

Tribute to Frans Vanistendael: a personal journey through his writings

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Abstract

Frans Vanistendael (1942–2021) was a visionary tax academic. A tireless traveler of European and world universities, he had developed throughout his career a communicating enthusiasm for the Europeanisation of taxation. Combining an indisputable technical competence with an extraordinary capacity for abstraction, he was a university person in the etymological sense of the term, i.e. oriented towards the universal, while at the same time deeply embedded in the political, social and economic reality of his time.

Professor of tax law, then dean, at the Faculty of Law of the KU Leuven, after having studied the United States, he very quickly combined an intense scientific career at the national level with research activities in European and international taxation that earned him a worldwide reputation.¹ He also acted as an expert for various national and international public authorities, in particular as a Royal Commissioner for tax reform in Belgium in the 1980s and as a member of the famous Ruding Commission in the early 1990s, which published a remarkable report recommending, among other things, the introduction of a minimum rate and a harmonised base for corporate taxation in the European Community.²

Always available to young researchers and colleagues, he had participated in countless editorial projects, in particular within the European Association of Tax Law Professors (EATLP), which he contributed to create and for which he had been the general rapporteur of the annual congress several times.³

One of his favourite subjects was how to reconcile, at European level, the achievement of the internal market with the creation of a genuine European political community, balancing the objectives of tax harmonisation with the tax sovereignty of the various Member States. In his last years, he militated for the introduction of a genuine European (corporate) tax, which in his opinion was the only way to curb tax competition and aggressive tax planning, while providing the Union with the financial resources necessary to carry out its ever-increasing tasks. This is a constant in his think-

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1. For more information on the personality and career of Frans Vanistendael, see L. Hinnekens/Ph. Hinnekens (ed.), *A vision of taxes within and outside European borders: Festschrift in honour of Prof. Dr. Frans Vanistendael*, Kluwer, 2008 and the special issue 3/2022 of the World Tax Journal published in his memory (IBFD).
2. Report of the Committee of independent experts on company taxation, 1992, available at <https://op.europa.eu/en/publication-detail/-/publication/0044caf0-58ff-4be6-bc06-be2af6610870>. See also F.J.G.M. Vanistendael, *The Ruding Committee Report: A Personal View*, 13 *Fiscal Studies* 2, p. 93 (1992) and F.J.G.M. Vanistendael, *The Limits to the New Community Tax Order*, 31 *Common Market Law Review* 2, pp. 293-314 (1994).
3. Frans Vanistendael was EATLP general reporter on the following subjects: *Taxation of Charities*, (Annual congress Rotterdam, 2012), IBFD Amsterdam (2015), 680 pp; *Accounting and Taxation & Assessment of ECJ Case Law*, (Annual congress Helsinki, 2007), IBFD Amsterdam (2007), 176 pp; *The EC Interest Savings Directive*, (Annual congress Budapest, 2006); *EU Freedoms and Taxation*, (Annual congress Paris, 2004), IBFD Amsterdam (2006), 302 pp.

ing: he had successively defended a harmonisation of the corporate tax base, a significant fiscal solidarity within the eurozone, and finally a reform of the Union's own resources.

It is therefore not surprising that one of the first discussions I had with Frans Vanistendael took place during a conference on the European Tax Constitution, organised at the University of Bologna.⁴ Paradoxically, we did not talk about Europe, but about Belgium, the country he was so attached to, despite the difficulties linked to the coexistence of different languages and cultures on a small territory. We spoke about the history of our two universities, which were once united and chose to separate because of linguistic quarrels, but which today have rediscovered the ability and desire to collaborate. As is often the case, distance brings people together and erases differences: What I understood from that first conversation with Frans that day, and what I have felt many times since, is a great unity and coherence of thought among Belgian academics when it comes to tackling the issue of the evolution of European taxation.⁵

Without doubt, the best way to tell the story of a colleague's legacy is to highlight some of his most emblematic publications. It would be indeed impossible to summarize his entire scientific output in a few pages. I have therefore selected a few of them, motivated as much by their scientific relevance as by the personal relationship I had with him. Although it may seem too partial, even arbitrary, this selection gives in my view a fairly accurate idea of the extent of Frans Vanistendael's scientific interests.

The first publication I read from him was a chapter entitled "Legal Framework for Taxation", published in Handbook edited by the International Monetary Fund, mainly for developing countries that wanted to undertake structural reforms.⁶ It reviews in a comparative manner the major constitutional principles common to most democratic tax systems, such as the principle of tax legality and the division of powers between the legislature and the executive, the principles of interpretation of tax laws, the concept of tax abuse, procedural guarantees and taxpayer rights, and the principles of fiscal federalism. This transnational and comparative codification of constitutional guarantees is also an excellent introduction to taxation for all those who wish to learn about (constitutional) tax law.

The second publication is the general report of the 2012 congress of the European Association of Tax Law Professors (EATLP) on the taxation of charities. This is my first scientific collaboration with Frans Vanistendael: I had the opportunity to write both the Belgian and the European report, and I could see the great perseverance with which he brought this project to a conclusion. In the European context, it raises complex issues as regards the balance between the EU freedoms of movement, according to which the same tax advantages should in principle be granted to internal situations as to cross-border situations, and the sovereignty of the Member States in the areas of activity of charities, such as culture, education, religion or health.

