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A Global Analysis of Tax Treaty Disputes, by Eduardo Baistrocchi (ed.), (Cambridge: CUP, 2000), 2 vols, 1,588pp., £300.00, ISBN: 9781316507254.

This two volume magnum opus is about tax treaty disputes in 27 countries with country chapters (plus one on the EU Arbitration Convention) written by well-known authors. The editor, Eduardo Baistrocchi, Associate Professor at the London School of Economics (LSE), has written a short introduction, and a substantial conclusion section.

One of the chapters in the conclusion section, written by Jinyan Li, contains fascinating examples where the combined effect of two treaties is to create triple non-taxation. For example,

a Canadian company has subsidiaries in Hong Kong and China, with the China manufacturing subsidiary paying deductible interest and royalties to the Hong Kong subsidiary subject to the treaty withholding tax rate of 7 per cent. Hong Kong does not tax this income because it arises outside Hong Kong and Canada does not tax it because the Chinese interest and royalties paid out of active business income are deemed to be active business income not subject to Canadian controlled foreign company (CFC) rules, and dividends paid out of that income are exempt from Canadian tax as Hong Kong is a designated treaty country. The only tax is the Chinese withholding tax. There is another similar example involving those three territories where there is no tax at all.[1]

The conclusion section also includes a chapter written jointly by Eduardo Baistrocchi and Martin Hearson, a Fellow in International Political Economy in the International Relations Department at the LSE, giving a global quantitative analysis with a different perspective. This contains some interesting material that this reviewer believes is new, such as: the large increase in the number of disputes since 2000, including the emergence of disputes in the BRICS countries (Brazil, Russia, India, China and South Africa); the change in the countries involved in tax disputes over time; the government's success rate (around half the rate in France, compared to the US, the UK, Japan and Germany) and interestingly lower government success rates where the treaty partner is the Netherlands or Switzerland suggesting the treaty partner's annoyance about their use; the differing government success rates between treaty articles (25 per cent on Article 5 and 80 per cent on Article 13); the article numbers in dispute in each country (for example, that half of the disputes in Brazil, and one-third in Australia, are on Article 7); the increase in the use of the mutual agreement procedure in the US and Germany (followed by France, Canada and the UK) and a noticeable decline in domestic litigation in Germany. That analysis contains some fascinating charts where the size of each country's node indicates the average share of disputes in the other G20 countries with that country (the US being by far the largest). The thickness of each line between the countries indicates the average share of G20 disputes involving that treaty, and the location of the country is determined by "the technique of principal component analysis" (please do not ask this reviewer to explain). The progression of such charts with time is also interesting showing the importance of Switzerland in the 1980s, the Netherlands in the 1990s, and Switzerland, the Netherlands and Belgium in the 2000s.[2]

The analysis is centred on G20 countries which is right in economic terms but means that non-G20 countries which are important in tax treaty disputes like the Netherlands, appear only in relation to treaty partners not with their totals in their own right. This reviewer wondered whether perhaps the focus of treaty disputes would be better on the countries with disputes rather than the economic importance of the country. The selection of cases was made on the objective basis of a case that has been cited at least once which seems slightly odd as it means that the latest Supreme Court case before the end-date would not be included because there has been no

[1] The point was put to this reviewer at the conference at which the book was launched that this might be vulnerable to the principal purpose test in the Canada–Hong Kong Treaty which will raise interesting issues when Hong Kong is the recognised gateway for investment into the rest of China (and the Hong Kong–China Treaty is not covered by OECD, *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) (7 June 2017)).

[2] Unfortunately in a few cases, e.g. pp.1,443 and 1,464, the diagrams are so small as to be virtually illegible even with the aid of a magnifying glass.

time for anyone to cite it. That was not a problem with *Anson v HMRC*,[3] which is included, but this reviewer looked in vain for the Irish case of *O'Brien v Quigley*,[4] an excellent example of treaty interpretation, the absence of which may be caused by this approach. However, a cross-check was made against the more subjective IBFD database which may correct some of the problem. Instinctively this reviewer would have preferred what the author regarded as a leading case but perhaps this is too dangerous if one wants to make a statistical analysis of the cases. An interesting adjustment is made to cater for countries like India and Germany (and the Netherlands outside the G20) which have disproportionately large numbers of cases by using "normalisation", which means taking each case as a proportion of the leading cases in each country thus counting one case out of 35 in the UK in the same way as 12 cases out of 618 in Germany for statistical purposes. This seems a sensible way of making international comparisons.

The leading cases from 1923 to 2015 are categorised into 116 dispute patterns in six main categories (for example, improper use of the Convention) of which about 55 per cent fall within five categories: 1. improper use of the Convention (26 of the 116); 2. income characterisation (21 of the 116); 3. transfer pricing (3 of the 116); 4. conflicts on source country jurisdiction (7 of the 116); and 5. non-discrimination (7 of the 116). A real benefit of this categorisation is that one can see a list of all the cases on that topic from all the countries in a table called "The Golden Bridge". The number in the improper use category is much higher than this reviewer would have expected, and it is good to see that non-discrimination is gaining in importance.

The majority of the book comprises country chapters by well-known authors from a wide list of countries, including not only the OECD and BRICS countries and also others (Argentina, Cyprus, Uganda, Indonesia, Saudi Arabia and Singapore) for some of which information is much less readily available. Necessarily the content on treaty cases is variable, with the UK chapter containing a detailed analysis of a number of cases, and the Hong Kong chapter pointing out that treaty disputes are unlikely to arise there because of the structure of its tax system. Dipping into these chapters demonstrated the advantage of having a summary of a leading case with the author's comments. This is particularly so for countries like China where the cases (in reality, tax authority rulings, naturally in their favour) are not well-known.

In all this is an important addition to the international tax disputes literature containing interesting statistics, a useful categorisation of cases from different countries on a particular topic, and a wide range of country chapters.

John Avery Jones[*]

[3] *Anson v HMRC* [2015] UKSC 44.
[4] *O'Brien v Quigley* [2013] IEHC 398; 19 TLR 605.
[*] This reviewer wishes to declare an interest as the book contains an acknowledgement of his assistance although he believes that this was mainly his attendance at an earlier conference.