Personal tax planning for South Africans abroad*

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The maturing of the South African society has resulted in a large group of people, educated and trained in a sophisticated economy, who are able to employ their skills worldwide. Many are consequently tempted to move to other areas of the globe to work, to live and to expand their experience and expertise.
In addition, South African businesses are expanding abroad and whereas in the past the posting of a company executive from the United Kingdom or United States of America to South Africa was a fairly regular occurrence, now, the South African executive in the United Kingdom or United States of America is becoming increasingly commonplace.
Whether an emigrant or an executive posted abroad, the "emigré" in the first instance and his/her parents in the second, have to contend with the requirements of South African tax and exchange control as well as the tax, estate duty and exchange control laws of the country to which he is moving.
The purpose of this article is to highlight the problems and outline some of the options available for two of the more obvious countries to which South Aricans gravitate, namely the United Kingdom and United States of America.

South African exchange control

It will be assumed that most practitioners are familiar with this subject and only the very basic rules applicable to emigrants will be dealt with.
When a person wishes to leave South Africa permanently to take up residence in a foreign country, Excon (the South African exchange control authorities) should be advised via an authorized dealer (usually a commercial or merchant bank) and application should be made for a settling-in allowance or a capital transfer allowance which is normally granted on the following basis:
1.1 A maximum of R100 000,00 per family unit (plus travel allowance in respect of each member of the family unit, if not already used during the previous six months).
1.2 A maximum of R50 000,00 per single person emigrating (plus a travel allowance as above).
Provision must be made for all existing liabilities at the proposed date of emigration and no resort to local borrowing may be had to make up the capital transfer allowance.
2 Household effects to the value of R20 000,00 and a motor vehicle of the same value may be exported provided they have been owned by the emigrant for at least one year.
3 Assets which remain in South Africa, are blocked and placed under the control of an authorized dealer (normally the one who processed the capital transfer allowance application). These assets may be used in prescribed ways and invested in approved investments.
4 The full income, less the relevant South African taxes, can be exported.
5 Inheritances up to R100 000,00 per beneficiary can be transferred through normal banking channels and special consent must be obtained for any excess. The income on the excess can be transferred, subject to the relevant South African taxes being deducted. A properly motivated application can be made to Excon for consent to transfer more than R100 000,00.
6 Income accruing to a beneficiary of an *inter vivos* trust formed more than three years before the beneficiary emigrated can be transferred abroad.
Having filled in the necessary forms, having obtained the capital transfer allowance and having secured a flow of income, the prospective emigrant now has the problem of structuring himself to meet the exigencies of the tax laws of the country to which he or she is emigrating.

Assumptions

Assume that the emigrant family is in the following position:
1 A settling-in allowance of R100 000,00 is to be transferred through normal banking channels.
2 Certain assets owned by the emigrant family remain in South Africa as blocked assets, but are income-producing and the income flows to the emigrant by way of normal banking channels subject to the South African taxes levied thereon.
3 The husband and/or wife are beneficiaries of *inter vivos* discretionary trusts and would be entitled to income earned by the trusts and distributed to them, which income would be entitled to flow by way of normal banking channels.
The emigrant family is possessed of capital ie R100 000,00 and a flow of income from South Africa from two sources.

Relocating in the United Kingdom

A person's domicile and residence have a considerable influence on his liability to United Kingdom income tax, capital gains tax and capital transfer tax (a combination of donations tax and estate duty).
An understanding of the concepts of domicile and residence is therefore fundamental to structuring and co-ordinating the emigrant's move to the United Kingdom.

