

NEW RANGE &
ORTHODOX CONCERNS IN
INTERNATIONAL
TAXATION

NEW RANGE &
ORTHODOX CONCERNS IN
INTERNATIONAL
TAXATION

2023

Edited by
Parthasarathi Shome

Foreword by
Johann Hattingh

Valedictory by
Vito Tanzi



INTERNATIONAL TAX RESEARCH
AND ANALYSIS FOUNDATION





Published by
OakBridge Publishing Pvt. Ltd.
M 35, 1st Floor, Old DLF, Gurugram, 122001, Haryana, India
Tel.: +91 124 4305970, E-mail: info@oakbridge.in
www.oakbridge.in

Copyright © ITRAF, 2024

All rights reserved.

No part of this publication may be reproduced, transmitted, or stored in a retrieval system, in any form or by any means, electronic, mechanical, photocopying recording or otherwise without the prior permission of the publishers.

The views and opinions expressed in this book are the author's own and the facts are as reported by him/her and have been verified to the extent possible. Due care has been taken while preparing this book. Neither the author nor the publishers of the book hold any responsibility for any mistake that may have inadvertently crept in. The author and publisher shall not be liable for any direct, consequential, or incidental damages arising out of the use of this book.

ISBN: 978-93-95764-99-5

Printed and bound at: Saurabh Printers Pvt. Ltd.

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, resold, hired out, or otherwise circulated without the publisher's prior consent in any form of binding or cover other than that in which it is published.



About the Contributors



Dr. Parthasarathi Shome was designated Founder Chairman, International Tax Research and Analysis Foundation (ITRAF), Bengaluru, India, from April 1, 2023, after serving as Chairman for eight years prior to that. He has also served as Visiting Senior Fellow, London School of Economics, for the past five years. He received Brazil's highest civilian honour, Commander of the Order of the Southern Cross, for his contributions to Brazilian fiscal reform. He was Adviser (Minister of State) to the Indian Finance Minister, and chaired the Tax Administration Reform Commission (TARC). Earlier, he was Chief Economist, UK Revenue and Customs; Chief of Tax Policy, IMF; and Professor, American University, Washington DC. He chaired India's Ninth and Tenth Five Year Plan Task Forces on tax policy and administration. He was Director of National Institute of Public Finance and Policy (NIPFP) and International Council for Research on International Economic Relations (ICRIER), New Delhi, India. His publications in peer reviewed journals include *IMF Staff Papers*, *National Tax Journal* (US), *Bulletin for International Taxation* (Netherlands), *Oxford Economic Papers* (UK), *Oxford Review of Economic Policy* (UK), *Public Finance* (Europe), *Public Finance Quarterly* (US), and several other international and national journals. His edited and own books are from Bristol University Press, Business Standard Publishers, Cambridge University Press, CenTax, International Monetary Fund, Lexis Nexis, OakBridge, Orient Blackswan, Oxford University Press, Routledge, Springer, and Wolters Kluwer. His latest book, *Taxation History, Theory, Law and Administration*, is from Springer, Cham: Switzerland, 2021. He received the Jeanne S. Mattersdorf Award of the National Tax Association of America as "an outstanding student in the field of taxation and public finance" for his Ph.D. thesis on the incidence of the corporation income tax. He participates

regularly in international debate and discussions on international taxation and is invited to speak across the globe.



Johann Hattingh is Professor in the Faculty of Law of the University of Cape Town, South Africa. He is an Advocate of the High Court of South Africa and formerly practised with PwC. Prof Hattingh was educated at the Universities of Cambridge, Leiden, Cape Town and Stellenbosch. He is the Chief Editor of IBFD's Bulletin for International Taxation and part of the management structure for the IBFD Centre for Studies in African

Taxation. Outside of academia he has acted as senior international consultant for the UN Economic Commission for Africa, the IMF and for NEPAD on behalf of the African Union. He serves as Rapporteur for Africa in the International Law Association's Study Group on International Taxation and is executive board member of the International Fiscal Association-South Africa.



Suranjali Tandon is an Assistant Professor at the National Institute of Public Finance and Policy (NIPFP). She is Chevening financial services fellow 2019 at King's College London. She leads NIPFP's work on international and corporate tax and has published several papers on the subject. She is a special invitee to the sub-group on Finance and Regulation, Task Force for Sustainable Finance, Ministry of Finance, Government of India.

She completed her PhD from Jawaharlal University, New Delhi.



