Introduction

Chapter 1 focuses on the historical background to EU corporate tax law. Prior to this analysis, there is a brief discussion of the legislative bases used for de minimis harmonisation and the limitations of this legal framework. This chapter considers some of the tax obstacles to the cross-border movement of companies and investment in such companies, for which international tax law and the OECD Model provide limited or no solutions. This sets the context in which the discussion in the following chapters takes place.

The next two chapters consider in greater detail the actual sources of EU corporate tax law. Chapter 2 delves into the EU legislative instruments on direct tax law – that is positive integration. There is an analysis of the EU direct tax Directives in force, the Arbitration Convention and some soft law instruments. The draft proposal for a Common Consolidated Corporate Tax Base is reviewed in Chapter 3.

Chapter 4 deals with negative integration and the effects of tax litigation in the development of EU corporate tax law. The jurisprudence of the Court of Justice is considered from a broad perspective and its methodology considered. The concept of reverse subsidiarity is also discussed in this context. The remaining chapters examine specific topics.

Chapter 5 focuses on the taxation of companies and parent–subsidiary relationships. Some of the tax obstacles arising in the cross-border movement of companies are examined, the emphasis being on direct investment. This chapter also considers the taxation of permanent establishments. The concept of corporate residence and its importance as a connecting factor for tax purposes is also discussed in the beginning of this chapter.

Chapter 6 examines the taxation of passive income such as dividends, interest and royalties. Economic and juridical double taxation are considered. It is explained that although the international tax community through the OECD Model has sought to tackle juridical double taxation but not economic double taxation, the jurisprudence of the Court of
Justice seems to be going the opposite way. Juridical double taxation is considered to be the result of the parallel exercise of taxing powers by Member States and, as such, is outside the ambit of EU law, whereas economic double taxation is heavily targeted. These trends are detected and critically assessed. This chapter examines the taxation of non-portfolio investment and portfolio investment in the EU.

Chapter 7 concentrates on the tax treatment of some types of reorganisations. The emphasis is on mergers, divisions, transfers of assets and corporate migration. The case law of the Court of Justice as well as the provisions of the Merger Directive are considered. This chapter also considers whether the use of EU corporate vehicles such as the Societas Europaea facilitate corporate reorganisations from a tax perspective.

Chapter 8 deals with tax avoidance in the EU. It examines the response of the Court of Justice to specific practices such as controlled foreign companies, thin capitalisation and transfer pricing. There is also a discussion on whether a uniform principle has developed in the area of direct tax law.

The book concludes with a general discussion on the current state of EU corporate tax law and its future perspectives.

It should be noted that throughout the book, the term 'host State' refers to the source State and the term ‘home State’ refers to the State of residence. In addition, the terms ‘branch’ and ‘permanent establishment’ are used interchangeably. This is because while the OECD Model and the EU direct tax Directives use the term ‘permanent establishment’, in case law references are more often made to a ‘branch’. Finally, unless stated otherwise, the case references relate to the judgments of the Court of Justice.

The contents of this book are based on materials available up to 6 September 2012.