Domicile

Statute law contains no general definition of domicile and its definition has been determined by statements in case law as well as by rules and principles enunciated by legal commentators.
The most widely acknowledged commentary is to be found in the *Conflict of laws* by Dicey and Morris and is known simply as "Dicey's rules".
The more important of Dicey's rules can be summarized as follows:
1 A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home.
2 A person may sometimes be domiciled in a country although he does not currently live there.
3 No person can be without a domicile.
4 No person can at any time have more than one domicile.
5 Every person receives at birth a domicile of origin as follows:
5.1 A legitimate child born during the lifetime of his father has his domicile of origin in the country in which his father was domiciled at the time of the child's birth.
5.2 A legitimate child not born during the lifetime of his father, or an illegitimate child, has his domicile of origin in the country in which his mother was domiciled at the time of his birth.
5.3 A foundling has his domicile of origin in the country in which he was found.
6 The domicile of a dependent person is the same as, and changes with, the domicile of the person on whom the dependent person is legally dependent.
7 An existing domicile is presumed to continue until it is proved that a new domicile has been acquired.

8 Every independent person can acquire a domicile of choice by the combination of residence and the intention of permanent residence but not otherwise.
9 Any circumstance which is evidence of a person's residence or of his intention to reside permanently in a country, must be considered in determining whether he has acquired a domicile of choice in that country.
10 Without prejudice to the generality of the previous rule, in determining whether a person intends to reside permanently in a country, the court may have regard to –
10.1 the motive for which that person has taken up residence there;
10.2 the fact that the residence was not freely chosen;
10.3 the fact that the residence was precarious.
11 A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently, and not otherwise. When a domicile of choice is abandoned either –
11.1 a new domicile of choice is acquired; or
11.2 the domicile of origin revives.
The above stated rules form a useful summary of the basic principles of domicile established in the courts over the years. To understand fully the manner in which the above principles have been applied to particular facts it will be necessary to examine the leading cases in some detail.
To maintain the generality of this particular article an older decision (1850's – *Bell v Kennedy* (LR I Sc)) and a more recent decision (*CIR v Bullock* 1976 STC 409) will be discussed.
The following edited extract of a portion of the judgment of Lord Westbury in *Bell v Kennedy*, where a daughter was endeavouring to show that her father had lost his Jamaican domicile of origin, in favour of a Scottish domicile of choice, and where the court ruled that he had maintained his Jamaican domicile of origin, is both illustrative and instructive:

> "[T]he domicile of origin adheres until a new domicile is acquired . . . residence and domicile are two perfectly distinct things. It is necessary in the administration of the law that the idea of domicile should exist and that the fact of domicile should be ascertained in order to determine which of two municipal laws may be evoked for the purpose of regulating the rights of parties. We know very well that succession and distribution depend upon the law of the domicile. Domicile, therefore, is an idea of law. It is the relation which the laws create between an individual and a particular locality or country. To every adult person the law ascribes a domicile and that domicile remains his fixed attribute until a new and different attribute usurps its place. Now this case was argued on the footing that as soon as Mr Bell left Jamaica, he had a settled and fixed intention of taking up his residence in Scotland and if, indeed, that had been ascertained as a fact, then you would have had the *animus* of the party clearly demonstrated and the *factum* which alone would remain to be proved, or, at least, would result immediately upon his arrival in Scotland.
> "The true enquiry thereof, is – had he the settled purpose, the moment he left Jamaica or in the course of the voyage, of taking up a fixed and settled abode in Scotland? Undoubtedly part of the evidence is the external act of the party; but the only external act we have here is the going down with his wife to Edinburgh, the most natural thing in the world, to visit his wife's relations. We find him residing in Scotland from that time; but with what *animus* or intention his residence continued there we have yet to ascertain. For although residence may be some small *prima facie* proof of domicile it is by no means to be inferred from the fact of residence that domicile results, even although you do not find that the party had any other residence in existence or in contemplation."

