THE PERSONAL TAX PLANNING REVIEW

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EDITORIAL

The Court of Appeal decided in *Billingham v Cooper (Inspector of Taxes) v Cooper*[1] that a loan made by trustees to a beneficiary on favourable terms but repayable on demand can result in a tax charge on the latter under the capital gains tax Offshore Beneficiary Provisions. In his article, "Loans From Trusts after *Billingham v Cooper*", the Consulting Editor canvasses the possibility that there will be no imputing of gains under the Provisions if a loan is made on arm's length terms to a beneficiary entitled for an interest in possession, even if the interest is never in fact paid.

In "The Historical Background to Section 397 – Hobby-farm Losses", Professor David Stopforth considers the origin of an anti-avoidance provision which arguably no longer serves any useful purpose.

In many states outside the British Isles, it is decreed that not only shall a man's estate be subject to taxes on his death but that he shall be denied the fundamental human right to will it to whosoever he wishes. A device which has been adopted in France to enable non-resident foreigners to avoid forced heirship provisions applying to secondary homes which they own in that country is the *Société Civile Immobilière*. While it appears to be generally agreed that it achieves its immediate purpose, it has been suggested that its use may have unfortunate United Kingdom tax consequences for United Kingdom residents. In his long article, "SCIs, 'Shadow Directors' and Benefits in Kind", Peter Harris expresses some most interesting views on the nature of the SCI in French law and the treatment of the SCI and its members for United Kingdom tax purposes.

A difficult question of will construction arises where residue is left only partly to beneficiaries who are exempt from inheritance tax. In "*Re Benham's Will Trusts* and *Re Ratcliffe Deceased Re Holmes v Mcmullan*", Ralph Ray discusses how these two cases can be reconciled and offers advice on the clear drafting of wills and variations of wills.

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1 [2001] EWCA Civ 1041 [2001] STC 1177, upholding the decision of Lloyd J, reported at [2000] STC 122. An identical case heard with it was *Edwards (Inspector of Taxes) v Fisher*.

"When things go wrong, they go badly wrong." Whatever the truth of this maxim in general life, it does seem to apply to cases of alleged professional negligence by tax advisers. In "Grimm and Grimmer", the Consulting Editor discusses the decision of Etherton J in *Grimm v Newman*, in which the defendant accountant was held liable for alleged negligence as to the operation of the Schedule E income tax remittance rules. He suggests that the advice which was given was not in fact wrong. He also advises on how we can all help to protect ourselves from actions in negligence, by ensuring, as far as possible both that they never occur, and, if they do, that the defence is conducted in the best possible way.

The Editors welcome contributions, particularly on points raised in articles appearing in the *Review* (or indeed, other Reviews and Journals). All articles (whether long or short), ideas for articles and other correspondence on editorial matters should be addressed to: Andrew Hitchmough, Managing Editor, *The Personal Tax Planning Review*, Pump Court Tax Chambers, 16 Bedford Row, London WC1R 4EB, Tel: (020) 7414 8080, Fax: (020) 7414 8099.

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