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**COOPER, KREVER AND VANN'S
INCOME TAXATION:
COMMENTARY AND MATERIALS**

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The speed at which it changes and the enormity of its economic and social consequences distinguish income tax law from all other law and accounting subjects. This casebook is designed to train students how to work in what is probably the most complex area of law and certainly the most rapidly changing. Its object is to provide students with an understanding of the dialectics of tax law, not an historical snapshot of its status at a given point in time. Tax students must learn how to understand the technical rules in legislation and how to apply judicial precedents to given hypothetical situations, but these skills are not to be acquired as ends in themselves.

THE authors, in the Preface to this second edition, have thus identified the magnitude of the task they have undertaken. Although the changes in the income tax law area which have occurred since the publication of the first edition of this book have not been nearly as dramatic as the changes introduced in the mid-1980s, the very nature of income tax law makes a traditional casebook untenable. This book relies less on lengthy extracts from decided cases than other casebooks have done. This is in recognition of two related matters: first, that in the area of tax law individual factual characterisation is extremely important; and secondly, that the current trend is for the legislature to respond to judicial decisions which are regarded as 'adverse' by changing the legislation. For

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these reasons decided cases are less significant and so recourse must be had to the range of other primary and secondary materials that form the basis of taxation law; regulations, Commissioner's rulings, guidelines and information bulletins, articles and treatises and also to the policy basis of taxation to be able to, as the preface states, "predict, first for their examiners and later for their clients, the likely response of the Commissioner and Treasury to their decisions and then advise on the course of action most appropriate for a taxpayer in light of those possible responses".

The authors have also contributed a great deal more commentary than would be expected in a traditional casebook - so much so that at times the commentary can almost stand alone, making the work almost textbook like. This approach is reflected in the title of the book with its explicit reference to "Commentary and Materials" rather than "cases and materials".

Another strength of the work is the ordering of materials and careful dissection of topics. The second edition has twenty-five chapters compared with eighteen in the first edition. This change has occurred, not through the introduction of significantly new matter, but rather by virtue of breaking up previously large chapters, for example, "Allowable Deductions" into three chapters, "Personal and Non-Personal Expenses", "Business and Investment Expenses" and "Current and Capital Expenses". The number of chapters dealing the Tax Accounting has also been expanded to include separate chapters on "Accounting for Profits and Losses" and "Statutory Accounting Regimes", as has the section on International Aspects of Income Taxation which now has, in addition to an introductory chapter, separate chapters on "Taxation of Residents" and "Taxation of Non-Residents".

Of particular assistance to students in attempting to develop a thematic approach to the subject, are the two introductory chapters. In addition to covering historical and constitutional issues, these chapters examine matters such as "Alternative Tax Bases", "The Design of the Income Tax", "The Progressive Rate Structure" and "Tax Expenditures". These topics establish a framework for evaluation and indicate that policy decisions may not always be determined by consistent principles. By contrast, the book's final two chapters encourage students to be reflective, to stand back from the mass of detail and consider the issue of "Professional Responsibility and Ethics", dealing with such matters as the role of responsibility of tax professionals, potential liability of tax advisers, ethics and tax planning as well as the problems with formulating ethical standards. The Tax Avoidance chapter not only examines Part IVA and its predecessor, s260, but also deals with conditions facilitating tax avoidance (the role of the

courts, taxpayer attitudes and institutional factors) and the effects of tax avoidance. The approach is innovative and timely given the general community reaction to the perceived excesses of the 1980s.

The authors note, in an introductory section entitled 'Studying Tax Law - A Guide to students on how to learn and study the materials in this book' that it has been prepared with eight themes in mind, that is:

- (1) the search for principles;
- (2) the interaction of the various parts of the income tax;
- (3) the importance of referring to the statute before and after examining the cases;
- (4) the importance of developing skills in statutory interpretation;
- (5) the importance of recognising the numerous and authoritative sources of tax law;
- (6) the extent to which recent base broadening measures increase the importance of timing issues;
- (7) the significance of administrative processes and review mechanisms, and;
- (8) the nature of the rights, duties and obligations of tax practitioners both to their clients and to society.

The ordering of materials and the manner of exposition reinforces these themes throughout the book in a logical and coherent fashion. I only have two minor quibbles with the second edition. First, the chapter dealing with capital gains tax ("Income from Property") has been moved ahead of "Income from the Provision of Services" and "Business Income". The motivation seems to be that because capital gains tax applies not only to gains "realised on disposal of assets, but also to capital gains related to the use of money or property, capital gains related to personal exertion and capital gains related to business activities" (p 4-4), it was appropriate to deal with the topic first and then return to it throughout the following chapters. My experience is that the concepts are too complex for students without an overall understanding of income from services and income from business and the sorts of problems which arose from the distinction, in those areas, between "income gains" and "capital gains". Secondly, the division of the

materials dealing with allowable deductions could benefit from an introductory chapter outlining s51 and some of the general deduction questions into (the) three legal questions - "personal vs non-personal; deductible vs non-deductible under a judicial rule; current vs capital" (p 8-3).

Generally though, the book is an excellent one for students (in the widest sense) coming to examine the mysteries of income tax law. Finally, it should be mentioned that the book is supplemented by a teaching manual, available to all teachers who prescribe the book. As originally drawn it contained "references to alternative cases, further materials which might be prescribed and an outline of model courses of varying sizes relying on this book". (Preface, v, First Edition). The Teachers' Manual to the Second Edition confines itself to providing the author's guidance on questions raised in each of the chapters. This is less ambitious but the Manual nevertheless offers guidance and assistance to teachers within this narrower scope.