

*Laws of Taxation in the Hong Kong SAR* by Berry F. C. Hsu [Hong Kong: Hong Kong University Press and Open University of Hong Kong Press, 2001, 237 pp, paperback, US\$29.95, HK\$180].

Dr Hsu has done those interested in Hong Kong's taxation system a great favour. His book, *Laws of Taxation in the Hong Kong SAR*, is the first local publication that seeks to explain Hong Kong tax law from anything other than a black letter law perspective. It sets out to, and provides, a commentary on the theory underpinning taxation in Hong Kong and critically evaluates the Hong Kong tax system rather than merely providing a detailed description of it.

The first chapter sets the tone for the work: theories and structure of taxation, including a very useful discussion on the constitutional basis and sources of taxation law and practice in Hong Kong. Other topics covered include tax on land income (Chapter 2), tax on salaries income (Chapter 3), tax on business profits (Chapter 4) and depreciation allowances (Chapter 5). The final chapter is devoted to tax administration and ethics (Chapter 6). Throughout the book, the author endeavours to examine two fundamental issues: who should be taxed; and what the tax base should be. The issues are generally raised in a legal context (see particularly Chapters 3, 4 and 5), but with a brief introduction to the non-legal considerations involved (such as social, economic and governance).

Notwithstanding its strengths, this book can also be frustrating. Sometimes, broad general statements are made, while obvious unasked questions are left for the reader to ponder. For instance, the following questions all arise from passages contained in Chapter 3:

1. "In recent years, overall government revenue in the HKSAR has been very much dependent on land sales"<sup>1</sup>  
True, but what are we going to do about it?<sup>2</sup> In essence, this question begs for an examination of Hong Kong's tax base and whether, if it is too narrow, more general taxation should be introduced.
2. "Hong Kong has a relatively narrow salaries tax base"<sup>3</sup>  
Perhaps, but is this due to the relatively small number of taxpayers, or is it related to the very high level of personal allowances that effectively

<sup>1</sup> At p 84.

<sup>2</sup> To be fair, in Chapter 4 the elastic nature of Government income from land revenue is reiterated and other gaps in Hong Kong's taxation system, such as the absence of a capital gains tax and any general tax on investment income (including interest), are recognised. The combination of these factors leads the author to conclude that "The long-term solution for the HKSAR if it wants to raise inelastic revenue is to become part of a global tax system", pp 197-198.

<sup>3</sup> See n 1 above.

exempt the great majority of employees in Hong Kong from paying salaries tax at anything like the standard rate of 15 per cent?

3. The discussion of *Glynn's case*<sup>4</sup> on taxation of employment fringe benefits<sup>5</sup> is informative, but missing is any critical appraisal of the Government's response to this decision.<sup>6</sup> In short, the response was a surprising reversion to the pre-*Glynn status quo* that effectively undercut any move to reform taxation of employee fringe benefits that, most commonly, are enjoyed by the more wealthy members of our community. Why should holiday allowances, or "passages" as they are quaintly called in statutory language<sup>7</sup> redolent of a voyage on the *QE2*, be tax-free in the 21st century?
4. "There are strict, and inequitable, deduction rules for salaries tax"<sup>8</sup>  
This is true, but is this counterbalanced by the very generous personal allowances granted to individual taxpayers? What, if any, are the advantages of such a strict system when judged against the competing principle of simplicity (for which equity is often sacrificed), bolstered by very low rates of taxation? If, for the sake of argument, simplicity and certainty are more important than the Inland Revenue Ordinance providing for a more complex yet more equitable economic reflex of income, then why should these deduction rules be that much more restrictive than those applicable to persons carrying on a trade, business or profession?

*Laws of Taxation in the Hong Kong SAR* is also fairly eclectic in terms of the tax policy issues raised for detailed discussion. For instance, good coverage is given in Chapter 2 to show how property tax evolved from an equitable tax base to the current regressive system favouring owner-occupiers; in Chapter 3 the shortcomings of traditional family taxation in a modern world is treated sympathetically; and in Chapter 4, the traditional capital versus revenue dichotomy is discussed from an economic perspective and a query raised whether taxation of capital should continue to be ignored in Hong Kong. However, other key tax reform topics, such as whether Hong Kong's jurisdiction to tax should be changed from the current, very restrictive source-based system, could also have been placed under the microscope. Similarly, the absence of any broadly based indirect tax in Hong Kong (apart from the hidden "land" taxes in all their various forms) is in need of much greater analysis.

Has Dr Hsu tried too hard to give his book more "knowledge relevance" (my words, not his) for students of traditional taxation courses? Many pages,

<sup>4</sup> (1990) 2 AC 298.

<sup>5</sup> See n 1 above, pp 101–102.

<sup>6</sup> See Inland Revenue (Amendment) Ordinance 1991 (Ordinance No 1 of 1991).

<sup>7</sup> Inland Revenue Ordinance (LHK, Cap 112) s 9(1)(a).

<sup>8</sup> See n 1 above, pp 115–116.

if not the greater part of certain chapters (such as Chapters 3, 4, 5 and 6), are devoted to an explanation of “the law”. One problem with this approach, of course, is where do you stop and how detailed should the discussion be of those areas covered?

The following examples illustrate these concerns. The commentary on source of employment income in Chapter 3 is both detailed and critical of IRD practice. A good case is made that the current law and practice should be analysed to assess its relevance in today’s e-commerce / IT world. This approach seems precisely in line with the aims for which the book was written. However, why should the reader then be faced with many pages dealing with the distinction between an employee and an independent contractor when the key problems in this context, namely the wildly different deduction rules applicable to salaries tax versus profits tax, the uses and abuses of service companies exploiting those differences and the inequities flowing from non-mandatory personal assessment, are not highlighted to any great degree?

Another example relates to coverage. In Chapter 4, after analysing the source concept for profits tax purposes – a critical topic – the author considers the taxation of royalty income. The *HK-TVBI* case<sup>9</sup> is commented upon, but not the Court of Final Appeal decision in *Emerson*,<sup>10</sup> which will result in a change in the law.<sup>11</sup> The dilemma is thus obvious: if the book is intended to appeal to students of Hong Kong taxation, then, ideally, it should be more encompassing; but if it is intended to focus more on tax policy and an explanation of Hong Kong’s taxation structure, then why not redefine the work solely within this context? To try to do both may well result in injustice to each.

I trust that readers will excuse the reviewer for ending with an anecdote. In two recent pieces of very disparate research, I became interested in taxpayers’ rights in Hong Kong and the relationship between accounting practices and Hong Kong profits tax. I am pleased to report that the *Laws of Taxation in the Hong Kong SAR* examined both topics, and proved helpful.

In conclusion, I commend Dr Hsu for his serious approach in attempting to explain the nature of taxation in Hong Kong; for his analysis of the shortcomings, as well as the advantages, of Hong Kong’s system of taxation; for his useful focus upon taxation of land; and for his initiative in examining certain avenues for taxation reform. The *Laws of Taxation in the Hong Kong SAR* deserves a place in the library of any serious student of Hong Kong taxation and will be indispensable to any reader interested in understanding the structural nature of taxation in Hong Kong.

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<sup>9</sup> [1992] 2 AC 397.

<sup>10</sup> [2000] 1 HKLRD 238.

<sup>11</sup> See Inland Revenue (Amendment) Bill 2000.

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