

Preface	v
Table of Contents	vii
List of Abbreviations	xxi
Part I General Subjects	1
Chapter 1 Sources of EU Tax Law	3
1.1 Introduction	3
1.2 Primary law	3
1.3 The Lisbon Treaty	4
1.3.1 The institutional framework	6
1.4 International agreements	12
1.5 International customary law	16
1.6 General principles	17
1.7 Indirect taxation and primary EU law; the <i>acquis</i>	17
1.8 Secondary law	21
1.9 The fundamental freedoms	21
Chapter 2 Legal Principles	27
2.1 Introduction	27
2.2 Fundamental legal principles	28
2.2.1 The principles of conferral, subsidiarity and of proportionality	29
2.2.2 The principle of sincere cooperation	33
2.2.3 The principle of non-discrimination on grounds of nationality	34
2.3 Fundamental rights	37
2.3.1 The charter of fundamental rights of the European Union	38
2.4 The unwritten general principles	41
2.4.1 The principles of equivalence, effectiveness and legal certainty	43
2.4.2 <i>Abus de droit</i>	46

2.4.3	Transactions designed solely to obtain a tax advantage	52
2.5	Fiscal neutrality	79
Chapter 3 Legal Acts		85
3.1	Introduction	85
3.2	Regulations	85
3.3	Directives	90
3.4	Decisions	91
3.4.1	The own resources Decision	91
3.5	The obligation to motivate regulations, directives and decisions	95
3.6	Recommendations and opinions	99
Chapter 4 Judicial Remedies and Judicial Protection		101
4.1	Introduction	101
4.1.1	The EFTA Court	101
4.2	Direct appeals	102
4.3	Violation of EU law by a Member State	104
4.3.1	Infringement proceedings against a Member State	104
4.3.1.1	Breach of EU law by the highest court of a Member State	110
4.3.3	Infringement proceedings between Member States	119
4.4	Direct access by individuals	120
4.4.1	Review of the legality of acts	120
4.4.2	Failure to act	128
4.4.3	Compensation for damages	133
4.4.4	Disputes between the European Union and its servants	135
4.5	Preliminary questions	137
4.5.1	Qualifications for the court of reference	143
4.5.2	Hypothetical questions	145
Chapter 5 Effectiveness of EU (Indirect Tax) Law		147
5.1	Introduction	147
5.2	Direct effect of directives	152
5.3	Reverse direct effect	156
5.4	Horizontal effect	158

5.5	Reconciliatory interpretation	159
5.6	National time-limits	164
5.7	Liability for damages	175
5.8	Obstacles put forward against liability for damages	189
5.8.1	Limitation of the temporal effect of judgments	189
5.8.2	Respect for <i>res judicata</i>	203
5.8.2.1	The ECtHR as guardian of the case law of the Court of Justice	220
5.8.3	Unjust enrichment	224
5.8.3.1	The requirement of passing on taxes	234

Chapter 6 Methods of Interpretation **241**

6.1	Introduction	241
6.2	<i>Acte éclairé</i>	242
6.3	<i>Acte clair</i>	250
6.3.1	Equally obvious to the courts of the other Member States	251
6.3.2	Twenty-three authentic languages	252
6.3.3	EU terminology	258
6.3.4	Contextual interpretation method	261
6.3.5	The teleological interpretation method	262
6.3.6	The state of evolution of EU law	264
6.3.7	Historical interpretation method	265

Part II European VAT **269**

Chapter 7 Introduction to VAT as Fiscal Phenomenon **271**

7.1	General	271
7.1.1	Legal character	273
7.1.2	Tax on consumption	274
7.2	General indirect tax on consumption	275
7.2.1	General tax	276
7.2.2	Consumption	278
7.2.3	Indirect	280
7.3	Neutrality	283
7.3.1	Internal neutrality	284
7.3.1.1	Legal neutrality	284

