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Duncan Bentley
Bond University, Duncan_Bentley@bond.edu.au

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A REVIEW OF ROY ROHATGI'S "BASIC INTERNATIONAL TAXATION"

2002 Kluwer Law International, ISBN 9041198520, 704pp

In his book, *In the Company of Scholars*, Professor Julius Getman writes:[1]

> The gap between educated laymen and academic specialists constantly grows. I do not think the gap is attributable to the speed with which the frontiers of knowledge are being pushed back; instead, it reflects the desire by academics to be thought part of a special, elite, intellectually rigorous world and the fear that, if what we wrote was intelligible, the claim would be more easily dismissed.

The same statement could be made of tax writing generally. It is certainly not true of *Basic International Taxation*. While the subject matter is anything but basic, the style is clear, the writing is lucid, and the text is well organized and readable. However, where this book comes into its own is in its appeal and usefulness to a diverse audience.

Ninety percent or more of tax advisers are faced only occasionally with the need to provide clients with advice on international business taxation. If national tax systems seem filled with baited traps for the unwary, the multiplier effect seems to apply to traps facing cross border transactions. For those venturing warily into the international tax arena, this book provides a useful guide to where to look for the traps and some of the ways to avoid them and to overcome them. Both the sophisticated tax expert and the occasional adviser on tax matters will find this book a valuable introduction to international business taxation. It does not assume too much and includes an excellent glossary of international tax terms.[2] It will provide a good starting point for the vast majority of tax advisers who have small numbers of clients needing international tax advice and enable them to ask the right questions of their counterparts in other jurisdictions.

Many regular practitioners of international taxation will also want to have *Basic International Taxation* on their shelves, simply because it is one of the few general texts in the area. It provides a useful summary, together with the footnotes and suggested readings of current thinking on a wide range of topics.

For students of international taxation around the world, Rohatgi has performed a welcome service. There are few suitable and current texts for university courses that provide an introduction to international business taxation.[3] It is useful to have a book that is current, comprehensive and accessible. I expect this volume to be prescribed widely as a text for students.

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[1] (1992 University of Texas Press) 47.

[2] Extracted from Susan M Lyons, *International Tax Glossary* (3rd ed 1996 IBFD Publications BV).

[3] Others include the 1992 text of S Picciotto, *International Business Taxation* (1992 Weidenfeld and Nicholson), the 1995 texts of BJ Arnold and MJ McIntyre, *International Tax Primer* (1995 Kluwer Law International) and A Ogley, *Principles of International Taxation* (1995 Interfisc Publications). A Easson's *Taxation of Foreign Direct Investment – An Introduction* (1999 Kluwer Law International) is also an excellent text, but more focused, as the title suggests.

Basic International Taxation is just over 700 pages and is divided into eight substantive chapters. Chapter One provides an overview of international taxation. Chapter Two sets out the principles of international tax law. Chapter Three covers model tax conventions on double tax avoidance. Chapter Four examines the impact of domestic tax systems on international taxation issues. Chapter Five on international offshore financial centers is followed by chapter Six on anti-avoidance measures and Chapter Seven on principles of international tax planning. The substantive section of the book ends with an examination in Chapter Eight of some current issues in international taxation. Chapter Nine contains the glossary of international tax terms mentioned above. Included as "exhibits" are the texts of the OECD Model Tax Convention on Income and Capital ("MC"), the 2001 version of the United Nations Model Double Taxation Convention between Developed and Developing Countries ("UN MC") and the United States Model Income Tax Convention ("US MC"). Before the index there is also a seven-page summary of recent developments in international taxation to September 2001.[4]

The book is well structured with an extensive table of contents and a useful numbering system for easy reference. In addition to the footnotes throughout, each chapter contains a selection of suggested further readings on key topics discussed in the chapter. The index is adequate, without being comprehensive, and points the reader to the main sections where the more important topics and terms are discussed. Some of the footnoting is inconsistent and lacks adequate detail to find the source quickly.

The content and delivery is idiosyncratic, which can be a little surprising, given the structured and ordered framework. This is both the book's greatest weakness and its greatest strength. Coming from many distinguished years in practice, Rohatgi is keen to provide useful examples and information to support the principles he sets out. The country examples, describing how a principle described works in a particular jurisdiction, add significantly to the reader's understanding of the principles. So, too, do the excellent checklists that are given in a number of sections throughout the book. They bring a vital sense of reality to the information. However, the reader should be aware that the country examples and checklists are used where the author believes they are relevant and do not appear in each section. The countries used in the examples vary from principle to principle and the form of the examples differs between principles. The result is a book that provides practical insights into what the principles mean and how they work. It does not provide a commentary on the operation of those principles in the major international economies, and that is not its aim.

