Universität St.Gallen

Institut für Law and Economics

Justice and Fairness

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From insight to impact.

Overview

- **One example to start**
- **Justice as a Tax Policy Guideline Domestic Tax Policy**
- **Domestic Tax Policy**
- **Justice and Equality in a Global Context**
- **Normative Review of the Most Essential Design Principles**
- **One example to close**

One Example to Start

Person A
Net income 100
Net wealth 100
Consumption 50

Person B
Net income 200
Net wealth 100
Consumption 150

100 of tax revenue is necessary to fund the state

Allocation of the tax burden?

Person C
Net income 0
Net wealth 100
Consumption 50

Person D
Net income 100
Net wealth 500
Consumption 50

Justice as a Tax Policy Guideline

Introduction and Terminology

Justice in a specific context!

A just punishment

A just contract

A just election

A just procedure

Just institutions

A just distribution of the tax burden

Justice in an Institutional Context

1. Governmental institutions trigger specific justice considerations
2. A **societal basic structure** triggers specific justice considerations

→ cooperation, assocation and coercion

Domestic Tax Policy

Never forget the spending side

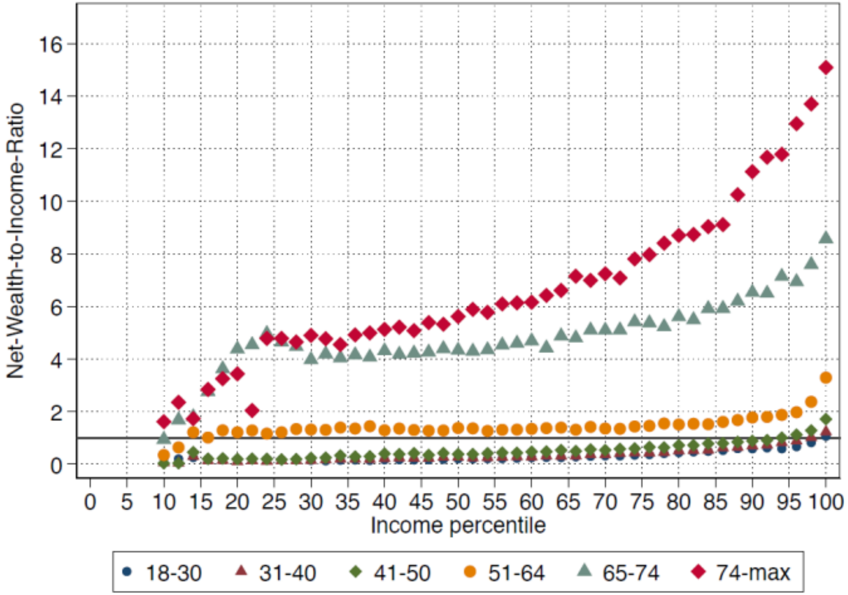
Lambert's Conundrum

	1	2	3	4	Total
Original income x	10	20	30	40	100
Tax liability $t(x)$	6	9	12	15	42
Benefit level $b(x)$	21	14	7	0	42
Post-benefit income	31	34	37	40	142
Final income	25	25	25	25	100

Source: Lambert (2001, table 11.1, p. 278).

