Taxing the European Union Citizen

Tax Equity and the Balanced Allocation of Taxing Powers

**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 Steuerverfassungrecht
- 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.
  - Relations between cases (guidance of precedent) provides additional information that the attributes (facts) of the individual case in isolation alone do not offer.

**Results:** Preliminary SNA of Marks & Spencer, paras 44-46
- Loss of Tax Revenue
  - Tax Treaty Neutralization
  - Compensatory Advantages
  - Balanced Allocation of Taxing Powers

**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 adjudge tax restrictions, even to the extent that they ultimately render constitutional the fundamental inequity of international juridical double taxation?

**References**