

M^cKie&Co

Book Review: **Sharon M^cKie**

McCutcheon on Inheritance Tax¹

Sharon M^cKie reviews the fifth edition of this authoritative work on IHT.

A good, comprehensive practitioners' text on taxation will provide a summary of all the relevant statute and case law on its subject and of Revenue and Customs' (HMRC's) extra-statutory concessions, guidance, briefs and other extra-statutory material which is of relevance to the subject-matter of the book. Some textbooks dealing with particular topics will often explain clearly the structure of a tax or of a topic within that tax, give alternative constructions and explain the practical significance of provisions. It is extremely rare, however, to find a book dealing with a large topic which does both.

A classic practitioners' text

When Barry McCutcheon wrote his *Understanding and Planning for Capital Transfer Tax* in 1980,² he produced a comprehensive description of the statutory rules of the tax, an explanation of the existing applicable case law (including those estate duty cases which remained relevant) and an analysis of its structure and form which dealt with difficulties of construction and pointed out the practical implications of its application. Since then, the work has become one of the standard texts for the taxation practitioner, changing its title with the tax which is its subject to *McCutcheon on Inheritance Tax* but receiving that popular accolade which is the practical expression of its pre-eminence in being referred to by practitioners simply as "*McCutcheon*".

¹ Withers LLP, A. Nathan, M. Lemos, *McCutcheon on Inheritance Tax*, 5th edn, (London: Sweet & Maxwell, 2009) ISBN 978 1847035936, 1315 pp., £235, (hardback).

² B.D. McCutcheon *Understanding and Planning for Capital Transfer Tax* (London: McGraw-Hill Book Co., 1980).

The fifth edition

The fifth edition was published late last year. It is the first edition the production of which has not been directed by Barry McCutcheon. To what extent does the book live up to the high standards of its predecessors?

Clear, logical and comprehensive

The fifth edition maintains the clear and logical structure of previous editions. Starting with an overview of the structure of the tax, the book deals first with the main charging provisions (inter vivos and on death) and then the special charging provisions applying to settled property, before moving on to such specialist subjects as valuation, liabilities and revaluation reliefs, business, agricultural and woodlands relief, heritage property, partnerships and administration. The book concludes by considering the international dimension, ending with a final and extremely useful chapter on aspects of international estate planning. This final chapter includes an analysis of forced heirship provisions and matrimonial property regimes. Particularly enlightening is its discussion of the nature of a Foundation. It notes the growing number of offshore jurisdictions, including Jersey, which have introduced Foundations into their laws.

Heritage property

Chapter 27 on heritage property is a model of clear exposition in a complicated field. It is illustrative of the book's comprehensiveness and willingness to engage with difficult issues that it explains the significance for IHT and CGT purposes of deciding whether or not an object is a fixture and therefore part of a building and that it goes on to illustrate the bizarre conclusions which the courts can reach in this area by reference to the unreported case of *Harborough County Council v Lord Hazelrigg*.³ The chapter notes the inadequacy of HMRC's guidance in this area but is perhaps too gentle in dealing with the withdrawal, by HMRC, of IR67 for a period of years, accompanied by a vague statement of intention that an updated version will be published at some point in the future.

Insurance policies

No book is perfect and the coverage of insurance policies is rather disappointing. Insurance forms an element in virtually all IHT planning and much of the more sophisticated tax planning is economic for those who are merely prosperous rather than rich only if insurance policies are used. There is a general lack of understanding of such products. They are designed to be simple in appearance but their simplicity is deceptive. They raise technical questions of the greatest

³ See, N.E. Palmer and A.M. Hudson, *Art, Antiquity and Law*, (2000).

difficulty. The book's analysis of the IHT aspects of insurance policies is probably better than is available in other IHT guides, but it is still far too scanty. It is particularly disappointing to find so little discussion of insurance policies in relation to the reservation of benefit provisions where identifying the property which is the subject of a gift is so important. In relation to gifts and loan trusts, for example, the book cites HMRC's view of the arrangements as if that view were authoritative in itself. Discounted gift schemes are only cursorily described and more space is given to HMRC's apparent view of such schemes than to analysing their actual IHT consequences.

Settled property and other topics

By contrast, the book's description of the IHT treatment of settled property is admirable in its scope and in its willingness to engage with difficult questions of construction. The authors are happy to criticise HMRC's view that separate funds established under a Will or deed that are held on separate trusts necessarily constitute separate settlements, noting that:

“... Budget Note 25 which preceded the FA 2006 changes suggests that in HMRC's view each disposition of property represents a separate settlement. However, practitioners consider that this view is incorrect as a matter of Trust Law and, in the authors' view, also as a matter of Tax Law: in particular, s.43(2) envisages the creation of a single settlement by 'dispositions'.”

Close companies, APR and BPR

The coverage of close companies is similarly thorough, as is its treatment of Agricultural and Business Property Reliefs although its discussion of the case law on APR on farmhouses is perhaps too compressed to provide a non-specialist with a clear exposition of the subject or the specialist with a useful guide through its conceptual difficulties.

Recommended to the practitioner

Even at £235, I would thoroughly recommend this book to any practitioner who deals with IHT. The non-specialist will find no clearer exposition of the structure of the tax; the specialist will find a textbook which engages with difficult areas of construction. It is a reference book which will be of constant use in any technical library. It is large (over 1,200 pages) but it is handsomely produced and easily handled. It is often a temptation for tax publishers, faced with the need of keeping practitioner texts up to date, to use a looseleaf or database format for established texts such as this which can affect the quality and level of discussion in the publication. It is hoped that the publishers will resist the temptation in

this case. What is suggested for future editions, however, (until the advent of digital readers has transformed the way in which we read) is that the text is also made available to purchasers of the book on CD-ROM to facilitate searching. A manual index is no longer sufficient.

Withers LLP, Aparna Nathan and Marika Lemos are to be congratulated on maintaining the high standards of previous editions. The work remains, in this edition, the foremost practitioner's text on IHT.