

Book Review: The Principles of Canadian Income Taxation, by F. E. LaBrie

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Book Reviews

THE PRINCIPLES OF CANADIAN INCOME TAXATION. F. E. LABRIE. TORONTO: CCH CANADIAN LIMITED. 1965. pp. 838 (\$25.00).

There is a temptation in reviewing a book to criticize it for a lack of something which it does not purport to contain. What is the objective of Dr. LaBrie in writing this book? In his preface Dr. LaBrie states that "it has not been written to indoctrinate but rather to stimulate . . ." and ". . . this volume is simply aimed at promoting perspective and at encouraging a broad range of inquiry as a background for making decisions in the field of taxation."

In my opinion Dr. LaBrie has achieved his purpose remarkably well. His book is full of thought provoking insights and ideas. For the student the book will be most helpful. Will it be helpful to legal practitioners? Dr. LaBrie points out in his preface that although legal practitioners may find the book of some value, it has not been written with their particular needs in mind. Dr. LaBrie's assessment is correct. A busy practitioner who in the hurly burly of practice wants to find an answer may be frustrated by this book. This book will however be most helpful to the practitioner if approached from the right point of view. Lawyers who tend to limit their practice to tax matters, and this is true of other areas of practice also, are required to read a lot of literature to keep abreast of developments. Generally such literature is read for new ideas and insights. One of the dangers of specialization is that one's views tend to become fixed and pre-conceived. It is good from time to time to read something which raises questions as to the foundation for such views. This book will well serve to achieve such a result. A practitioner may find himself saying that it never occurred to him that such a result was possible. Accordingly I recommend the book to the thoughtful practitioner as well as the student.

A few illustrations of Dr. LaBrie's erudite approach. In his chapter on "Deductions in Computing Income" he points out:

At page 200

The anxiety of our courts to classify income expenditure so as to maintain a level accounting measurement is the more surprising because of their abandonment, as discussed in earlier chapters, of any such suggestion in bringing into progressive income taxation occasional, unusual, and even fortuitous long-term gains, under the formula of carrying on business, as defined in the Act. While granting that sec. 12(1)(b) precludes the deduction of capital losses, capital outlays and capital replacements, we may question why, if carrying on business can transform normal capital realizations into the income from a business within the meaning of sec. 4, it cannot also be regarded as converting what would otherwise be a capital outlay or loss into an income expenditure.

At page 202

The problem of classifying capital expenditure and revenue, or income, expenditure is in its essence a problem of safeguarding the tax base; and the problem originates in the exclusion from tax base of receipts on capital account, to which the exclusion of capital expenditures and losses should be constantly regarded as a necessary counterpart.

At page 210

While it may be conceded that capital expenditure should be disallowed as a deduction in computing income because it places the taxpayer in the advantageous position of having acquired an asset that may be realizable as tax-free capital after having had the benefit of a deduction, and while accepting that this position is justifiable on proper business principles, it may be asked whether, if subsequent experience reveals that the taxpayer did not actually realize a capital gain and that the value of his expenditure was truly realized on revenue account, the amount of such capital expenditure may then be treated as deductible as an income expense.

Dr. LaBrie makes one point in particular to which I would like specifically to refer. He is critical, as I am, of the failure of the Revenue to challenge many of the schemes that have been developed to avoid tax on the distribution of corporate surplus. The following paragraph taken from page 527 of his book well sums up the problem:

The thing that remains surprising, and indeed disturbing, has been the almost complete absence of challenge to any of these schemes before the courts where, by contrast, the tax schemes (and sometimes very modest ones) of the same Canadian tax advisers in the area of personal income taxation have been repeatedly swept aside. It cannot be said whether the evident lack of enthusiasm at some level of the tax administration, occasioning the Minister's omission to challenge, has been due to failure of confidence following negotiation in the face of overwhelmingly compelling legal argument, to lack of total belief in the righteousness of the cause, to fear regarding the impact of completely enforced taxation of past profits on the motivation to earn future profits, or plain corruption in administration. One possibility is that failure to challenge has been based on administrative expediency, in the belief that mutual self-interest would prevent any general spreading of tax avoidance schemes that would only be publicized by judicial review. If so, the situation was wrongly appraised and the plan has broken down, because self-styled tax experts have, at least in recent years, been competitively engaged in making known various devices for distributing accumulated corporate surpluses tax-free.

The failure of the Revenue may be laid in part to the rather archaic approach of our courts to the literal interpretation of taxing statutes. In fairness however it should be pointed out that our courts have not been so literalistic when they have been given general principles rather than complex detailed rules to interpret.

One significant deficiency in the book is Dr. LaBrie's failure to refer to the works and articles which must have been of assistance to him in writing the book. Such references would be helpful both to the student and teacher and would make the book a much more useful tool for the practitioner. A more comprehensive subject matter index would also be helpful.

I must close on a more critical note. From the point of view of attention to detail, this book is not well done. Dr. LaBrie's style is

difficult enough to read without the frustrating annoyance of finding incorrect references and misplaced and omitted words and phrases. One example will serve to illustrate this point. In the first full paragraph on page 468 the reference to section 28 (1) in the first line should be to section 28 (10), the reference to section 28 (2) in the fifth last line should be to section 28 (1) and the reference to section 28 (2) in the third last line should be to section 28 (1).

One should not over emphasize criticism of such a technical nature. This is a very good book. It would have been well worth while to have spent sufficient time and effort on detail and checking to have made it an excellent book.

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