## **Contents**

Preface	V
List of Contributors	VII
Personal and Substantive Scope (Art 1, 2 and 4 OECD Model) – part I	
Richard Vann Australia: Hybrid entities – Resource Capital Fund III LP Case	3
Philip Baker United Kingdom: George Anson vs. HMRC	15
Axel Verstraeten Argentina: Petrobras Case: Is Argentinian Minimum Presumed Income Tax covered in Tax Treaties?	19
Marjaana Helminen Finland: Is the Estonian Corporate Tax Covered by Article 2 and Creditable under Article 23?	25
Personal and Substantive Scope (Art 1, 2 and 4 OECD Model) – part II	
Brian J. Arnold Canada: Conrad Black vs. the Queen – Dual Residence and the Remittance Basis of Taxation	35
Werner Haslehner Luxembourg: The Effect of a Tax Treaty Tie-breaker for Dual Residents	43
Eivind Furuseth Norway: GE Healthcare Case – Hybrid Entity	51
Hyejung Byun South Korea: The Application of Tax Treaties to Partnerships and Hybrid Entities	57

## Business Profits (Art 6, 7 and Art 14 OECD Model) and Permanent Establishments (Art 5 OECD Model)

Luís Eduardo Schoueri/Mateus Calicchio Barbosa Brazil: CFC Rules and Tax Treaties in Brazil: A Case for Article 7	69
Emmanuelle Cortot-Boucher France: Minister vs. Société Bayerische Hypo und Vereinsbank	87
Emmanuelle Cortot-Boucher France: Société DGFP Zeta	91
Alexander Rust Austria: Constitutional Review of Tax Treaties	95
Hanna Litwińczuk Poland: Has the Non-resident Company as a Shareholder of the Polish SKA a Permanent Establishment in Poland?	101
Alvaro Villegas Bolivia: Total E&P Bolivie Sucursal Bolivia, a PE of two French Companies at the Same Time	109
Pasquale Pistone Italy: No Permanent Establishment for Toll Manufacturers without Participation in Strategic Decision-Making	115
Adolfo Martín Jiménez Spain: The Spanish Position on the Concept of PE: "Complex Operative Settlements" and "Industrial Dependent Agents" as PEs	121
Dividends, Interest, Royalties and Capital Gains (Art 10, 11, 12 and 13 OECD Model) – part I	
Eric C.C.M. Kemmeren Netherlands: Taxation of Notional Amount (Box 3) Rather than Paid Dividend: No Tax Treaty Override	141
Søren Friis Hansen Denmark: Capital Gains; Permanent Establishment; Article 7 of the Denmark-Germany Tax Treaty	159
Eivind Furuseth Norway: Dividend; Article 10 of the Nordic tax treaty	163

## Dividends, Interest, Royalties and Capital Gains (Art 10, 11, 12 and 13 OECD Model) – part II

Axel Verstraeten Argentina: Treaty Entitlement and Abuse: Argentina's Molinos Case	171
Richard Vann Australia: Royalties – Task Technology and Seven Network Cases	183
Hanna Litwińczuk Poland: The Legitimacy of Double Tax Relief for Dividends Prior to Directive 2014/86/EU: Poland's 2014 Supreme Administrative Court Judgment (II FSK 187/12)	203
Associated Enterprises (Art 9 OECD Model)	
Brian J. Arnold Canada: McKesson Canada Corporation vs. The Queen – Judges are Human	213
Marjaana Helminen Finland: KHO 2014/2117 (119) – Does Article 9 Allow Reclassification of Hybrid Debt as Equity in Finland?	221
D.P. Sengupta India: Whether Transactions between two Resident Companies are within the Scope of India's Transfer Pricing Regulation: the Case of Vodafone (India Services Pvt Ltd	a) 229
Employment Income (Art 15, 18 and 19 OECD Model); Directors' Fees, Artistes and Sportsmen, Students and Other Income (Art 16, 17, 20, 21 OECD Model)	
Adolfo Martín Jiménez Spain: Article 15 OECD Model Convention, Stock Options and Inpatriate Tax Regimes: Judgment of "Tribunal Superior de Justicia" of Madrid of 12 March 2014	245
Danil V. Vinnitskiy Russia: Withholding Tax on Agency Fees under the Russia-Germany Tax Treaty (Articles 14, 15 and 21)	257
Edoardo Traversa/Gaëtan Zeyen Belgium: Employment Income from Directors – Physical Presence in the Source State	269

## Contents

Edoardo Traversa/Gaëtan Zeyen Belgium: Allocation of Employment Income from Sportspersons	275
Philip Baker United Kingdom: Michael Macklin vs. HMRC	283
Yariv Brauner United States: The Saving Clause, Green Card Holders and Article 19	285
Methods to Avoid Double Taxation, Mutual Agreement Procedure, Exchange of information and Assistance in the Collection of Taxes (Art 23, 25, 26 and 27 OECD Model); Non-discrimination (Art 24 OECD Model)	
Edoardo Traversa/Gaëtan Zeyen Belgium: Constitutionality of Interest Credit in Belgium-Australia DTC	293
Daniël Smit Netherlands: Dutch Supreme Court 31 January 2014, BNB 2014/77: Worldwide Taxation of Non-Resident Taxpayers for Purposes of Calculating the Average Tax Rate: Tax Treaty Override?	301
Salome Zimmermann/Beat König Switzerland: The Revised Provisions on Administrative Assistance in Swiss Double Taxation Agreements: Limitations Arising from National Law	313
Stefano Bernasconi/Michael Beusch Switzerland: Substantiation of a request under the France-Switzerland Tax Treaty	323
Craig West/Jennifer Roeleveld South Africa: Retrospectivity of Treaty Clauses Regarding Assistance in the Collection of Taxes and the Preservation of Assets	333
D.P. Sengupta India: Credit for Taxes "Paid" as opposed to "payable" – the Case of Vijay Electricals Ltd	347
D.P. Sengupta India: Is a Competent Authority Determination on the Existence of a PE in the Source State Determinative? – The Case of eFunds Inc	353