1 Introduction*

1.1 Introduction and overview to the driving forces behind an international tax organisation

Globalisation (a metaphor for a way of describing a variety of non-linear processes of change on a global scale) has become the latest concept to “grab the attention” of tax commentators. It has been recognised as having a significant impact on taxation. With the increasing globalisation of business activity, mobility of capital (and to a lesser degree individuals), and the blurring of jurisdictional boundaries, the setting of domestic tax policy has taken on an increasingly international application. As a consequence of this international dimension, tax policy and practice cannot, or at least should not, be developed by a country in isolation of the international implications. Territorial tax competition, one potential outcome of international tax policies, has been criticised as an inefficient mechanism for economic activity when assessed from a global perspective. International economic cooperation and policy coordination has been suggested as important in the operation of the

* Parts of this chapter have been drawn from the published article: Adrian J Sawyer, *Is an international tax organisation an appropriate forum for administering binding rulings and APAs?*, 2(1) E-J. Tax’n Res. 8, 8-10 (2004). I wish to acknowledge and thank the editors for granting permission to utilise this article.


3 For a discussion on the implications of the mobility of capital, and to a lesser degree, of labour, see Reuven S Avi-Yonah, *Globalisation, Tax Competition and the Fiscal Crisis of the State* 113 HARV. L. REV. 1573 (2000).


international monetary system, and with the growing internationalisation of business activities and investment, cooperation (especially coordination) should also be debated in the context of international tax policy.

The international tax environment is changing rapidly. Social and economic conditions are changing almost constantly, along with a technological revolution that is challenging the traditional ways that tax systems operate to determine liability for tax. James suggests application of the STEP analysis, where relevant social, technological, economic and political factors are each examined in turn. James concludes that tax systems are likely to become more complex, that they will become increasingly global and more competitive.

Adopting an approach of international cooperation as the basis for setting tax policy is expected to produce benefits, and therefore international cooperation involving moderate to high levels of coordination between sovereign states is an important theme throughout this book. International cooperation on a scale greater than that currently experienced is seen as crucial to solving the fiscal problems of the twenty-first century, including the development of more multilateral tax treaties. For example, Owens emphasises the need for continual updating of the OECD’s model tax convention, a coordinated response to the global communications revolution and harmful competition, and possibly harmonisation of tax systems. However, he concludes in favour of the need for international cooperation involving coordination rather than complete harmonisation.

The literature on international tax principles, globalisation, tax policy and international law within this context needs to be assimilated, synthesised and revisited in the light of developments in recent years, such as the growing importance of international transactions and derivation of income cross border, and new challenges, such as the development of electronic commerce. Diverse views permeate throughout the pertinent literature, and some attempt at reconciliation, or at least revisiting in the context of the twenty-first century, seems warranted, although it is not the focus of my thesis. In this context

9 Id. at 3.
10 Id. at 9.
the book contributes to this enormous task to an observable degree with respect to binding (advance) rulings on cross-border business transactions and advance pricing agreements (APAs). Nations are gradually moving away from their independence to forming interdependent relations with their neighbours, particularly their major trading partners.\textsuperscript{12} Thus, this book, as part of a broader research program, is timely from this perspective and has the potential to make an important contribution to the literature and to the development of future international tax policy and practice.

The main contribution of this book to the literature and its associated debates is arguing for the creation of an overarching international tax organisation to facilitate effective coordination of binding rulings (on cross-border business transactions) and APA practices as its initial jurisdiction, and if experience with this limited but important jurisdiction proves successful, then expansion to other areas may be worthwhile. Hence an approach of gradualism and experience is advocated. In this book, the organisation to undertake this role, a World Tax Organisation, is also used interchangeably with the title International Tax Organisation; both are intended to represent the same proposed international body, although an abbreviation of the former to ‘WTO’ would lead to confusion with the World Trading Organisation.

Furthermore, it is my contention that the phenomenon of cooperation (as evidenced through moderate to high levels of sovereign state fiscal policy coordination) has not evolved to a position whereby mutual considerations in devising, revising and implementing tax policy have been fully embraced, particularly on income that is derived across jurisdictional boundaries. A step down this path would be to include a mutually agreeable process in the areas of binding rulings and APAs that encompass business income with cross-border implications. On the other hand, as Weiss and Molnar argue, a mutual tax policy setting process in any area is possible and not merely a utopian ideal which in itself requires separate investigation and justification.\textsuperscript{13} Beyond the OECD countries, there are an immense number of developing and transition nations experiencing the implications of globalisation.\textsuperscript{14}

\textsuperscript{12} Examples include the European Union (EU) (or European Community (EC)), the North American Free Trade Association (NAFTA), the Asia Pacific Economic Cooperative (APEC), the Association of South East Asian Nations (ASEAN), and Closer Economic Relations (CER), as between New Zealand and Australia.

