

# Book Reviews

## McKie & Co

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James Kessler QC, *The Taxation of Non-Residents and Foreign Domiciliaries 2012/13*, 11th edn (Oxford: Key Haven Publications Ltd, 2012).

Emma Chamberlain and Chris Whitehouse, *Trust Taxation*, 3rd edn (London: Sweet & Maxwell, 2011).

The nearest thing to professional immortality is to write a legal text book which establishes itself as an authority in the field of law with which it deals. The names of Treitel, Chitty and Archbold will always be remembered with reverence, if not necessarily with fondness, by generations of those who have been law students. I remember being thrilled as a young man when I met Mr Sims of *Sergeant and Sims*, at an Addington Society Dinner and, also, the disappointment of a young lady who worked for me when she discovered that the volumes in my office of *Simon's Taxes* were not written by me.

As King Solomon might have said: "of making many tax books there is no end", but very few manage to establish themselves as authorities. Both of these two works have established themselves as pre-eminent works in the areas of revenue law with which they deal. Both were first written relatively recently. *The Taxation of Non-Residents and Foreign Domiciliaries* has now reached its 11th edition whereas *Trust Taxation* is younger and is only in its 3rd edition. Both have the advantage of being written by their original authors. Good works on taxation do more than merely paraphrase the relevant statute law and cite all of the relevant cases. They dissect the relevant legislation and cases, discuss alternative constructions and highlight the practical implications of the legislation. As new authors take over responsibility for established works, however, because of the ever-increasing volume of primary, secondary and tertiary legislation, the development of new case law and the proliferation of Revenue "Guidance", there is a tendency for standard works to become arthritic, concentrating on the basic task of ensuring that their coverage of legislation and case law is comprehensive but losing in the process depth of analysis and practical application.

Neither of these works is showing signs of the onset of this form of arthritis. They engage with difficult issues of analysis and identify their practical application. So for example Ch.43 of *Trust Taxation* contains an analysis of various Inheritance Tax strategies involving the home which were widely used in the past and which continue to be of relevance because many taxpayers will still have such structures in place. The discussion of the home loan, or double trust, scheme is particularly useful in its evaluation of HMRC's arguments and of the practical steps which may now be taken by those who have implemented the schemes in the past.

Similarly James Kessler's book, after giving a concise summary of the law of domicile, has an illuminating discussion of the function of domicile in UK taxation and of some of the policy considerations which will affect the probability of future changes in the law.

One of the difficulties with which modern commentators have to contend is that so much of the material published by the Government on tax legislation is designed to obfuscate or mislead rather than to enlighten. Kessler does not burden the reader with his own views where they are not relevant but he does carefully

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distinguish HMRC statements which are useful from those which may mislead. In discussing the investment relief for remittance basis users conferred by ITA 2007 ss.809VA–809VO, for example, he gives the aims of the reform which were announced in 2011 and comments:

“It is melancholy to compare the aspiration expressed ... with the achievement in the 17 dense pages of legislation. The rules are complex, restrictive, and ... contain many uncertainties ...”

He then goes on to draw the lesson for practice:

“All else being equal, a remittance basis taxpayer will not wish to rely on this relief to invest in the UK, either directly or indirectly through trusts and companies, as investment elsewhere avoids the burden of the rules ...”

So both books are not merely comprehensive, but they are certainly that. *Trust Taxation* runs to over 1,600 pages which seems almost lightweight compared to the 3,000 pages of James Kessler’s work.

*Trust Taxation* begins by considering the nature of a trust, the categorisation of foreign entities, the residence and domicile status of individuals, the residence status of trustees and companies and the taxation of non-residents and foreign domiciliaries. It then covers in great detail the application of each of the three major direct taxes, Income Tax, Capital Gains Tax and Inheritance Tax and goes on to consider a number of specialist topics including reverter to settlor trusts, tax efficient Will drafting, deeds of variation, disclaimers and pilot trusts. This part includes a consideration of life policies and other insurance products held in trust although, considering the importance of insurance to trustees and of trusts to insurance based tax planning, the treatment is rather slight. Finally, it provides, in three appendices, a number of useful precedents, various HMRC material and a particularly helpful series of illustrative computations.

The structure of James Kessler’s book is rather less obvious but it is at least equally comprehensive. Volume One starts by reviewing domicile, residence, treaty residence, years of departure and arrival, exit charges and temporary non-residence. This is followed by a substantial explanation of the remittance basis. There follows a detailed examination of the taxation of difference classes of income, which straddles the end of Volume One and the beginning of Volume Two, and then of the income taxation of trusts (of course, from their different angles of approach the two books examine many of the same topics because they are relevant to the subjects of both). This leads to the taxation of settlor interested trusts and, perhaps by a process of association, to the transfer of assets abroad provisions. From there we move to the taxation of various sorts of investments, life policies and offshore funds and so to deeply discounted securities and unit trusts. The final part of Volume Two considers a number of disparate topics and contains a, very short, treatment of National Insurance contributions and then begins a consideration of Capital Gains Tax which is continued in Volume Three. From there we move to Double Taxation Relief and EU law, to a detailed consideration of Inheritance Tax and then to the taxation of the estates of deceased persons before the main body of the work concludes with a consideration of concepts of importance across the taxes; identifying the settlor, the situs of assets, the meaning of “control”, “connected”, “close” and related expressions, of “permanent establishment”, “branch” and “agency” and a consideration of disclosure and compliance.

Six appendices consider other more specialised and limited topics including a very useful appendix on the construction of deeming provisions.

In spite of the fact that it has doubled in size since the first edition, *Trust Taxation* is still published in one volume. The three massive volumes of Kessler’s book make it rather difficult to handle. The publication of practitioner texts in a hardback format is becoming unusual for texts of this size. Most such texts now seem to be a database form where they can be updated at short intervals. The authors are correct to resist the temptation to do this. The value of their books is in their analysis. It is very much more difficult to regularly update analysis than it is summaries and authorities. One very useful feature of the Kessler

volume is, however, that the purchaser also receives access to the text online allowing him to search it. A similar facility for the *Trust Taxation* book would be useful.

Both works are major achievements. They will ensure their authors, and authoress, a place in the nearest thing tax practitioners have to the hall of the immortals. Every practitioner dealing in the areas of tax which they cover would be well advised to have copies on his shelves. They are monuments to the deep and practical learning of their authors.