7.3.1.2	Competition neutrality	285
7.3.1.3	Economic neutrality	285
7.3.2	External neutrality	287
7.4	Systems of levying turnover taxes	288
7.4.1	Single-stage levies	288
7.4.1.1	Manufacturer's tax	288
7.4.1.2	Wholesale tax	290
7.4.1.3	Retail sales tax	291
7.4.2	Multiple-stage levies	292
7.4.2.1	Cumulative cascade systems	292
7.4.2.2	Non-cumulative systems	294
7.4.2.3	Synopsis	294
7.4.3	Examples	294
7.4.3.1	Single-stage (cumulative) taxes	294
7.4.3.1.1	<i>Manufacturer's tax</i>	294
7.4.3.1.2	<i>Wholesale tax</i>	295
7.4.3.1.3	<i>Retail sales tax</i>	295
7.4.3.2	Multiple stage levies	295
7.4.3.2.1	<i>All stage tax</i>	295
7.4.3.2.2	<i>Dual-stage taxes</i>	296
7.5	Systems of levying a VAT	296
7.5.1	Extent of vertical coverage	296
7.5.2	Treatment of capital equipment	297
7.5.2.1	Consumption type	297
7.5.2.2	Income type	297
7.5.2.3	Product type	298
7.5.3	Methods of calculation	298
7.5.3.1	The direct/subtraction and the addition methods	299
7.5.3.2	The tax credit method	299
7.5.3.3	Example of the tax credit method	300
7.5.4	Summary	300
7.6	The VAT as fiscal phenomenon	300
7.6.1	Advantages	301
7.6.1.1	Fiscal advantages	301
7.6.1.2	Psychological advantages	302
7.6.1.3	Economic advantages	303
7.6.2	Disadvantages	305

7.6.2.1	Is VAT a regressive tax?	305
7.6.3	Some idiosyncrasies of VAT	308
7.6.3.1	Scope of the VAT	308
7.6.3.2	VAT is not a cost price factor	309
7.6.3.3	The recouping effect	310
7.6.3.4	Exemptions	311
7.6.3.5	Exemption at the retail level	312
7.6.3.6	Consequences of the deduction mechanism	313

Chapter 8 Subject Matter and Scope 315

8.1	Introduction	315
8.1.1	Dates of introduction and expiry dates	323
8.2	The Recast of the Sixth VAT Directive	323
8.3	Subject matter	326
8.4	Scope	326
8.4.1	Illegal transactions	327
8.4.1.1	Carousel fraud	333
8.4.2	Transactions without consideration	340
8.4.3	Payments without transactions	341
8.4.4	Transactions for consideration/direct link	346
8.4.5	Legal relationship	350
8.4.6	Acting as such	352
8.4.7	Tax amnesty	353
8.5	Territorial scope	356
8.5.1	Extra-territorial activities	356

Chapter 9 Taxable Persons 359

9.1	Introduction	359
9.1.1	Any person in any place	359
9.1.2	Whatever the purpose or result	364
9.2	Economic activities	365
9.2.1	Occasional activities	372
9.3	Preparatory acts and ceasing economic activities	373
9.4	Acting independently	381
9.4.1	VAT grouping	385
9.5	Public bodies	392
9.5.1	Activities engaged in as public authorities	394

9.5.2	Assimilation to activities engaged in as public authorities	406
9.5.3	Road tolls	412
9.5.4	Parking charges	414
9.5.5	The granting of licences for third generation mobile telecommunications systems	421
9.6	"Special" taxable persons	424
9.6.1	The <i>Societas Europaea</i>	425
9.6.2	The EEIG	426
9.6.3	General legal aspects of the <i>Societas Europaea</i>	428
9.6.4	Indirect tax aspects of the <i>Societas Europaea</i>	430
9.6.5	The <i>Societas Cooperativa Europaea</i>	435
9.6.6	The <i>Societas Privata Europaea</i>	435
Chapter 10 Taxable Transactions		443
10.1	Introduction	443
10.2	Supplies of goods	443
10.2.1	Member States must treat as supplies of goods	449
10.2.1.1	Tangible property	449
10.2.1.2	Transfers by order made in the name of a public authority	449
10.2.1.3	Hire/purchase	450
10.2.1.4	Commission	450
10.2.1.5	Private use	450
10.2.1.6	Treated as supplies of goods followed by an intra-Community acquisition	464
10.2.2	Member States may treat as supplies of goods	466
10.2.2.1	Certain interests in immovable property and rights in rem	466
10.2.2.2	Supplies under a contract to make up work	467
10.2.2.3	Works of construction	471
10.2.2.4	Internal supplies	471
10.2.2.5	Transfer of a going concern/the "no-supply rule"	473
10.3	Intra-Community transactions	484
10.3.1	New means of transport	490
10.3.2	Intra-Community acquisitions of goods	499
10.4	Supplies of services	503