Thus the intention of the tax payer is of paramount importance to determining his domicile. His intention must, however, be borne out by the facts as is clearly illustrated in one of the most important decisions of recent years *CIR v Bullock* 1976 STC 409.
Mr Bullock, a Canadian, moved to England in 1932 to join the Royal Air Force and married an English woman in 1946. He continued to reside in England but he made periodic visits to Canada to see his father until his father's death in 1960. By that time Group Captain Bullock had retired from the RAF and the inheritance which he received on his father's death enabled him to give up work altogether in 1960. Had his wife been agreeable to move to Canada at this point Captain Bullock would have done so, but Mrs Bullock refused to move. Meanwhile Group Captain Bullock attempted to persuade his wife to move to Canada but from about 1966 he realized that it was too much to ask of her and he deferred to her wishes and intended to return to Canada if his wife either predeceased him or changed her mind. In about 1962 Mrs Bullock made use of her own money to acquire a bungalow in Dorset and from 1963 the Bullocks occupied the bungalow as their matrimonial home.
In 1966 Group Captain Bullock made a will subject to Nova Scotia law and appointed a Nova Scotia corporation as his executor. The will contained a declaration in the following terms:

> "I hereby confirm that my domicile is and continues to be the province of Nova Scotia . . . to which . . . I intend to return and remain permanently upon my wife's death."

Group Captain Bullock retained his Canadian citizenship and never considered taking United Kingdom nationality.
The Crown claimed that at some time prior to 1971 Group Captain Bullock had acquired a domicile of choice in England. He, however, contended that since he had always intended to return to live in Nova Scotia and would have done so, had it not been for his unwillingness to override his wife's reluctance to live there, and since it was his intention to return to Canada in the event of his wife predeceasing him, he could not be regarded as having abandoned his domicile of origin in Nova Scotia.
It was held in the court of appeal that for Bullock to acquire a domicile of choice in England it was necessary to show that he had intended to make his home in England until the end of his days unless and until something happened to make him change his mind. Bullock's adherence to his Canadian citizenship, his declaration as to his domicile in his will and the possibility that he was as likely to survive his wife as she was to survive him showed that his intention to return to Canada on surviving his wife amounted to a real determination, rather than a vague hope or aspiration. In the circumstances Bullock could not be said to have formed the intention necessary to acquire an English domicile of choice in place of his domicile of origin.
In contrast to the above the case of *CIR v Furse* 1980 STC 596 is instructive. In this case Furse had a domicile of origin in Rhode Island, USA, lived his early life in England and then, after a period of residence in the United States returned to England and lived there with his wife and family. Although they retained a property in America and from time to time considered acquiring other properties there, they continued to live in England. However, Mr Furse always said that when he became incapable of living an active life on his farm in England he would return to America. He died at the age of eighty on his farm in England.
Clearly all the criteria necessary to establish a domicile of choice in England were there but there was the express conditional desire to return to America. The judge felt that the desire was too vague to override the other criteria and he held that Mr Furse died domiciled in England.
From the above it is clear that there are three main categories of domicile:
1 Domicile of origin.
2 Domicile of choice.
3 Domicile of dependency.
For the emigrant therefore to maintain his domicile of origin in South Africa his affairs should be so structured that the facts bear evidence to his state of mind that South Africa is his home and that it is his intention to return thereto.
The following are some of the steps which can be taken so as clearly to illustrate the intention to maintain South African domicile of origin:
1 Maintenance of South African citizenship; in the event of a passport of another country being applied for, application should be made to the Minister of the Interior for the right to continue to hold a South African passport.
2 The continued exercise of political rights in South Africa.
3 The maintenance of a home or alternatively, the purchase or lease of a home in South Africa.
4 The maintenance of a business interest in South Africa.
5 The execution of a will according to the laws of South Africa.
6 The maintenance of membership of clubs and associations in South Africa.

Residence

The terms "residence" and "ordinary residence" are not defined by the United Kingdom Tax Act. They have no special or technical meaning and are to be construed in their ordinary sense (see *Lysaght v IRC* 1928 13 TC 501 on 536).
Residence therefore depends on the facts of each case and it is determined by the individual's presence in a country, his object in being there and his future intention regarding the length of stay. The main criterion is the length of time spent in the country during each tax year. Another important point is whether a "place of abode" is kept in the country.
As the emigrant has clearly stated his intention of "taking up permanent residence" in the United Kingdom and he will readily concede to inland revenue that he is resident in the United Kingdom, no purpose will be served in reviewing here the sections of the Tax Act, 1970, and the case law in regard to when a person is considered to be resident in the United Kingdom.

