

**BOOK REVIEW: “THE SAVING OF INCOME TAX, SURTAX  
AND DEATH DUTIES” BY JASPER MORE<sup>1</sup>**

**Philip Baker**

I first encountered Jasper More in the Public Records Office in Kew in 1997. It was not a very auspicious meeting. I had gone to the PRO to carry out some historical research in connection with the *Willoughby* case<sup>2</sup> which was at the time proceeding to the House of Lords. One of the issues in that case was whether what is now s.739 of the Taxes Act applied to transfers made by a person not ordinarily resident at the time of the transfer (but who subsequently becomes ordinarily resident in the UK). On that issue, there had been some statements made in Parliament when the legislation was first introduced in 1936 by the then Financial Secretary to the Treasury to the effect that the legislation did not apply to transfers by non-residents.<sup>3</sup> Despite these statements, the Inland Revenue had subsequently come to apply the provisions where the transferor had been non-resident. I wanted to check whether the statements made by the Financial Secretary were supported by any historical documentation which showed that this was the intention of the Government, or whether the comments were simply made off the cuff by the Financial Secretary.<sup>4</sup>

In the course of the research, I looked at what are sometimes referred to as the “Pocket Hansard Volumes” and sometimes as the “Board Volumes” on the Finance Bill 1936. These wonderful bound volumes contain a wealth of information about the enactment of each section of the annual Finance Act. One volume sets out, clause by clause, all the material relating to the passage of that clause through Parliament. A second volume contains the background documentation explaining why that particular clause was introduced in the first place.

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<sup>1</sup> First edition, Butterworths & Co, London 1935, second edition, 1937.

<sup>2</sup> [1997] STC 995.

<sup>3</sup> These are cited in [1995] STC 143 at 161.

<sup>4</sup> Several documents confirm that it had indeed been the intention of the Government not to apply the original legislation to transfers made by non-residents.

In the background documentation to what became s.18 Finance Act 1936, I found a fascinating document dating, I believe from late 1935 or early 1936.<sup>5</sup> This was the originating document for, amongst other things, the anti-avoidance settlement provisions and for s.739. This document introduced me for the first time to Jasper More. The document bears quoting quite extensively for its own historical value (the relevant parts of the document are set out at Appendix 1 to this article).

It was the reference to a young barrister, Mr. Jasper More, on page 4 of this document, which particularly caught my attention. Members of the Revenue Bar tend to live long and practise well beyond the point where other barristers have gone on the bench or retired.<sup>6</sup> If Jasper More was practising in the late 1930s, I would have expected to come across his name in cases from the 50s or even 60s. However, the name meant nothing to me at the time. I asked some of my colleagues in Chambers, whose collective memory stretches back several hundred years, and no-one recognised the name. What had become of Jasper More? Had this negative comment in the memorandum to the Chancellor of the Exchequer (albeit in a private document) blighted his career for ever? I was intrigued and wanted to discover further information.

My starting point was the book referred to in the memorandum that I had found. I had the title to the book and the name of its author, and a relatively simple search in the catalogue of the Institute of Advanced Legal Studies disclosed that they had a copy of both the first edition and the second edition: no further editions after the second edition of 1937 were published. A trip to the Institute, and a request for a copy to come from the Depository, allowed me to see the impugned text.

Those who know me, particularly those who have ever asked me to write a book review, will not be at all surprised that I am now

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<sup>5</sup> The document is found at PRO IR 63/141, pp. 24 et seq.

<sup>6</sup> Heyworth Talbot, in his time the doyen of the tax bar, practised well into his 80s.

proposing a book review of a book published in 1935.<sup>7</sup> It is only surprising that I am now getting round to writing the book review only some 69 years after the book was published.

The frontispiece book shows that Jasper More was a barrister of both the Middle Temple and of Lincoln's Inn, and that he won the Blackstone Prize in equity in 1930. In July 1935, when he signed off on the text, Jasper More was a tenant at 8 Old Square, Lincoln's Inn.

