extent of making some law in the United States.[13] But then he adds: "Of course, the President cannot do what is forbidden to him . . . by the Bill of Rights."[14]

Surely one hopes that to be the case and, I daresay, Professor Henkin was also only expressing a hope. "The President," says Professor Henkin, "*would* not make a treaty that forbids teaching or advocating racial superiority because it would probably violate the First Amendment."[15] It is a political judgment as to whether a President *would* make such a treaty. One need not be too radical to believe that some future President *would* make such a treaty, that the courts might find that he *could*—despite the Bill of Rights. In that instance the final protection would not have been abandoned if the Senate failed to give its consent to such a treaty. Hence the need to preserve the treaty veto power of the Senate.

Professor Henkin's book is unusually well-documented. Indeed, for the statistically minded, there are 281 pages of text and 252 pages of notes and citations—all placed in the back of the book—a benefit for the general reader, if not a boon to the indepth student. A well done and complete 16 page index makes the book a valuable reference instrument.

In short, Professor Henkin has given students, scholars, lawyers, public servants—indeed, all Americans who care about foreign affairs and the Constitution—a book which I believe comes close to being a classic, as defined by Webster, "of recognized value: serving as a standard of excellence."[16]

CARL MARCY*

INTERNATIONAL TAX PLANNING. By Barry Spitz.[1] London, England: Butterworth & Co. Ltd., 1972. Pp. xxiii, 159. $12.15 (U.S.).

In the challenging business world of today, management often must look beyond national boundaries in order to realize the fullest profit

[13] *Id.* at 64.
[14] *Id.*
[15] *Id.* at 254 (emphasis added).
[16] WEBSTER'S NEW COLLEGIATE DICTIONARY 153 (7th ed. 1970).
*Chief of Staff, Senate Committee on Foreign Relations. B.A. Willamette University, 1934; M.A., Columbia University, 1936; LL.B. Columbia University, 1939; Ph.D., Columbia University, 1942. Member of the New York State Bar and the American Society of International Law.

[1] B.A., LL.B. (Rand); of Gray's Inn, Barrister; Johannesburg, South Africa.

potential; yet, because of inexperience, this view may be obscured by uncertainty and unfamiliarity.

Unfortunately, management's myopia is not infrequently shared by advisers or counsel to management, creating an alliance of ignorance with a deadly talent for crippling a promising international endeavor, and, at the same time, hampering domestic market positions.

If ever an area of operations existed where the key word is "flexibility," the international business arena is one. The expression, "Don't let the tax tail wag the corporate dog" admittedly has merit but, in international trade, tax planning may be so critical that one frequently finds quite another creature—namely, a "tax dog" with a "corporate tail."

Mr. Spitz, taking note of this anatomical inversion, has written a veritable primer on international tax planning. As stated by Mr. Spitz, "For a commercial or industrial enterprise, an unnecessarily increased tax burden represents a business waste which not only reduces its distributable profits but may well make it uncompetitive."[2]

Mr. Spitz sets out in a clear and practical manner to analyze the fundamental techniques of international tax planning, primarily for students and practitioners wishing to enter the field. In doing so, the author relies upon a number of examples to illustrate various points which he desires to make. On the whole, such examples are concise and apt and should aid a neophyte considerably in appreciating basic principles.

In addition, Mr. Spitz is admirably adept at describing certain rather involved concepts in layman's language. For example:

> Tax planning is the process of taking into consideration all relevant tax factors, in the light of the material non-tax factors, for the purpose of determining: whether; and if so—when; how; and with whom, to enter into and conduct transactions, operations and relationships, with the object of keeping the tax burden falling on taxable events and persons as low as possible while attaining the desired business and other objectives.[3]

In examining such process, Mr. Spitz has, with considerable skill, arranged the book in such a way that the elements of international tax planning are stated simply, succinctly and chronologically, beginning with "preparation of the data base"[4] through "processing the data"[5] and

[2] B. SPITZ, INTERNATIONAL TAX PLANNING 1 (1972) [hereinafter cited as SPITZ].
[3] *Id.* at 1.
[4] *Id.* at 3-44.
[5] *Id.* at 45-81.
[6] *Id.* at 82-102.

concluding with a discussion of tax havens[6] and tax incentives.[7] This is a short book but do not be misled by its length. It is packed with an abundance of information.

