

# No common denominator in international taxation discourse

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For the time being there seems to be no solution in sight for the much-debated problem of tax avoidance by international companies. As basic-research findings

show, it is deeply rooted in different legal traditions. Credit: Alex Motoc/unsplash

Large companies that sell their products and services worldwide, but do not pay income taxes on revenues generated in countries other than their own, are the reason why many are calling for new tax regulations. For legal expert Daniel Blum, the unproductive back and forth of arguments is rooted in different schools of thought that have no common denominator. – This insight is the result of several years of research.

GAF A, the acronym denoting the world's four market leaders—Google, Amazon, Facebook, Apple—have been the source of discussions on international taxation issues for years. Many people use at least one of the [digital services](#) and products of the four big US companies. Although many of the big four's customers that generate a good profit for them are European, GAF A pay little or no income tax to countries outside the U.S.. This is why attempts to reform historical taxation regulations have been ongoing for years. Taxation is usually linked to a physical permanent establishment in the respective market country, but that is not the crux of the matter.

With funding from the Austrian Science Fund FWF, Daniel Blum, a longstanding research associate at the Institute for Austrian and International Tax Law at the Vienna University of Economics and Business Administration, has analyzed hundreds of pages of the ongoing academic, political and legislative discourse and found that the protagonists have been talking at cross-purposes for many years: "There are two basic schools of thought: natural law and legal positivism. If everybody argues or makes demands from their own point of view, there is simply no common denominator."

## Exchange of arguments without common ground

Does that mean that brilliant thinkers from serious international institutions have been talking themselves blue in the face for years, but fail to understand each other from the word go? That is quite a strong statement, and Daniel Blum is already looking forward to lively objections or attempts at refuting his research results as soon as they are published next year. He himself discovered the "research gap" during a research stay in the U.S. at the University of Georgia and the University of Florida School of Law, as well as the NYU School of Law. In his opinion the views about international taxation of modern digital companies on both sides of the Atlantic "have to do with having been somehow imprinted by their respective understanding of the law." And that imprint goes back further than the invention of the Internet. This concerns fundamental questions: what, in our opinion, is done right in international tax law? And why should we comply with these legal norms?

The natural-law "[school](#) of thought" derived the legitimacy of law first from God and then, since the era of Enlightenment, from reason (in the sense of: law must be justified). The legal-positivist "school of thought," on the other hand, considers the cornerstone to be the establishment of manmade legal norms arrived at by a legitimate democratic-political process. Although there are provisions under international law—and 3,000 bilateral tax agreements—there is no common international understanding of normativity in tax law. Blum is convinced that answering his law-theory questions would have quite tangible effects in practice. "Because the way it is now we are at an impasse."

### Case study: GAF A should pay

Daniel Blum illustrates this by means of a concrete debate that has been

ongoing since 2012 between experts from the EU Commission, OECD, WTO, political representatives, but also the community of academics from the fields of law, economics and ethics. The example of "taxation of internationally active digital companies" illustrates the underlying problem. When analyzing the typical arguments, such as fairness, from the perspectives of the two schools of thought and comparing them with the relevant international law standards, Blum realized "that this discourse misses the point because the arguments are approached from very different starting points." For his professorial qualification thesis, Blum did not limit himself to labeling the different boxes of the schools of thought, but tried to make each school's typical arguments comprehensible for the other school by elaborating on the underlying assumptions and justifications. After all, it is not one side or the other that is right. It is the standpoint that informs the argument.

## **Human law or moral foundation**

Tax law is actually regarded as a legal field that is technical and very much written down, and morality should play a subordinate role in it. But after asking a great many "why" questions, Blum hit on the core of the problem, namely the two different positions with regard to using natural law or manmade law as a yardstick. "To my own surprise, the key result of my basic research is that natural-law thinking shapes the discourse much more than I had thought." When Blum underpinned the central arguments of the discussion with the respective school of thought, it "fell like scales from my eyes why, at international conferences, it often seemed as if one side wanted to deny the competence of the other." International taxation is about a lot of money, which is why the issue is at the top of the agenda of the G20 finance ministers. Daniel Blum, who now works in tax consultancy, does not want to take sides in the dispute over theories, but prefers to "build bridges rather than deepen trenches."

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