Lyla Latif: As the Chief Executive of Lai'Latif & Co Advocates, Lyla Latif has led the firm to become a prominent player in multiple areas of tax and law, including establishing a philanthropy wing to support underprivileged women from low-income households with zakat. Lyla is also a board member of Tax Justice Network and the International Lawyers Project, and a member of the inaugural Tax Law Committee of the East Africa Law

Society, where she informs and shapes East Africa's tax doctrine and practice. She is also an expert trainer with Capabuild, Rotterdam's premier tax capacity building organisation, focusing on training revenue authorities in Botswana and Indonesia and the Tax Appeals Tribunal of Kenya on emerging international tax norms and rules. She is a Chair and co-founder of the Committee on Fiscal Studies, dedicated to the reform and strengthening of tax systems in the global south, generating research needed for knowledge transfer, policy advocacy, capacity building, and tax trainings. Lyla has worked with governments, law firms, NGOs, think tanks, and universities in Africa, Germany, Israel, the UK, and the USA. She is an author

and co-author of numerous publications in peer-reviewed international journals, policy briefs, working papers, reports, and tax training manuals. She has advised the Future Generations Commissioner for Wales, UNCTAD, UNDP, UN Office of the Special Adviser on Africa, European Commission's Directorate for Research and Innovation, WHO, the Kenyan and German Parliaments, as well as several NGOs.



Krupa Venkatesh is an indirect tax professional with 30 years of experience. She is a Cost Accountant and Company Secretary by qualification. Her work experience comprises 10 years with Government of India, 14 years with Deloitte and 3 years at Amazon India. She is a frequent speaker, recognised by the International Tax Review as one of India's leading indirect tax professionals successively during her stint at Deloitte and has been on various Committees of trade associations, notable of them being a Special Invitee to the FICCI Indirect Tax Committee on GST. She is currently a Partner with Consark, a boutique financial advisory services firm.



Shankey Agrawal is a Partner at BMR Legal who specialises in tax litigation and has been involved in several high-stake litigations, with over 14 years of robust experience in both direct and indirect tax litigation. Shankey is also qualified as an Advocate on Record of the Supreme Court and is also a qualified Company Secretary from the Institute of Company Secretaries of India (ICSI)



Harsh Shukla is a Managing Associate at BMR Legal. He has an extensive experience of 9 years in indirect tax and trade law. He has advised several corporates on various facets of indirect tax law and has successfully represented clients before High Courts, CESTAT and revenue authorities. Harsh is also a qualified Chartered Accountant and is a regular contributor in various reputable journals on issues of tax and trade law.



Shinjani Agnihotri is an Associate at BMR Legal. She has completed her BA LLB from Nirma University, Ahmedabad. She has been associated with various research projects at BMR Legal. Shinjani has contributed to prestigious platforms such as ITAT Online and AIFTP Journal on "Analysis of GST Scheme for Export of Intermediary Services".



Yvette Lind is currently Professor of Law at Norwegian Business School, Department of Law and Governance, Nydalsveien, Oslo. She was previously Assistant Professor in tax law at Copenhagen Business School, Denmark. Swedish jur.dr. specialising in international taxation with an emphasis on challenges arising from globalisation increased taxpayer movement and the fragmentation of law. Awarded Swedish TOR/Skattenytt post-doc between 2017-2019 in connection to defending her doctoral thesis. Regular guest researcher and teacher at the Faculty of Law, Lund University and the Max Planck Institute for tax law and public finance in Munich.



Nigam Nuggehalli is a Board Member of ITRAF and Registrar, National Law School of India University, Bangalore. He is also a Visiting Professor and Advisor to the School of Law at BML Munjal University, Gurugram. He was previously the founding Dean of the School of law at BML Munjal University. Previously, he was a Visiting Professor at the National Law School, Bangalore and an Associate Professor at Azim Premji University, Bangalore. He holds a DPhil in Law from Oxford University and an LLM (Taxation) from New York University School of Law. Prof. Nuggehalli also taught at BPP University, London, United Kingdom, for several years, where he led a team of academics in delivering undergraduate programmes in jurisprudence and post graduate programmes in commercial law and international tax law. Prior to joining academia, Prof. Nuggehalli was an international tax lawyer working in New York, USA. Prof. Nuggehalli is presently completing a monograph on international taxation from an Indian perspective.