Defining the data base as one consisting of three parts—the facts, tax factors and nontax factors—Mr. Spitz ranges far and wide, covering such items as the various types of taxes to look out for (*e.g.*, income taxes, capital gains taxes, business taxes, stamp duties, transfer duties, sales and use taxes, gift taxes and turnover taxes); and certain variables which determine the rate of tax and taxable base such as the residency, domicile and nationality of the taxpayer and the source of the taxpayer's income or gain. The nontax factors which he discusses include exchange control problems, import and export restrictions, political and economic stability, language, and professional, commercial and banking facilities (all of such nontax factors being very important when choosing a tax haven).

However, the author's thoroughness in raising issues arising under the laws of numerous countries is, at the same time, a fault and a virtue. Because Mr. Spitz does not limit himself to any one tax jurisdiction, but offers examples of the various matters to be considered in a number of different jurisdictions, it is this reviewer's opinion that there is a danger that the beginner may be misled to think that all of these considerations are present in each case in each country (they are not) and to feel overwhelmed by the enormity and complexity of the task ahead. Undoubtedly, the field of international tax planning is one of considerable complication, but it is, nevertheless, one that, with experience, is manageable.

In any event, after having prepared the data base and formulated a plan, Mr. Spitz explores in detail the question of evaluating the tax plan from several diverse standpoints—if the plan is adopted, if the plan is adopted and succeeds, or if the plan is adopted and fails.[8] It is, in actual practice, imperative to weigh the consequences in each of the aforesaid instances before launching a program and Mr. Spitz's formula for computing the odds for success or failure of a plan is interesting and enlightening.[9]

After ample treatment of the basic considerations regarding an international tax plan, Mr. Spitz journeys into the area of tax havens, discussing the different types of havens (*e.g.*, tax paradises,[10] tax shelters,[11]

[7]*Id.* at 103-124.
[8]*Id.* at 65-75.
[9]*Id.* at 67-73.
[10]No relevant taxes—The Bahamas, Bermuda, The Cayman Islands.

and tax resorts[12]) in general and providing a brief survey of the major tax havens of the world from Antigua[13] to Switzerland.[14] This section is concluded with an examination[15] of the various tax and nontax features of tax havens which are of importance to the planner in selecting a haven, such as, among others, company law and trust law, guarantees against taxes, convertibility of currency, secrecy of information, and government attitude toward haven operations.

Mr. Spitz concludes the text of his book with mention of the most usual categories of tax incentive measures. Once again relying on an example as a prime educational tool, he offers a case study of Ireland[16] to illustrate the application of such customary incentives as tax exemptions, tax deferments, deductions from the taxable base (the most frequently encountered form of tax incentive) and reductions in the rate of tax.

Finally, some comment should be made regarding the Appendix[17] which is the text of the Organization for Economic Cooperation and Development (O.E.C.D.) 1963 Draft Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital. Because tax treaties are so important in international tax planning, it is this reviewer's opinion that they do not receive sufficient attention in Mr. Spitz's book and that the printing of the aforesaid draft without any comment will not be of much use to the student or practitioner getting his first glimpse of such planning from this book. It is hoped that Mr. Spitz will direct the considerable talents otherwise exhibited by him throughout the book in expanding the Appendix in a later edition into another chapter with a discussion of the various types of treaty provisions which are, more or less, standard in tax treaties.

Finally, Mr. Spitz stated at the outset of his book that "it is hoped that this analysis of the basic techniques of international tax planning will offer something of value even to the more experienced tax planner."[18] It is this reviewer's opinion that Mr. Spitz has done a fine job in

---

[11]Taxes levied only on internal taxable events, but not at all, or at very low rates, on profits from foreign sources—Hong Kong, Liberia, Panama.

[12]Special tax privileges to certain types of companies or operations—Luxembourg, The Netherlands, Switzerland.

[13]SPITZ, *supra* note 2, at 83.

[14]*Id.* at 90-92.

[15]*Id.* at 92-102.

[16]*Id.* at 108-124.

[17]*Id.* at 125-147.

[18]*Id.* at ix.

accomplishing his primary intent of educating beginners, but that the experienced planner will find the book to be of limited worth.

DONALD O. CLARK*

*McClain, Mellen, Bowling & Hickman, Atlanta, Georgia. A.B., University of South Carolina, 1956; M.A., University of Illinois, 1957; J.D., University of South Carolina, 1963. Member of the Georgia and South Carolina Bars.