TAXING OFFSHORE INVESTMENT INCOME. EDITED BY JOHN PREBBLE (Fiscal Publications, 2006). £29.95.

The taxation of interests in foreign investment funds is a topic of our times. The abolition of exchange control, new means of investment through electronic media, an increase in focus on the importance of saving (particularly for retirement) and globalisation in general make this a topic of particular current interest. This new work (although it has its origins in an International Fiscal Association Seminar in 2003) provides a comprehensive guide to the structural issues and the approaches of a number of leading countries in this field.

The fundamental issue is whether residents who invest in foreign companies and other entities should only be taxed with respect to their interests in those entities when dividends or other distributions are made or the investment is sold or otherwise realised. This is essentially a question of whether an appropriate tax has been imposed on the foreign entity or the income earned by it prior to distribution. The book seems to start with the presumption that if the entity has not been appropriately taxed then the investor should be and cites the usual rationales used by governments to justify implementing a foreign investment fund regime. It does not consider in any detail why it might be inappropriate to introduce such a regime. So one should not look for an in depth analysis into the fascinating theoretical underpinnings of a foreign investment fund regime, such as the cash flow and realisation problems, consistency with the “ability to pay” theory and consistency with domestic regimes that encourage savings by permitting deferral. Further, the focus is on a particular style of regime, that similar or supplementary to controlled foreign company rules. It does not look in depth at the more unique approaches of, for example, the Netherlands, with its deemed income rules that apply to both domestic and foreign interests, or the UK’s settlements legislation.

Within this focus, John Prebble has done a solid job of putting together this book. He has enlisted the assistance of a number of reputable authors with expertise in a difficult and complex area of tax law. The start of the book is unique because it is truly comparative. Most comparative books simply devote a chapter to each of a number of jurisdictions. The start of this book adopts a conceptual approach and is structured to consecutively deal with the issues that all foreign investment fund regimes face. Within this framework, the book is full of comparative examples of the different approaches that might be taken with respect to the structural issues. The result is a coherent and informative discussion that is lacking in many comparative books. In some respects the book goes beyond a direct interest in foreign investment fund regimes. For example, the discussion of classification of foreign entities in Chapter 2 is particularly informative and of general interest in international taxation. Towards the end the book slips into the usual trait of comparative works with particular...
chapters devoted to Germany, Switzerland, the United States and a final update on New Zealand.
All in all a good read.

PETER HARRIS*

THE TAXATION OF PERMANENT ESTABLISHMENTS, AN INTERNATIONAL PERSPECTIVE. BY RADHAKISHAN RAWAL, FOREWORD BY PHILIP BAKER QC. (Spiremus, 2006). £75.00

The title of this book does not give away its main theme, which is the taxation treatment of permanent establishments within India. However, its analysis is wide ranging and applicable to any international situation where the issue of permanent establishment arises. The book provides a comprehensive and scholarly treatment of Article 7 of the OECD model treaty, and how it compares to India’s own treaties, as well as an analysis of Indian case law in this area. In addition to the consideration of the OECD model treaty, Article 7 of the UN and the US models are also analysed, with comparative analysis of Article 7 of the tax treaties signed by the United Kingdom, Netherlands and China. This work, together with the citation of numerous Indian court cases around the question of permanent establishment, will give the reader insight and ammunition with which to discuss these issues in relation to any treaty, as definitions and concepts in this area continue to develop and are as yet to be universally defined.

The work’s particular focus on India is however its main interest to the reviewer. The rise of India as a major trading hub through improvements in Information Communications Technology, coupled with the country’s highly educated and English speaking workforce, have caused many multinationals to invest large sums into the country. This naturally has given rise to a correspondingly large increase in the number of Indian tax issues that are faced by international tax practitioners from all industries, many of which are initially in the arena of permanent establishment and profit allocation as companies take their first holdings in the country. To many practitioners, the inevitable outcome of this investment is a difficult and challenging tax audit, where reaching an acceptable and long lasting agreement with the Indian Revenue can sometimes seem to be an unattainable goal. This work will be an essential guide to dealing with permanent establishment issues within India, although what will not be a surprise for the experienced practitioner is that the book documents several cases where Indian courts have arrived at contradictory conclusions.

In conclusion this comprehensive work could prove an invaluable companion to anyone dealing with issues in this area, whether Indian focussed or not.

PHILIP OWEN**

* University of Cambridge.
** BT Group plc.
\*\ India; Permanent establishment