

TAXATION IN THE UNITED STATES. By Harvard Law School, International Program in Taxation, World Tax Series.¹ Chicago: Commerce Clearing House, 1963.² Pp. lxxii, 1444. \$27.50.

AN appraisal of a description in one volume of the entire American tax system, as has been attempted in *Taxation in the United States*, should consider the nature of that system and the other writings available to those who must cope with American tax law.

Of all the branches of American law, taxation has probably become the most complex both in terms of volume of provisions and multifariousness and subtlety of concepts. For example, a single concept, like "trade or business," that may seem relatively straightforward to a non-specialist, appears with slight contextual variation in scores of different provisions in the Internal Revenue Code with potentially different meanings in each context. Dealing only with the federal tax system, hundreds of looseleaf pages of material may be added each week to multi-volume commercially published services. Keeping abreast of current federal developments is a large task, and state developments add substantially to the burden of those who are also concerned with that level. Tax lawyers are naturally, then, beginning to speak in terms of subspecialties: they feel themselves "really" expert only in such areas as taxation of corporations, or of foreign income, or real estate transactions, or insurance companies, and so forth.

In addition to being almost overwhelmingly complex, the American tax system is enormously pervasive. The areas of American life affected are vast and varied. Everything from the offer of a free lunch to the merger of two large industrial corporations may be motivated by, conformed to, or cause consequences under, the tax law.

Finally, the whole taxing process is made more unruly by its peculiar susceptibility to rapid and fragmentary change. Every few years since enactment of the modern income tax law in 1913 there has been major federal legislation, the chief vehicle of change. Meanwhile, various courts churn out a multitude of tax cases, which now run into the hundreds annually. These courts (apart from the Supreme Court) have overlapping jurisdictions, and as a result a consistent and coherent process of judicial interpretation is often lacking. Frequently the transactions giving rise to the cases are several years old, and the statute may have already been changed, so that previous decisions are of no great help to those dealing with present problems. It takes perhaps ten years or more in some complex, but frequently applicable, areas of the law — such as the provisions governing common kinds of corporate transactions — to develop enough

1. The volume is primarily the work of Marvin A. Chirelstein (Part II), Langdon Day (Parts I and III), Elisabeth A. Owens (Chapter 11 of Part II), and Stanley S. Surrey (correspondent).

2. A Supplement of 98 pages to bring the text up to date through October 12, 1964 has been prepared by the Commerce Clearing House Editorial Staff.

cases to be sure of the law's content, or even to be sure where it is ambiguous. Indeed, in many important areas there have never been sufficient cases to clarify the statutory provisions.

Faced with this labyrinth, most tax lawyers called upon to render advice are in a position, vis-a-vis the body of tax law, which is comparable to that of a general practitioner vis-a-vis the less specialized bodies of law — they must go to the library and learn what they need for the problem at hand. Research in taxation can be conducted efficiently, and while it may not always provide answers, it can narrow issues and limit risks. The reason for this efficiency is a massive quantity of readily available, and relatively well organized, material. Besides multi-volume looseleaf services which lead directly to primary sources, there are multi-volume general treatises, specialized treatises and books, collected papers from tax institutes, and articles in various legal journals, magazines, and newsletters.³ Yet, the quality and usefulness of this material vary greatly, and a good deal of it is clearly not helpful. Moreover, the very bulk of the available material causes some inefficiency in research.

How does *Taxation in the United States* fit into this labyrinth of legal provisions and deluge of printed words?

To attempt to describe accurately and comprehensively in one volume the mass that constitutes the American tax system is itself a conception of heroic proportions. Considering the difficulty of the task, the book is a remarkable achievement. The central part of the volume — Part II, a 935 page description of the federal income tax⁴ — is a highly competent piece of work. While it provides few, if any, original insights, it draws together in sharp focus an enormous amount of material and provides a sound analysis of the law at a medium level of generalization. Although there are statements one might disagree with, one suspects that the difficulty lies in the pitfalls of writing at this medium level of generalization in an area where enormous detail is the reality.⁵ The third part of the book,⁶ dealing with the tax system of New York State, also seems well executed given the spacial limitations of 44 pages.