Saurav Bhattacharya is a Chartered Accountant and Certified Public Accountant (CPA) with over 30 years of experience in corporate taxation and accounting. He has worked extensively in tax compliance, tax litigation and rendered advisory services in taxation of transactions, mergers and acquisitions, corporate restructuring and international taxation. In his current role as Associate Partner at Price Waterhouse & Co. LLP India, he is a member of the Corporate and International Tax Centre of Excellence, the role of which is to provide viewpoints on involved questions of corporate and international taxation, M&A, expatriate taxation, GAAR and other aspects. As secretary to the Tax Policy Panel of the organisation he also contributes to deliberation and assessment of tax policy and reputational aspects of tax practice. He has contributed to international tax publications, such as IBFD Tax Bulletin and was India country reporter in the IFA Congress of Boston in 2012.



Indraneel Roy Choudhury is a Founder Member and Director on the Board of ITRAF. He recently retired after a long career from PW & Co LLP, Bangalore, as Tax Partner and former Leader of South India Tax & PW & Co LLP's Tax Leadership Team. He chaired the Tax Policy Panel for PW & Co LLP Tax function. He specialises in International Tax & Transfer Pricing. His experience is in advising domestic and multinational clients on tax, legal and regulatory issues, on inbound / outbound transactions, tax structuring, mergers & acquisitions and transfer pricing planning, and compliance issues, MAPs and APAs. He has been associated with several professional & trade bodies and has lectured at various fora including PwC's Leadership Development programs at Genesis Park. He is a Fellow Member of the Institute of Chartered Accountants of India (ICAI).



Mukesh Butani is a Founder Member of ITRAF and the Managing Partner of BMR Legal. He is a Chartered Accountant, has a law degree and practices as an advocate in various Tribunals, High Courts and The Supreme Court of India. He is President, International Fiscal Association (IFA), India. He represents the International Chamber of Commerce (ICC), Paris, on the MoF Standing Committee on TDS and Foreign Tax Credit. He has served as member, Expert Task Force on International Tax and Transfer Pricing, MoF, in July 2012. He was member of the Tax Bureau of OECD – BIAC, Permanent Scientific Committee of IFA and is presently Vice Chairman of Taxation Commission of ICC. He was member of the Focus Group on Administrative Practices on tax disputes at the Tax Administration Reform Commission (TARC) set up in August 2013 by the MoF.



Seema Kejriwal is a Partner at BMR Legal who specialises in international corporate tax and transfer pricing with two decades of experience in advising Fortune 500 multinationals and large Indian business houses. She has co-authored several contributions in transfer pricing compendiums and books by leading organisations and authors, such as Vienna University's publication on Transfer Pricing Developments Around the World, Chamber of Tax Consultants, Bombay Chartered Accountants' Society.



Aditya Rathore is an Associate with the international tax and transfer pricing team at BMR Legal. In his current role, he is involved with the firm's litigation, advisory and policy work, relating to Transfer Pricing, International Tax and Direct Tax. He has also appeared before several High Courts and Income Tax Appellate Tribunals. Aditya is a National Law University (NLU) Odisha graduate and is also pursuing ADIT from CIOT, UK.



K. R. Girish is a Founder Member and Director on the Board of ITRAF. Previously he was a Senior Tax Partner and National Head of Tax Litigation and Disputes resolution practice in KPMG. After 20 years, he took an entrepreneurial step and set up his own practice under K R Girish & Associates, specialising in direct tax and regulatory issues. He was a president of the Bangalore Chamber of Industry and Commerce (2009-10) and continues to be Chairperson of the Finance Committee of the Chamber. He is fellow member of ICAI and an Associate member of the Australian Taxation Institute. He is a regular faculty member of ICAI Diploma in International Tax programme. He has Law degree from the Karnataka State Law University.



Rahul Chowdhury is a young professional working with K.R. Girish & Associates as Senior Associate. He is an Associate member of the ICAI enthusiastically working in the field of direct taxes and is also a qualified Company Secretary (ICSI). He is also a commerce graduate from University of Calcutta. Previously he was working with EY Transfer Pricing practice for around four years.



Dr Rohit Roy is Associate Professor of O P Jindal Global Law School, Delhi. He has a Ph.D. in International Environmental and Trade Law and Policy and a Masters in International Commercial Law, both from Cardiff University, UK. His current research interests are in the field of climate change and the regulation of displaced persons, as well as in various aspects of international taxation. His areas of teaching comprise environmental law (domestic and international), international taxation and food security policy. Prior to teaching, he worked as a Tax Research Consultant at ITRAF, Bengaluru.



