

International and Cross-Border Taxation in New Zealand

BY CRAIG ELLIFFE

Reviewed by **Neil Russ**

As Professor Elliffe observes – and despite what a few politicians seem to think – there is no such thing as “international tax”. This excellent book deals in depth with the New Zealand rules on international and crossborder taxation, and also provides a broad review of international taxation principles. There have been a few, now fairly old, attempts to describe aspects of our international taxation landscape, but none as comprehensive and accessible as this.

Since at least 1891, when income tax was first introduced on “income derived or received in New Zealand” by the Land and Income Assessment Act 1891, New Zealand individuals and companies, and persons doing business with New Zealand, had to concern themselves with the relationship between New Zealand’s tax regimes and the tax regimes of other countries. As international trade grew following World War I, nations discovered that they would need to work together to ensure that the appropriate amount of domestic revenue was collected while at the same time ensuring that the suffocating effect of significant double taxation did not occur. In the last hundred years, the world has seen an explosion of trade and cross-border investment activity. This has been facilitated very significantly by double tax treaty networks as well as specific domestic statutory provisions which, for example, exempt from income tax certain dividends received from offshore, or allow a credit for taxes of a similar kind paid elsewhere.

The recent base erosion and profit shifting (BEPS) work being undertaken by the OECD (sparked by the perception that many larger multinationals were not paying their “fair share” of taxes anywhere in the world) represents a further development in this process of international concern for taxation. Nations are beginning to take collective action at the political level to improve international tax co-operation to counter



international tax avoidance and evasion. At the same time they are looking out for their own interests in terms of international tax competitiveness.

Valuable contribution

Craig Elliffe has made a very valuable contribution to New Zealand by helping academics, students and tax practitioners (both the legal and the accounting kind) with an interest in international and cross-border taxation understand the key principles and to access in a practical way the detail of our law and what it might mean for clients. Professor Elliffe is ideally qualified and experienced to guide students and senior practitioners alike through the domestic and international landscape. As a result of his time at the coalface as a partner in a major accounting firm, and subsequently as a partner in a leading law firm, Professor Elliffe is probably unique in New Zealand in having the combination of real-life private-sector experience and the academic skills to produce a comprehensive, usable text book on this topic.

Using clear diagrams and flow charts, Professor Elliffe has organised his work into seven chapters.

The first chapter sets the scene with an introduction to general principles of international tax and New Zealand’s history in this area. It then divides into three broad areas, discussing: first, the taxation of New Zealand residents and their overseas investments; secondly, non-residents and the consequences of investment in New



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Zealand; and thirdly, New Zealand’s international tax treaties and other major regimes which deal with profit and interest allocation. There is a discussion of such fundamental (and surprising) things as what “New Zealand” is, through to the details of non-resident contractors’ withholding tax, and ending (topically and fittingly) with how to reduce transfer-pricing risks by obtaining an advanced price agreement under the binding ruling regime.

By any measure, this is a comprehensive treatment of international and cross-border taxation dealing not only with taxation provisions and case law in New Zealand but also with relevant cases and double taxation conventions which are matters of general international interest. Written in a clear style with plenty of examples to illustrate the points made, this book should be the first port of call for any academic or practitioner endeavouring to come to grips with international taxation principles generally, and with New Zealand’s rules specifically.

As an example of the helpful, real-world approach offered by this book, there is a section on how to use a tax treaty. Professor Elliffe has included this section “because the temptation of any adviser or revenue official is to jump to the substantive provision in the DTA [double taxation agreement] and to seek immediately the answer in the DTA alone”. As he goes on to observe “it is incredibly important to resist this temptation because it may lead to the wrong, or at least an incomplete, answer”. Wise words indeed.

“Sharp end” issues

The book also tackles head on some of the difficult “sharp end” issues facing practitioners and the Commissioner of Inland Revenue at the moment. These include the question of treaty abuse and the relationship between a country’s domestic general anti-avoidance rule and the specific language of double taxation agreements. The question as to primacy between the domestic general *Continued on next page...*

anti-avoidance rule and the terms of our double tax treaties (especially the older ones) is a vexed and complex one which raises real concerns and implications in day to day practice. One would not be surprised if, having considered the views on this point very carefully set out in the book, New Zealand took some measures to resolve the issues, at the legislative level.

One anticipates that Professor Elliffe might need to begin planning for the second edition of this book, to take into account any

legislative response to the issue mentioned above, as well as such BEPS-initiated reforms anticipated for early 2016 as neutralising the effect of hybrid mismatch arrangements, strengthening CFC rules, limiting interest deductions and requiring disclosure of aggressive tax planning arrangements.

This is an easily accessible and valuable reference work. It should be on the bookshelf of every credible New Zealand tax practitioner and will almost certainly be an essential starting point for students and academics alike

who are looking for a clear and comprehensive exposition of New Zealand's international and cross-border taxation framework.

The book is current as at 31 January 2015. *International and Cross-Border Taxation in New Zealand*, Thomson Reuters Ltd, June 2015, 978-0-864728-99-9, 765 pages, paperback, \$190 (GST and p&h excluded). ■

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3 International Tax Dialogue, The Value Added Tax: Experiences and Issues, prepared for the ITD Conference on the VAT, Rome March 15-16, 2005, p. 9. 4 For some examples see Millar, "Cross-Border Services: A Survey of the Issues", New Zealand Journal of Taxation Law and Policy 2007, pp. 302 et seq. Simply put, income taxes only know two connecting factors that allow taxation in a state: the person that derives the income and the source of the income. The New Zealand rules merely decide on a yes/no basis whether the country applying the law has substantive jurisdiction. Cross-border e-commerce is particularly affected, since the administrative burden may either increase prices or deter businesses from selling cross-border altogether. The reduction of the administrative burden on cross-border e-commerce has the potential to increase the value of B2C e-commerce in the EU by between 0.3% and 0.7%; under the medium growth scenario, this represents an increase in the value of B2C e-commerce of between EUR 3.1 billion and EUR 5.2 billion annually. The value of cross-border B2C e-commerce may potentially increase by 1.2% - 2.6% with the elimination of the administrative burden; under the medium growth scenario, this represents an increase in the value of e-commerce of between EUR 2.5 billion and EUR 4.2 billion annually.