

Preface

by Professor Dale Pinto

Once we saw issues and problems through the prism of a village or nation-state, especially if we were lawyers. Now we see the challenges of our time through the world's eye.¹

In many ways, the need to adopt an international approach to tax policy in the face of an increasingly integrated and globalised world should be self-evident. And though this need is supported by the literature, there has been (and continues to be) a reluctance on the part of countries to adopt multilateral approaches to solving emerging problems in the taxation arena.

This reluctance can be explained by two main factors. First, as trade between nations has become truly international leading to a greater level of cross-border economic integration,² the world continues to be organised politically into nation-states with sovereign governments, leading to a friction between economic and political structures of the world. In other words, while governmental policies, regulations and institutions tend to be nation-based, economic activity is increasingly becoming internationally-based and therefore a conflict is likely to occur in many policy areas, including in the area of taxation policy.

Secondly, and perhaps most significantly in the taxation area, is the fact that national governments are reluctant to relinquish sovereignty concerning tax policy. Cockfield has observed in this regard that the desire to protect sovereignty is possibly the main impediment to efforts to formulate effective tax rules to govern international transactions.³ However, as globalisation continues and as businesses become more interdependent and integrated—countries may have little choice but to engage in greater international cooperation and adopt a global framework where multilateral solutions are adopted to protect their tax bases and therefore their ability to fund public goods.⁴

1 Justice Michael Kirby AC CMG, *Through the World's Eye* (2000) Preface, xxv.

2 See Vito Tanzi, *Taxation in an Integrating World* (1996) xiii (observing that 'increasing economic integration among nations will continue to erode differences among national economies and undermine the autonomy of national governments').

3 Arthur Cockfield, 'Transforming the Internet into a Taxable Forum: A Case Study in E-Commerce Taxation' 57 (Working Paper, *Stanford Technology Law Review*, 2001, available at <http://stlr.stanford.edu/STLR/Working_Papers/00_cockfield_1/index.htm>; (2001) 85 *Minnesota Law Review*). See also, Richard Doernberg and Luc Hinnekens, *Electronic Commerce and International Taxation* (1999) 364 (observing that 'Institutions, in matters of domestic and international taxation, are mostly national. They will remain so as long as nations are sovereign and insist on the exercise of their sovereign rights when it comes to taxing power').

4 Hobbes paradoxically asserts that in fact giving up sovereignty can lead to empowerment (by harnessing mutual benefits), while retaining it can actually lead to disempowerment;

Returning to the literature, though many commentators, studies and reports agree that a global framework and international cooperation to govern taxation policy is desirable,⁵ few (if any) have considered *how* international cooperation could effectively be achieved. Currently, no international body like the World Trade Organisation exists for tax matters. The main forum for cooperation in international tax matters is the Organisation for Economic Cooperation and Development (OECD). The OECD's Committee on Fiscal Affairs, supported by the activities of its various Working Parties, is currently the most influential international organisation for tax issues. The work of the OECD in international tax matters is very extensive and has intensified with the current interest in electronic commerce and tax competition – it fulfils an important information role. Nevertheless, the activities of the OECD in the tax policy field falls short of what is needed to be truly global, since its membership is currently limited to thirty countries. Also, Tanzi has argued that the role of the OECD probably falls short at the political level, as it is principally concerned with the diffusion of information and the discussion of technical issues, rather than having any real decision-making power and binding authority and control over its Member nations.⁶

Given these deficiencies, Professor Sawyer's book is very timely and will make a significant contribution to the literature in this area as it argues that consideration should be given to broaden the extent of international tax cooperation so that it truly becomes multilateral through the establishment of a World Tax Organisation (or International Tax Organisation ('ITO') as it is referred to in the work).

Tempered with the reality of international politics, the book advances the notion that such an organisation should be initially established with a specific initial jurisdiction. This initial jurisdiction is defined by the author to be in the area or the provision of binding (advance) rulings (involving cross-border business transactions) and advance pricing agreements ('APAs'). Assuming the ITO is successful in this initial area of jurisdiction, the author then advocates

see Thomas Hobbes, *Leviathan* (1991) 92; See generally Ramon J Jeffery, *The Impact of State Sovereignty on Global Trade and International Taxation* (1999) 21.

5 See, OECD, *Towards Global Tax Co-operation: Report to the 2000 Ministerial Council Meeting and Recommendations by the Committee on Fiscal Affairs* (2000), available at <http://www.oecd.org/daf/fa/harm_tax/Report_En.pdf> 5 ('For a global economy to succeed, governments must intensify their co-operation and provide international frameworks for the effective management of global issues. Taxation is no exception').

6 See Tanzi, above n 2, 140. See also Frances M Horner, 'Do We Need an International Tax Organisation?' (2001) 24 *Tax Notes International* 179; Daniel J Mitchell, 'United Nations Seeks a Global Tax Authority' (2001) 24 *Tax Notes International* 1293.

for the ITO's jurisdiction to be expanded. Thus an incremental approach to achieving multilateralism is advocated by Professor Sawyer which is, in my view, a very sensible approach.

The structure of the book is described in the Introduction and accordingly will not be repeated here, except to say that the structure adopted is logical and the chapters link well with each other. Important background information in relation to the driving forces behind such a proposal – including globalisation – are described and analysed in some detail. Also, a survey of the current forms of international coordination and review of existing literature is usefully undertaken before the proposal is put forward and developed in the context of binding (advance) rulings and APAs.

The writing style of the author is clear and comprehensive and both students and practitioner alike will benefit enormously not only from the text itself but the many references that are contained in each chapter. As such I believe that this book will be useful for both students and practitioners and would represent a welcome addition to any tax library.