Tax status

Provided, therefore, that South Africa is the domicile of origin of the emigrants and that they continue to maintain close ties with South Africa as set out above, they will retain their domicile of origin and, in terms of United Kingdom tax laws, would therefore be deemed to be *non-domiciled residents of the United Kingdom*.
This status brings about very definite tax advantages which may be summarized, in the main, as follows:
1 Income earned outside the United Kingdom by the non-domiciled resident is taxed on a remittance basis ie income earned outside the United Kingdom would only be taxed if and when it was actually remitted to the United Kingdom.
Thus, if no income is remitted to the United Kingdom, no tax is payable. By definition, income would include rents, interest, dividends, pensions etc.
2 Assets held abroad are not subject to capital transfer tax (this is a combination of donations (gift) tax and death duty); a non-domiciled United Kingdom resident will only pay capital transfer tax on such assets as are within the United Kindom. Any assets outside the United Kingdom will not be liable to capital transfer tax until the South African resident has been in the United Kingdom for seventeen out of the previous twenty years. Normally, it is only in the sixteenth year of residence that a problem will arise and in this sixteenth year relevant action can be taken to block off overseas assets by the use of overseas trusts, etc.
From the aforegoing it is clear that the simplest method of reducing any United Kingdom tax liability on income and capital gains earned outside the United Kingdom is simply not to remit such income or gains to the United Kingdom, but to retain them abroad in an acceptable tax haven. However, this is not always desirable or practicable as the emigrant will often have to supplement his earned income with his unearned offshore income.
It has been established for some considerable time that capital can be remitted to the United Kingdom free of tax and the income generated by the capital assets held abroad can be accumulated abroad. The question will now arise as to how the benefit of making capital gains and earning income, tax free, can be used, in the United Kingdom without paying tax thereon.

Tax planning

With correct structuring it is possible to use overseas income in the United Kingdom without attracting United Kingdom tax thereon. Certain of the well-tried and accepted methods are the following:

1 The cessation of source method
Income becomes capital in the year after the tax year in which the source ceases. When an asset produces income, the income should be held in a separate bank account. The capital is taken into the United Kingdom and the income not. When the capital asset ceases to exist, providing there is an intervening tax year, the accumulated income in a separate "account" becomes capital and can be brought to the United Kingdom without attracting United Kingdom taxation. This (second) capital is again held in a clearly defined "account" and the interest thereon in a separate and clearly defined "account".

2 The house-purchase method
An overseas trust is established. Non-domiciled residents' overseas income is donated to this trust. The trust forms a company and lends whatever sum is required to this company which, in turn, purchases in the United Kingdom a house that is placed at the disposal of the non-domiciled resident. This has the advantage that should the United Kingdom introduce exchange control, the house itself would always be an external asset.

3 Other various methods
3.1 The purchase of valuable assets abroad.
3.2 Periodic donations from abroad.
3.3 Accumulated income used for holidays abroad or other purchases abroad.
3.4 Establishment of educational trusts for children.
From the aforegoing it will be seen that considerable thought and planning should be undertaken by prospective emigrants or persons taking up employment for an extended period in the United Kingdom, even if they do not intend to emigrate from South Africa.
In this regard, it must be remembered that it is always best to plan totally and set up the structures to be used by the non-domiciled person at the outset in such a way that all the advantages described above will flow naturally.
The matter, however, does not rest there. The emigrant having: (i) structured his affairs in South Africa so as to obtain a capital transfer allowance, (ii) arranged for the transfer to him of the offshore income earned in South Africa on blocked assets and (iii) structured his affairs abroad (offshore), is nonetheless left with the situation that the blocked assets remain in his estate in South Africa and on his death, the estate will be subject to South African estate duty. His heirs will be entitled to transfer the inheritance abroad.
At the outset thought will, therefore, have to be given to this eventuality and not only his emigration must be structured but also his South African estate.
In addition, the emigrant's parents will have to give consideration to their own estate planning so that the changed circumstances can be taken into account.
The prospective emigrant will, therefore, have to consult an attorney and an accountant in South Africa, and will equally have to consult a person adept in the planning *and* administration of his affairs both in the United Kingdom and offshore in one of the acceptable tax havens. One very important factor to be borne in mind by practitioners is that the conception and setting up of the structures to accommodate the tax and estate planning scheme is only part of the solution.
The structures themselves must be managed and controlled outside the United Kingdom failing which they will be liable for United Kingdom tax. Use must therefore be made of a trust company in an acceptable tax haven to undertake the administration and control of the structures and the assets.

