

REVIEWS

TAXATION OF FOREIGN INCOME, CASES AND MATERIALS. By Boris I. Bittker and Lawrence F. Ebb. Palo Alto: Stanford University International Legal Studies, 1961. (Preliminary ed. 1960). Pp. xii, 580. \$5.00.

THERE comes a point at which the education of a law student passes beyond basic exercises in analyzing legal doctrine to a point where emphasis must be put on employing information, legal skills and practical judgment in planning to protect the interest of a client. Pedagogical requirements for such a course are many. Not only must the student be afforded the opportunity to grasp the basic doctrines; he must also be able to formulate the basic legal structure which controls factual transactions in the area selected. Moreover, he must be encouraged to ascertain what the law makes commercially and practically possible with respect to planning transactions in the selected segment; such an enterprise is not so much concerned with what the law is, as what to do about it. Finally, such courses should cause the participants to inquire whether the body of law governing the adjustment of the relations between the individual and the community should not be revised. In the area selected it is imperative to consider whether apportionment of the burdens of government under pertinent doctrine is the most effective and equitable one available for the client and the taxpaying community.

Preparation of materials for such classroom study is never easy. When the subject matter sought to be carved out for such a course is (as with the area covered by the book now reviewed) generally unfamiliar and rapidly burgeoning, difficulties are intensified. Despite these obstacles, Professors Bittker and Ebb have succeeded in creating a work exceptional for its clarity, scope, and relevance both to the current legal structure for the subject and law school teaching techniques.

The content of the work is more than adequate to provide for all of these objectives. There are plenty of cases for the professor whose principal goal is to ground his students in the basic concepts governing taxation of foreign income, devoting substantial class time to the traditional analysis of judicial opinions and measuring the scope of the rules they are thought to enunciate.

The materials are also calculated—and the field is such that they must be—to inspire student and professor to consider underlying tax philosophies and measures of reform. Treatises, statutes, cases and text from commentators reflect competing policies for tax collection as against national safety or national expansion, non-governmental aid to other countries versus the perils of hidden tax subsidies, and the sheer feasibility of drafting tax relief statutes so as to give aid only to those whose commercial transactions are so vital to the national welfare as to require Federal tax indulgence.

Finally, there is almost an embarrassment of riches for those who regard taxation as a subject peculiarly fitted to stimulate student imagination in planning transactions so that legal concepts become—prior to litigation—meaningful in the affairs of a client. The work is organized in substantial part to deal with patterns of facts: relevant materials are collected respecting (for example) tax consequences when a taxpayer establishes a foreign branch, takes up residence abroad, gives a license to a foreign corporation, or creates a foreign subsidiary. This is not casually done: it is a major portion of the book, under a title calculated to drive the student into comparative tax planning.¹

The sources of materials in the work are as varied as are the facets of legal education they have been gathered to exploit. There is much in addition to the usual collection of cases, statutes and annotations by the editors. Unusually extensive use is made of observations of commentators respecting legal and non-legal factors relevant to taxation of foreign income. Additional materials include excerpts from briefs, legislative hearings, administrative memoranda, committee reports, congressional debates, treaties, and correspondence addressed to congressional committees. Especially useful are text and other materials comparing attempts of other nations to reach objectives apparently similar to those sought in our laws.

Presentation of the materials is stimulating. There is often a refreshing understatement of argument, as in the material supporting the basis for a critique of Western Hemisphere Trade Corporations. For all that the material is comprehensive and orderly, it is artfully arranged so that it bristles with unsolved issues and unasked questions. Thus, the path to successful tax planning under statutes, treaties, and administrative materials is often left for the professor and the student to explore together; it is wisely recognized that the author who leaves little for the professor to explain is not always regarded with enthusiasm by those who might use his materials. A balance is, however, maintained, as where the advantages of creating foreign subsidiaries in tax-haven countries are incisively explained.

In short, the diet of cases, statutes, treaties and text materials is selected with care and balanced in proportions appropriate to the nature of the course and the potential competence and experience of students enrolled in it.

Particular comment must be made on the authors' successful use of an extremely valuable device pioneered elsewhere² in presenting basic tax materials. In the space of three pages they summarize the basic rules for taxation of foreign income under the Internal Revenue Code, thus encouraging intensive class study of these materials in the course of a couple of class hours (the analogy to learning the multiplication tables is inescapable). Following such study, students may quickly pass to conceptual problems involving the

1. Pp.180-351.

2. *E.g.*, WARREN & SURREY, CASES ON FEDERAL ESTATE AND GIFT TAXATION 259-70 (1956).

consistency and adequacy of the various rules; thence to an ultimate consideration of the manner in which such rules operate in fact to control tax consequences in various kinds of transactions.

As every law professor knows, many consider it gauche of a critic to write a completely favorable review; a suspicion arises that he is not sufficiently fastidious. So (with conscious charity respecting a line of wrong font type at page 254) the hope is here expressed that at some future time the book may be expanded. The work is limited—in title and, to a large extent, in fact—to taxation of foreign income under the laws of the United States. A complete study of the concepts involved in planning with respect to foreign income requires consideration of the manner in which other nations tax income earned there by non-residents such as nationals of the United States. There is little focus on this material, for reasons which readily come to mind. It is manifestly impossible to summarize the tax laws of all foreign nations in this respect, and a survey of even the most important areas affording tax avoidance devices might be dangerously incomplete. Moreover, the subject is in fact considered incidentally throughout the work. But as a matter of emphasis and organization, experimentation with this preliminary edition (and further investigations currently under way by the authors) may reveal that a chapter dealing with this subject, even though severely limited in length, is both feasible and desirable.

This book will be extremely useful to practitioners seeking a basic understanding of how foreign income is taxed in this country. Beyond this, the work makes a most significant contribution to legal education. It facilitates potential professional understanding of an extremely complex and important area of the law. Absorption of these materials—even to the extent reasonably to be expected of the normal law school student with a limited background in taxation and no background in international law—will enable the recipient to begin the study of the tax consequences of international transactions on a most secure foundation. From a course based on this work he should emerge with a sense of the relevant, a fixed suspicion of current political and economic concepts on which present practices are dependent, and an understanding of how—for whatever reasons—a client may properly arrange his affairs for best tax consequences with respect to adventures in foreign trade.

In all deference to the authors of this excellent book, it is to be hoped that congressional acceptance of current proposals for reform in our system of taxation of foreign income will soon make it obsolete. Professors Bittker and Ebb have artfully made the present deficiencies evident. No element of tax reform is more necessary than an informed bar. The light this work sheds on what the law is and might be will surely advance the time that public and private interests will come to a more rational approach to the taxation of foreign income.

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