The book contains a foreword by Lord Decies, the director of the Income Tax Payers' Society. That foreword indicates that no similar book on the subject of the saving of income tax, surtax and death duties had previously been published. Jasper More's book supplied a "long-felt want". The foreword ends with the following:

"In conclusion I may say that the taxpayer will not in any way lay himself open to the charge of having acted dishonestly if he adopts any of the numerous schemes so clearly explained in this book.

I wish Mr. Jasper More every success in his undertaking."

The book is notable in a number of respects.

First - and something which struck me as soon as I began to read it - was that the book has copious references to decided cases and statute. However, the book has no bibliography and absolutely no references whatsoever to any other secondary sources. Either the author read no secondary sources when preparing the text, or if he read any of them he did not feel it necessary to cite those sources, or there simply were no secondary sources in existence at that time on what one might broadly term the topic of "tax planning". In discussion with one or two colleagues, it has been suggested that there were, perhaps, some earlier books considering the approach to tax planning, and that there may have been short articles in professional journals of the day, such as journals published for

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<sup>7</sup> I am not certain if there were any book reviews published at the time of the original publication: that would be an interesting topic for further research.

accountants.<sup>8</sup> On the face of it, at least, every idea contained in the book was the original conception of Jasper More, basing himself simply on the legislation, decided cases, and practice commonly known in Lincoln's Inn at the time.

The second point which struck me about the book was that a number of the "schemes" which he discussed for the saving of income tax, surtax and death duties are still with us today, though often subsequent legislation (perhaps prompted by the publication of the book and a detailed reading of it within the confines of the Inland Revenue) has restricted the scope of the schemes or made their implementation more complex. There are obviously topics not discussed in the book – capital gains tax planning, accumulation and maintenance settlements, use of tax treaties, even taxation of the family, for example – and some of the chapter headings would now be redundant. However, there is a remarkable element of familiarity when one reads some of the chapter headings.

(The contents list of the book, with the chapter headings, is attached as Appendix 2 to this article)

The third point which struck me on reading the book was how clearly it was written. The background in the tax legislation and case law, and the possibilities for tax mitigation, are clearly explained and illustrated by examples, the details of the implementation of each scheme are explained, and some indication is given of the costs involved.

The first three chapters of the book explain the general background in terms of the law of income tax and surtax and of death duties. In particular, it highlights the fundamental bases on which much of the tax planning is posited: the fact that surtax only applied to individuals; the limitations of death duties only to certain assets in the UK and to gifts made on death or prior to death, for example.

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<sup>8</sup> Another interesting avenue of further research would be to see the context in which this book was written, and whether the ideas contained in the book were truly original to the author or had previously been discussed in other secondary texts.

The main core of the book is found in Chapters 4 to 13 and the discussion of "practical schemes of tax saving".

Chapter 4 on "Covenants for payment of income" comes as no surprise to anyone who practised UK tax law before the late 1980s (or even practises now, for that matter). The covenants which he discusses are primarily covenants to give income to the covenantor's child. There is, however, at page 28 a rather coy reference: "a scheme of this kind can even be made use of for the payment of salaries of employees." The footnote makes a reference to a certain Duke of Westminster<sup>9</sup> case.

Gifts and settlements are explained both in terms of their income tax/surtax and death duty advantages. This is all relatively standard advice, explaining how outright gifts or gifts into settlements could mitigate the tax liability both of the donor/settlor and of the beneficiary.

The chapter on discretionary trusts is quite short, and focuses on the added death duty advantages.

Chapter 7 on "estate companies" is probably something that is a little strange to the tax advisor of the 21<sup>st</sup> Century. Essentially, these are companies incorporated to take over the ownership and management of large agricultural estates. Again, there were surtax and possibly death duties advantages in so doing.

