

echo (cf. Holmes' 1905 *Lochner* crack: "The Fourteenth Amendment does not enact Mr Herbert Spencer's *Social Statics*") of Sawyer's treatment, in the first edition, of the 1948-1949 Banking judgments will be remembered:

The 1949 Privy Council decision in *Bank Nationalisation* finally adopted the individualist approach which had then recently become the dominant one in the High Court; it is a construction allowing only such power of regulation and taxation of interstate commerce as is permitted by Herbert Spencer's conception of the scope of government generally—the minimum consistent with the continued existence of trade in an ordered society. . . .

In the new edition before us, Sawyer notes that since his work first appeared there have been some High Court nibblings away at these Dixonian concepts. But he finally comes back to his 1968 conclusion:

It remains generally true that, whereas in the U.S.A. the common market is a purpose of federalism giving rise to a wide centre competence, in Australia it is treated more like a Bill of Rights guarantee to the individual trader.

Over pages 68-75 the author leaves little doubt about the mess and confusion into which federalism of our sort and in our circumstances leads the governance of the country and ordering of its services, production and distribution.

In his new preface the author pays your reviewer a much appreciated compliment. In return your reviewer expresses the hope that we shall soon see a third edition, if only so that two original dates and a new one may be corrected: 1946 for 1947 (page 32); 1930 for 1931 (page 128); and 1974 for 1975 (page 70).

L. F. CRISP\*

*Manual of the Law of Income Tax in Australia* by K. W. RYAN, B.A., LL.B. (Qld), PH.D. (Cantab.); Barrister-at-Law, Professor of Law, University of Queensland. (The Law Book Co. Ltd, 1976, 4th edition), pp. i-xxi, 1-289. Cloth, recommended retail price \$14.50 (ISBN: 0 455 19454 8); Paperback, recommended retail price \$11.50 (ISBN: 0 455 19452 1).

*Case Companion to Ryan's Income Tax Manual* by H. H. MASON, B.A., LL.B. (Syd.), LL.M. (Adel.), PH.D. (Qld); Barrister-at-Law of the Supreme Court of New South Wales, Reader in Commercial Law, Department of Commerce, University of Queensland, J. DIXON, B.E.C. (Adel.), LL.B. (Syd.), F.A.S.A.; Barrister-at-Law of the Supreme Court of Queensland, Senior Lecturer in Law, Department of Law, University of Queensland and L. G. PRIDDLE, LL.B. (Qld); Solicitor of the

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Supreme Court of Queensland, Lecturer in Commercial Law, Department of Commerce, University of Queensland. (The Law Book Co. Ltd, 1976), pp. i-xiii, 1-262. Cloth, recommended retail price \$15.50 (ISBN: 0 455 19455 6); Paperback, recommended retail price \$10.50 (ISBN: 0 455 19456 4).

The fourth edition of Professor Ryan's popular *Manual* contains no significant departures from the structure of his earlier editions.

Chapter 1 outlines the genesis of the uniform tax system. It is most useful to have such an account included in a text on taxation law as many readers might not have ready access to the various constitutional law texts on this topic. The first chapter also sketches the basic scheme of the income tax system briefly explaining such pivotal concepts as taxable income, assessable income and allowable deductions. Rebates are not mentioned at this point although they clearly affect the net tax payable by the taxpayer. The general principles which determine the residence of individual taxpayers are summarised and the role residence plays in determining a taxpayer's assessable income is explained. It is not entirely clear why residence is considered in Chapter 1 while other important concepts such as income, capital, source and derivation are reserved for Chapter 2 which is headed "A Tax on Income" (page 14). It would seem better to collect all the fundamental concepts in one chapter.

Chapters 3, 4 and 5 deal with income from personal services, income from property and income from business. This is certainly a logical format although it does tend to cut across the Act's classification which groups income from personal services and income from isolated sales and special ventures under the heading "income from personal exertion".