Amrisha Tripathi has an LL.M. in International and Comparative Public Law from the West Bengal National University of Juridical Sciences, Kolkata. She has been a legal researcher and academic for 8 years now. She has taught at some of the leading law schools in India which include the Tamil Nadu National Law University, Trichy and School of Law, CHRIST (Deemed to be University), Bengaluru. Her research interests include policy and governance, international human rights and humanitarian law, and feminist legal studies.



Aditya Vora is an Advocate with the Chambers of Porus Kaka. He studied law at Jindal Global Law School before obtaining an LLM from the LSE. His professional and academic engagements are focused on international taxation. Professionally, he has advised and represented various multinationals on tax treaty issues. Academically, his interests lie in dispute resolution, particularly international tax arbitration on which he has spoken at conferences and written in reputed journals.



Vito Tanzi was born and raised in Italy and is a citizen of both Italy and the USA. He is married, has three sons, and resides in Bethesda, Md., USA. He received degrees in economics, from Harvard University, (MA, 1963, and PhD, 1967), and from George Washington University, (BA, 1959 with “special honors in economics”, and another MA in economics in 1961). In 1959-1961 he worked for the Joint Economic Committee of the US Congress, and for a Presidential-Congressional Commission (Outdoor Recreation Resources Review Commission, ORRRC). In 1963-1965, while working on his PHD dissertation, he was associated with a research program at George Washington University, which was studying the potential economic benefits from R&D’s spending by NASA, and taught economics. In 1965-67 he was a senior economist in the Joint Tax Program of the Organization of American States (OAS) in Washington. In 1967-75 he was Professor of Economics (Department Chair, 1970-73, and on leave in 1974), at the American University in Washington DC. He taught graduate courses in Public Finance and in Income Theory. Over the years, he has been a visitor in various foreign universities, including twice at the university of Munich (Germany), the Bocconi University in Milan, the University of Torino (Italy), the University of Rome and some others. In 1975 he joined the IMF, as Head of the Tax Policy Division and in 1981 he became Director of the Fund’s Fiscal Affairs Department, a position that he held until the end of 2000. In that position, he supervised hundreds of economists, many with PhDs in economics from top universities, directed the IMF work in the fiscal area, and advised the governments of many countries on fiscal issues and on tax reforms. After leaving the IMF, he served in the Italian Government, at ministerial level, as Undersecretary for Economy and Finance. After leaving the Italian Government, in July 2003, he spent some years as a visiting scholar at the Inter-American Development Bank in Washington DC. In recent years, he dedicated himself mainly to research, writing, and speaking at international conferences.

Brief Contents

Editor's Note: <i>Parthasarathi Shome</i>	v
Foreword: <i>Johann Hattingh</i>	ix
About the Contributors	xxiii
1. Taxation of Artificial Intelligence/Robots <i>Parthasarathi Shome</i>	1
2. Carbon Tax for Green Transition <i>Suranjali Tandon</i>	17
3. Checking in on Tax: The Evolution of Checkpoint Taxation in Afghanistan <i>Lyla Latif</i>	49
4. Tax And Technology – From Compliance to Fraud Detection <i>Krupa Venkatesh</i>	69
5. GST's OIDAR: India's Digital Service VAT <i>Shankey Agrawal, Harsh Shukla and Shinjani Agnihotri</i>	87
6. The Practice of Offering Mobile Workers Preferential Expert Tax Regimes - A Swedish Perspective <i>Yvette Lind</i>	125
7. Tax Avoidance in Indian Tax Treaties: The Past, the Present, and the Future <i>Nigam Nuggehalli</i>	141

8. Tax Transparency and Governance <i>Saurav Bhattacharya and Indraneel Roy Choudhury</i>	159
9. Ethics of Tax Planning <i>Mukesh Butani, Seema Kejriwal and Aditya Rathore</i>	185
10. Principal Purpose Test in Domestic Law versus Tax Treaties in International Context <i>Girish K. R. with Rahul Chowdhury</i>	203
11. The Effect of OECD Pillar Two on Tax Incentives in Developing Countries: An Indian Perspective <i>Robit Roy and Amrisha Tripathi</i>	217
12. Potential Conflicts Between Pillar Two Tax Rules and The Current International Tax Regime <i>Aditya Vora</i>	237
13. National Tax Systems in a Globalised World: A Brief Historical Review <i>Vito Tanzi</i>	253