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# THE EC TAX JOURNAL

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## Editorial

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# EDITORIAL

Important changes have taken place in the constitution of the Editorial Board. Timothy Lyons has been Managing Editor of the Journal since its creation. It is thanks to his extensive knowledge of EC law and EC lawyers and his tireless and dedicated efforts that the Journal was born and raised to maturity. We are immensely grateful to him. Understandably, his practice at 24, Old Buildings, Lincoln's Inn is now so heavy that he has reluctantly decided to reduce the scope of his role. He has become Consulting Editor. We look forward to the benefit of his wisdom still being available to the Journal.

We welcome Ann Humphrey and Katherine Holmes, who have taken on the mantle of Joint Managing Editors. Both are English solicitors with established practices centred on indirect taxation. Ann has her own consultancy, based near Tower Bridge. Katherine is a partner of the City firm of Richards Butler. We welcome them both and wish them well in the difficult task of following in Timothy's footsteps.

Key Haven's activities continue to expand. We welcome as an additional Executive Director Chrissie Gray, who has taken over responsibility for books and reviews, leaving Valerie McWilliams more time to devote to seminars, marketing and general management. Contributions to the Journal and correspondence with the Managing Editors should be sent care of Chrissie, whose email address is [legs4fogs@cs.com](mailto:legs4fogs@cs.com).

Key Haven is moving on May 10th to larger premises nearer to the centre of London. The telephone and fax numbers will have changed. Details are on the title page of this Issue. Email and website addresses remain the same.

In *Halifax plc v Commissioners of Customs and Excise*, the London VAT and Duties Tribunal was invited to defeat what was alleged to be a value added tax avoidance scheme on the basis either that (a) a transaction entered into solely for the purposes of (in that case) VAT avoidance is neither itself a "supply" nor a step taken in the course or furtherance of an "economic activity" as those terms are defined in the 6th EC VAT Directive ("the 6th Directive") or (b) that such a transaction should, in accordance with an alleged general principle of EC law preventing "abuse of rights", be disregarded and, instead, the terms of the 6th Directive (and, here, the provisions of VATA 1994 which implement the Directive) applied to the true nature of the

transaction(s) in issue. This issue contains two very different articles on the Decision of the Tribunal, released on March 1st 2001, written by Jonathan Peacock QC, counsel for Customs in *Halifax* case, and by myself, entitled respectively "*The Law Ends where Abuse Begins*" and *When is a Supply not a Supply?* One matter on which we both agree is that the Decision is bound to be considered by the Courts and that only time will tell the final outcome. The new anti-avoidance doctrine which the Tribunal has either invented or discovered can potentially apply in any EC Member State.

Common law jurisdictions, such as the Republic of Ireland and England and Wales, have had a well-defined concept of beneficial ownership for centuries. Civil law jurisdictions on the whole do not. While the concept is used in the OECD model treaties, it is clear that it does not bear quite the same meaning as in, say, English law. In his article on *Beneficial Ownership and Dutch Transfer Tax*, Redmar A. Wolf shows the problems the Dutch legislature have had in trying to introduce a concept of beneficial ownership for the purposes of Dutch transfer tax.

In *A Summary of the Acquis Communautaire on Direct Taxation*, Philip Baker considers the extent to which direct taxation in EC Members States has been coordinated. He surveys legislative provisions so far adopted, the growing and not altogether consistent jurisprudence of the European Court of Justice on direct taxation and proposals for tax harmonisation currently under consideration.

Robert Venables QC  
May 2001

Chairman of the Editorial Board