10.4.1	Qualification as services	504
10.4.2	Private use	511
10.4.3	Private use and allocation of assets	516
10.4.4	The business purpose test	538
10.5	Importation	543

Chapter 11 Place of Taxable Transactions **555**

11.1	Introduction	555
11.2	Supply of goods	555
11.2.1	The supply of goods without transport	555
11.2.2	The supply of goods with transport	555
11.2.3	The supply of goods on board ships, aircraft or trains	566
11.2.4	The supply of goods through distribution systems	567
11.3	The place of intra-Community acquisitions	571
11.3.1	Chain transactions	573
11.3.2	Simplification measures for triangulation	583
11.4	Supply of services	589
11.4.1	Particular provisions	594
11.4.1.1	Services supplied by an intermediary to non-taxable persons	594
11.4.1.2	Supply of services connected with immovable property	596
11.4.1.3	Supply of transport	607
11.4.1.4	The supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services and/or services related to the admission, ancillary transport activities and valuations of and work on movable property	610
11.4.1.5	Supply of restaurant and catering services	617
11.4.1.6	Hiring of means of transport	618
11.4.1.7	Supply of restaurant and catering services for consumption on board ships, aircraft or trains	619
11.4.1.8	Supply of electronic services and of telecommunications, radio and television broadcasting services to non-taxable persons	620
11.4.1.9	Supply of services to non-taxable persons outside the Community	625
11.4.2	The main rule for supplies to taxable persons	652
11.4.2.1	The concept of an establishment	654

11.4.2.2	Dual capacity	665
11.4.3	The main rule for supplies to non-taxable persons	668
11.4.4	Use and enjoyment override	669
11.5	Importation of goods	671

Chapter 12 Chargeable Event and Chargeability of VAT **675**

12.1	Introduction	675
12.2	Supplies of goods and services	675
12.3	Intra-Community acquisitions	689
12.4	Importation	689

Chapter 13 Taxable Amount **691**

13.1	Introduction	691
13.2	Supplies of goods or services	691
13.2.1	Barter transactions	694
13.2.2	Promotion schemes	695
13.2.3	Subsidies	707
13.2.3.1	State aid	716
13.2.4	Service charges	722
13.2.5	Credit cards and factoring	723
13.2.6	Gaming machines	734
13.2.7	Binding in honour only	735
13.2.8	Investment gold	738
13.2.9	Objective valuation of supplies	738
13.2.10	Disbursements	741
13.2.11	The full cost of self-supplied services	746
13.2.12	Deposits retained in the event of cancellation	751
13.2.13	VAT in- or exclusive	755
13.2.14	Second-hand goods	756
13.2.15	Rounding of VAT amounts	759
13.3	Intra-Community acquisitions	765
13.4	Importation of goods	765
13.5	Miscellaneous provisions	770
13.5.1	Cancellation, refusal or total or partial non-payment	771
13.5.2	Exchange rates	772
13.5.3	Returnable packing costs	772