Let’s Talk about Tax Policy

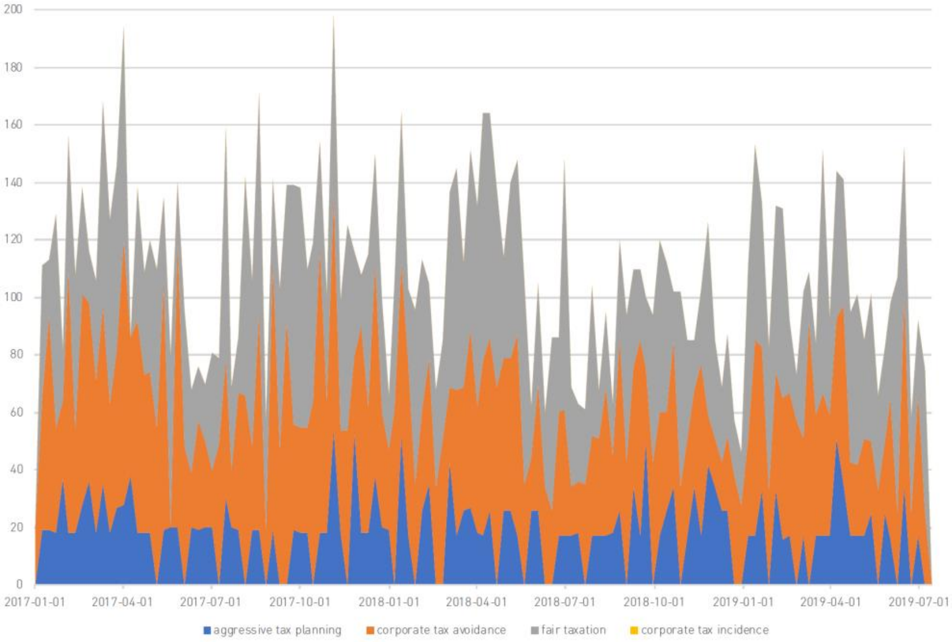
Distribution between the generations



Martinez, Isabel Z. (2021). "Evidence from Unique Swiss Tax Data on the Composition and Joint Distribution of Income and Wealth", in: Measuring Distribution and Mobility of Income and Wealth. Raj Chetty, John N. Friedman, Janet C. Gornick, Barry Johnson, and Arthur Kennickell (Hrsg). NBER Conference held March 5-6, 2020. University of Chicago Press. Forthcoming

Let’s Talk about Tax Policy

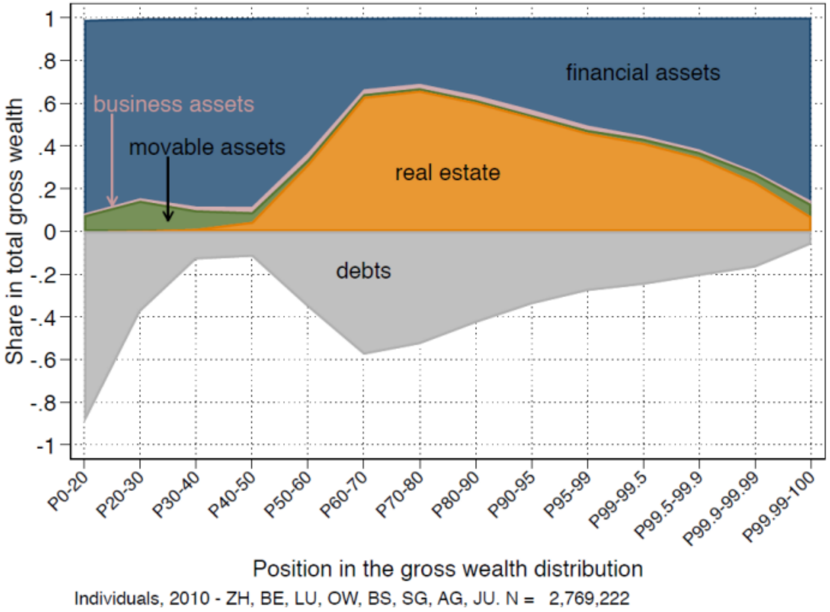
CIT incidence (I)



Source: Bauer (2019): *“Google Trends. Query of 17 July 2019. Interest over time. Period covered: 1 January 2017 – 14 July 2019. Region: worldwide. Numbers represent search interest relative to the highest point on the chart for the given region and time. A value of 100 is the peak popularity for the term. A value of 50 means that the term is half as popular. A score of 0 means that there was not enough data for this term.”*

Let's Talk about Tax Policy

Composition of wealth



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Justice and Equality in a Global Context

Justice in a Global Context

Some of questions we will deal with:

- Do states indeed need to share „the pie", i.e. is single taxation indeed the ideal solution?
- If yes, how should we avoid double taxation?
- If yes, what does single taxation mean?
- Is there a normative claim for cross-border distributive duties?
- Is tax law an efficient instrument to achieve distributive duties? Or are other legal measure more efficient?
- Should international tax policy aim at strengthening the sovereignty of states or not?

Justice in a Global Context

Some preliminary philosophical remarks

- There is an intense discussion about global justice among philosophers since the 1970s
- Still a young discipline but (of course) some important reference points in the past, inter alia:
  - Aristotle (distributive justice – commutative justice)
  - Kant (The Perpetual Peace)
- Two important contemporary ideas
  - Monism / Cosmopolitanism
  - Dualism / Statism

Justice in a Global Context

Some preliminary philosophical remarks

- Monism vs. Dualism
- Statism vs. Cosmopolitanism

Justice in a Global Context

Monism / Cosmopolitanism

- Egalitarian approach
- Same duties against everyone in the world?
- Distributive payments from the rich to the poor countries
- Practical constraints?
- Thomas Pogge & Charles Beitz

Justice in a Global Context

Monism / Cosmopolitanism

Justice in a Global Context

Dualism / Statism

- Different duties within a state and cross-border
- E.g. there is a distributive duty among Dutch citizens but not between a Dutch citizen and a Belgium citizen
- Why?
- Coercion and cooperation as two potential justifications
- John Rawls / Thomas Nagel

Justice in a Global Context

Dualism / Statism

Normative Review of the Most Essential Design Principles

Normative Review of the Most Essential Design Principles

In general

- No constitutional framework
- How do you justify tax policy decisions?
- Design principles are key

Normative Review of the Most Essential Design Principles

Source principle

- The source principle as a sovereignty concern
  - Source principle as a justification-to-tax but also as a limitation-to-tax principle
  - States should not tax income that has been generated abroad with no link to a territory
- The source principle as an allocation key?
  - Depending on the understanding this leads to a higher allocation to very productive countries
  - Libertarianism?

