



Summary

In the legal literature it is postulated that taxation should be based on the principles of fairness and efficiency. This book considers how the practice of taxation can be made fair. A number of actors have a part to play if the principle of fairness is to have actual substance: the government as legislator and executive power, the tax courts and the public at large.

What is 'fair' in taxation can be defined by reference to the concept of fairness present in the legal conscience of the public at large. This book is therefore divided into two parts. The first part (chapters 1 to 4) looks at how the government's legislative and executive powers and the tax courts should or could give *concrete* substance to the fairness required in taxation. This part sets out the conditions that can be gleaned from the literature necessary for actual fairness in taxation. Requirements are made, for example, on the substance and structure of tax legislation and on how it can be elaborated. The second part (the annexes) considers legal opinions on taxation and tax legislation. The opinions indicate whether or not the people involved in the day-to-day practice of levying and collecting taxes believe all the conditions have been fulfilled for the realisation of fairness in taxation. These opinions are included in part in chapters 3 and 4. Abstract, ethical thought is thus juxtaposed with experience from previous and current legal practice.

Chapter 1 posits that the *legislator* has prime responsibility for ensuring that taxation is fair (the principle of legality). Current legal practice suggests that tax laws are complicated and couched in vague terms in order to create flexibility so that the goal of fairness in taxation can be achieved. A first and self-evident requirement of legal regulations is that they must be universally applicable. It is open to question whether the legislator, in enacting vague, complicated tax legislation, is making an adequate contribution to the realisation of fairness in taxation, since its implementation demands specialised knowledge of taxation from all involved in the process of levying and collecting taxes. If the knowledge is inadequate, the desired goal cannot be achieved without the *tax court* and the *tax department* being willing and able to help bring about fairness in taxation.

In *Chapter 2*, consideration is first paid to the question of what is fair taxation. The idea that a distinction must be made between fair and unfair taxation is based on natural law. Of importance to the concept of fairness in taxation are the four canons laid down by Adam Smith. The first is that taxes are seen to be fair if the tax burden is universal and equal for all members of society. Taxation, however, must take account of the unequal economic positions of the public. Today, this is done by reference to the principles of law or proportionality and in particular to the principle of equality.

Smith's second, third and fourth canons are that tax legislation must be known, legally certain and enforceable. Clear and understandable legislation is therefore essential if

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