3. See description of "sources" and the selective bibliography contained in the book, pp. xxvii-lxxii.

4. The treatment here is selective. Relatively full treatment is provided in the chapters dealing with taxation of corporations and shareholders (153 pages), and taxation of foreign income and aliens (198 pages). Briefer treatment is accorded in chapters dealing with, among other things, principles of income determination, business income generally and in specialized industries, income from personal services, investment income, capital gains and losses, computation of tax, and administration and procedure.

5. There are also various minor errors to be found. However, some mistakes are to be expected in a book of this type, and the errors do not appear to be sufficiently numerous to constitute a serious criticism of the book.

6. The aim in Part III is to use one state as an illustration of the taxes that are encountered at the state and local level. Income, property, sales, and many other kinds of taxes are found in New York, and are very briefly sketched.

In comparison to these two parts, the first chapter of the book,⁷ which provides an "introduction" to the entire system, falls short. The generalizations relating to such matters as history, politics, and economics seem so superficial as to be valueless. While it is understandable that some general background to the tax system must be presented, the material is inadequate even for that limited function. The portions of the first chapter dealing with the legislative, judicial, and administrative processes in the federal tax field are mechanically done; more insight could have been shown even in the brief space available. The last three chapters of Part I, summarizing taxes on income, capital, and transactions, are reasonably sound, but so lacking in detail that the reader will gain only a very general view of the legal rules involved.

In essence, therefore, the book is less a description of the entire American tax system than a moderately detailed description of the federal income tax, with particular emphasis on the corporate and international aspects of that tax, plus some background and collateral material designed to provide an understanding of other aspects of American tax law for the uninitiated.

The fundamental question raised for a reviewer of the book is its usefulness. The persons who will find the book most helpful are likely to be foreign tax practitioners, government officials, students, and others abroad who have some need for information about the infra-structure of United States income tax law. While they will not find complete answers in this book, they generally should find enough to assist them in identifying legal problems and patterns, and to put them in a position to go further, either through their own research or by communication with tax experts in the United States. While the same information could be garnered elsewhere, having a relatively compact description readily available should be an enormous advantage to foreigners. There is no other single-volume work which approaches the World Tax Series volume from this standpoint.

Other possible users may be practitioners in the United States who are working with correspondent lawyers abroad. Reference to a description in this volume may be an efficient method of letting the expert abroad know what the tax problem under American law is. The inability of foreign practitioners to grasp the kinds of tax problems that concern American businesses and their counsel is a recurring problem — it now may be partly mitigated.

Others in the United States will probably find this volume helpful. Economists, academicians, government officials, employees of international organizations, and other non-tax law specialists with an interest in the tax structure may find the level of generalization employed appropriate for their needs. The book may also have uses for non-tax lawyers, but its value will be decidedly

7. Part I describes broadly (in 4 chapters of 334 pages) the entire system. The opening chapter of this part, entitled "Introduction to the Tax System," presents, among other things, general information with respect to the history, politics and economy of the United States, and the Federal legislative, administrative, and judicial processes as they operate in the tax area. The remaining three chapters of Part I summarizes taxes on income, capital, and transactions.

less than it will be abroad because of the availability of other equally or even more useful tools. It may be, however, that a non-tax expert in the United States encountering a particular tax problem for the first time will find it helpful, though not necessary, to orient himself with the World Tax Series volume before turning to more detailed material. It may even be that some tax law experts in the United States will keep a copy available to check into a problem or to find a citation. Tax experts are accustomed to using many tools, and just as they often keep available a one volume casebook such as BITTKER, FEDERAL INCOME, ESTATE AND GIFT TAXATION or SURREY & WARREN, FEDERAL INCOME TAXATION, for occasional reference, so they may want a copy of this book on hand. In addition, although the volume does not seem to be particularly designed as a teaching aid, students in the United States may find the book useful as a brief textual summary introducing them to that part of the Internal Revenue Code involved in their inquiry. In short, assuming the book is kept reasonably current, it should have considerable domestic use as well.⁸

