

BOOK REVIEW

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**Book: Taxation of Foreign Domiciliaries, 4th edition 2005
by James Kessler QC**

If only more practitioners would buy this book! It would help them to appreciate the real depth of this area of tax law and clear up the many common misconceptions relating to the taxation of foreign domiciliaries that lead to clients being under-planned and exposed to unnecessary tax burdens.

Examples of the common misconceptions are legion, but here are a few to illustrate the problem.

“File a Dom1 and keep all your income offshore”.

“Buy a burial plot that will maintain your Foreign Domicile forever”.

“Speak to your bank; you just need separate accounts for capital and income offshore.”

These are all examples of the advice that I regularly see.

Investing in this book, would also give practitioners a clearer view of the complexity that a seemingly simple issue can have for a foreign domiciliary; and demonstrate that careful research and thought will almost always produce a planning solution.

This book is a comprehensive treatise on the subject matter, where some of the most complicated issues facing the practitioner with clients who are foreign domiciliaries are addressed in an incisive and crisp manner.

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It is also an ideal reference book for general practitioners to delve into and arrive at an understanding of the issues involved, even if they then have to confirm their thoughts with a specialist.

Broken down into 40 chapters the basic, as well as the complex are dealt with, all with the author's elegant commentary and impeccably referenced to the relevant statutes and case law.

The burial plot issue is dealt with in Chapter 2 on domicile.

The remittance basis, (often a key to much basic planning) is dealt with in detail in Chapter 6 under its new tax law classification of "Relevant Foreign Income."

For me each chapter represents the start of a journey towards researching and resolving clients' planning issues.

On many occasions, apart from reading the relevant statute and the case law, the answer is clearly encapsulated in the detailed chapter, along with a planning tip.

Nowhere, is this more apt, than the opaque and testing issues of Section 739 and Section 740 ICTA 1988.

Section 739 ICTA has been on the statute books in some form since 1936 and the case law is still evolving.

Section 739, along with its sister Section 740 still seem to catch many practitioners totally unawares and a careful and detailed study of Chapters 12 to 17 could really pay dividends.

Those chapters deal with this knotty area by breaking down the statutory language and dealing with it piece by piece; as well reviewing the case law and giving practical situations and examples, and of course some possible solutions.

The need to appreciate the impact of these Sections is all the more important in the light of the new measures proposed in the December 5th 2005 Pre-Budget Report.

Although, the outcome of the Government's review into this area is as yet unknown. There have been several recent developments, demonstrating that the scope for planning for foreign domiciliaries in certain areas is being narrowed. So, practitioners need to be aware of these developments and the alternatives or risks involved for clients in carrying them out.

HMRC's change of position on dual contracts revealed in the Tax Bulletin 76 is helpfully dealt with in Chapter 8 on Employment Income.

No doubt this issue will be a developing one, as those with larger remunerations packages employed in financial institutions and multinationals test HMRC's resolve in this area.: They are in my view the clearly the intended targets.

Another targeted measure is against a favourite remedial planning technique; converting UK shares to bearer shares prior to a sale of a UK incorporated limited company.

This is covered comprehensively in Chapter 39.

Many clients were being offered this planning (just before sale) in order to avoid all UK capital gains tax and it was probably costing the Treasury significant amounts from the sale of property investment companies. The irony is that with good planning at the outset (as the chapter explains), a foreign domiciliary can take steps to avoid all UK capital gains tax, even after the introduction of these measures.

There is also huge impact of the Pre-Owned Asset Tax ('POAT') for inheritance tax. This is covered in the usual comprehensive way in Chapter 35 and now needs to be considered by practitioners in so many trust and gift planning situations for foreign domiciliaries.

It is to the author's credit that he has seen scope for further elucidation even in such a thorough and comprehensive work as this.

This is shown most clearly in Chapter 3 dealing with residence of individuals.

Far clearer and accurate than HMRC's own outdated IR20 that many practitioners like to rely on. It is arguably of use not just for foreign domiciliaries, but for anyone advising clients becoming resident or non-resident in the UK.

Careful reading of this chapter can give them a unique insight into the issues and planning possibilities.

There is just one slight omission, (where the author's views would have been welcome) and that is the Special Commissioners case of *Shepherd v HMRC 2005* (whose judgment may have come just too late for inclusion). Buying the book, just for this chapter and its related Chapter 5, year of arrival and departure would in my view make sense on its own.

There are endless gems in other chapters, such a Chapter 34 on the family home and its chattels, where several planning solutions are evaluated as well as illustrating the pitfalls of others.

Practitioners with any foreign domiciliary clients, or just clients coming to or leaving the UK should acquire this book. It's an invaluable reference work to keep on their desk.

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