

Book Reviews

INTRODUCTION TO UNITED STATES INTERNATIONAL TAXATION. By Paul R. McDaniel¹ and Hugh J. Ault.² Deventer, Netherlands: Kluwer, 1977. Pp. 183. \$18.00, paper.

Students and teachers of international aspects of taxation will be pleased to learn of the publication of *Introduction to United States International Taxation*. In this work McDaniel and Ault, both professors at Boston College Law School, have summarized three complex sets of tax rules. The first set of rules, which deals with the taxation of domestic taxpayers on their foreign income, has been the subject of detailed analysis and heated debate since the early 1960's. At that time, United States business enterprises and citizens were engaging in large-scale tax avoidance by artificially shifting large amounts of income to foreign-controlled subsidiaries and trusts organized in such low tax jurisdictions as the Bahamas and Switzerland. Many analysts wanted to end these abuses by taxing United States-controlled entities currently without regard to the form of business organization. More cautious reformers, however, were content to impose a tax on undistributed foreign income only when the foreign entity was established primarily for tax avoidance purposes. The authors summarize the various tax acts and regulatory changes from 1962 onward that are the product of that debate. They explain, for example, the statutory changes and regulatory reforms that have reduced the tax haven abuses of the multinational companies. Integrated into the text is a summary of the Tax Reform Act of 1976,³ an important piece of reform legislation that phased out a number of complex provisions of dubious merit and cut back on or eliminated some notorious loopholes.

The authors also outline briefly the new source of deduction regulations that went into effect in early 1977. These regulations were issued in response to a common practice of United States-based companies — the artificial allocation of most expenses to domestic source income. The result of that misallocation was to inflate net foreign income and thereby obtain a larger foreign tax

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3. Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520.

credit. The new source of deduction rules are also important for other purposes, such as computing the taxable income of foreign corporations operating in the United States.

The two other sets of rules summarized by McDaniel and Ault have been given much less legislative and scholarly attention. International features of the estate and gift tax are almost never taught in law schools and are rarely included in a book on international taxation. What is most striking about the wealth transfer tax issues discussed by the authors is their similarity to problems of conflicting national jurisdictional claims arising under the income tax. The authors discuss, for example, the rules that have been designed to inhibit United States citizens from avoiding the estate and gift tax by holding assets overseas. As with the income tax, this extension of jurisdiction outside the United States poses a threat of double taxation. The wealth transfer system solves the double taxation problem with a mechanism analogous to that of the income tax — a credit for taxes paid to a foreign government on foreign property. The rules adjusting for conflicting tax rules are not nearly as well thought out for the wealth transfer tax as for the income tax. Perhaps by including both sets of rules in the same introductory text, McDaniel and Ault will succeed in directing some well-deserved attention to an obscure area of the tax laws.

The third set of rules — the rules for taxing foreigners on income derived in the United States — is likely to be the focus of reform activity for the next decade. Foreigners are increasing the amounts of income they derive from the United States economy at exponential rates. The rules for taxing that income, as the authors illustrate, are chaotic and lack a grounding in tax theory. The basic statutory pattern reflects no consistent economic policy or fairness standard. Even if it did, that pattern is overturned, on a country-by-country basis, by bilateral tax treaties entered into with twenty-eight foreign countries. The interplay of tax treaties and statutory provisions provides a smorgasbord of tax regimes from which the foreign taxpayer can elect almost at will. A company based in Japan, for example, pays tax on its investment income at 15% or less and is not taxed on business income unless it has an office or other fixed place of business in the United States. If that company chose to incorporate in Brazil, however, its investment income would be taxed at 30%; and its business income could be taxed even without an office in the United States.

The book's intended audience is foreign tax lawyers and other tax specialists with a professional interest but no background in the United States tax system. Because of the dearth of published teaching materials on international aspects of United States taxa-

tion, however, the book undoubtedly will be called into duty as a hornbook for United States law students. As a hornbook, the work has many substantial virtues. It is brief, comprehensive, and up to date and accurately digests an enormous amount of technical material. The footnoting to the Internal Revenue Code and Regulations is extensive. The book could have been improved, however, if the authors had been willing to slow down their torrid pace at difficult sections to illustrate the operation of the rules with detailed examples.

The book provides no more and no less than what the authors promise — a broad overview of the rules adopted by the United States for taxing domestic and foreign taxpayers “as they invest, work, or carry on a trade or business in the United States or abroad.”⁴ Judged on its own terms, it is an excellent book and a useful contribution to the literature on international taxation. The authors have not attempted, however, to delve deeply into the structure of the United States international tax rules or to analyze alternative, perhaps superior, patterns of taxation. As a result, the book can serve as a valuable supplement to a course or seminar in international taxation; but it ought not to be used as the backbone of such a course.

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LAW AND POLITICS IN CHINA'S FOREIGN TRADE. Edited by Victor H. Li.¹ Seattle: University of Washington Press, 1977. Pp. xviii, 444. \$20.00.

The past year has witnessed a pronounced increase in trading by the People's Republic of China (PRC) on world markets. The National People's Congress held in February, 1978 affirmed that foreign trade will play an important role in the attempt to transform China into a modern, industrialized country by the end of the century. In an effort to expand the PRC's weak foreign trade, the Chinese have concluded two unprecedented long-term trade agreements, with Japan and the European Economic Community.² They are busily searching for the latest military equip-

4. P. MCDANIEL & H. AULT, INTRODUCTION TO UNITED STATES INTERNATIONAL TAXATION 13 (1977).

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2. Trade Agreement, May 2, 1978, European Economic Community — People's Republic of China, 21 O.J. EUR. COMM.(No. L 123) 1 (1978). Signing of the agreement with the European Economic Community is reported in N. Y. Times, Feb. 4, 1978, at 29, col. 3. The Sino-Japanese agreement is reported in *Japan and China Sign 8-Year Pact for \$20 Billion Industrials Deal*, *id.*, Feb. 17, 1978, at A10, col. 1.