

# Taxation of cross-border inheritances and gifts

## Summary

Ongoing globalization fosters the mobility of both persons and capital across the globe. It makes it possible to invest in immovable property or incorporeal property abroad. Consequently, family members can reside in different countries, and their wealth no longer must be limited to one country. This leads, however, to cross-border situations that cause complex tax problems. This book discusses the imposition of taxes upon gratuitous wealth transfers *mortis causa* or *inter vivos* in cross-border situations.

The analysis aims to show the complexities underlining current double (or multiple) taxation of cross-border inheritances and cross-border gifts, and puts forward proposals for comprehensive solutions that would eradicate cases of double (multiple) taxation. In addition, the analysis aims to verify the (in)correctness of Polish legislation as it applies to cross-border situations. A comparative method is applied cohesively to develop the main line of reasoning. In addition, parts of the analysis are deeply influenced by dogmatic and evolutionary methods. The analysis is principles-based.

The book begins by defining the cross-border inheritance (cross-border gift) and outlines different cross-border scenarios. This definition focuses on two elements – (1) a personal element, i.e., the place of residence of the deceased and the heir(s), and (2) an objective element, i.e., the situs of wealth (assets and debts). Such an approach makes it possible to explain factual situations and also helps to justify the three-layered structure of the analysis. Each layer is developed in depth in one chapter, which are altogether preceded by the theoretical chapter and followed by concluding remarks.

The first chapter explains the legal framework of gratuitous transfers of wealth *mortis causa* and *inter vivos* and the general ideas concerning (the limits to) tax ju-

risdictions. A detailed investigation is offered of the underlying reasons for double (or multiple) taxation of cross-border inheritances (cross-border gifts) in the second chapter. This investigation is based on a comparative analysis of selected national tax systems, including personal and objective linking provisions and existing unilateral mechanisms against double (multiple) taxation. A special emphasis is put on Polish legislation. The functions of bilateral tax treaties in light of the OECD Model Tax Convention with respect to Taxes on Inheritances, Estates and on Gifts and the US Treasury Department Model Tax Convention in respect of Taxes on Estates and on Gifts are commented upon in the third part. The dualistic nature of international tax law *sensu stricto* is also discussed briefly. The final chapter comprises analyses of positive and negative integrations in the internal market. The influence of EU law, and in particular ECJ case law concerning taxes on inheritances and on gifts, is presented in a holistic fashion, and emphasizes the protective nature of EU fundamental freedoms in inbound and outbound situations within the EU internal market (and beyond). It also includes a comprehensive commentary on potential conflicts between EU law and Polish taxes on inheritances and on gifts. In the conclusions, the author offers ideas for systematic change that are applicable internationally, EU-wide and nationally (from the perspective of Polish legislation). For instance, the most important international proposal concerns the adaptation of a common system of international tax law *sensu stricto*, i.e., there should exist a single, common OECD Model Tax Convention for Taxes on Income and on Capital and Taxes on Inheritances (Estates) and on Gifts. This monistic approach should increase the number of bilateral tax treaties that are applicable to cross-border inheritances and cross-border gifts, and thus decrease the number of cases of double (multiple) taxation in cross-border scenarios. A national solution for Poland concerns the redesign of its personal linking provision(s) and the introduction of a unilateral relief mechanism.