Chapter 3 focuses on personal services income and particularly sections 26(d), 26(e) and 26AAC. Much more attention could have been devoted to *Reseck v. F.C.T.*<sup>1</sup> in which Gibbs J. endorsed Professor Ryan's interpretation of section 26(d). A brief statement of the facts of *Reseck* might assist the reader to understand the rather cryptic footnote: "It is not necessary that the termination of the services should be the dominant cause of the payment" (page 51).

Chapter 4 on income from property is an excellent statement of the basic case law and statutory provisions dealing with annuities, royalties, interest and leases. However, the treatment of purchased annuities would be improved by an example of how section 26AA applies when a taxpayer retires during the year of income and receives less than the normal annuity payment.

Chapter 5 deals with income from business in some depth starting with a detailed discussion of the badges of business. Profit derived from the realisation of assets is assessable either as income according to ordinary concepts or as profit caught by section 26(a). Professor

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<sup>1</sup> (1975) 49 A.L.J.R. 370.

Ryan's treatment of the latter section is, in my view, inadequate. It would be far better to discuss each element of the section *seriatim* under appropriate headings. Moreover, the important decision in *Steinberg v. F.C.T.*<sup>2</sup> is dismissed in a few lines (page 79). In that case Barwick C.J. made some observations about the onus of proof issue under section 26(a) and those comments were accepted by the majority in *Gauci v. F.C.T.*<sup>3</sup> Professor Ryan could also have drawn attention to the divergence of opinion in the *Steinberg* case on the issue of what constitutes a profit making undertaking or scheme within the second limb of section 26(a).

Chapter 5 also contains a clear description of the trading stock provisions of the Act and a special section dealing with compensation payments in business. Here again Professor Ryan demonstrates his ability to explain complex material in simple terms.

Chapters 6 and 7 deal with allowable deductions and rebates. The general formula which determines whether an item is allowable as a deduction is contained in section 51(1) of the Act. Professor Ryan expertly analyses the wealth of case law on this section in Chapter 6. He closes the chapter with some common examples of deductions allowable under the general formula.

Chapter 7 examines many of the specific provisions under which certain deductions are allowed. Repairs and depreciation are discussed in detail and there is an adequate coverage of bad debts and losses of previous years. In future editions it might be instructive to include an example illustrating the taxation consequences flowing from a change from diminishing value method depreciation to prime cost method depreciation.

In the present edition Professor Ryan introduces several pages on concessional rebates, and recent changes to the rebate system are tabulated in the Appendix (page 282). At this point an explanation of the policy behind the new personal income tax system and its effect on taxpayers in comparison with the former concessional deduction scheme would be useful. None is provided.

The taxation of companies and their shareholders is considered in Chapter 8. Professor Ryan again provides a clear account of complex statutory provisions but his explanation would be greatly assisted by simple examples illustrating, for instance, the circumstances in which a private company is entitled to a full rebate on private company dividends. The section dealing with excess distributions (page 190) is now, of course, dated.

In Chapter 9 Professor Ryan deals with partnerships and trusts. *Crowe v. F.C.T.*<sup>4</sup> deserved at least a footnote reference in the partnership section. In addition, the reader would benefit from a few examples showing how a net partnership income or a partnership loss is calcu-

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<sup>2</sup> (1975) 75 A.T.C. 4221.

<sup>3</sup> (1975) 75 A.T.C. 4257.

<sup>4</sup> (1958) 100 C.L.R. 532.

lated and how the division of this profit or loss is reflected in the distribution statement. The discussion of uncontrolled partnership income is excellent but once again an example would help the reader understand the complex provisions involved.

In the section dealing with trusts Professor Ryan discusses the statutory provisions in numerical order. It would be better if he had considered firstly the situations in which the trustee is assessed and secondly the situations in which a beneficiary is assessed. Furthermore, the burgeoning area of discretionary trusts is dismissed in fifteen lines without any guidance as to further reading on the subject.

Chapter 10 is devoted to superannuation funds. Professor Ryan unerringly charts a course through this labyrinth of statutory provisions and Commissioners' rulings. However, I would like to see more discussion of this material on a broader plane. For example, what are the advantages and disadvantages for self-employed persons participating in a section 23(ja) fund when compared with a section 79 fund? Is the Commissioner's scale of reasonable benefits (page 215) realistic? What is the justification for continuing the 30/20 ratio which restricts the yield on superannuation fund investment? In short, the chapter lacks critical comment.