Normative Review of the Most Essential Design Principles

Source principle

- Avoidance of double non-taxation
- Value creation requires that benefits are obtained (→ benefit principle)
- Entitlement of states
- Mutual benefits
- Cross-border distributive duties

- Problem: Source principle as an allocation key
  - Fair allocation if the merits of the income created should be with the person who created the income
  - More allocation to productive countries!

  - Source principle as a justification-to-tax and a limitation-to-tax principle

Normative Review of the Most Essential Design Principles

Benefit principle as a justification- and limitation-to-tax principle?

- Derived from the sovereignty principle and the principle of fiscal self-determination
- Calculation of benefits obtained is difficult if not impossible and could lead a distribution to richter countries (see example above)

Normative Review of the Most Essential Design Principles

Benefit principle as an allocation principle?

Example

A Haitian professional boxer earned USD 10,000 in 2012 as a salary, which he receives from the national boxing federation. He earns very little income from sponsors. In 2012, he attended the Olympic Games and stayed in London for 3 weeks. The tax rate in London is presumably 30%, but only 10% in Haiti. Let's assume that the received benefits in the year 2012 are equal between Haiti and the United Kingdom, as the security and building of the specific Olympic premises were very expensive and, therefore, even though he stayed only a few weeks in London, the UK benefits have the same value as the Haitian benefits for the rest of the year.[2229] This would mean, following the benefit principle as an allocation principle, that London could tax USD 5,000 at 30%, i.e. USD 1,500 and Haiti could tax USD 5,000 at a rate of 10%, i.e. USD 500. This would be a strange outcome and clearly opposing cosmopolitan theories of justice, such as those developed by Pogge and Beitz.[2230]

Peter Hongler, Justice in International Tax Law, IBFD 2019, p. 450

Normative Review of the Most Essential Design Principles

Efficiency/neutrality

- Capital export neutrality
- Capital import neutrality
- Capital ownership neutrality

- Why should the international tax system be neutral/efficient?
- Utilitarian position – growing the cake is good per se!
- But: we cannot distribute income at an international level

One Example to Close

Formulary Apportionment

Formulary apportionment

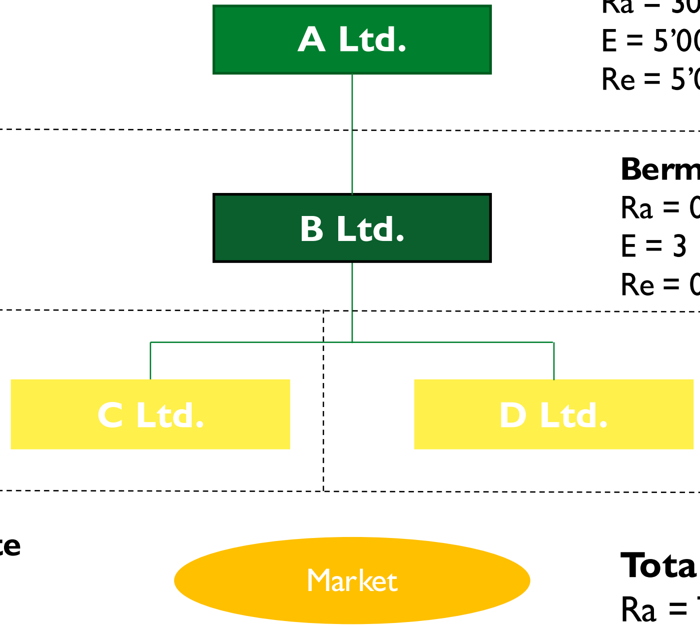
1. Source principle
2. Benefit principle

US
Ra = 30%
E = 5'000
Re = 5'000

Bermuda
Ra = 0%
E = 3
Re = 0

Ireland
Ra = 12.5%
E = 1'000
Re = 200

The Netherlands
Ra = 3% (special tax regime)
E = 5
Re = 500



Market state
R = various
E = 0
Re = 10'000

Total profit = 1'000
Ra = Tax Rate
E = Employees
Re = Revenue

Formulary apportionment

US
Ra = 30%
E = 5'000
Re = 5'000

A Ltd.

Bermuda
Ra = 0%
E = 3
Re = 0

B Ltd.

Ireland
Ra = 12.5%
E = 1'000
Re = 200

C Ltd.

D Ltd.

The Netherlands
Ra = 3% (special tax regime)
E = 5
Re = 500

Market state
R = various
E = 0
Re = 10'000

Market

Total profit = 1'000
Ra = Tax Rate
E = Employees
Re = Revenue

Liberia
R = 20%
E = 0
Re = 500

Liberia

Thank you!!

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