

Income Taxation in Australia: Principles of Income, Deductibility and Tax Accounting by R. W. Parsons, Sydney, The Law Book Company Limited, 1985. lxxiii + 901 pp.

The publication of this treatise is an outstanding event in the history of Australian legal scholarship. The book appeared shortly before Professor Parsons' retirement from teaching at the University of Sydney Faculty of Law and represents the distillation of over twenty years of teaching and research of the Australian income tax law. Moreover, the volume appeared around the time of the Treasurer's Statement of 19th September, 1985¹ which marked the beginning of the greatest change to the Australian income tax since its inception.

The book is unique in my experience of Australian legal scholarship for its approach. Starting with a discussion of economists' theories of income, particularly the concept of income as gain associated with Henry Simons,² it seeks to build a coherent and detailed analysis of the law against the backdrop of that theory. It demonstrates on the way both that the law partially reflects and partially contradicts that theory, and that it is extremely difficult, if not impossible, to make the theory operational in practice. The treatise is not, however, preoccupied with theory in any abstract sense. Its great strength is the rigorous analysis applied to the details of the income tax law in seeking for coherence and principle. That is, its uniqueness consists not in the use of ideas from neighbouring social science disciplines (for this is increasingly common in Australia as elsewhere) but in its relentless attention to the detail of the law in a search for the seamless web of fundamental principle that should inform the law.

Those familiar with the work of Professor Parsons will quickly recognise his characteristic style of writing. The book is a demanding one. It assumes that the reader has a basic knowledge of the structure of the income tax statute and can read the leading cases without the need for a synopsis of statutory provisions or the standard exposition of the facts of cases and summaries of reasons for judgment commonly found in Australian legal texts.

Rather the volume probes. It subjects the words of the legislation to close scrutiny revealing deficiencies and unintended consequences, many of long standing which have escaped the notice of current tax reformers. Moreover, it analyses the reasoning of the judges, makes clear what is obscure in judgments, criticises where criticism is appropriate, and most importantly suggests avenues of development whereby existing case law can be made part of a more coherent fabric of principle and analysis than initial perusal of that case law would suggest. The achievement of consistency may involve reconstructing the reasoning of the judgments without disagreeing with the actual decision reached. In the more detailed

¹ Statement by the Treasurer The Hon. Paul Keating, *Reform of the Australian Tax System* (Canberra: AGPS, 1985).

² *Personal Income Taxation* (Chicago: University of Chicago Press, 1938).

discussion which follows, many examples of this process will be highlighted.

This probing analysis does not make the book of interest only to academics and students. Any practitioner who wishes to know where the law may be thought currently to stand and where it may move through judicial reshaping of existing law or who is seeking to find arguments for and against a particular position, will find Professor Parsons' work a continual source of inspiration (and in some cases provocation!). Although the analysis is sophisticated and demands close attention from the reader, assistance can be obtained from the unusually comprehensive Table of Contents of eighteen pages and the Index of fifty-five pages. In fact the vast scope of the treatise means that a reader coming to the book for the first time will be greatly assisted in later use of the work by the study of the Table of Contents and the method of organization.

That method of organization divides the work into three basic areas. Part I deals with Assessable Income, consisting of four chapters, Part II with Allowable Deductions which reduce assessable income to taxable income, consisting of six chapters and Part III dealing with Tax Accounting, also consisting of six chapters. Each part is of approximately the same length of two hundred and fifty to three hundred pages. It will be apparent from even this brief description that the work is not a comprehensive account of the Australian income tax in the sense of covering all areas (which is made clear in the subtitle referring to Income, Deductibility and Tax Accounting). It is stated in the Preface that further volumes will deal with more specific issues such as the taxation of entities (companies, partnerships and trusts) and international taxation. The work is rather a discussion of the basic principles which go to make up the heart of the Australian income tax, those principles being probed to a depth that is not even closely approached by any existing Australian legal text in the income tax area.

The relatively even size of the three Parts contrasts with the few existing texts of a general kind on the Australian income tax. The usual format is to give the greatest emphasis to the principles in relation to assessable income, relatively less discussion of allowable deductions and very little treatment (if any as a separate subject heading) to tax accounting. The more or less equal treatment of the topics in Professor Parsons' book in itself makes the point that the issues of deductibility and tax accounting are no less important than principles of assessable income. Indeed when Australia's experience with tax avoidance activities is considered, it is apparent that the areas of greatest abuse and manipulation are allowable deductions and tax accounting.

Within each Part, the chapters brim with ideas and analyses which are not found in other authors' writing on the Australian income tax. Because many of the ideas receive their first broad discussion with the publication of the volume, it is useful to spend more time than is usual in a review indicating the nature of the discussion.

Chapter 1, as well as discussing the theories of income mentioned

previously, has a section dealing with the structure of the Income Tax Assessment Act 1936 and the meaning of income in that Act which was elaborated by Professor Parsons in a 1978 article.³ This analysis holds that the word "income", when used on its own in the Act, has a meaning drawn from the various provisions of the Act and is not confined to the judicial concept of income. Moreover, all items enter assessable income under s. 25(1) of the Act rather than severally through differing provisions of the Act providing for inclusions in assessable income.

The consequences of this analysis are not obvious at first sight, but are nonetheless profound. One well-known area of debate is the meaning of "income" in s. 47. The arguments need not be detailed here, but it should be noted that the draftsman currently has a proclivity for using the unadorned word "income" in the tax reform legislation in what are often pivotal provisions. For example, there are s. 20(2)-(5) dealing with the conversion of foreign currency in relation to the foreign tax credit, s. 23L, in relation to the respective operations of the Income Tax Assessment Act and the Fringe Benefits Tax Assessment Act 1986, and s. 160ZP(11) in relation to the transfer of capital losses in a company group under the Capital Gains Tax.

Chapter 2 deals with the concept of income developed by the judges. Despite the ever increasing volume of the income tax legislation, the judicial concepts are still central to the income tax. The chapter proceeds by way of fifteen propositions which serve as useful signposts for the elaboration of the analysis. Their utility has been proved by their absorption into the thinking of a generation of students passing through Sydney Law School.

The first three propositions assert the importance of derivation and valuation as elements of the judicial concept of income. In other Australian texts this analysis is either omitted or intermingled with discussion of other matters with the result that the central importance of *Constable*,⁴ *Abbott v. Philbin*,⁵ *Donaldson*⁶ and *Federal Coke*⁷ is not recognised.

The next four propositions assert the view that the judicial concept of income has by-and-large adopted the economists' concept of income as gain and various situations are identified where receipts are not treated as income precisely because there is no gain. These include receipt by a trustee, the principle of mutuality most recently analysed by the High Court of Australia in the *Sydney Water Board Employees' Credit Union*⁸ case and contributions to capital including but extending far beyond subscriptions for shares in companies and units in unit trusts (the latter having been a controversial issue under the Capital Gains Tax legislation). Again Professor Parsons' analysis is valuable for its isolation of these situations

³ "The Meaning of Income and the Structure of the Income Tax Assessment Act" (1978) XIII *Taxation in Australia* 378.

⁴ (1952) 86 C.L.R. 402.

⁵ [1961] A.C. 352.

⁶ 74 ATC 4192.

⁷ 77 ATC 4255.

⁸ (1973) 129 C.L.R. 446.