\textsuperscript{13} Weiss and Molnar have presented some possible models; see Arnold H Weiss and Ferenc E Molnar, \textit{International Cooperation is Possible, in Tax Policy in the Twenty-First Century} (Herbert Stein ed., 1988).

\textsuperscript{14} Globalisation is the subject of Chapter 2 of this book. For an excellent discussion of the issues and priorities for developing and transition countries in developing and refining their international tax policy, see Richard J Vann, \textit{International Aspects of Income Tax, in Tax Law Design and Drafting} Vol. 2, 718, 808 (Victor Thuronyi ed., 1998).
1.2 Approach and organisation of this book

This book has been developed from material that appeared in a number of conference papers and published articles in international scholarly journals. This book draws together these papers and articles, and extend the analysis to provide a more coherent discussion of the issues and presentation of my arguments. Thus the remainder of this book is structured as follows. Chapter 2 provides further background to events and developments influencing tax policy worldwide, specifically globalisation. It also identifies a number of key issues and limitations associated with these concepts, including national sovereignty. Chapter 3 describes the current types of international cooperation (ranging from loose forms of coordination to complete harmonisation), and reviews proposals to change the status quo, and explains the inadequacies of the proposals. Specifically Chapter 3 examines possible models that could be adapted to include an international coordination function for taxation, such as the International Monetary Fund (IMF) and World Bank (WB), the United Nations (UN), the World Customs Organisation (WCO), the Organisation for Economic Cooperation and Development (OECD), and the World Trade Organisation (WTO). These existing international organisations are contrasting with my alternative proposal, namely an International (World) Tax Organisation (ITO) with an initial limited jurisdiction to binding rulings and APAs on cross-border business transactions. Technical aspects of this proposal are left to Chapter 8.

Chapter 4 outlines key aspects of binding rulings and APA processes, two related areas that I argue are prime candidates for inclusion within the jurisdiction of my proposed ITO. Chapter 5 provides a brief comparative analysis of private rulings systems in twenty six nations in relation to the system operating in New Zealand (NZ). The private rulings systems in Australia, Canada, Sweden, United Kingdom (UK) and United States (US) are the main focus of comparison with the NZ regime. This chapter presents the NZ regime in a favourable light and concludes that there is surprisingly little in common between the regimes reviewed, apart from where one country has modelled its regime on that of another. Chapter 6 provides a summary of APA practice in four countries, namely Australia, Canada, NZ and US, as well as comments on practices in Japan, with these countries (with the exception of New Zealand) being member of the Pacific Association of Tax Administrations (PATA),15 which is seeking to improve APA administration practices.

Chapter 7 focuses on how my proposed ITO will facilitate greater international coordination of binding rulings and APAs on cross-border business transactions.

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15 PATA was superseded in 2006 by the Leeds Castle Group; see further discussion in section 6.4.3 of Chapter 6 of this book.
transactions, after first establishing why greater coordination of administrative practices for binding rulings and APAs is preferable to the uncoordinated practices that currently operate. This chapter also provides a brief overview of the compliance impact on the status quo with an ITO providing increasing coordination of tax policy and practice with respect to binding rulings and APAs on cross-border business transactions.

Chapter 8 sets out the technical details of my proposed new stand-alone organisation, an ITO, with an initial jurisdiction of binding rulings and APAs on cross-border business transactions. The chapter does not provide a definitive analysis of all the surrounding issues, but it sets out a comprehensive high level vision of the overarching structure of my proposed ITO. Chapter 9 contains the overall conclusions of this book, along with emphasising my argument for gradualism and experimentation with the limited initial jurisdiction for the ITO before expansion is seriously contemplated. It also contains some areas for future research.

This proposal in this book for creating an ITO is acknowledged to be forward looking and normative. Realistically an ITO is not expected to emerge in the near future but the ongoing contributions to the debate from scholars and commentators for such an organisation is gathering momentum, albeit with no clear agreement on what form or shape an ITO should take. In the context of increasing globalisation impinging upon the scope of countries to develop and operate effective tax policy on cross-border transactions, this book makes a solid argument for developing a new standalone organisation (rather than modifying an existing organisation) with initially limited jurisdiction to binding rulings and APA practices (based upon evidence of the need for increased coordination by sovereign states) to undertake this task. Furthermore, through a process of gradualism and experimentation, experience will be a key factor as to when, or indeed if, this organisation’s jurisdiction is expanded.