

Foundations of Taxation Law



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4th Edition

Stephen Barkoczy

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FOREWORD TO THE FIRST EDITION

Foundations of Taxation Law is an impressively ambitious project impressively executed. The aim of the book is said in the preface to be to provide a “concise” introduction to the policy, principles and practice of the Australian federal taxation system. Anyone acquainted with that system will appreciate how large and difficult a task that is. Stephen Barkoczy has brought to bear many years of teaching and practice in tax in the production of this substantial contribution to the literature on tax law, policy and practice in Australia. His teaching skills are evident in the exposition of complex and difficult issues in a systematic and clear language reflecting the kinds of questions which students might frequently have asked him. The text, however, is thoroughly informed by many years of practice and experience in tax law, policy and practice. The value of this book lies not only in its clarity and breadth of coverage. Readers will find throughout the book further references to pursue in more detail the many concepts and issues considered by the author. Teachers in taxation will undoubtedly find useful as a teaching tool both the text and the many detailed further references. They will also find particularly useful the study questions helpfully provided throughout the text at the end of various sections. They are designed to assist students in their understanding of the issues explained in the text and, as a teaching tool, will be very useful to the other teachers of taxation in Australia as a vehicle for discussion and application of principles.

It is particularly heartening to see a text of this kind directed to the student. There are many texts on tax law for practitioners designed, with varying degrees of success, to provide practical answers to difficult problems. Some publications for practitioners can do little more to assist the practitioner than gather together as much relevant information as possible and provide some statement of the law. *Foundations of Taxation Law* is directed to a different kind of enquiry, namely, that of the student wishing to understand what the rules are about. Tax law has developed over the years to become a complex system of many interacting rules. The complexity and size of the rules makes its teaching as a system a difficult task. The practitioner consulting a practice text or commentary may be presumed to have sufficient knowledge before looking up the text. For the student the task is different and more difficult. It is that enterprise that Stephen Barkoczy has undertaken with impressive results in this text.

On a personal note it is particularly gratifying that this text should be written by one's own former student of many years ago. The text is a great credit to the author and I commend it to students of taxation in Australia.

The Hon. Justice Pagone
Supreme Court of Victoria

PREFACE

Aims and objectives

Taxation law is a vast and complex area of law that is continually evolving. As a consequence, it can be an overwhelming and challenging subject to study and research. The aim of this book is to provide a concise introduction to the policy, principles and practice that underpin the Australian taxation system. The book focuses on the key components covered in many introductory and advanced taxation law courses studied at Australian universities. It is designed to be used by undergraduate and postgraduate students as well as students undertaking professional qualifications with accounting bodies, law societies and the Taxation Institute of Australia. The book is also intended to serve as a general reference guide for taxation academics and researchers, as well as practising lawyers and accountants, who require a succinct and user-friendly explanation and analysis of fundamental taxation law concepts.

Content and coverage

The main emphasis of the book is on Commonwealth taxes, particularly:

- goods and services tax
- income tax, and
- fringe benefits tax.

The book is divided into 21 parts containing 52 chapters. The more fundamental material is covered in the earlier chapters, so that students who are undertaking basic courses are able to focus their reading principally on those chapters. Students who are undertaking advanced courses, on the other hand, will have more use for the latter chapters, which have a more specialised focus and deal with more technically complex issues.

As the book is designed to be an introductory guide, I have adopted the approach of focusing the discussion in the chapters on broad general principles and have not covered all of the exceptions to the rules. My objective is to provide a broad overview of the foundations of the taxation system rather than an exhaustive explanation of all of its intricate principles in complete detail. In this regard, I have been selective in the topics I have covered and have purposefully tried to divide the topics into “consumable chunks” that can be easily and efficiently digested by a reader in discrete segments.

At the same time, I have tried to ensure that the book addresses most areas of general importance and does not over-simplify the law or skirt over harder issues. I have, therefore, purposefully chosen to tackle difficult areas of law that I believe are of significant practical importance. For instance, the book has chapters dealing with topics such as superannuation, employee share schemes, consolidated groups, double taxation agreements, accruals taxation and the taxation of financial transactions. While these areas are outside the scope of most basic tax courses, they are relevant to

more advanced courses and are critical to a broad understanding of the Australian taxation regime. They are also particularly important areas for practitioners. Consistent with the philosophy of this book, these chapters are designed to provide a broad introductory overview of the relevant areas of law, rather than a detailed analysis of every single rule and exception thereto. My aim is not to bog the reader down in excessive detail, but to provide a general framework which outlines the fundamental concepts and rules.

While the book does not purport to provide a complete picture of Australia's tax laws, it covers a lot of ground, including discussion of hundreds of legislative provisions, cases and rulings. The discussion in the chapters should serve as a solid set of principles around which readers can progressively build their general understanding of the law. The discussion should also provide a useful "road map" for navigating the complex web of interconnected provisions in the tax legislation and for making sense of the extensive body of case law in the field. Hopefully, by using this book, readers will be able to tread more confidently through the tax law maze and be able to better "see the wood from the trees".

Design and layout

The book is the product of many years of researching, practising and lecturing in the field of taxation law, and it undoubtedly demonstrates my own biases about what I think is important for students to understand about the subject. I have tried to blend policy issues, taxation theory, technical "black letter law" and commercial practice into a succinct principled text that is integrated with other CCH Australia Limited tax products. Although the book is a legal text, it does not focus exclusively on legal issues. The discussion in the chapters also touch on a wide range of social, economic, political and international comparative issues. Taxation law, perhaps more than any other area of law, is affected by these broader considerations, and I firmly believe that it needs to be approached with these perspectives in mind.

