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P. Postlewaite & M. Collins, International Individual Taxation

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Abstract

This is a book review of International Individual Taxation by Postlewaite and Collins. The author argues that the book is an important addition to the tax library of novice and professionals alike.

BOOK REVIEW

INTERNATIONAL INDIVIDUAL TAXATION. By P. Postlewaite & M. Collins. Colorado Springs, Colorado: Shepard's/McGraw Hill, 1982. Pp. 507. \$75.

In the Introduction, the authors express the intention to meet two goals: "to provide the novice reader with a comprehensive explanation of international individual taxation and to afford the experienced user the most complete and thorough resource material in the field."¹ The text that follows certainly meets the first of the two principal goals, and makes a significant contribution to the second. The second goal is also fulfilled through citation of major cases, rulings and law review articles. This book thus becomes, in accordance with the authors' expressed hope, a valuable tool for lawyers and accountants interested in the field of international taxation.

The scope of the book is limited to consideration of the United States taxation of domestic individuals and partnerships with respect to their income from foreign sources as well as United States taxation of their foreign counterparts on their income from the United States and foreign sources. The tax treatment of corporations, trusts and estates is not addressed. However, Professor Postlewaite has written a companion volume entitled *International Corporate Taxation*² which is cross-referenced in this book at appropriate points.

Generally, United States citizens and residents (United States persons) are subject to taxation by the United States at regular rates on all income, whether the source is domestic or foreign. However, any income tax which such persons pay to a foreign government may qualify for credit (or deduction) against their United States tax liability. In certain cases, special benefits are provided for United States persons who earn income abroad (including in the possessions of the United States) and who meet specified criteria. In contrast to the tax treatment of United States persons, nonresident alien individuals are subject to United States tax only if they derive income from within the United States or if they derive income which is

1. P. POSTLEWAITE & M. COLLINS, *INTERNATIONAL INDIVIDUAL TAXATION* vii (1982).
2. P. POSTLEWAITE, *INTERNATIONAL CORPORATE TAXATION* (1980).

“effectively connected” to a United States business.³ Full United States taxation of such income may be mitigated by provisions of the Internal Revenue Code which are intended to encourage foreign investment in the United States or by bilateral tax treaties.

The book generally addresses current law, briefly referring to prior law only where the authors deemed it significant. References are made, however, to other sources of coverage for prior law. The authors intend to publish annually a supplement discussing recent cases, rulings and regulations, as well as any legislative changes so that the book's relevance will continue despite passage of time. The importance of such updates was made evident when, shortly after the book's publication, Congress enacted the Tax Equity and Fiscal Responsibility Act of 1982,⁴ making a number of changes in provisions affecting foreign operations or taxpayers.

The book is divided into four parts. Part One considers the factual issue of whether an individual who comes to the United States will be considered a resident of the United States, discusses the concepts of income source and “effectively connected” income, and examines the special rate structure which applies to certain income of nonresident aliens. The provisions of the Code which affect the general scheme of United States taxation of nonresident aliens are generally intended to encourage foreign investment in the United States. However, the recent Foreign Investment in Real Property Tax Act of 1980⁵ (FIRPTA) represents an attempt to end preferential treatment of foreign investment in a particular area.

Part Two shifts the focus to issues which primarily concern United States citizens and residents. Against the backdrop of the general rules on taxation of such persons on their worldwide income, the book explores the situation in which citizens and residents are treated specially. Thus, in order to encourage the expansion of American business abroad, the Code provides for limited income exclusions and special deductions for Americans employed abroad, and includes various incentives for Americans in possessions of the United States. On the other hand, the Code also attempts to respond to efforts to avoid United States taxation through renunciation of citizenship. Finally, in this part, the book explores

3. I.R.C. § 864(c) (1982).

4. Pub. L. No. 97-248, 1982 U.S. CODE CONG. & AD. NEWS (96 Stat.) 324 (to be codified in scattered sections of 26 U.S.C.).

5. Pub. L. No. 96-499, 94 Stat. 2682 (codified in scattered sections of 26 U.S.C.).

the unilateral response by the United States to the problem of double taxation: the foreign tax credit.

Individuals are generally subject to taxation where they derive their income (country of income source) and where they reside (country of fiscal domicile). To prevent double taxation, the United States uses tax treaties and the foreign tax credit mechanism. The United States Treasury Department and Internal Revenue Service have recently been giving considerable attention to the possibility of limiting the availability of the credit to the great consternation of individuals and corporations alike. Proposed temporary regulations which were issued by the Treasury in 1979⁶ and revised in 1980,⁷ have been heartily attacked by the interested public. Since that time, the Treasury has been attempting to revise these rules and appears finally to be on the verge of doing so. In its general fashion, the book provides a sufficient understanding of this important and evolving area in such a way that the new rules, when they are promulgated, can be placed in the appropriate perspective by the interested reader.

Part Three of the book confronts the "ticklish" subject of tax treaties. The United States has entered into over thirty tax treaties with other countries. These treaties establish special rules which may modify the treatment by the United States of transactions involving residents of the foreign country or the taxation of United States residents by foreign countries. The book describes the various administrative provisions which a treaty may contain, the treaty rules applicable to the business profits derived by a resident of a signatory country, and the special treatment of dividends, interest and other income. In addition to references to particular treaties, the book discusses the Treasury's 1977 Draft Convention⁸ and 1981 proposed new model,⁹ which constitute the announced starting point for future treaty negotiations.

The fourth part of the book addresses the use of partnerships in the international context. It covers organization and formation issues as well as operation and dissolution problems. Many of these issues revolve around the constant question whether a partnership is

6. Prop. Temp. Reg. § 4.901-2, 44 Fed. Reg. 36,071 (1974).

7. Temp. Reg. § 4901-2, 45 Fed. Reg. 75,647 (1980).

8. Treasury Department's Model Income Tax Treaty of May 17, 1977, 1 *TAX TREATIES* (CCH) ¶ 153.

9. Treasury Department's Model Income Tax Treaty, 1 *TAX TREATIES* (CCH) ¶ 158 (June 16, 1981).

an entity or an aggregate of individuals. This critical issue had achieved a considered level of determinability through application of the Treasury Regulations, which list the characteristics distinguishing a partnership from an association taxable as a corporation. However in 1977, the Internal Revenue Service presented a novel application of the Regulations to foreign enterprises.¹⁰ This ruling received apparent support in a 1980 decision of a California district court, which was recently overturned on appeal.¹¹

The book concludes with a series of appendices consisting of certain congressional reports, special rules for Americans abroad (cost of living differential tables and list of qualified hardship areas), a table of tax conventions, the model income tax treaties and, finally, the text and technical explanation, of the treaty between the United States and Canada.

The authors have accomplished much in this single work, perhaps more than in any other single volume to date. Their effort does not entirely fulfill the concern expressed in their observation that many texts, while adequately explaining statutory material, fail to indicate when and how particular provisions may be successfully used. Many tax planning techniques can be derived by the astute reader, but the comprehensive nature of the work precludes any considerable elaboration on the many potential factual variations from those covered in existing cases and rulings. Nonetheless, this is an important addition to the tax library of novice and professional alike.

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10. Rev. Rul. 77-214, 1977-1 C.B. 408.

11. *MCA v. United States*, 502 F. Supp 838 (C.D. Cal. 1980), *rev'd*, 685 F.2d 1099 (9th Cir. 1982). For an analysis of the separate interests test, see Note, *The Separate Interests Test: A New Hurdle in Foreign Entity Classification*, 6 FORDHAM INT'L L.J. 202 (1982).

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