Editors

**Werner Haslehner**, Professor of Law at the Faculty of Law, Economics and Finance at the University of Luxembourg, holds the ATOZ Chair for European and International Taxation and is Director of its LL.M. Programme in EU and International Tax Law. He joined the Faculty as Associate Professor in 2013 and was appointed Full Professor in 2015. He previously held full-time academic positions in Austria at JKU Linz and in the UK at the London School of Economics and Political Sciences (LSE). His research interests cover all aspects of international taxation, including the impact of EU law and tax policy.

**Georg Kofler**, Professor of Law and Head of the Institute for Fiscal Law, Tax Law and Tax Policy at Johannes Kepler University of Linz Law School. He previously worked with the International Department of the Austrian Federal Ministry of Finance, as Acting Assistant Professor at New York University, and as Assistant Professor at the University of Linz. His research focuses on international and European direct tax law and all aspects of Austrian tax law.

**Alexander Rust**, Professor of Tax Law at the Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business). He previously worked as Professor of Tax Law and Director of the Master Programme in European and International Tax Law at the University of Luxembourg, as Acting Assistant Professor at New York University and as assistant at the University of Munich. He is a member of the editorial board of Intertax and *Internationale Steuer-Rundschau*, as well as Co-Editor of the Commentary *Klaus Vogel on Double Taxation Conventions*. His main research interests are tax treaty law, EU tax law and tax policy.
Contributors

Niels Bammens, Professor of Tax Law at KU Leuven (Belgium) and of counsel to EY Tax Consultants (FSO Tax, Brussels). His research interests mainly concern the principle of non-discrimination in international and European tax law, the interaction between international and European tax law, and the relevance of tax treaties for developing countries. He can be contacted at niels.bammens@kuleuven.be.

Frederik Boulogne is a tax lawyer at Lubbers, Boer & Douma (The Hague, The Netherlands). In 2016 he defended his PhD thesis, entitled Shortcomings in the EU Merger Directive, which contains an analysis of the tax obstacles to cross-border restructuring within the European Union and solutions to remove them. His thesis was awarded the prestigious European Academic Tax Thesis Award 2017 by the EATLP and the European Commission.

Ieva Freija-Peccati, Référendaire at the Court of Justice of the European Union. She holds a DESS (Master) in European law (Université Paris I Panthéon-Sorbonne) and has been a Guest Lecturer at the University of Luxembourg (2011–2013) and at the Riga Graduate School of Law (2016). All views expressed in this volume are expressed in a solely personal capacity.

F. Alfredo García Prats, Jean Monnet Chair ‘EU Tax Law and Policy’ at the Universitat de València (Spain) and Of counsel at Montero Aramburu. He can be contacted at alfredo.garcia@uv.es.

Katerina Pantazatou, Associate Professor in Tax Law at the University of Luxembourg.

Alice Pirlot, Research Fellow at the Oxford University Centre for Business Taxation/FNRS Postdoctoral Research Fellow at the Catholic University of Louvain (on leave).

Karoline Spies, Research Associate, Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business).
Contributors

**Serge Schroeder**, Judge, Administrative Court of Luxembourg and Guest Lecturer at the University of Luxembourg.

**Daniel S. Smit** is a Professor in taxation at the Fiscal Institute Tilburg, Tilburg University, the Netherlands. He is the author of more than one hundred national and international publications in the field of European and international tax law and is a frequent speaker at seminars and conferences. He has also been employed at EY since 2002.

**Mario Tenore** is a senior associate at Maisto e Associati, with competence in corporate taxation and European and international tax law. Holding a PhD and an Advanced LL.M, he publishes extensively in the field of international and European tax law.

**Edoardo Traversa**, Professor of Tax Law, Catholic University of Louvain, guest professor at KU Leuven and Vienna University of Business and Economics; Of Counsel, Liedekerke Law Firm, Brussels.

**Dennis Weber**, Director of the Amsterdam Centre for Tax Law/Loyens & Loeff.

**Joanna Wheeler**, Senior Principal Research Associate at the IBFD, seconded to the University of Amsterdam for a substantial portion of her time. She is the Programme Director of the joint University of Amsterdam/IBFD advanced LL.M. programme ‘International Tax Law: Principles, Policy and Practice’.
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Preface

This book constitutes the latest volume in a series of publications by the University of Luxembourg’s ATOZ Chair for European and International Taxation, which series is based on annual conferences on current international and European tax-law issues and which was previously published in a separate series called ‘International Tax Conferences of the University of Luxembourg’. The ATOZ Chair’s conferences bring together leading tax experts from various areas of tax practice, academia, and governmental entities to facilitate high-level and timely topical discussions that foster dialogue among the different actors. This volume is the result of just such a conference, organized by the ATOZ Chair in collaboration with the University of Linz, the Vienna University of Economics and Business, and an expert group on EU Tax Law from CFE Tax Advisers Europe, to which the editors are grateful.

Time is a crucial dimension in the application of any law, especially tax law, yet, too often, it is underappreciated in academic analysis of virtually any tax issue. Nevertheless, the timing of taxation is becoming ever-more important when attempting to provide accurate legal advice in an environment characterized by rapid change on the national, European, and international levels.

Among the numerous timing issues arising out of applying tax treaties, this book addresses: the time limits within which relief must be requested for ‘taxation not in accordance with a Convention’; the relevance of national statutes of limitation for claiming a tax refund; the question of when income arises under a tax treaty; the transitional issues relating to changes in tax treaties, including tax rules applied to on-going business operations that overlap periods of ‘different’ treaties; and the attribution of profits and expenses to a moving or closed-down business.

With respect to EU tax law, the volume discusses a similar number of questions that arise from the application of primary and secondary EU law to national taxation. Such questions concern, among other things, the retroactivity of judicial decisions of the Court of Justice of the European Union (CJEU) and its approach to changing circumstances and developing case law. Moreover, several key EU tax doctrines developed by the CJEU – such as the concept of ‘final losses’, the compliance of exit tax regimes with free movement, and the related issue of cash-flow disadvantages – all
Preface

relate to the timing of taxation from an EU-law perspective and ought to be analysed from that angle. In addition, the book also deals with timing issues arising under EU tax directives.

Thirdly, the book explores the important constitutional and policy aspects that arise in the context of taxation timing. In particular, it addresses the limits of retroactivity for tax rules under constitutional principles, which are not only protected by the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and the Charter of Fundamental Rights of the European Union (Charter), but also by the European Convention on Human Rights (ECHR), such as the principle of legal certainty, as well as the right to a fair trial and to effective legal remedies. These principles, of course, contrast with policy recommendations that often suggest a different approach, one that aims to prioritize efficiency of taxation over individual rights; this volume analyses the conflict between these two sets of principles and approaches.

We would like to express our sincere gratitude to all the contributors for their commitment to the publication of this volume and for their diligent adherence to the guidelines set for the chapters by the editors. We also especially thank the ATOZ Foundation for its generous sponsorship of the research coordinated by the ATOZ Chair and the conferences organised under its aegis, which made the publication of this book possible.

We further owe thanks to our publisher Kluwer and, especially, Simon Bellamy, for their professional and kind assistance through the publication process. The timely publication of this book in its current form would not have been possible without the dedicated copy-editing work of Suzanne M. Larsen, with additional assistance from Roman Ursu and Jessica Cafferkey.

Werner Haslehner
Georg Kofler
Alexander Rust