

Taxation Without Representation: The History of Hong Kong's Troublingly Successful Tax System, Michael Littlewood [Hong Kong, Hong Kong University Press, 2010, 376pp, hardcover, US\$65.00] ISBN: 9789622090996.

'What is the point of asking us to refer to a case which has been overtaken by legislation and become historical? We are here to learn law, not history.' About eleven years ago, a few (fortunately not many) students expressed this view after their Revenue Law Examination in which one of the questions had asked them to explain, with reference to a case whose effect had been narrowed considerably by subsequent statutory intervention, why a service company arrangement would be entered into and why the (supposed) tax efficient fringe benefit was structured in the way it was from the perspective of Hong Kong taxation. Law and history do intertwine and I trust that those students are now enlightened that one can effectively learn the law through history. I do not think, however, that any one of them knew that a scholar had been surveying the history of Hong Kong's taxation system and was completing his doctoral thesis on this almost untouched territory in Hong Kong legal scholarship. Dr Michael Littlewood is the ground-breaking scholar and it was one of his supervisors who set the examination question. The doctoral thesis has now been updated to become a monumental masterpiece, and the subject of this review.¹

According to Dr Littlewood, the story of Hong Kong's taxation system falls into three main parts. After the introductory chapter, Chapters 2 to 4 of the book cover the period from 1939 to 1952, which marks the establishment of a system of income tax in Hong Kong. Although a single tax on income covering both the world-wide income of Hong Kong residents and income sourced in Hong Kong of residents elsewhere (which was thought to be 'normal') was originally planned, only a 'partial' tax system was actually brought into being. While it was first thought to be a temporary measure, it survived the war. The second phase is from 1952 to 1981 during which the colonial government advocated and made plans to 'normalise' the system but that never happened. This forms the key subject matter in Chapters 5 to 7. The third period covered in Chapters 8 and 9 started from the time when the government chose not to fix the system since 'it ain't broke'. The political handover of Hong Kong in 1997 entailed no change in, among other things, its taxation system

¹ For other reviews of the book, see Jefferson P. VanderWolk, 'Publication Review: Taxation Without Representation: The History of Hong Kong's Troublingly Successful Tax System' BTR 2011, 1, 120–124 and Samuel Chan, 'A Review of the Book: Taxation without Representation' (2010) 14:1 *Asia-Pacific Journal of Taxation* 146.

and this has continued to be the position today. By providing a detailed historical account of the introduction and development of income tax in Hong Kong from 1940 to the present, readers can readily appreciate and understand our current system of taxation.

The theme of the book cannot be clearer. The 'partial' income tax system in Hong Kong, featuring a schedular system and the source base, has been 'troublingly' successful. The system is considered 'successful' because it has been generally accepted by the public as beneficial to the majority; however, it is 'troubling' partly because the essentially undemocratic nature of Hong Kong government may well be a significant factor which has enabled the system to become entrenched. This perhaps suggests a possible de-link, or an unnecessary link, between taxation and democracy – a phenomenon that seems to lend weight to the Leviathan hypothesis and the theory of fiscal constitutionalism.

The book is informative whilst at the same time exhibiting no complacency in favour of the status quo. The author's critical analysis of system's flaws and drawbacks, particularly in the Epilogue, is edifying and instructive. One may think that some of the suggestions, including the possibility of introducing PAYE (Pay-As-You-Earn) and GST (Goods and Services Tax), do not apparently fit well with the main theme which concentrates on income taxation; but these topics undoubtedly add value to the book and contribute to the discussion of important issues (including, for example, the desirability, or otherwise, of broadening the tax base) that are crucial to contemporary Hong Kong from a wider tax perspective. After all, the Hong Kong revenue source is derived not just from income taxation; rather, the government has been deriving its revenue mainly from land sales and related transactions together with a range of other duties and charges currently or historically applied.

Apart from background research into the relevant theories and contextual analysis of taxation, the book provides a comprehensive and critical examination of primary source materials ranging from legislation and case law to committee reports, newspaper archives and other public records. The study is ambitious; the findings are eye-opening; the exposition is logical, well-structured and excellently composed. A collection of literature on Hong Kong taxation law (and perhaps on the history of Hong Kong) is not complete without this title!

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