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法例與實施說明



David Flux 著 David Smith 修訂

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港台書室

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90055174



中文大學出版社

088888 1201-201-598-0

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國際統一書號（ISBN）：962-201-598-0

1989-90版 1989

1990-91版 1990

1991-92版 1991

1992-93版 1992

1993-94版 1993

出版：中文大學出版社

香港中文大學·香港 新界 沙田

承印：美力（柯式）印刷有限公司

香港黃竹坑道好景工業大廈

Hong Kong Taxation: Law and Practice 1993-94 (in Chinese)

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ISBN: 962-201-598-0

Published by The Chinese University Press,

Shatin, N.T., Hong Kong

Printed in Hong Kong

序 言

爲了使讀者容易理解，本書使用淺顯明白的文字，同時並引用在香港及其他地方有關的稅務個案實例，互相參照說明，適合於對香港稅務只有基本認識的學生使用，並且對於香港稅務上需要具有全面認識及實際指引以處理複雜稅務問題的商界和執業稅務顧問人士來說，更是必備的參考用書。爲了提高本書的實際價值，書中還參考了若干重要的稅務上訴委員會所裁決的個案以及稅務條例中有關的條文，互相參照。

在1974年，有關利得稅評稅的基本範圍法例有重大的修改。本書所討論的範圍，只集中在已修改的新稅例，而不會詳細討論舊有的法例或過渡性的條文，只是在有需要引用以協助讀者了解現行新稅例的情況下，才會簡單概述。

在稅務條例中，無可避免地會引起有關方面公眾的議論而有值得商榷的地方。關於這些疑問，筆者在書中有關的內容上亦有提出個人的意見，讀者在翻閱本書時，不難確認本人的立場。然而，讀者應該明白，這些評論只是純屬筆者個人的意見，在法例中並沒有確定的有關條文。

最後，筆者謹向已故畢馬域會計師行合夥人 Brian Osborne 先生致意，衷心感謝他幫助審閱原稿和提出中肯的意見，使本書得以順利定稿。

David Flux

一九八一年五月寫於香港

前言

正如 David Flux 曾在本書所說的，去年立法局漸趨民主化，對稅務政策造成顯著的影響。財政司在其一九九三年財政預算案演辭中強調「立法局提出的意見和批評成為前所未有的主要動力。」上述趨勢顯著地從日益廣泛的公開辯論中反映出來。議員的辯論，大多是針對稅率、個人免稅額和所謂「夾心階層」的利益等問題。雖然財政司對公眾就稅務事項提出的意見表示歡迎，但要注意的是，壓力團體及各個政府部門不能忽視審慎的財政及預算政策。

在一九九三年財政預算案演辭中亦進一步公布了反避稅條例及實施綜合報稅表的系統。就反避稅條例而言，財政司重申不能容忍避稅，並且會實施特定反避稅規則，以平衡因欺詐及瞞騙而產生的庫房虧損。政府當然考慮採用這種方法，即使帶來了許多爭議。可是，有趣的是財政司首次實際應用該政策，是在建議立法抗衡某種可預見的瞞騙上，其中包括將知識產權出售予海外公司，然後再重申持有該知識產權；儘管稅務上訴委員會已根據現時的一般反避稅規則打擊這種安排。此外，財政司的建議書對極為廣泛的交易造成衝擊，其中大部分為與避稅或稅務計劃毫不相干的真正商業交易。幸而在有關人士發表意見後，建議書所包括的範圍在制定為條例前已大大縮小了。

綜合報稅表的制度主要在於改善稅務局的行政效率，同時亦可以減輕許多獨立納稅人在填報報稅表上的負擔。根據該份建議書，將保留所得稅分類稅制。雖然獨立納稅人一般只需要呈交一份報稅表，但他們仍然會在適當的情況下繼續接受各種評稅。至於該系統最終會否演變成單一入息稅系統，則有待留意其日後的發展了。