Chapter 8 on "holding companies" suggests something quite different from what we would presently understand by the term. What is proposed here is the use of a holding company which is placed into "permanent liquidation". By making distributions to the shareholders on liquidation, it is suggested that surtax on distributions to shareholders can be avoided.

"Bonus shares" in chapter 9 takes advantage of the pre-capital gains tax days when, if a shareholder was prepared to receive bonus

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<sup>9</sup> (1935) 14 ATC 77.

shares rather than a dividend, those shares could be subsequently sold for a tax-free capital gain.

The chapter on “investment in foreign lands” relies entirely on the fact that British estate duty was not payable on freehold or leasehold land situated outside Great Britain. The chapter points out, of course, that the land must be purchased in a territory that has a lower estate duty than that applicable in the UK.

Chapter 11 on “companies controlled abroad” is, of course, written in the pre-s.739 Taxes Act days. Income accruing to a company controlled abroad would not be attributed for tax purposes to the UK shareholder. There is an interesting discussion of central management and control as a concept for determining residence. The territory primarily identified as ideal for this purpose is not one that would immediately jump to the mind of the 21<sup>st</sup> Century tax practitioner: it is the Dominion of Canada which is recommended for this purpose.

Interestingly, in the pre-capital gains tax days, “foreign settlements” are recommended in chapter 12 for their potential to save British estate duty. The key element here was that the settlement had to have its forum of administration outside Great Britain to fall outside of estate duty. The discussion considers the establishment of settlements in New York or in Hong Kong.

Finally, chapter 13 on “foreign residence and foreign domicile” explains the tax consequences that might flow if an individual became resident outside the UK or was not domiciled in any part of the United Kingdom. The discussion in that chapter is remarkably similar to any discussion one might find today (with the possible exception that there is no discussion of the impact of tax treaties). There is a discussion of the domestic case law on the determination of individual residence, a discussion of the general rules on domicile, and a brief explanation of the remittance basis of taxation.

The last six chapters of the book do not offer particular schemes, but rather elaborate on some of the schemes in the first

part and might be regarded as something more of a discussion of strategic planning. Chapter 14 on persons resident and domiciled abroad explains the advantages and disadvantages of this status. The chapter on "English landowners" elaborates on the scheme of using estate companies. Chapter 16 on "insurance" is quite familiar in part as it explains life insurance as an investment medium. It also discusses the use of insurance policies as a way of making provision for the payment of estate duty. There are brief chapters on the accumulation of income and the provision of annuities: the latter largely explaining how the capital element in annuities is free from tax. Finally, there is a short chapter on the drafting of wills in the context of estate duty, legacy duty and succession duty.

Looking back at the book after almost 70 years from the time that it was written, several general comments come to mind.

First, many of the "schemes" described in the book would now be regarded as fairly standard, rather mild, tax mitigation: covenants to charity; gifts inter vivos and into settlement; even the tax planning for non-domiciled individuals would be regarded as fairly standard. The fact that this book provoked the reaction that is seen in the memorandum that I quoted at the beginning of this article (and which first pointed me in the direction of Jasper More and the book) shows one continuum: advice on tax mitigation will never be welcomed by the tax-collecting authorities, and they will have a tendency to over-react (particularly when they are being called upon to increase tax collections, whether it is to fight a war in Europe or supposedly to fight a war against terrorism).

My second comment is a more personal one, though I think many others would agree with it. It seems to me that what Jasper More was doing was fulfilling a task, which is the perfectly reasonable and appropriate task for tax advisors at all times and in all places. That is, he is identifying perfectly legitimate means of tax mitigation, pointing out the advantages, disadvantages and costs involved in adopting a particular route of tax mitigation, and highlighting in particular any pitfalls that need to be avoided by someone who decides to follow that particular scheme. Nowhere in the book is there any suggestion that any of the schemes rely upon

some particular loophole in the legislation which the draftsman failed to spot. Rather, most of the schemes take advantage – if that is the correct term – of general limits on the scope of surtax or death duties and the possibility of the potential taxpayer to benefit from those exclusions from tax. In terms of Lord Nolan in the *Willoughby* case<sup>10</sup>, Jasper More is simply pointing towards certain indications of freedom from tax which the legislature has presented.