United States of America

To best illustrate the very different methods of planning which must be adopted for each tax jurisdiction, we will next look at a tax plan which a prospective emigrant to the United States should consider.

Consequences of United States residence

When a non-United States citizen becomes a United States resident, the change in his United States tax status is both immediate

and significant.
While a non-resident, an alien is subject to United States income tax on:
1 certain non-business periodic and capital income from sources within the United States; and
2 income that is effectively connected with the conduct of a United States trade or business.
He would also be subject to United States gift tax and his estate subject to United States tax, only on property situated within the United States.
Once an alien becomes a United States resident (and this will be defined more clearly later on), he is generally in the same tax position as a United States citizen, which means that he is subject to United States income tax on his world-wide income and to gift and estate taxes on all property wheresoever situated.
The above situation is in very stark contrast to the source-based method of taxation in South Africa and the concept of being a non-domiciled resident in the United Kingdom and consequently a non-resident alien of the United States contemplating becoming a United States resident would be well advised to review what steps he might take to insulate his non-United States assets and income from United States taxation.
In the light of the fact that the United States has adopted very stringent control over non-resident aliens becoming residents of the United States, many people have applied for, and obtained, what is commonly known as a "green card".
The "green card" is a permit entitling the holder thereof to take up lawful permanent residence in the United States and is usually granted on the basis that the holder thereof will take up such residence within six months of receipt thereof.
However, many persons holding a "green card" continue to reside in their domicile of origin and visit the United States annually in the belief that this will maintain their status as persons entitled to take up residence in the United States.
In legislation aimed at regulating the tax situation of the so-called "green card" holders, United States congress has in the Tax Reform Act, 1984, passed by congress on 27 June 1984, inserted specific sections which define when a person is resident or deemed to be resident in the United States for tax purposes.
Objective definitions of resident and non-resident aliens generally effective for tax years beginning after 1984 for purposes of the United States federal income tax have been set out and definitions of the terms "resident alien" and "non-resident alien" are incorporated into the internal revenue code.
An alien will be considered to be a United States resident for income tax purposes if the individual –
1 is a "lawful permanent resident" of the United States at any time during the calendar year; or
2 meets the requirements of the "substantial presence" test.
An alien who does not qualify under either of these tests is defined as a "non-resident alien" under these provisions for purposes of the internal revenue code. The determination of an alien status as resident or non-resident, is important because of the different income tax rules applicable to each category. Resident aliens are subject to United States tax on their world-wide income as set out previously.
Section 192 defines "lawful permanent resident" as follows:

> "An alien will be deemed to be a lawful permanent resident of the United States if he, or she, has the status of having been lawfully given the privilege of residing permanently in the United States as an immigrant, and such status has not been revoked or administratively or judicially determined to have been abandoned."

According to the house committee report, this is the so-called "green card" test.
Section 193 deals with the substantial presence test which is, in effect, a test as to physical presence in the United States.
Section 194 provides that "if an alien qualifies under the lawful permanent residence test, but not under the substantial presence test, residency will be deemed to begin on the first day of the calendar year on which he or she was present in the United States as a lawful permanent resident".
If a person has therefore applied for residence in the United States and is granted such residence by the issuing of the so-called "green card" and that person travels to the United States and enters the United States on the basis of the "green card", but intends returning to South Africa, the holder of the "green card" will have been deemed to have taken up residence in the United States and will be liable for United States tax as a resident from the first day of the calendar year in which he or she is present in the United States.
Tax planning for persons intending to emigrate to the United States should therefore be undertaken prior to the obtaining of the so-called "green card".

