible manoeuvres orchestrated by taxpayers to unduly reduce the tax base. The exposure to such kinds of risk might be in some cases particularly high, such as for capital transfers between family members or transactions between related enterprises. Therefore, the use of the fair market value as a proxy may prove to be particularly convenient in case of liquid assets for which market prices are readily available (e.g. traded shares). Note that liquid capital does not prevent the insurgence of critical issues of valuation but makes the assessment of its value reasonably objective.

The presence of accounting books generally creates a more objective, traceable and reliable reference framework for achieving an analytical determination of the taxable base of business assets. However, critical issues can still arise when different accounting standards are used, when tax and commercial accounting differ, as well as in connection with different moments in time for recording the accrual and alienation of capital. Moreover, the use of different currencies can differently shape the recording of capital at different moments in time or in transfers involving taxpayers located in different countries, making necessary uniform rules for determining the tax base, especially on capital taxes that apply upon transfer.

The absence of liquid capital requires a more structured approach to the determination of the taxable base. On the one hand, some of the objective criteria indicated above can be sufficient to address the problems of determination of the taxable base. On the other hand, there are situations in which expert appraisals become indispensable. This might be especially the case for the transfer of going concern, or intangibles and digital assets. Even more, such problems arise for cryptoassets, given their unpredictable volatility and the frequent absence of transparent markets, which is to some extent also shared by the evaluation of intellectual property.

However, even in the presence of an appraisal, the problem remains that a different assessment of relevant elements can arise when compared to the valuation provided by tax authorities. This situation generates extremely burdensome controversies, which often require years before settlement, including, in many cases, before courts.

Liquidity constraints connected with the payment of tax represent another critical issue shared by the different taxes levied on capital. In general terms, capital taxation is extremely sensitive to liquidity constraints due to the circumstance that the payment of taxes may actually produce deprivation effects for the owner of the assets. Imagine a concrete case in which taxes are levied upon a non-liquid asset. In case the value of this non-liquid asset goes down after the levying of tax, evident problems of fairness and compatibility with the constitution and the right to property, as a human right, might arise. The latter two legal problems might be particularly challenging when capital taxation generates forms of disproportionate payments with potential or actual confiscatory effects on the property of the assets.

Cross-border taxation of capital generates a separate cluster of issues for the determination of the taxable base. Taxes on capital gains and ownership are generally well addressed in the framework of treaties on income and capital, which determine criteria to make sure that the applicable rules on the tax base operate consistently in the countries of source and residence of the taxpayer.

By contrast, the cross-border aspects of all other capital taxes are often neglected in theoretical analyses and operate in connection with different types of nexus. Some follow the territoriality of the document that certifies the transfer. This is the case for taxes that apply to immovable property transferred against consideration. Others, such as inheritance and gift taxes, apply this nexus together with others, generating a structural exposure that is hardly ever addressed in tax treaties. Accordingly, the tax base might be determined differently by either state that exercises its prescriptive tax jurisdiction, creating a relevant exposure for tax disparities that adds to the absence of a general obligation to relieve the various forms of cross-border double taxation.

Those critical issues also characterize enforcement of capital taxation across borders, which in some cases might benefit from mutual assistance operating under income and capital tax treaties also beyond their subjective and objective scope.

1.2. Historical overview

1.2.1. Introduction

Nowadays the most common and the most important taxes from a revenue-raising perspective are personal income taxes and consumption taxes, especially in the form of value added taxes (VATs). However, capital taxes,

mainly in the form of property and inheritance taxes, have always been – and still are – relevant. Until the beginning of the 20th century, capital taxes were widespread and represented a very significant source of tax revenue, along with customs, poll taxes and excise duties, which are out of the scope of this book. Therefore, the purpose of this (very) brief historical overview is to highlight that, while capital taxes are currently not as prevalent as they once were, they have solid historical roots and have been very successful revenue-raising tools in ancient times and until the 20th century.

1.2.2. Capital taxes from antiquity to Roman times

1.2.2.1. Ancient times

The roots of capital taxation can be traced back to antiquity. In fact, capital taxes in the form of taxes on land appeared in early societies because they were easily administrable. Egypt, Babylon, Persia and China levied property taxes on land and its production value. In ancient Egypt, taxes were raised on the value of grain, cattle, oil, beer and land. The tax imposed on farmers was calculated by relating the yield of grain crops to the size of the cultivated surface area, while the tax on livestock was calculated with relation to the size of the herd. These practices eventually resulted in the creation of the abstract concepts of capital and value. The first gift and inheritance tax was also levied in Egypt. Initially, the tax was imposed on the transfer of land because of death. However, eventually, inheritance tax also covered transfers of personal property *mortis causa*. Egypt developed a property registry for the purpose of inheritance tax collection. As there were no exemptions, even for children of the deceased, tax evasion through fake sales of land was common.

Capital taxes can also be found in ancient Greece, where Solon's reforms in Athens provide the first evidence of a general property tax. The reforms divided the Athenian population into categories according to their wealth, evidenced through their visible agricultural production. Taxes on the wealthy were also imposed to fund public services and military operations. The *eisphora*, a direct capital tax used to fund military activities, is noteworthy for two reasons. First, although the *eisphora* was imposed on the wealthy, it was a tax that significantly broadened the tax base to include both citizens and non-citizens. Second, the taxable amount was determined according to a self-assessment of an individual's wealth. Particularly, the wealthy would provide their self-assessment to the registrar, who could approve or challenge it. This observation illustrates that the capital tax determination



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