The third publication is the chapter entitled "The functioning of fundamental freedoms and tax neutrality in the internal market" which Frans Vanistendael was kind enough to write in the *Research Handbook on European Taxation Law*, which I co-edited.⁷ This chapter constitutes a synthesis of several decades of reflection on the difficulty of reconciling the principles of free movement in an integrated economic framework, but in a fragmented tax framework. He concludes with a nuanced proposal, stating:

"In order to avoid contradictory and inconsistent legal decisions and contradictory and inconsistent tax policy it is therefore necessary to coordinate or streamline the great

4. The proceedings of this conference have been published in A. Di Pietro, *Per una costituzione fiscale europea*, Padova, CEDAM, 2008.

5. Apart from Frans Vanistendael and myself, we can mention Jacques Autenne, Jacques Malherbe, Bruno Peeters or Marc Bourgeois, who have all developed links with the University of Bologna.

6. F. Vanistendael, *Legal Framework for Taxation*, in *Tax Law Design and Drafting* (volume 1); International Monetary Fund: 1996; Victor Thuronyi, ed, available <https://www.elibrary.imf.org/downloadpdf/book/9781557755872/ch02.pdf>.

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tax policy lines for the internal market, leaving maximum room for national decision making by the Member States. The purpose of this chapter has been, first, to illustrate the causes of the present inconsistencies in tax policy, and second, to point to a possible resolution of these inconsistencies. The solution lies in establishing a priority of competitive export tax neutrality for those EU enterprises that cover most or all of the internal market and compete in the world market, a priority of competitive import neutrality for enterprises that operate within national boundaries and a flexible option between the two policies for those enterprises that do not have a clear competitive profile.”

Fourthly, the article entitled ‘Democracy, Revolution and Taxation’⁸ examines the role of taxation in relation to recent populist movements challenging the fundamental principles of our liberal democracies. It traces the recent history of taxation and the reforms that have led to increased social inequalities (lowering of corporate and personal income taxes, concentration of wealth due to digitalisation). He pleads for the implementation of structural reforms at the national level in terms of income tax by adopting a dual income tax system, allowing for a proportional but relatively high taxation of all capital income, and a progressive taxation of earned income with a relatively generous minimum tax. Finally, he advocates for enhanced international cooperation in tax matters. In a few pages, we find a summary of Frans Vanistendael’s views on what a tax system should be if not in an ideal world, at least in a democratic one.

Finally, the fifth article from Frans Vanistendael than I want to mention is his last one, published a few days after his death on 27 October 2021, entitled “An EU Corporate Income Tax Filling the Hole in the EU Budget: An End to Tax Competition and”Tax Abuse“?”,⁹ In this contribution, he states

“From this analysis follows the conclusion that the EU concept of tax abuse is not the right instrument to fight against tax competition within the European Union, because that type of tax competition is the major engine of economic integration, in view of the persistent absence of legal integration of national systems of corporate income tax. Therefore, the contribution ends with a radical proposal for a uniform EU corporate income tax for companies with annual revenue in excess of EUR 750 billion that would feed directly the annual EU budget. Such a tax would eliminate the weakness of CCCTB, the revenue of which had to be apportioned between the national budgets of the Member States. The increase of the EU budget to meet the challenges of COVID-19, climate change and immigration justifies such a tax as a new resource. But the tax is also justified by the fact that those big multinationals make their profits by the very existence of the internal market and, therefore, should contribute to the level of government that makes their business success possible”.

In order to make the process of adopting European tax standards more democratic, this development must also involve abandoning the unanimity rule in favor of qualified majority voting, as he has already advocated in numerous other publications.¹⁰ Beyond the content, which I fully agree with, this contribution has a particular significance. First of all, he defends the creation of a European tax, in line with a call that we launched together with other colleagues in 2020, and which was published in English, German, French, Dutch, Italian, Polish and Spanish in newspapers and magazines throughout Europe.¹¹ But above all, because Frans Vanistendael had presented it two

8. F. Vanistendael, Democracy, Revolution and Taxation, Bull IBFD, 2017, p. 444-451.

9. Frans Vanistendael, An EU Corporate Income Tax Filling the Hole in the EU Budget: An End to Tax Competition and “Tax Abuse“?, Bulletin for International Taxation, 2021 (Volume 75), No. 11/12.

10. See in particular F.J.G.M. Vanistendael, No European Taxation without European Representation, 9 EC Tax Review 3, p. 142 (2000); F.J.G.M. Vanistendael, Democratic Taxation: Necessity or Utopia for Euroland?, 46 Intertax. 4, pp. 346-347 (2018); F.J.G.M. Vanistendael, On Democratic Legitimacy of European Tax Law and the Role of the European Parliament, in European Tax Integration: Law, Policy and Politics ch. 3 (P. Pistone ed., IBFD 2018), Books IBFD.

11. Daniel Gutmann, Peter Essers, Pasquale Pistone, Edoardo Traversa, Frans Vanistendael, Gianluigi Bizioli, Irene Burgers, Fernando Alfredo García Prats, Werner Haslehner, Georg Kofler, Hanno Kube, Adolfo Martín Jiménez, Ekkehart

weeks before he died at the tribute ceremony I had organised for my late professor Jacques Autenne, to whom he had been linked by a friendship of almost 40 years, in the presence of many colleagues, including Adriano Di Pietro of the University of Bologna.

I would like to conclude this tribute of Frans Vanistendael, by inviting readers to read his publications, which, I am sure, will remain relevant for a long time to come and will keep alive the memory of a great European academic.

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Reimer, European Solidarity Requires EU Taxes, April 2020, available on https://taxprof.typepad.com/taxprof_blog/2020/04/european-solidarity-requires-eu-taxes.html See also in French “La solidarité européenne passe par des impôts européens”, Le Soir, 21 April 2020, <https://www.lesoir.be/295911/article/2020-04-21/carte-blanche-la-solidarite-europeenne-passe-par-des-impots-europeens>.