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Current Books

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Current Books

Abstract

[Extract] This section is designed to provide a brief overview of the content of recently published, tax related books that may be of interest to our readers.

- Tax Law Design and Drafting
- Tax Units and the Tax Rate Scale
- Company Tax Systems
- Taxation Towards 2000
- Interests in Non-Resident Trusts: a Review of the Conflicting Income Tax Regimes
- Tolley's International Tax Planning

CURRENT BOOKS

Editor: Duncan Bentley

This section is designed to provide a brief overview of the content of recently published, tax-related books that may be of interest to our readers.

Victor Thuronyi (editor), *Tax Law Design and Drafting*, 1996, International Monetary Fund, ISBN 1-55775-587-6, 487 pages.

Most tax books are kept for reference. This is the first of two volumes that any person involved in any aspect of taxation should read. These books represent the synthesis of current thought on how to design tax systems. What relevance is that to average tax practitioners? It enables them to understand their own tax system and why it operates as it does. This volume deals with the legislative process, legislative framework, drafting, and administrative design of tax law, and the design of systems of mainly indirect taxation. The second volume deals with design of taxes on direct taxation and investment. Unfortunately, only five of the 23 chapters deal with legislation and tax administration. Experience suggests that they are just as crucial to the successful operation of a tax system as the taxes themselves.

The title of the volume is a misnomer, as there is but a short chapter on drafting tax legislation in this volume. Drafting is referred to in passing, or by implication elsewhere. Given its importance and the current focus on drafting in many OECD countries, I expected a fuller treatment. There is certainly no shortage of research, models and practical examples to draw on. That is not to say that the treatment is flawed. It is simply a very brief overview of a subject that is just as important in the implementation of tax policy as the design of the tax system. These two volumes may not be as widely read as they should be by policy makers in countries with developed tax systems because the drafting of tax laws has received such short shrift. It is because drafting is so relevant to all tax systems that it can draw the reader into the book. Once there, this volume has a surfeit of rich ideas which have as much relevance to sophisticated tax systems as to those in earlier stages of development.

Richard Gordon and Victor Thuronyi begin the book with an introduction to the tax legislative process. It is a fascinating review of an area that is often overlooked, but which has significant consequences for the final shape of the tax law. In most jurisdictions the process is taken for granted and no thought is given, in the context of tax reform, to refining or changing it. Yet, to do so could have more significant an effect than rewriting the whole of the existing

tax law in simple language. For this reason, this important topic receives too brief a treatment. Nonetheless, it identifies important principles that should be noted by anyone involved in designing tax systems and processes.

Frans Vanistendael provides a comprehensive overview of the legal framework for taxation. His perspective is Eurocentric, but he takes a broad comparative view. The footnotes provide a rich source of further reading. Given the work of the International Monetary Fund in designing tax systems in less-developed countries, it would have been useful to draw on that experience to comment on the legal framework for taxation in those countries, and how, if at all, it differs from that in the OECD countries reviewed.

I enjoyed reading the chapter by Richard Gordon on the law of tax administration and procedure. That says something in itself, as it can be a dry topic focused on procedural detail. The author gives a good overview of the topic, liberally footnoted. He is too brief in his outline of what he sees as uncontroversial issues. But his discussion of compliance issues is interesting and very practical, without ignoring the complex theoretical arguments in a number of areas. There is little mention of the methods of dispute resolution alternative to the traditional adversarial approach that are becoming popular within tax systems in a number of countries, including Australia. Integral to tax administration is the regulation of tax professionals. Victor Thuronyi and Frans Vanistendael provide a comprehensive overview.

The next six chapters look at the design of a range of taxes and represent the main part of this volume. They are all well-written by international experts in the design of tax systems, and provide many useful insights into the subjects they cover. Policy makers in any country should read and digest them, particularly as tax reform seems determined to survive as a major focus for governments into the next century. David Williams writes on value-added tax and social security taxation, Sijbren Cossen on the VAT treatment of immovable property, Ben Terra on excises, Joan Youngman on tax on land and buildings, and Rebecca Rudnick and Richard Gordon on taxation of wealth. The last two chapters, by Victor Thuronyi, look at presumptive taxation and adjusting taxes for inflation. These chapters will be of particular interest to policy makers in developing countries. They cut through the complex theory to provide a lucid comment on the practical effects of introducing presumptive methods of taxation and adjustment for inflation.

This is one book, with its companion volume when it is published, that should be on the shelves of every tax library. The two volumes could also form the texts for courses on tax policy and tax design.

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John G Head and Richard Krever (editors), *Tax Units and the Tax Rate Scale*, 1996, Australian Tax Research Foundation, Conference Series No 16, ISBN 0 949482 59 5; 213 pages.

Tax Units and the Tax Rate Scale provides a useful addition to the literature on tax policy at a time when tax reform is once more at the top of the Australian political agenda. Traditionally Australia, in common with most tax systems, has based its taxation on the individual unit. However, it is by no means a pure system. Where the system allows income splitting, particularly in the taxation of capital, the marital unit is the effective unit of taxation. This volume provides a collection of papers that analyse the basis for using the individual and marital taxing units.

