

THE TAXATION OF CHARITIES, 7th edition, 2009

By James Kessler QC and Harriet Brown

Reviewed by Alexander Erskine, Trust Quarterly Review Vol 8 Issue 2, 2010

I recently heard of a Conference with Counsel at which Counsel sought to excuse egregiously incorrect advice on the basis that the relevant book by James Kessler QC had not covered the point. Clearly, works by James Kessler QC are regarded as being particularly thorough, and *The Taxation of Charities 7th edition* is no exception.

The book generally

The object of the book is stated to be, as previously, "to discuss as thoroughly as possible the law and practical problems faced by charities and donors to charity". The book achieves its aims – it is meticulous in examining the means through which charities may be taxed and the authors exhibit a clear and detailed understanding of charity law as well as taxation law.

Each chapter deals thoroughly and clearly with its subject matter. Most chapters, such as chapters seven and eight on charity trading, are particularly clear as well as approachable to those with a limited tax background, whilst some chapters (such as chapter 12 on charities extracting money from owned or part-owned companies) are aimed more at tax practitioners. The book is consequently useful to a broad cross-section of readers.

The layout of each chapter is generally logical and easy to follow, although one or two sections would benefit from more of an introduction. For instance, the discussion of the substantial donor rules (in chapter 4) might have benefitted from a brief paragraph explaining the significance of the rules before listing the categories of transactions caught by them.

The book also covers international issues. Chapter 14's analysis of the position under double taxation treaties is particularly useful when preparing advice for offshore clients. Whilst thorough, the authors also set sensible limitations, for instance only dealing with VAT as it affects charity fund raising (chapter 5).

The discussion of practical problems is perceptive, detailed and helpful, often providing useful and clever suggestions for dealing with such difficulties. For instance, the authors offer sensible means for charities to ensure that trading income is exempt (chapter 5) and that Gift Aid applies to donations (chapter 15).

As with previous editions there is often lengthy citation of statute, Her Majesty's Customs and Revenue (HMRC)/Charity Commission Guidance, Statements of Practice etc. which sometimes lends to the work the appearance more of a sourcebook rather than a textbook. The authors have carefully chosen, cropped and ordered the passages so as to describe the law accurately, and providing clear discussion thereof. In many cases the authors correct the relevant Guidance. The latest edition maintains the entertaining tradition of acerbic remarks at HMRC's expense.

Changes to the latest edition

This latest edition, now co-written with Harriet Brown, has been substantially supplemented and updated. The Tax Law Rewrite is reflected and there is excellent discussion of recent cases. The coverage of *Persche v Finanzamt Lüdenscheid*, for example, sets out clearly and in detail the basis of the ECJ's decision and highlights how we can soon expect UK law formally to recognise charities located elsewhere in the EU on an equal footing for tax relief purposes.

Other changes and additions include new discussion of possible areas of reform and the mention of more academic points. There is, for instance, lengthy coverage of the 2008 consultation paper on

substantial donors in chapter 4, which chapter also now benefits from Fred Schwed Jr's colourful explanation of the difference between investment and speculation. These additions complement the book's readability.

Chapters 30 and 31 are new. The latter deals with rating relief whilst the former details the parallel regime of reliefs in respect of Community Amateur Sports Clubs, also explaining clearly the relative benefits and disadvantages of this regime and when it will be preferable to avoid this regime and to qualify for general charity reliefs instead.

There are now two chapters, rather than one, which deal with the tax position on testamentary donations – one chapter dealing with capital gains tax and the other dealing with income tax (chapters 32 and 33 respectively). Consequently the chapters have added detail (particularly in relation to income tax), are more focused than previously and are more user-friendly.

The latest edition offers an online facility which allows owners of the book, amongst other things, to check for updates and to contribute to the book.

Conclusion

This book is of immense assistance to anyone advising charities. The changes to the latest edition further justify this conclusion.