

POTTER & MONROE TAX PLANNING WITH PRECEDENTS, 6th Edition.
By D.A. SHIRLEY and STEPHEN J.L. OLIVER. [London: Sweet & Maxwell. 1970. xxxix + 473 + 11 (index) pp.]

The appearance of the 6th edition of this book within a period of only sixteen years is some indication of the state of flux and constantly changing tax laws. The growing number of books based on precedents with a view to tax avoidance, particularly within Britain, indicates a trend towards the American preoccupation with tax avoidance. The constant 'cat and mouse' exercises between tax planners and the United Kingdom Revenue Department are well worth watching, particularly when there is a tendency for the Malaysian and Singapore legislators to adopt English statutory provisions.

However, the immediate relevance of such a book in the Malaysian-Singapore context is rather limited. The 6th edition is based on the radical amendments in the United Kingdom to estate duty law, by the Finance Acts of 1968 and 1969. The Singapore Estate Duty Ordinance (Cap. 162) is based on the United Kingdom Finance Act of 1894. As a consequence, basic provisions of our Ordinance like the five year rule for *inter vivos* gifts and the restrictive definition of property to include only property situated in Singapore, find no treatment in this edition as they are no longer law in the United Kingdom.

Notwithstanding the vital differences, the coverage given to the United Kingdom pre-amendment law, general taxation principles and objectives and case law, provide a three-dimensional approach which is most educative to tax planners and the Revenue Department. The possibilities for tax reform and their implications are thus of some interest to the above persons as well as practising lawyers and tax law students in Malaysia-Singapore, if they are willing to go through this book with great circumspection.

At any rate the precedents provided are not totally irrelevant, particularly when one bears in mind that their avowed function is "to suggest possible lines of approach ... rather than to provide ready-made solutions."

Further, the preliminary questions raised and considered are equally applicable here, in spite of the radical differences between local and the United Kingdom tax laws. An example exists in the tax considerations for service agreements and pension schemes, where the following questions are postulated and considered: "Are the payments made by the employers a deductible expense?; Will the pension be taxable

in the hands of the recipient?; Will a provision presently made for a future pension be treated as taxable emoluments?; If a fund is set up to provide pensions, will the income be exempted from tax?; and Can a tax free gratuity be paid to a retiring employee?" All these considerations fall to be answered universally and the notes appended to them are helpful as guidelines.

The book covers a wide scope ranging from family settlements to insurance policies, partnerships and service agreements. It has perhaps deliberately omitted any detailed references to private companies as this has been adequately dealt with in Sweet & Maxwell's other publication by David R. Stamford: *Tax Planning and the Family Company* (1964) 2nd Edition.

The whole concept of tax planning is perhaps based on the following premise:

"No one is bound to leave his property at the mercy of the Revenue authorities if he can legally escape their grasp" Per L. MacNaghten in *Stamp Duty Commissioners v. Byrnes* (1911) A.C. 386 at p. 392.

However, there are inherent limitations to the use of precedents and indeed any form of language which aims at achieving favourable legal results. Thus the authors have perhaps unwisely omitted the following caveat of Martin B in *Limmer Asphalte Paving Co. v. I.R.C.* (1872) L.R. 7 Ex. 211 at p. 214-215.

"In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even though they may have believed that its effect and operation was to create a security mentioned in the Stamp Act, and they so declare."

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