INTERNATIONAL AND CROSS-BORDER TAXATION IN NEW ZEALAND

Professor Craig Elliffe, *International and Cross-Border Taxation in New Zealand* (Thomson Reuters, 2015).

2015 was an exciting year for international tax scholars and practitioners, with the OECD presenting its final package of measures for a comprehensive, coherent and coordinated reform of the international tax rules. Known as the Base Erosion and Profit Shifting (BEPS) Program for reform, the OECD/G20 project provides governments around the world with potential pathways for modernising their international tax rules.

Publishing a book in the area of international tax against such a backdrop is courageous to say the least, yet Professor Craig Elliffe, author of *International and Cross-Border Taxation in New Zealand*, has done just that. Even more courageous is the author's opening sentence, which is to state that "there is no such thing as international tax" (p 1). To the uninitiated, this may suggest that the remaining 715 pages are not worthy of any attention. Yet, this could not be further from the truth. It is the opening sentence that sets the scene for what is a comprehensive and well-written book which balances the theoretical aspects of international tax with the practical and pragmatic considerations, or what Professor Elliffe describes as the "nitty-gritty" (p vii), of New Zealand's international tax regime in 2015. To that end, Professor Elliffe pronounces that the purpose of his book is to be a guide to the New Zealand international tax system. In an era of globalisation combined with the OECD/G20 BEPS initiative, his book achieves much more. It is true that the phrase "international tax" refers to the concept and way that sovereign states impose tax on international and cross-border taxation and, as such, where there is to be a practical focus overlaying theoretical concepts it is eminently sensible to choose a single country as the mainstay. In this case, given Professor Elliffe is a well-known New Zealand academic who came to academia after a long and distinguished career as a tax partner at both KPMG and Chapman Tripp, the rationale for country of choice is clear. However, much of what is written can apply equally to other jurisdictions.

The relevance of this book beyond New Zealand academics and practitioners becomes obvious from the beginning. All countries face decisions as to whether their international tax regimes should be based on a territorial model, a worldwide model or a hybrid of the two. All countries need to decide how to balance policy aims of capital export neutrality, capital import neutrality and national neutrality. Both of these issues are dealt with by Professor Elliffe at the very beginning (pp 3-4). It is this scene-setting which allows a non-New Zealand reader to then be taken on a journey through both the general concepts of any international tax regime as well as the intricacies of the New Zealand system. While each of the seven chapters has a strong New Zealand flavour, the way in which each is set out, with references to other jurisdictions, as well as double tax agreements, means that the reader is given an insight into a global perspective of international tax concepts. It is unsurprising that Australia features heavily as a point of reference for examples, cases and the double tax agreement. However, readers from such countries as the United States, United Kingdom and Canada, to name a few, will not be disappointed, with Professor Elliffe establishing from the beginning the interrelated nature of domestic tax regimes dealing with international tax issues and the similar problems faced by jurisdictions around the world (p 10).

Many books written on the subject of international tax either provide a comparative analysis or focus on a specific aspect of a regime such as transfer pricing or treaties. The difference with Professor Elliffe's book is that it covers all possible areas that come to mind when one thinks of an international tax regime. The chapters are designed in a logical, matter of fact way so it is only when you delve into the book that you realise the insight that Professor Elliffe brings. For example, Chapter 2, which covers the topic of residence-based taxation, begins with the meaning of "New Zealand" and, with diagrams included, discusses physical land mass, the continental shelf, and water and air space. Perhaps for a New Zealand reader this discussion seems obvious, but for a non-New Zealand reader this discussion proved a fascinating precursor to the rules on residence.

For those who research and/or practise in the area of controlled foreign companies and foreign investment funds, Chapter 3 will prove fascinating and insightful reading, while Chapter 4 introduces the reader to source-based principles, including an expected comprehensive discussion on business income and the permanent establishment concept. Professor Elliffe then goes on to discuss both the domestic rules and treaty provisions relating to a wide ranging array of income sources. Highlighting just how comprehensive this book is, Chapter 5 extends on the previous discussion with its focus on the taxing of source-based income to include collection mechanisms and special regimes.

Given the comprehensive discussion in earlier chapters, it is initially perplexing as to why Chapter 6 is specifically dedicated to double tax agreements. However, much to the reader's delight, this chapter does not revisit material already covered, but rather provides what is one of the highlights of the book with its discussion on the purpose, use and interpretation of treaties. This chapter culminates in a discussion about the intersection between general anti-avoidance rules (GAAR) and double tax agreements. The initiated reader will know that GAARs are also an area in which Professor Elliffe has written widely and has considerable expertise. Of course, no comprehensive international tax book would be complete without a discussion on thin capitalisation and transfer pricing. Apart from the introduction, this is the shortest of the chapters in the book at approximately 30 pages and only 10 of those pages dedicated to transfer pricing. Some readers may be disappointed by the limited discussion of this important area. However, in the current climate of international tax reform, this is perhaps the most difficult area to include in a book that is designed to stand the test of time. It is this reviewer's opinion that Professor Elliffe has written a book which will do just that.

Professor Kerrie Sadiq
Business School
Queensland University of Technology