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FISCAL JURISDICTION: WHAT YOU ARE, YOU ARE ONLY BY TREATIES

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A central function of the expression 'fiscal jurisdiction' is to describe the competence of a state to legislate for the taxation of cross-border business. This paper, which is work in progress, argues for two main points: (a) the impossibility of divorcing in legal analysis questions of legislative competence (ie what a state may lawfully legislate for on tax) from legislative capacity (ie what a state can effectively legislate for in relation to tax); and (b), on this basis, the category error of considering the taxation of cross-border business separately from the taxation of business within a single jurisdiction. The paper, which is work-in-progress, and here receives a second iteration, builds on the writer's theory of tax law as public law. The emphasis is on the taxation of multinational groups. Whilst the focus is the UK, the issues raised have equal relevance to other jurisdictions, any jurisdiction indeed, wishing to preserve and strengthen its corporate and commercial tax base.