去年最重要的稅務發展也許是稅務局頒布眾人等待已久的決定收入來源的實施守則。該守則已在本書的有關部分內作出詳細論述。基本上，稅務局在這複雜問題上作出澄清及一定程度上確定稅例所付出的努力是令人讚賞的。可是，與其他觀察家一樣，筆者對於實施守則中所作的個別結論的有效性抱有保留的態度。然而，在整體上，我相信這是減低有關收入來源的爭議的一個合理及真正的嘗試。

最後，筆者衷心感謝就本書提出評語及建議的讀者。對於這些評語，筆者感到無任歡迎，亦會在可能及適當的情況下採納該等建議。

David G. Smith

一九九三年七月

譯者的話

香港為國際商業及金融中心，資金集中，經濟發達，而香港稅制在其中佔有極其重要的地位。然而至今仍缺乏關於香港稅務的中文版的專業參考用書，因此，本人欣然接受中文大學出版社之邀請，將 *Hong Kong Taxation: Law and Practice* 一書編譯為中文版本《香港稅務：法例與實施說明》。本書內容豐富，並引用具體的例子，旨在幫助有關人士了解香港的稅制。本書的翻譯是以香港稅務條例為根據，大多是直接引用有關條例的原文。

在翻譯的過程中遇到不少困難，為求意思明確，文詞暢順，譯者曾廣泛徵詢專業人士的意見，故譯稿經過幾番修改，足足花費了一年多的時間才整理完畢，脫稿刊印。

本書得以順利完成，主要是依賴各界人士的合作努力和鼎力支持，尤其是本書原著者 David Flux 先生與香港稅務局提供寶貴資料、畢馬域會計師行中國部門同仁協助翻譯，在此謹致謝意！

本書出版後，承蒙專業人士及讀者對譯本提出不少寶貴意見，指出錯漏之處，本人在此深表謝意。根據讀者的意見，譯者對譯文作出修改和更正，並加入了增譯的部分，力求譯本能準確地表達原作的意恩。期望本修訂版較前一版進步，對讀者的幫助更大。

譯者 謝孝衍
一九九三年七月寫於香港

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書中引用的縮寫語：

AC	Appeal Cases (U.K.)	上訴案件 (英國)
AITR	Australian Income Tax Reports	澳洲所得稅報告
All E.R.	All England Law Reports	英國法律報告
ATC	Australian Tax Cases (CCH)	澳洲稅務個案 (CCH)
ATD	Australian Tax Decisions	澳洲稅務決議
CIR	Commissioner of Inland Revenue	香港稅務局局長
CLR	Commonwealth Law Reports	英聯邦法律報告
FC of T	Federal Commissioner of Taxation (Australian)	聯邦稅務局局長 (澳洲)
HKRC	Hong Kong Revenue Cases (CCH)	香港稅收個案 (CCH)
HKTC	Hong Hong Tax Cases	香港稅務個案
IRD	Inland Revenue Department	香港稅務局
IRO	Inland Revenue Ordinance	香港稅務條例
IRR	Inland Revenue Rules	香港稅務規則
MSTC	Malaysian and Singapore Tax Cases	馬來西亞及新加坡稅 務個案
NZ	New Zealand	新西蘭
QBD	Queen's Bench Division	英國高等法院後座法 庭所屬分庭
SATC	South African Tax Cases	南非稅務個案
Sec(s).	Section(s) of the IRO (unless otherwise specified)	香港稅務條例條文 (另有規定者除外)
TC	U.K. Tax Cases	英國稅務個案
WDV	Written Down Value	折餘價值
y/e	Year Ended	年終

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稅務條例

Inland Revenue Ordinance

書中引用的稅務條例和稅務規則條文：
(注意：自一九八九年四月一日起，已廢除了利息稅。因此，文中有陰影部分的條例28至33已被撤銷。)

Inland Revenue Ordinance 稅務條例

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