It goes without saying that Jasper More assumes full disclosure of all facts to the revenue authorities and impliedly accepts that the revenue authorities would be capable at any point in time of legislating to change the law to counter some of these schemes. In some cases – covenants for children, companies resident abroad – the legislature responded quite soon after the book was published to deal with these situations.

So what became of Jasper More himself? For a long time I did not know the answer to that question. The book only appeared in two, pre-Second World War editions. The catalogue of the Institute of Advanced Legal Studies revealed no other legal books written by him. A search of the Tax Cases revealed no litigation in which Jasper More appeared after the Second World War. For a long time, I assumed that he might well have served and been killed during that conflict, and that his name would probably appear in the Book of Remembrance in Lincoln's Inn. Then, having an odd free moment in Chambers, I recalled that the frontispiece showed that he had been called to the Bar by both Middle Temple and Lincoln's Inn. Perhaps the archivists of those Inns might have some record of his subsequent career. A few telephone calls were remarkably productive.

The archivist and assistant librarian at Lincoln's Inn supplied some details.<sup>11</sup> Jasper More was admitted as a student of Lincoln's Inn on 19<sup>th</sup> November 1927. He joined Chambers at 19 Old Buildings in 1933 and moved to 8 Old Square in 1936 (in fact,

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<sup>10</sup> *Supra.*, at p. 1004 c.

<sup>11</sup> I am particularly grateful to Mrs Frances Bellis, Assistant Librarian at Lincoln's Inn, for the information that she supplied me.



probably 1935 based upon his introduction to the book). He stayed there until the war broke out in 1939. He was knighted in 1979. He died on 28<sup>th</sup> October 1987. They were further able to tell me that Jasper More's father was Thomas Jasper Mytten More and that he was an HM Inspector with the Education Board. Jasper More came from Ben Rhydding in Yorkshire and his father was a JP and had been awarded an OBE.

Neither Lincoln's nor Middle had any information about Jasper More after the outbreak of the Second World War.

However, the librarian at Middle Temple was able to add one more key detail. Jasper More had been educated at King's College Cambridge before coming to the Bar.

A phone call to the archivist at King's College Library struck gold.<sup>12</sup> They were able to confirm that Jasper More had studied at King's College and were able to send me a copy of his obituary from the college magazine.

The obituary from the King's College magazine finally resolved all my queries about what had become of Jasper More.

Jasper More's mother was the daughter of the 5<sup>th</sup> Marquis of Sligo. She married Thomas Jasper Mytten More against the wishes of her father, who wrote to his prospective son-in-law saying "your financial position causes me anxiety...Everyone who has an account at the Bank should always have some money there". The More family, having been Shropshire landowners, had fallen on hard times and Jasper's father had to take the appointment as an Inspector of Schools to earn his income.

Jasper was born in London on 31<sup>st</sup> July 1907 and won a scholarship to Eton and then up to King's where he read history, obtaining a first in Part I and a second of Part II of the Tripos. At

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<sup>12</sup> I am extremely grateful to the archivist and the archivist's assistant, Dorothea Sartam, at King's College for the information she sent me and also for sending me the obituary of Jasper More.

King's he rode in the college boats and is remembered for, amongst other matters, having cross-examined Lytton Strachey as to whether he (Strachey) believed in hell.

The King's College obituary goes on to say that Jasper was called to the Bar where, "at no surprise to his friends, he quickly became an expert in the advantageous management of taxation. Unlike his later books, *The Saving of Income Tax, Surtax and Death Duties* (1935) does not seem to have been presented to the College Library."