Michael McIntyre and Neil Brooks provide very different legal policy arguments, using the traditional Haig-Simons framework of a comprehensive tax base and a progressive rate structure. McIntyre suggests joint taxation of individuals on the incomes they enjoy after intra-family transfers. Neil Brooks ignores transfers and suggests that individuals be taxed on their market income, which they are assumed to control.

Patricia Apps, and Glenn Jones and Elizabeth Savage are economists. In their contributions, they use optimal tax analysis, which incorporates the important factors of leisure, and the role of the non-working spouse in household production. Both chapters use this model, and examine the effect of a switch to joint taxation with full income splitting, based on numerical estimates derived from Australian data. The authors conclude that, in the context of the current progressive rate structure, a switch would be both inequitable and inefficient. The chapter by John Freebairn flows from these analyses and examines the arguments for a flatter personal income tax in Australia. Freebairn concludes that a pure flat tax would bring gains in tax simplicity, and flatter taxes would probably reduce distortions to improve economic efficiency. However, he sees a flatter tax as politically unrealistic outside a wider package of reforms. Any advantages from a flat or flatter tax depend on the whole package.

Geoffrey Brennan and Michael Brooks tackle family taxation from a public choice perspective using a model of Leviathan government. In an interesting analysis, they show that, as yet, there is insufficient information for public choice models to explain family taxation and the tax unit. However, the authors suggest that a weaker public choice model, seen as one agent in a complex political process, may still shed light on the family taxation choices that a government will make.

The focus of the book changes again with the contribution by Ruud Sommerhalder. He provides a useful description of a number of European approaches to the taxation of families and individuals from a legal

perspective. The chapter concludes that the choice of taxing unit is usually based on social and not fiscal considerations in the countries examined.

John Head offers an outstanding summary of the key issues raised in this volume. He draws together the main threads and adds his own incisive analysis. He concludes that "no clear picture or set of policy conclusions can be drawn from the contrasting perspectives on the tax unit and tax rate scale", but he expresses no surprise at this, in an area "as socially complex and fraught with conflicting views and value judgments" (at 212).

John G Head and Richard Krever (editors), *Company Tax Systems*, 1997, Australian Tax Research Foundation, Conference Series No 18, ISBN 0 949482 57 9; 378 pages.

For those interested in tax policy this volume is valuable, not only in its comprehensive review of company tax systems, but also in the different frameworks for analysis used by a group of the world's leading tax writers. That, too, is its shortcoming. The volume is a collection of individual papers. It would have been useful if the editors had drawn together the different threads and issues raised, at least in a concluding chapter. Nonetheless, the contributions are organised so that the content does flow for the reader. This volume also provides readers with an up-to-date international bibliography of the most important writing on company tax systems.

The contents are as follows.

- Company tax systems: from theory to policy by John G Head.
- The role of the corporation tax in OECD member countries by Sijbren Cnossen.
- Observations on US corporate tax policy and the 1992 US Treasury Report on Integration by Serge J Nadeau and Robert P Strauss.
- Canadian corporate tax: logic, policies and politics by Neil Brooks.
- The Australian full imputation reform by Matt Bengie.
- Company tax in Australia by Howard Pender.
- The future of UK corporation tax by Malcolm Gammie.
- Dual income tax: the Scandinavian experience by Leif Mutén.
- Company tax reform and the inter-nation allocation of tax jurisdiction by Alex Easson.
- A corporate cash flow tax as an income tax integration mechanism by George R Zodrow.
- The effect of an income tax on corporate tax compliance by Graeme S Cooper.

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John G Head and Richard Krever (editors), *Taxation Towards 2000*, 1997, Australian Tax Research Foundation, Conference Series No 19, ISBN 0 040482 61 7; 643 pages.

During the 1980s the *Australian Tax Forum* published a number of important articles on the reform of the Australian tax system. Many were written by economists. Too often, the disciplines that consider taxation do not interact. The articles in the *Australian Tax Forum* raised the level of general debate in the tax community by making the views of leading economists available for general consumption. This volume of essays will achieve the same result for the debate of the late 1990s.

The chapters are readable and comprehensible to anyone with an interest in tax policy. They consider the basis for reform in a number of areas that will inevitably be high on the tax reform agenda. Whether or not the reader agrees with the views expressed in these essays, they will provide a basis for informed discussion.

Professor John Head provides an incisive analysis of the major themes in the book in the introduction. The book is then divided into eight parts. The first part provides an overview of the issues pertinent to reform of the present Australian tax structure from an economic perspective. The second part provides different views on the choice between a personal income tax and a personal expenditure tax. The third part contains five essays on aspects of indirect taxation, which consider design issues, the effect of changes of the tax mix and the setting of tax rates, as well as studies of specific indirect taxes. The latter theme is pursued in the fourth part, which looks specifically at resources and pollution taxes. The fifth part considers national savings and superannuation. The sixth part focuses on issues in capital income taxation, including capital gains, the debt-equity distinction and debt financing, tax losses, and the taxation of housing. Essential to any consideration of tax reform, the seventh part looks at taxation and redistribution issues. The volume concludes with an essay on compliance costs.