In writing the book, I have been conscious of the pressures placed on students and practitioners who have to grapple with large amounts of complex information located in different places in short time frames. For this reason, I have not only endeavoured to write succinctly and directly, but I have also tried to develop topics in a logical and structured order from the ground up. In this regard, I have tried to clearly signpost and break up core concepts into their constituent elements. I have also cross-referenced the discussion in the topics to specific provisions in the legislation and case law so that readers are able to easily find the source of the law.

To assist learning, the book is peppered with many examples, diagrams and tables, that are designed to condense the law, help clarify difficult concepts and provide a "bird's eye view" of broad topics.

The book has been specifically designed to be used in conjunction with, and serve as a companion text to two of my other books:

- S Barkoczy, *Core Tax Legislation and Study Guide* (2012) — which contains extracts of the legislative provisions covered in the book, and
- S Barkoczy, C Rider, J Baring and N Bellamy, *Australian Tax Casebook* (2010) — which contains detailed summaries of the cases covered in the book.

Study questions

To assist students with their exam preparation, the book contains a set of study questions at the end of each chapter linked to the specific topics covered in that chapter. These questions focus on fundamental issues that students need to understand in order to properly grasp key concepts. The questions can also be used by lecturers as a basis for tutorial discussions. The questions have been designed in such a way that they examine core issues from both a practical (calculation and problem based) perspective and a conceptual (theoretical and policy based) perspective. Solutions to these questions, which have been independently prepared by Tom Delany and Toni Chardon, are available to lecturers who use the book free-of-charge from CCH Australia Limited. The book also contains cross-references to selected questions from L Nethercott, G Richardson and K Devos, *Australian Taxation Study Manual* (2011).

Additional references

To help students in conducting research for their assignments and essays, I have included, at the end of each chapter, a set of additional references to selected books, articles, government reports and taxation rulings. I have also included specific references to chapters within the following major textbooks, which contain a more comprehensive and detailed technical analysis of the law:

- R Woellner, S Barkoczy, S Murphy, C Evans and D Pinto, *Australian Taxation Law* (2012), and
- CCH Australia Ltd, *Australian Master Tax Guide* (2012).

These references should serve as a platform for commencing further research in the particular subject areas.

PowerPoint slides on CD-ROM

A special feature of the book is that it is supported by a CD-ROM containing a set of approximately 900 PowerPoint slides that are directly linked and cross-referenced to the specific topics covered in the chapters. The slides are designed to serve as a handy teaching and learning aid for distilling the key points covered in the topics.

Changes in the fourth edition

The fourth edition of this book contains many revisions that take into account important legal developments and announcements that have occurred over the last year. I have expanded the discussion of several topics and included analysis of a number of new cases and legislative provisions. In addition, in order to provide readers with a broader conceptual framework for understanding taxation law, I have developed the economic, policy and international comparative discussion in a number

of chapters. I have also substantially rewritten and updated certain parts of the book, such as Chapter 23 (Fringe Benefits Tax), Chapter 27 (Trusts) and Chapter 40 (Double Tax Agreements).

As with the previous edition, I have paid special attention to improving the layout and design of the book. There are two additional chapters together with many new headings and subheadings to guide the reader through complex areas. The book has also been enhanced by the inclusion of additional examples, charts, diagrams and tables. There are also a number of new study questions and many additional references at the end of the chapters.

The book has *generally* been updated to reflect the law in force as at 1 August 2011.

Acknowledgments

Many people have contributed to the production of the third edition of this book. In particular, I would like to thank CCH Australia Limited's tax, editorial and marketing teams — especially my long-standing colleagues Jonathan Mendel, Stephen Blackwell, Marcus Lai and Ingrid Segota — for their ongoing valuable conceptual, editorial, and design input. Marcus Lai, in particular, was very helpful in providing timely and insightful feedback on the many revisions in this edition. I would also like to thank all members of CCH Australia Ltd's production team (Raveena Rajavetti, Helen Santiago, Sarah Tan Enk Hwa, Azeem Shah Mashood Shah, Premadevi Subramaniam, Berabagaran Rasashihar and Gnaliny Tigarajan). These people spent long hours putting this book together under tight deadlines and were generous in accommodating many last minute revisions.

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Over the years, I have also benefited greatly from the many discussions I have had regarding various technical aspects of the law with my academic and professional colleagues, especially my friends from the Faculty of Law at Monash University and Blake Dawson. These discussions have helped shape my ideas on the structure and scope of this book. A special mention should also go to Associate Professor Justin Dabner from James Cook University who provided me with some very useful suggestions that I have incorporated into this edition. I have also been fortunate to have a supportive Dean, in Professor Arie Freiberg, who has provided me with the ideal academic environment in which to blend my teaching and research interests. My special thanks are also extended to my former lecturer, Justice Pagone, for the lessons I learned from him and for taking the time to write the foreword to this book.

Finally, and most importantly, I would like to acknowledge the support and encouragement of my family for whom this book has been written.

Stephen Barkoczy

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Stephen Barkoczy is a Professor in the Faculty of Law at Monash University. Stephen has lectured, practised and published widely in the area of taxation law. From 1998 to 2010, he was a Consultant with the law firm Blake Dawson. In 2011, he was appointed for a three-year term as a Member of the Commonwealth Government's Venture Capital Committee of Innovation Australia. Stephen is the author/co-author of the following books: *Australian Taxation Law*, *Australian Tax Casebook*, *Core Tax Legislation and Study Guide*, *Australian GST Guide*, *Pooled Development Funds Handbook* and *Government Venture Capital Incentives*. Stephen is a recipient of Monash University's Vice Chancellor's Award for Teaching Excellence and a recipient of an Australian Learning and Teaching Council Award for Teaching Excellence. In 2008, he received the Prime Minister's Award for Australian University Teacher of the Year.

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