Jasper More's legal career stopped at the outset of the Second World War. He served in the Ministry of Economic Warfare, and then in the Ministry of Aircraft Production and Light Metals Control until 1942. In 1943 he was commissioned as a legal officer in the army, and was posted to Italy from 1943 to 1945 and then to the military government in the Dodeconese in 1946.

In 1944, he married Clare Hope-Edwards, also from Shropshire, who was a substantial Shropshire landowner in her own right. He never returned after the war to the Bar. Instead, he followed the family traditions as a landowner, farmer and county squire. On the death of the occupying tenant, Jasper and Clare More occupied Lindley Hall, which was the More family's historical home. He then settled down as a local landowner, becoming a JP, County Councillor, and Deputy Lieutenant of the County.

In 1960 Jasper More was returned to Parliament as a Conservative MP for Ludlow, remaining there until 1979. The King's obituary says this:

"He had no political ambitions, having entered Parliament 'from family habit', and was surprised to be made a junior whip on the grounds of his conscientious attendance in the House and in the mistaken belief that he was a member of White's. In 1970 he was appointed Vice-Chancellor of HM Household, with the duty of reporting Parliamentary goings-on to the Queen. His very individual and perceptive commentaries are said to have caused much amusement in the confidential setting of Buckingham Palace."

Aside from serving as a whip, he never held any government post. He retired from Parliament in 1979. Though this is not said in his obituary, I believe he was one of the "men in grey suits" who brought Margaret Thatcher to the leadership of the Conservative party in 1975. He was knighted in 1979, the year he retired from Parliament.

Sir Jasper More died in October 1987. He had no children. His entry in *Who's Who* for 1988 mentions that he was in practice at the Bar from 1930 to 1939. It also mentions five books that he wrote, including a guide to Italy, a guide to Egypt, and the *Shell Guide to English Villages*. Intriguingly, it makes no reference whatsoever to the two editions of his book on *The Saving of Income Tax, Surtax and Death Duties*. Perhaps that was just one book too many to include in the biography of a Conservative grandee.

So, Sir Jasper More did survive the critical comments in the memorandum to the Chancellor of the Exchequer; he survived his period of practice at the Chancery Bar; he survived the Second World War; and he went on to retire as an establishment figure. I am certain there is a lesson in that somewhere: but I leave it for others to draw out the lesson.

**APPENDIX 1****Document PRO IR 63/141 pp. 24 et seq.****M.560.****Evasion of Taxation**

Income Tax, Sur Tax, Death Duties

**Chancellor of the Exchequer**

1. In July of last year I submitted to you a Report with a view to initiating legislation to combat the avoidance of income tax and sur-tax, in the course of which I suggested that the following forms of evasion, placed in order of their importance to the Revenue, called for immediate consideration:-

	Annual estimated date. £m.	loss at that date.
(a) Foreign Avoidance	2 <sup>3</sup> / <sub>4</sub>	
(b) Settlements and trusts in favour of minor children.	1 <sup>1</sup> / <sub>4</sub>	
(c) British Companies	<sup>3</sup> / <sub>4</sub>	

Following this Report you instructed me to have draft Clauses prepared for your consideration dealing with the problem of avoidance in the foreign sphere and with certain aspects of evasion of estate duty which were also referred to in my Report.

These Clauses were prepared by Parliamentary Counsel and brought to your notice in February of this year.

The Clause dealing with foreign evasion is somewhat formidable and you did not feel able to include it in this year's Finance Bill; and although the suggested legislation as regards estate duty was not so difficult it was decided not to deal with this in advance of the income tax question.

2. Our further experience of the growth of evasion and the intensification of propaganda in its favour makes it necessary to bring the subject again to your notice and to press upon you the urgency of taking some step to check the evil. And while I do not think that it will be practicable to attempt to deal at the same time with the whole range of tax avoidance, I feel bound to suggest that in deciding on immediate measures the question of action should be considered not merely in regard to foreign avoidance but also to certain other methods of evasion.