Many of the taxation advantages available to primary producers are dependent upon the taxpayer being engaged in the business of primary production. Unfortunately, Chapter 11, which deals with primary production, does not even mention this important threshold issue. There are a number of board of review decisions on the point and *Thomas v. F.C.T.*<sup>5</sup> deserved at least a brief reference in this context.

Chapter 12, the final chapter, is something of a mixed bag. Broadly, it deals with the administrative provisions which regulate returns and assessments, objections and appeals and the collection and recovery of tax. It also contains a useful discussion of the basic principles established by the courts in their interpretation of section 260. Why this subject is included in a chapter entitled "The Administrative Provisions" remains a mystery. The reader would be better served by a separate chapter on tax avoidance incorporating not only the section 260 case law but also a discussion of some of the standard tax planning schemes and their implications.

The book closes with a brief account of double taxation. In my view it is a pity that Professor Ryan did not go further and give his own views of the proposals for reform of our taxation system embodied in the reports of the Asprey Committee and the Matthews Committee.

On the whole Professor Ryan admirably achieves the modest objective he declares in his preface (page v). At times one might wish for a little more than a bare statement of the law but Professor Ryan reminds us that his manual is not intended to be a treatise. Nevertheless I believe the time has come for the writer to expand on his tried and proven formula by introducing critical comment on the law and

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<sup>5</sup> (1972) 46 A.L.J.R. 397.

practice of taxation in Australia. In my view the manual should also provide many more examples illustrating the application of the complex statutory provisions. There is another problem which will not be so readily resolved. Most law textbooks date quickly but none quicker than a taxation text. Some parts of Professor Ryan's latest edition are already out of date notwithstanding his Appendix dealing with developments from 13 December 1975 to June 1976. It is to be hoped that the writer can continue to revise his excellent manual at regular intervals.

The *Case Companion* closely follows the format of Ryan's *Manual*. The editors provide concise statements of the basic principles in a case before reciting the facts and extracting the judgments. While this approach assists the reader to focus on the key issues it does tend to discourage independent analysis. The editors reach a happy compromise in their comment on *Harrowell v. F.C.T.*<sup>6</sup> (page 187).

Occasionally I thought disproportionate space was given to a relatively minor issue, for example, the business of betting (page 75). But, on the whole, the extracts are predictable and pertinent. Moreover the editors were prepared to provide lengthy extracts where they were necessary for the sake of clarity or instruction. This is particularly evident in the treatment of *Finance Facilities Pty Ltd v. Commissioner of Taxation*<sup>7</sup> and *Steinberg v. F.C.T.*<sup>8</sup>

It is clear that the editors selected cases not only for their modern relevance but also for their ability to explain the background to certain statutory provisions. Thus in the companies section the reader is given extracts from *Keighery Pty Ltd v. F.C.T.*,<sup>9</sup> *F.C.T. v. Casuarina*<sup>10</sup> and *F.C.T. v. Angus*<sup>11</sup> which are now largely of historical importance.

In my view the highlight of this case book is the section dealing with the taxation of trusts. Here the editors give the reader an excellent insight into the leading cases and the schemes which produced the litigation. Unfortunately this standard of editorial comment is not maintained throughout the book.

The *Case Companion* will undoubtedly be a useful complement to Ryan's *Manual* and the two books as a package will no doubt be popular texts for taxation students. Neither book is perfect but together they represent the first serious challenge to C.C.H.'s *Australian Master Tax Guide*.

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<sup>6</sup> (1967) 116 C.L.R. 607.

<sup>7</sup> (1971) 127 C.L.R. 106.

<sup>8</sup> (1975) 50 A.L.J.R. 43.

<sup>9</sup> (1957) 100 C.L.R. 66.

<sup>10</sup> (1971) 127 C.L.R. 62.

<sup>11</sup> (1960) 105 C.L.R. 489.

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