

Chapters 5 to 8 deal with the position prior to, and after the enactment of, s. 26(a) of the Act and were the chapters which I found most interesting and thought-provoking. This provision includes in the assessable income profits derived from the sale of property acquired by the taxpayer with the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme. The section is notorious for the voluminous case law it has generated in respect of both questions of legal interpretation and of evidence. Rather than simply presenting a chronological examination of the authorities the author has sought to critically analyse the frequently conflicting judicial interpretations of the section. She has developed a valuable reconciliation and explanation of the authorities and has courageously dismissed certain judgments as plainly incorrect. She is, in my view, justifiably critical of the numerous limitations which the courts have read into the provision thereby cutting down its scope of operation and to some extent, distorting the ordinary concept of income.

After a brief chapter on losses from property realisations (Chapter 9), the author deals in Chapter 10 with some interesting points on tax accounting. Again, she explains that a number of important questions in this area have not yet been clearly resolved by the Courts.

The final chapter entitled 'Tax Avoidance and Property Transactions', after a short discussion of the old s. 260, outlines briefly various forms of tax avoidance schemes and the legislative measures which have been designed to combat them. Many of the schemes are highly complex and intricate and both the schemes themselves and the countering legislation require detailed study before they can be properly appreciated. However, most of these schemes are now largely only of historical interest and thus their cursory treatment is justified. Of course the impact of the countering legislation is of great and wider significance but to date there has been no judicial consideration of most of it. It is perhaps surprising that although two and a half pages are devoted to dividend stripping there is little more than a mention of trust stripping and no discussion of the difficult s. 100A designed to counter it. Moreover, as I mentioned earlier, the whole question of avoidance has now taken on a new dimension in view of the recently enacted Part IVA of the Act.

The book concludes with an Appendix containing summaries of all Court and Board decisions since 1970 dealing with the taxation of property realisations. This is no doubt a useful addition but readers must always be careful to resist relying on such concise summaries as more than a general guide.

Inevitably there are the usual odd typographical errors.¹⁴ The author's style is relaxed and easy to read though the excessive cross-referencing becomes somewhat distracting at times. The book is designed primarily for practitioners and my impression is that it will be best appreciated by those who already have some familiarity with the relevant case law. Although this book does not purport to deal directly with questions of tax policy, despite a number of telling asides from the author on various points, it does highlight the anomalies and inequities that may arise under a system which taxes income and not capital.

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Cases and Materials on Real Property by P. J. Butt, G. L. Certoma, C. M. Sappideen and R. J. Stein (Law Book Co. Ltd, Australia, 1980). ISBN 455 20044 0.

Property Law, Cases and Materials by Ronald Sackville and Marcia Neave (3rd edition, Butterworths, Australia, 1981), pp. lxxi, 1-913, Index

¹⁴ See e.g. paras. [404], [608], [1013].

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