Since my last Report we estimate that the annual loss of income tax and sur-tax from evasion has increased in the case of

Foreign Avoidance	From £m 2 $\frac{3}{4}$ to £m 3
Settlements and trusts in favour of minor children	From £m 1 $\frac{1}{4}$ to £m 2 and is rapidly increasing.
British Companies	From £m $\frac{3}{4}$ to £m 1 $\frac{1}{4}$

So that on these three headings alone we estimate that the annual loss of tax by evasion has increased in a twelve-month from under £m 5 to over 6 millions.

3. The development of propaganda in favour of evasion has received a notable fillip from the remarks of certain Judges in recent Revenue cases. For example, in the case of the Duke of Westminster and the Commissioners of Inland

Revenue (a flagrant case of evasion) on which the House of Lords delivered judgment on 7 May, 1935, Lord Tomlin said

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“Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be.”

Lord Atkin said –

“It has to be recognised that the subject whether poor and humble or wealthy and noble has the legal right so to dispose of his capital and income as to attract upon himself the least amount of tax.”

Remarks of this kind are at once seized upon and given the widest publicity, by those who make a living out of pushing avoidance schemes, as affording full justification to taxpayers to adopt their schemes. They are used to justify schemes that are legal in form, but are in substance a mere and obvious sham. They are taken as the warrant to use all the forms of law to establish that income does not belong to A, when it is as clear as noon-day that in reality the income is A’s and he has the full use and benefit of it.

One of the touting concerns engaged in this traffic is broadcasting printed slips advocating what they call their tax-economising scheme. These slips begin by quoting the most recent dicta of the Judges saying that taxpayers are entitled to evade Income Tax if they can do so legally and their comment in large type is – “A clearer justification” (for their tax-economising scheme) “has never been made out by the Courts of England”.

They wind up –

“There never was a more attractive means of obtaining ‘Something for Nothing’ from the Inland Revenue officials whose duty it is to ‘search the taxpayers’ pockets’; and those officials admit the Scheme to be

strictly legal and in order. So Why Not? ..... It is not 'Tax Evasion.'" ...

But perhaps the most outrageous evidence of the extent to which avoidance is spreading and is advocated as respectable is the publication last month by well-known law publishers of a book by Mr. Jasper More, a young barrister, which is devoted entirely to the subject of tax evasion. Under the pleasing title "The Saving of Income Tax, Sur Tax and Death Duties", this text book on the art of legal evasion sets out in detail various schemes for tax avoidance, with an explanation of the legal points to be watched to ensure that they will pass muster, of the advantages that will accrue in reduced tax bills, and of the legal costs incurred in carrying them out. There is a foreword by Lord Decies, Director of the Income Tax Payers' Society, commending the book, and saying that it supplies a "long-felt want", will be a "welcome addition to the textbooks in constant use by solicitors, accountants, etc." and should "appeal strongly to the much wider circle of taxpayers who are anxious to protect their income, as well as their capital, from the ever-increasing depredations of the State".

It is obvious that the position has considerable possibilities for public scandal: in the last year or two there have been a few references to the subject in Parliament, but it seems to me that at any time there may arise a strong public demand for action, accompanied by an exposure of the methods that some people employ for the protection of their wealth from the taxation imposed by Parliament.

4. In your minute on my Report of last July you said –

"It is clear that legislation on this subject ought to be undertaken before the extent of the evasion gets much worse".

and I have assumed that the questions to be determined are the time when action should be taken, the extent of the remedial proposals and the method which should be adopted.

There can be no doubt that action should be taken as early as possible, and I imagine that it is easier to deal with a subject of this kind in the earlier than in the later years of a Parliament. I hope it will be possible to introduce legislation in the next Finance Bill.

As to the extent of the proposals, I take it that there can be no question but that foreign evasion must be included and I imagine that the proposals about estate duty may stand, subject to detailed consideration. In view of the developments since my last report I have brought forward again – settlements and trusts in favour of minor children and evasion by means of British companies.

## APPENDIX 2

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