A proper appreciation of the value of *Taxation in the United States* requires, however, a consideration of more than its immediate practical usefulness. It is a milestone in the development of the World Tax Series. There were prior to this publication seven other World Tax Series volumes, on Australia, Brazil, India, Mexico, Germany, Sweden, and the United Kingdom.⁹ These books have provided substantial assistance to Americans with tax problems involving those countries, and have generally been acclaimed. The reception of these volumes in foreign countries has also been highly favorable, and certain of them, for example, the Mexican volume, have had a substantial impact on the development of the tax law in the principal country.¹⁰ In keeping with the United Nations' cooperation with the Harvard project and the international character of the undertaking, it is appropriate that a volume on the United States be available to increase the utility of the Series abroad. In this regard, the present book was primarily intended for foreign readers.¹¹

The World Tax Series has, however, in some ways not measured up to its original aspirations. The early notices spoke of volumes on thirty countries in

8. It is clearly a weakness of the book that its hardcover format will make it difficult for it to be kept current. Supplements can only be issued periodically, perhaps once a year, and in any event, a heavily supplemented book is cumbersome to use. Although the 1964 Revenue Act was enacted on February 26, 1964, making numerous significant changes in the law, a Supplement was not available before the end of the year. The supplementation of other World Tax Series volumes has been slow (U.K. is up to date as of 1959; Australia, 1958; Mexico, 1961; Sweden, 1959; India, 1960; Brazil, 1957), and if this proves to be the case with the United States volume, it will quickly become valueless. Our tax law changes too rapidly to permit supplementation or revision at this pace.

9. Volumes on Colombia and Italy have been published subsequent to the United States volume, and work has been reported to have advanced to a significant stage on volumes on France, Japan and Switzerland.

10. The Mexican volume was the first systematic tax treatise produced on the Mexican tax structure.

11. P. xviii.

a few years; there have been only ten volumes in over ten years. Furthermore, some of these volumes are seriously out of date and desperately require current supplementation or revision if they are to remain useful. In view of the difficulties of this kind of work, perhaps this failure to meet expectations is inevitable. It is certainly true that no one else has done anything comparable. Perhaps more importantly than the work of the World Tax Series taken in and of itself, is its role in the broader work of Harvard's International Tax Program. Undoubtedly, it has contributed to the highly successful training program for foreign tax officials, and the development of special studies on international tax problems.¹²

Finally, the book's limited perspective requires comment. The preface to this volume states that its "objective" is to furnish "a description indicating what the principal technical problems in taxation have been, what the legislative or administrative solution is, and, in general, how well that solution has worked."¹³ Yet the book is *not* an evaluation of the system and of how well solutions have worked. Its few references to underlying problems and policy aspects are incidental to its description and are not particularly insightful. Anyone wanting to understand what the system is about in broader economic and social terms should go to other works. Nor does the book present the tax law in terms of its problems or of how it operates. The authors do not approach the law from a "practical" standpoint, and the material is not oriented around transactional situations. Furthermore, the use of the uniform outline of the World Tax Series, worked out for use in all its books, is somewhat of a liability since it does not follow the structure of the Internal Revenue Code. While the Series as a whole probably benefits from a uniform outline, which is to some extent varied to accommodate particular aspects of a national system, the present volume would have been more useful if it had followed the Code structure. In brief, the book is no more and no less than a sharply focused description of legal rules.

This limited perspective seems to be a reflection of the blending of commercialism and scholarship in the World Tax Series. This blending has in certain respects been highly productive. Clearly, the intellectual tradition and strength of the Harvard Law School has contributed substantially to the competency and reliability of the studies. On the other hand, the desire to provide tools for, and to obtain funds from business enterprises, and to make profits (or reduce losses) by promoting wide-spread sales, has in basic ways oriented the Series more towards commercial purposes than towards efforts to make an intellectual contribution to the tax field. Evaluation of the operation of a tax system and clarification of policy considerations are more to be expected from imaginative academic work than merely descriptive pieces. Such work is, however, outside

12. See Oldman and Owens, *The Harvard Law School International Program in Taxation* (Occasional Pamphlet Number Five, Harvard Law School; 1961).

13. P. xix.

the compass of the World Tax Series volumes. As the volumes themselves suggest, a large potential exists for more scholarly comparative and analytical tax studies.

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