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## THE PERSONAL TAX PLANNING REVIEW

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## From the Editors

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# EDITORIAL

After the drudgery of winter and the onerous task of completing of tax returns, Spring is a time to move forward. It is a time for fresh thought and new ideas, and readers will discover an abundance of both in this Spring edition of the *Review*.

We start with an article by the Consulting Editor, Robert Venables QC. The Consulting Editor addresses the vexed question of the application of the "capital payments" regime, found in section 87 Taxation of Chargeable Gains Act 1992, to the exercise of a dispositive power transferring property from one settlement to another under which a beneficiary takes some beneficial, although not absolute, interest. At first blush it might appear that conferring such a beneficial interest is a clear benefit for the beneficiary in question, and is thus a capital payment for the purposes of section 87. The Consulting Editor puts forward a highly persuasive argument why this unfortunate result should not follow.

We move on from capital gains tax to Human Rights, one of the "hot topics" of recent times. In his article "The Human Rights Act 1998: Caught Between The Scylla Of Parliamentary Sovereignty And The Charybdis Of Citizens Rights" Hartley Foster conducts a thorough review of the question whether a taxpayer can rely on the right to a fair hearing under Article 6 of the European Convention on Human Rights in order to force the Inland Revenue to disclose information, and if so, how. Mr Foster concludes that the application of the Human Rights Act, particularly in the sphere of tax litigation, is going to be limited, and at the very least fraught with procedural difficulty. *"It is clear that, contrary to suggestions in various newspaper reports, the HRA is not"* believes Mr Foster *"a catholicon"*.

The third article in this edition of the *Review* falls into the "compulsory reading" category. Alexander Pepper and Liz Morgan bring us up to date on the difficult yet extremely important issue of share valuation for Schedule E purposes. Articles on share valuation for capital gains or inheritance tax are numerous. In the context of Schedule E they are not, yet *"depending upon precisely which charging section actually applies, the valuation principles may be subtly, yet significantly, different"*. In this comprehensive article Mr Pepper and Ms Morgan take us through them all.

Our fourth article comes from one of our regular contributors with a lifetime of experience in personal tax planning, Ralph Ray. As always Mr Ray describes helpful planning opportunities while identifying potential traps for the unwary. In

his current article he looks at the possibilities for individuals domiciled outside the UK to save inheritance tax.

The decision of the House of Lords in the important appeals of *R v Dimsey* and *R v Allen* forms the subject matter of our next article by the standing counsel to the Inland Revenue, David Ewart. Mr Ewart has written previously in this *Review's* sister publication, the *Offshore Tax Planning Review*, criticising the reasoning of the Court of Appeal in those cases. He now shares with us his views on the quality of reasoning in the House of Lords and, more important, the practical consequences of their Lordships' decision.

Our two final articles, in what has turned out to be a bumper edition of the *Review*, also concern recent cases.

In "Domicile of Choice: The Engineer's Tale" Peter Vaines considers the recent decision of the Special Commissioners in *A Civil Engineer v CIR*, an appeal which raised a number of issues surrounding the acquisition of a domicile of choice and the agreement of the position with the Inland Revenue. As Mr Vaines' points out "*It is difficult to dispel the impression that this was a difficult case which became practically impossible by the time the matter came to be argued*". Like Ralph Ray, readers will recognise Peter Vaines as a regular contributor to the *Review* with a wealth of experience to share with us.

Finally, in a fascinating article entitled "Remitter" Robert Argles, one of the long standing members of the Tax Bar, considers the far reaching implications of the recent decision of Etherton J in *Grimm v Newman*. Correctly decided? One hopes not! If it is, as Mr Argles concludes, a non-domiciled taxpayer "*whose only recourse is sums or property representing overseas income will encounter considerable difficulty in utilising those sums, whether directly or indirectly, in the purchase of a house in the UK*".

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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