Chapter 14 Rates	773
14.1 Introduction	773
14.1.1 Rate differentiations	773
14.2 Application, structure and level of rates	788
14.3 Zero rates	791
14.4 Special provisions applying until the adoption of definitive arrangements and temporary provisions	794
Chapter 15 Exemptions	801
15.1 Introduction	801
15.2 Exemptions without the right to deduction	801
15.2.1 Exemptions for certain activities in the public interest	802
15.2.1.1 Postal services	803
15.2.1.2 Hospital and medical care	807
15.2.1.3 Medical care	812
15.2.1.4 Human organs, blood and milk	829
15.2.1.5 Dental technicians	830
15.2.1.6 Independent groups of persons	834
15.2.1.7 Welfare and social security work	839
15.2.1.8 Protection of children	848
15.2.1.9 Education	849
15.2.1.10 Private tuition	851
15.2.1.11 Supplies of staff by religious or philosophical institutions	857
15.2.1.12 Trade unions	857
15.2.1.13 Sport or physical education	858
15.2.1.14 Cultural services	861
15.2.1.15 Fund-raising	863
15.2.1.16 Transport services for sick or injured persons	863
15.2.1.17 Public radio and television	863
15.2.1.18 Aiming at profit	864
15.2.2 Exemptions for other activities	869
15.2.2.1 Insurance and reinsurance transactions	869
15.2.2.2 Financial transactions	881
15.2.2.3 Postage stamps	899
15.2.2.4 Betting, lotteries	899
15.2.2.5 Immovable property	906

15.2.2.6	Goods used wholly for an exempt activity	907
15.3	Exemptions relating to intra-Community transactions	909
15.4	Exemptions on importation	921
15.4.1	Importation of personal property	927
15.5	Exemptions on exportation	930
15.6	Exemptions related to international transport	933
15.7	Exemptions relating to certain transactions treated as exports	943
15.8	Exemptions for the supply of services by intermediaries	943
15.9	Exemptions for transactions relating to international trade	943
15.9.1	Customs warehouses, warehouses other than customs warehouses and similar arrangements	944
15.9.2	Transactions exempted with a view to export and in the framework of trade between the Member States	948

Chapter 16 Immovable Property **949**

16.1	Introduction	949
16.1.1	The legislative history of the supply of buildings and building land	951
16.2	The handing-over of a work of construction	954
16.3	Letting and leasing and the option for taxation	955
16.4	Supplies of buildings or parts thereof and the option for taxation	990
16.5	Supplies of land and option for taxation	995

Chapter 17 Deductions **999**

17.1	Introduction	999
17.2	Origin and scope of right of deduction	1000
17.2.1	Refunds	1008
17.3	Proportional deduction	1023
17.3.1	Allocation on sectorial basis	1027
17.3.2	Incidental transactions	1029
17.3.3	Including in the denominator the amount of subsidies	1034
17.4	Restrictions on the right of deduction	1036
17.4.1	The stand-still clause	1039
17.4.2	Cyclical economic reasons	1053
17.5	Rules governing the exercise of the right of deduction	1058
17.5.1	Supplies to a taxable person	1058
17.5.2	Good faith	1073

Chapter 19 Special Schemes

1187

1187

1192

1196

1196

1200

1204

1211

1212

1218

1224

1229

Chapter 20 Derogations

1229

20.1 Introduction

20.2 Derogations applying until the adoption of definitive arrangements

1229

20.2.1 Derogations for States which were members of the Community on 1 January 1978

1229

20.2.2 Derogations for States which acceded to the Community after 1 January 1978

1232

20.2.3 Derogations applicable to all Member States which acceded to the Community after 1 January 1978

1235

1235

20.3 Derogations subject to authorization

1249

Chapter 21 Miscellaneous

1249

21.1 Introduction

1249

21.2 Implementing measures

21.2.1 The Council Regulation laying down implementing measures and the Proposal for a recast Regulation

1251

1256

21.3 VAT Committee

1258

21.4 Conversion rates

1259

21.5 Taxes not to be characterized as turnover taxes

Chapter 22 Final Provisions	1269
22.1 Introduction	1269
22.2 Transitional arrangements and transitional measures	1269
22.2.1 The Green Paper	1270
22.3 Transposition and entry into force	1271
Index	1273