

# Taxing the European Union Citizen

## Tax Equity and the Balanced Allocation of Taxing Powers

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**Research School:** Ius Commune  
Fiscal Issues in the Internal Market

**Time Frame:** Sept. 2006 – Aug. 2012

### Objective

The objective of the research is to **establish a doctrine of principles** of European constitutional tax law, that is a **systematic exposition** of the **most essential legal norms of the European legal tax order** (see Von Bogdandy & Bast, 2006). The research is limited to those rules that derive directly from **primary EU law**, e.g. the Treaty on the Functioning of the European Union (TFEU).

### Methodology

#### Union Citizenship as constitutional source of rights in EU law:

- non-discrimination right and market access right
- EU primary law as constitutional law (Von Bogdandy & Bast 2006)
  - Doctrine of principles as *Steuerverfassungsrecht*
- CJEU as constitutional court:
  - protects citizens' constitutional rights.
  - defines constitutional margin of appreciation of government.

#### Tax Equity versus Tax Discrimination

- Tax discrimination as subsidiary redistribution (distortion) within fundamental tax equity redistribution (Murphy & Nagel, 2002).
  - Consistency of design v Structure of design.

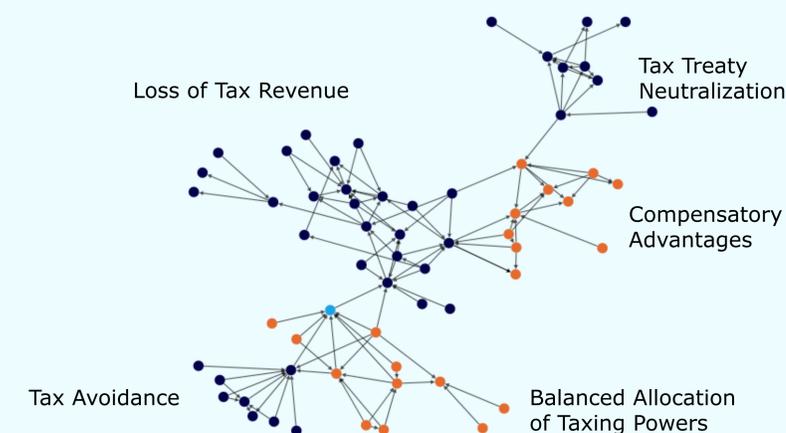
#### Social Network Analysis and Precedent in CJEU case law

- Prior research does not justify methodology of comparison of case law.
- Fowler et al. (2007) translation of SNA to theory of legal precedent.
  - *Relations* between cases (guidance of precedent) provides additional information that the *attributes* (facts) of the individual case in isolation alone do not offer.
- Case law as a dynamic network of applied principles and developing rules of law (meta-analysis of legal norms):
  - Precedent indicates existence of principle or rule.
  - Path dependency of precedent as assumed consistency.
- Legal network relations evidenced by precedent direct a conceptual interpretation and clarify the *ratio decidendi*:
  - Precedent affirmed in case: case attributes meet conditions.
  - Precedent rejected in case: case attributes distinguished from conditions.

### Research Questions

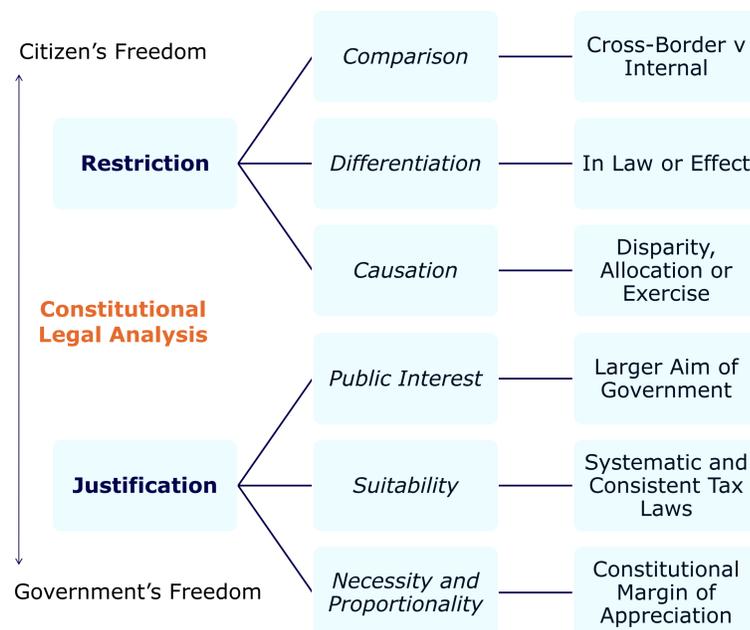
- I.** Does the CJEU distinguish between fundamental issues of tax equity and specific tax discrimination contrary to the fundamental freedoms, and if so, how can it be derived from the CJEU's method of constitutional legal analysis and the principles and rules applied?
- II.** How do Member State defenses against tax restrictions fit within the constitutional framework of EU Internal Market law and the function that the CJEU performs as constitutional court?
- III.** What legitimate larger aim of government is served by the justification 'balanced allocation of taxing powers', and how does it conceptually relate to other defenses?
- IV.** Considering that international tax practice clearly distinguishes fairness in terms of inter-personal equity and inter-nations equity, can considerations of inter-nations equity be used as persuasive standard of justice of EU law to adjudicate tax restrictions, even to the extent that they ultimately render constitutional the fundamental inequity of international juridical double taxation?

### Results: Preliminary SNA of Marks & Spencer, paras 44-46



### References

- Fowler et al. (2007). Network analysis and the law. *Political Analysis*, 15, 324-346.  
 Murphy & Nagel (2002). *The myth of ownership*. Oxford: OUP.  
 Von Bogdandy & Bast (2006). *Principles of European constitutional law*. Oxford: Hart.



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