Tax planning ("grantor trusts")

For a foreigner intending to become a United States resident alien, using a trust can be the most effective tax planning tool as it can be used to insulate him from ownership of non-United States assets for United States tax purposes and enable income to be accumulated and distributed to him tax-free. There are pitfalls to be avoided and proper planning techniques must be followed.
The sophisticated use of trusts as an effective tax-planning tool is gaining increasing recognition throughout the world and it is the use of the so-called "grantor trust" that has become one of the accepted methods of tax planning adopted by foreigners intending to become United States residents.
For United States tax purposes, a trust, whether foreign or domestic, is generally treated as a separate taxable entity and a distribution from the trust to a beneficiary is taxable income through the beneficiary when received.
As a result of the United States supreme court decision in the case of *Helvering v Clifford* SC 1 40-1 USTC, the internal revenue code has enacted in ss 671-679 a complex set of provisions generally referred to as the "grantor trust" rules which provide that in certain circumstances a trust will be ignored for tax purposes and another person (usually, but not necessarily, the grantor (donor) of the trust) will be treated as if he owns the assets held by the trust.
In the *Clifford* case, a trust was created by a husband for the benefit of his wife. The trust was to last for five years and at the end of that time was to revert to the husband/grantor if he was living. The husband, as trustee, had sole discretion as to amounts distributable to his wife, and otherwise retained wide powers of control over the trust.
The supreme court held that the income of the trust was taxable in the hands of the husband. Because of the solidarity of the family (the couple remained together throughout) and the express reservation of powers, the income could be sold, held or used with an eye to the grantor's benefit so that in substance and effect the income was his.
The "grantor trust" rules therefore came into existence and were designed to prevent various tax avoidance arrangements in the domestic context. They may however be used to achieve tax planning objectives in the international context. In the domestic context, distribution from a "grantor trust" is treated as a gift to the beneficiary and not as income and the beneficiary is therefore not taxed thereon, but internal revenue services seeks to tax the donor (he is the person who is treated as if he owns the assets held by the trust – the grantor).
If a foreign trust is structured so that a person who is neither a United States citizen, nor resident, (therefore not a United States taxpayer in any way) is considered the owner of the trust assets, distributions by the trust to a United States beneficiary should be considered as gifts from that person. Such gifts would not be income in the hands of the beneficiary for United States tax purposes and need not even be reported by him to the internal revenue service.
The foreign "grantor/donor" (deemed owner) of the trust will be treated as receiving the trust income, but as a non-resident alien he will not be subject to United States tax as such income is not

(Continued on page 196)

Vervreemding van grond
deur Theo de Jager
Kaapstad: Juta & Kie. xx & 442 pp. Prys: R45,00 + AVB.

