

Review of Harry M Rigney, *Australian Business Taxation*, Sydney: Butterworths 1990. pp i-xxiv; 1-407.

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The author of *Australian Business Taxation* is Harry M Rigney, the National Taxation Director of the accounting firm Pannell Kerr Forster. In his preface, Mr Rigney states that the book

came into existence because of my perception of a need for a work which put Australian taxation law into a business perspective.... [T]his work ... represents my attempt to give an edge of reality to the otherwise somewhat remote aspects of tax learning.<sup>1</sup>

The book is divided into six parts, dealing with basic principles and concepts, tax administration, tax structures for business, domestic business structures, international business operations, and tax planning and restructuring. The first part comprises three chapters, titled "Interpretation and Reasoning", "First Principles of Taxation" and "Related Principles and Concepts". The first chapter summarises the rules of statutory interpretation and judicial reasoning, the second chapter discusses the concepts of income, capital gains and deductions, while the third chapter deals with the concepts of residence, source, derivation and basic principles of property law.

Whilst the discussion of the rules of statutory interpretation and judicial reasoning is interesting, it may be doubted whether there is a place for it in a book aimed at putting taxation law into a business perspective. To someone other than a business executive, however, it does serve to put the current form of drafting found in the Commonwealth Income Tax Assessment Act 1936 ("the Assessment Act") and the

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1. H M Rigney *Australian Business Taxation* (Sydney: Butterworths, 1990) xi.

increase in the discretions conferred upon the Commissioner of Taxation in historical perspective. The increase in the discretionary powers of the Commissioner, foreshadowed by the late Mr Justice Murphy in *The Commissioner of Taxation of the Commonwealth of Australia v Westrad-ers Proprietary Limited*,<sup>2</sup> is indeed a feature of modern tax legislation.

The second part of the book, dealing with tax administration, covers administrative discretions conferred on public officials generally and the courts' supervision of the exercise of such discretions; the rights and obligations of the Commissioner of Taxation and the individual taxpayer; and sanctions for non-compliance with the tax laws. These chapters contain particularly useful discussions of the Commonwealth Freedom of Information Act 1982 and the Commonwealth Administrative Decisions (Judicial Review) Act 1977, and their increasing importance in disputes between the Commissioner and individual taxpayers. The discussion of section 264 of the Assessment Act is perhaps a little limited in its scope, having regard to the plethora of recent cases dealing with the interpretation of the section and the fact that it is one instance where the business taxpayer and the Commissioner's representatives are likely to come face to face, through the exercise by the Commissioner of his powers under the section.

Part three of the book comprises four chapters, dealing with the sole trader, the unincorporated entity (covering partnerships and trusts), the corporation and combinations of those entities, in that order. The chapter on the sole trader deals with the difficult issue of distinguishing between employees and independent contractors in the tax context and the tax accounting to be adopted by sole traders, while the chapter on unincorporated entities refers to Everett assignments, the ability of partners to vary their share of partnership income, losses incurred by trading trusts, and the effect of Part IIIA of the Assessment Act (capital gains and losses) on capital gains realised by a trust. The author makes reference to the unresolved problem of how capital gains realised by the trustee of a trust are to be accommodated within the regime for the taxation of trusts established by Division 6 of Part III of the Assessment Act. Chapter 9, dealing with the corporation, traces the history of the taxation of corporations under Australian taxation law, while the last chapter in the part makes reference to corporate trustees, service entities as used by many

2. (1980) 144 CLR 55, 80.

large and medium-sized professional practices, and public unit trusts. The chapter also contains a discussion on how orders made under the Commonwealth Family Law Act 1975 may affect business structures. Whilst it is difficult to see the place of such a discussion in a book on business taxation, it is nevertheless informative and interesting.

The fourth part deals with domestic business operations, in whatever form conducted, and looks at a number of aspects of such operations. Thus chapter 11 looks at the financing of business operations, the effect of Part IIIA of the Assessment Act on real property acquired or held as part of a business operation, and the tax treatment of plant and equipment; chapter 12 deals with employee remuneration and trading stock; chapter 13 covers the deductibility of advertising, insurance and legal and accounting expenses; chapter 14 deals with incentives given by the Assessment Act to various forms of investment, such as primary industry and resource industry investment, and the research and development concessions; chapter 15 covers the timing and deferral of receipts, bad debts and past year losses, elections available under the Assessment Act and the prescribed payments system; while chapter 16 deals with the dividend imputation system and the deductibility of payments made by a taxpayer to his associates.

Part five of the book deals with international business operations in three chapters, covering international tax planning, international financing considerations and the regulation of international business operations. Having regard to the fact that the third chapter in the part (chapter 19) deals with customs duties and export duties, as well as the remnants of the exchange control regime and Division 13 of Part III of the Assessment Act, these three chapters are probably the least detailed in the book. To be fair to the author, however, the proposed legislation dealing with the taxation of foreign source income had still to be tabled when the book was written. Future editions of the book would benefit from a more comprehensive treatment of foreign income derived by Australian entities and the establishment of business operations overseas by Australian residents.

The last part of the book is headed "Tax Planning and Restructuring" and comprises three chapters. Chapter 20 deals with the restructuring of business operations and matters to be taken into account when any restructuring is effected. The restructuring of a sole trader's operations, a partnership, a trust and a corporation are dealt with in chapter 21. The chapter also makes reference to the impact of stamp duty - as the author

notes, the increasingly prohibitive rates of stamp duty can often make a proposed restructuring uneconomic. Chapter 22 is concerned with the anti-avoidance provisions which must be taken into account before any restructuring is contemplated, while chapter 23 is concerned with tax planning for the small business. The last chapter of the book is concerned, appropriately enough, with the winding up of various business entities.

Having summarised the book, one may test its contents against the author's intention of producing a book which puts Australian taxation law into a business perspective. In this reviewer's opinion, it achieves this aim. The book is easily read and does not undertake a detailed analysis of the cases. By the same token, the author pays due regard to the rulings issued by the Commissioner of Taxation. Whilst a number of these are premised on doubtful grounds, they must be taken into account if the taxpayer does not wish to become involved in a costly and long-running dispute with the Commissioner.

Finally, there is the market at which the book is aimed. The author does not state, to use the jargon of the advertising industry, his "target audience". The book is likely to be of limited use to the experienced tax practitioner, and its combination of academic and practical discussion may make it of limited use to the university student who has still to grasp the basics of taxation law. It will, however, be a useful text to the individual who has completed university studies and is either contemplating, or has just embarked on, a career as a tax adviser, whether in the accounting, legal or merchant banking fields.

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