
The Personal Tax Planning Review

BOOK REVIEW

Taxation of Foreign Domiciliaries

By James Kessler published by Key Haven Publications PLC
ISBN 1 901614 15 8, price £125 (Hardback p.494).

This is an excellent book. 477 pages of Kessler clarity – worth twice the number of pages of many other authors. For anyone who regularly acts for clients with foreign aspects to their tax and trust planning it will be extremely useful. For anyone – and there are many – whose clients have occasional foreign aspects to their affairs which need advice, this book will prove absolutely invaluable. Nor is it solely about foreign domiciliaries. The answers to many key offshore or indeed onshore issues can be found, and found quickly, between the book's covers. As an example, there is a good chapter entitled "*Who is the Settlor?*". This issue can arise in a host of situations. Here it is fully and convincingly explained. As another example, he explains the four basic strategies for dealing with the attribution of gains to beneficiaries under s.87 TCGA 1992, even though foreign domiciliaries are exempt from the attribution.

He sets out the contents both in brief and in detail, and the detail is full. There is a sub-heading for every section of the work, and each section takes up about 1 – 2 pages. The breakdown into chapters with broader titles is logical. Taken with the index, there should never be a moment's delay in finding the section you want. Once there, the explanation shows the lucidity for which Kessler is well known. Half the trick, of course, lies in keeping the sentences short. But that is the simpler half. The subject is not an easy one. It does not seem easy when you read this book, but at least it seems understandable – usually. The use of the words such as "*counterfactual*" does not help. He uses the word "*timeously*" in relation to electing that a variation will backdate to death, when "within 6 months" might have been more helpful. (My spell-checker did not recognise the word and suggested instead "*timorously*". Not bad for a communication with the Revenue.) At least he gives the meaning of the word "*deictic*" where it appears in a quotation. He obviously has a collector's fondness for strange and unusual words, though purists may shy away from his spelling of "*gray*". Teasingly, however, he censors one word from an

article by John Avery Jones in 1998, even though it must have been good enough for the BTR.

Like most writers on tax, Kessler is fond of the worked example, but his really do help, rather than confuse. He also quotes usefully, but not too lengthily, from relevant judgments. He is happy to give web-site addresses, if good information can be garnered from them. Where the Revenue's manuals are helpful he quotes from them, too, and is not shy of doing so extensively. But he does not just add material. He strips away the unnecessary to reveal the critical issue in its statutory context, and then examines it in depth and with sure judgement.

The book is spattered with light humour, which comes as a welcome relief particularly in some of the darker passages. He delights in the "*quadruple negative*" of s.660 G(4) ICTA 1988. He suggests that any current land transaction is associated for Inheritance Tax purposes with any transaction in Saxon times affecting the same land. He rescues from the oblivion of Hansard, Sir John Foster's delightful demolition of the transfer of assets conditions in what is now ss.739 - 741 ICTA 1988.

Not only is the book extremely useful and easy to follow over a broad landscape of tax and trust law, but it should also remain so at least for the foreseeable future, given the fact that the government is not introducing immediate changes to the tax treatment of non-domiciliaries, as had been hinted, but is instead going to consultation. Those of us with forgotten consultation papers languishing in our bookcases will expect to be able to refer to this book for years to come.

It is of course galling for one member of the Bar to have to recognise excellence in another (who is still alive), but years ago I ceased to be annoyed when my most loyal instructing solicitors told me how wonderful they found his precedents. Now I can happily refer to this book, which is beautifully printed and robustly bound. The only charmless thing about it is the (usual) disclaimer at the front. You pay for his book, but he then disclaims liability for anything in it (just imagine what the damages might be!). He threatens you with criminal liability if you quote from it. I imagine it is the only part of the book, which he did not write himself.

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