With this in mind, Rohatgi is at pains to point out that any information he gives should not be used as the basis for providing advice without further consultation and research. The point is well made and taken in the Preface and Chapter One. Thereafter the notes to that effect at the beginning of each chapter are largely superfluous. The reader simply needs to review the chapter of recent developments to be aware of the avalanche of continuous change that would make it dangerous in the extreme to rely solely on a textbook such as this to provide specific technical advice to a client.

[4] This is prepared by Miles Dean and Roy Saunders of International Fiscal Services Ltd, London).

The first chapter provides a useful overview of the main areas of international business taxation that form the content of the book. A lengthier list of suggested further reading than in other chapters includes a list of the Committee of Fiscal Affairs of the OECD reports on international tax matters since 1979, the names of many of the commercial journals covering international tax, and a very brief pointer to relevant websites.

The second chapter sets the scene for the analysis throughout the rest of the book, focusing on the role, interpretation and application of international double taxation treaties. It pays particular attention to the MC and mentions a range of multilateral tax agreements. Starting with the primary rules at the international level is a common approach in most texts and chapters on international taxation and sets a sound foundation for analysis of international tax problems. The title of the chapter, "Principles of International Tax Law", is a little misleading. The principles are becoming more important, but are seldom discussed.[5]

Chapter Three provides an extremely useful analysis of the MC, comparing it with the UN MC and the US MC. The analysis is easy to follow, as the full texts of each model convention are included at the end of the book. Those not completely familiar with the model conventions will find the systematic comparison most valuable. In future editions it would be helpful to have the main issues covered in each article cross-referenced to the more detailed discussion elsewhere in the book. It would also be useful to have, at least in the footnotes, some examples of treaties that use each of the articles discussed. Those researching more deeply could then compare treaties that provide examples of the model articles from the different model conventions.

Chapter Four describes the main elements of domestic tax systems that interact at the international level. It is in this chapter that the country examples illustrating the principles described help to bring the content to life. The range of approaches used in different jurisdictions is both fascinating and daunting. The reader now comprehends the necessity for tax treaties, the dangers of failing to take proper advice, but also the many opportunities for intelligent tax planning. It leads naturally into the chapters on international financial centers and anti-avoidance measures.

Chapter Five provides a useful summary of the key features and the role of tax havens and, specifically, offshore financial centers. This chapter is invaluable for the newcomer to international tax planning. It provides an understanding of the terminology and then gives examples of the different types of intermediary entities. There follows a description of the key features of the most important base havens, treaty havens and special concession havens. The novice planner will be surprised to discover the planning opportunities available in high tax jurisdictions. The chapter closes with a clear warning to planners to be aware of current developments that can change completely the location of an optimal offshore arrangement.

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[5] See, for example, in the context of electronic commerce, Committee on Fiscal Affairs, "Electronic Commerce: Taxation Framework Conditions", (1998 OECD), also available at http://www.oecd.org/daf/fa/e_com/ottawa.htm

Chapter Six continues the warning with a description of the major anti-avoidance measures to which any tax planning may be susceptible. The chapter usefully begins with a description of judicial approaches in a range of jurisdictions to illustrate the radically different judicial attitudes. The chapter covers anti-treaty shopping measures, controlled foreign corporation legislation, thin capitalization rules, transfer pricing rules and mentions a range of other anti-avoidance measures, such as exit taxes and difficulties in transferring tax residence, that are frequently overlooked by those not well-versed in international tax planning. Rohatgi brings out in his analysis and through the careful use of country examples how anti-avoidance means so many different things in different jurisdictions.

This book is all about tax planning. Chapter Seven on tax planning draws together the threads from the earlier chapters. There are numerous books and commentaries on tax planning and most are confusing to the average primarily domestic tax adviser. Rohatgi, on the other hand, is remarkably clear in setting out a methodology and tax planning techniques and questions that are general enough to assist the average tax adviser trying to chart a course through to the resolution of a client's problem. The expert international tax planner may quibble on minor points, but the book provides a comprehensive introduction to planning, covering international tax structures, entities and financing, tax planning for cross-border transactions, planning for expatriate individuals, the avoidance of economic double taxation of dividends and the value of obtaining advance rulings.

The book concludes with a chapter on current issues in international taxation. The choice of topic reflects the recent and current work of the OECD and the International Fiscal Association. Some areas, such as electronic commerce, are necessarily out of date already given the pace of change. However, all issues are raised and discussed to show the need for awareness of potential change in the international tax arena. Rohatgi succeeds in identifying the importance in tax planning to be aware of changes in the offing that might affect proposed transactions and where special rules may be introduced in the near future. Topics discussed are electronic commerce, cross-border computer software payments, technical services and assistance, attribution of income to permanent establishments, treatment of exchange gains and losses, triangular cases, partnerships, financial instruments and harmful tax competition.

Professor Rohatgi is to be congratulated on producing a very useful text on basic international business taxation. It fills a gap in the literature. For the many tax advisers acting infrequently in the international arena, it will prove a very useful additional resource. For numerous students it will become their primary resource.

This review was also published in (15 April 2002) 26(2) Tax Notes International 173.