Lee Burns and Richard Krever, *Interests in Non-Resident Trusts: a Review of the Conflicting Income Tax Regimes*, 1997, Australian Tax Research Foundation (Research Study No 28) ISBN 0 949 482 625; 140 pages.

The Preface says (at vii):

This study reviews the development of the overlapping rules applicable to interests in non-resident trusts, explaining where and why they yield complex, and often inappropriate, results. It concludes with recommendations for reform to simplify the law and better achieve consistent and logical policy objectives.

It is particularly apt in the context of the general reform of the taxation of trusts in Australia, that the authors have produced a comprehensive analysis of the rules governing interests in non-resident trusts, together with proposals for reform. To my knowledge, there is no other analysis of this kind. It provides a valuable guide to all tax professionals.

The book begins with a brief overview of the issues; reviews the reforms prior to the adoption of anti-deferral legislation; analyses the first anti-deferral regime of 1990 and the subsequent 1992 amendments; and concludes with a blueprint for reform.

It is useful to have a clear description of the position before the anti-deferral legislation was enacted. The analysis of the anti-deferral regimes, which forms the bulk of the book, is enhanced by a brief comparative review of the United States, United Kingdom, New Zealand and Canadian systems.

This book is not an easy read. To understand it fully, you need the legislation in front of you. The text is well-written, but economically so. It would have benefited from greater explanation of the technical detail and from more cross-referencing between the different rules applicable to particular interests, transactions and arrangements described.

The proposals for reform are eminently feasible to implement, and are broadly in line with government policy. Their implementation would simplify the current rules and make them more effective. This volume should be required reading for the Federal Treasurer, the Shadow Treasurer, and the Commissioner of Taxation. It will alert them to the great difficulty in formulating a comprehensive regime to govern interests in non-resident trusts.

Malcolm J Finney and John Dixon (editors), *Tolley's International Tax Planning*, 1996 3rd edition, Tolley Publishing Company Ltd, ISBN 186012 331-7; 37 chapters.

Tolley's International Tax Planning is designed for tax planning that includes the United Kingdom (UK). Nonetheless, it is useful to anyone interested in tax planning. Unlike so many of the United States (US) oriented volumes it is largely outward looking. This is partly because the UK is a member of the European Union and any UK tax planning necessarily includes European angles. It is also a legacy of the old UK focus on the Commonwealth and the traditional interest in investing in Commonwealth partners. And any volume on tax planning must contain chapters on dealing with the US. For anyone resident in a common law country, the UK rules are familiar. Indeed, much of the UK case law is persuasive, if not binding.

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This is a very practical book with chapters by a range of authors. There are helpful insights into the tax planning process. Some chapters, such as “Doing Business in India” and “Immigration Controls in the United Kingdom”, are simply a description of the rules that apply in a particular area. The diversity of authors provides an eclectic mix of content and style. It makes this book far more interesting than most of the standard loose-leaf volumes on tax planning.

Predictably, the volume starts with a consideration of UK residence, then moves on to asset protection and offshore creditor protection trusts. Then come chapters on buying and selling residential property in France and Spain. Why is Italy not included, given the predilection of UK residents for holidays in Tuscany? We then jump to captive insurance companies for UK parent companies and controlled foreign companies, before considering corporate taxation in Canada and doing business in India. Why just Canada and India is not clear. US acquisitions, US corporate tax, and tax issues for US-based multinationals are dealt with at the end of the volume. The flow of chapters already shows that there is no flow. It is a case of picking your topic and using the index. If you are lucky, there will be a very useful chapter, or at least a description of the rules, in the area in which you are interested. If not, there are likely to be chapters on similar topics, which will give you an indication of what the rules might be.

There are chapters on double tax agreements, European Community Tax Directives, the European Economic Interest Grouping and international headquarter companies. There are chapters on financing overseas operations, international leasing, intellectual property, international share schemes, structuring European acquisitions, and tax planning for foreign tax credits. The anti-avoidance topics are covered with a liberal scattering of chapters. Tax havens, transnational enforcement of tax liabilities, and UK Revenue international investigations are all there. There is even a short chapter, perhaps of particular interest, on money laundering, tax evasion and professional liability. Individuals are not forgotten, with a liberal dose of inheritance tax, capital gains tax, and general tax planning for the non-UK domiciled, employment aspects of international assignments, purchasing and disposing of UK property, UK immigration controls, and planning for overseas entertainers and sportsmen with UK interests. The volume concludes with a well-written chapter on the international dimension of value added tax.

The book has a particular UK focus. It is still worth consulting for anyone involved in international tax planning simply for the ideas generated by the authors that are of general application.