Dit val onmiddellik op dat die skrywer sy werk getitel het "Vervreemding van grond" (Alienation of land) en nie in die titel van die boek verwys na die Wet op die Vervreemding van Grond 68 van 1981 nie.
Die wet kom prominent voor in die inhoudsopgawe en die inhoud van die wet sorg dan ook vir die grootste deel van die inhoud van die boek, maar dit is reeds duidelik uit die inleiding, wat deur die skrywer self geskryf is, dat dit veel verder gaan as 'n bespreking van die wet alleen.
Volgens die skrywer het hy gepoog om in 'n redelik kompakte vorm 'n alledaagse bruikbare boek daar te stel wat sal dien as eerste verwysingsbron oor die onderwerp. Hierin het die skrywer geslaag.
Die handboek is voorberei aan die hand van die artikels van die wet. Baie praktisyns verkies steeds dat 'n bespreking van die wet in hierdie vorm geskied. Op universiteit, by uitstek, kan 'n student handboeke bestudeer wat behoorlik gesistematiseer in hoofstukke ingedeel is, na gelang van die onderwerp. In die praktyk wil 'n praktisyn weet wat sê die skrywer oor 'n besondere artikel van die wet.
Die boek word tegelyk in altwee tale aangebied; die Engelse teks verskyn op die linkerbladsy en die Afrikaanse teks op die regterbladsy. Vir die grootste gedeelte van die boek volg die Engelse teks en die Afrikaanse teks op min of meer teenoorgestelde bladsye, maar soos by die woordbepalingsartikel van 'n wet, loop die besprekings uiteen as gevolg van die alfabeties gerangskikte definisies. Onder die woordbepalingsartikel bespreek die skrywer diverse aangeleenthede soos byvoorbeeld die prosedures van dorpstigting in verskillende provinsies. Teen die tyd dat die leser by die bespreking van a 2 kom, is hy dan ook reeds in die helfte van die boek. Aangesien die wet nie herhaal is in een van die bylaes van die boek nie, maar voorkom in die bespreking moet die leser, om 'n bepaalde artikel op te spoor, kyk na die nommer van die artikel bo-aan elke bladsy.
Die regulasies kragtens die wet vorm bylae A. Die boek bevat 'n register (of indeks) en 'n saak-register.
Die Wet op Hereregte kom voor en uittreksels uit die inkomstebelastingwetgewing wat handel oor belasting op geskenke. Die aktetarief ten opsigte van gewone opdragte en van deeltiteloordragte voltooi die boek, asook die eerste bylae van die Wet op Seëlregte. Hierdie is alles inligting wat in verband staan met die vervreemding van grond.
Die skrywer wys tereg daarop dat daar onderskei moet word tussen *voorwaardes* (conditions) en *terme* (terms). Waar 'n mens praat van terme (in plaas van voorwaardes) opgelê deur die administrateur of verkoopsterme (in plaas van verkoopswaardes), klink dit nog reg, maar die skrywer is te veel van 'n pionier as hy dink dat hy titelvoorwaardes (title conditions) wat reeds geyk is, vervang sal kry in die regsspreektaal met titelterme (terms of title).
Die boek bevat nie 'n konsepverkoopakte wat voldoen aan die bepalings van hoofstuk 2 nie. Dit is iets wat vir die praktisyn belangrik is, veral in die eerste dae wanneer hy worstel met hierdie wetgewing.
G Hugo, prokureur, Pretoria □

Nuwe toelatings *(Vervolg van bladsy 193)*

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B L Schneider BA LLB, Raymond Joffe & Louis Garb, P O Box 2195, Johannesburg 2000, 1984-11-20.
T J Jaggard BProc, Wessels & Gillis, P O Box 3973, Johannesburg 2000, 1984-01-15.
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from United States sources. Provided therefore that the distributions received by the United States beneficiary do not consist of property situated in the United States, there should be no United States gift tax due on the distributions by the trust to United States beneficiaries.
The above are the general principles for a very complex set of rules. In using these "grantor trust" rules, one must take into account the many pitfalls, nuances and subtleties contained, not only in the legislation, but as developed in the case law. Expert advice should consequently be sought prior to any steps being taken to obtain a "green card" or becoming a United States resident.
The aforegoing has hopefully highlighted the general principles applicable to emigration, with particular reference to two jurisdictions with vastly different approaches to taxation.

Summary

The practical planning for every country will be different but certain principles are applicable in each case.
1 The planning and executing of the scheme must take place at the earliest possible time.
2 Experts, not only in South Africa, but also in the foreign country to which the emigrant is relocating must be consulted.
3 The areas which should be considered are not confined to the immediate income tax regime of the foreign country but the laws on estate and gift taxes of that country and exchange control, taxation and estate duty in South Africa.
4 Not only the prospective emigrant must be involved in the planning but his/her parents should be made aware of the changed circumstances as well so that their own estate planning may take the changed circumstances into account.
5 The planning and creation of the structures within which the scheme will operate is only part of the solution.
6 The structures must be administered. This should ideally be done by persons who have an appreciation of the needs of the individual both in his new and his old jurisdiction. □