
THE PERSONAL TAX PLANNING REVIEW

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From the Editors

EDITORIAL

The Chancellor's Budget Speech contained many brave words. On the whole, he has, in spirit as well as in substance, maintained his pledge of not raising rates of income tax, capital gains tax, corporation tax or value added tax.

Sir Humphrey Appleby is once again up to his tricks, in the shape of Budget Press Release 'Inheritance tax—blocking tax avoidance', which introduces the provisions contained in clause 92 of the Finance Bill aimed at counteracting the decision of the House of Lords in *Lady Ingram's Executors v IRC*¹. The Consulting Editor exposes the spin-doctoring in 'Lady Ingram and the Finance Bill 1999 - A Note' and promises an article on the new provisions contained in the Finance Bill once they have become law.

In 'Trustee Investment in Offshore Funds', the Consulting Editor suggests that, despite the Offshore Funds Provisions, investment in offshore funds can be tax-efficient for non-United Kingdom resident trusts where it is expected that beneficiaries domiciled and resident or ordinarily resident in the United Kingdom will receive capital payments from the trustees. He further suggests that the holding of interests in material funds in an interest in possession trust, no matter where resident, may possibly prevent the Provisions applying.

In 'Barring A Recovery, and Other Taxing Notions', Professor Paul Matthews considers the vexed question of whether a United Kingdom resident settlor of an offshore trust who is compelled by the Offshore Settlor Provisions to pay capital gains tax in respect of trust gains, will be able to enforce his statutory right of indemnity in foreign jurisdictions. He disagrees with the view expressed, in the last issue of this Review,¹ by Leon Sartin that:

- (i) it is not possible for UK legislation to alter the rights of beneficiaries under a non-UK law trust;

¹ [1999] STC 37.

² Vol 6, No 3, pp 237-239 (the paragraph intended for p.240 was omitted in error).

- (ii) enforcing the statutory right of reimbursement amounts to an interference with those rights; and hence
- (iii) in the case of a non-UK law trust this UK legislation will not be enforced.

In view of the decision of the President of the Tax Tribunal, Stephen Oliver QC, *An Applicant v Inland Revenue Commissioners*, which rightly made the national press, there can be no question currently more vital to tax practitioners than the extent to which legal professional privilege can be a defence to a notice to produce documents served under section 20 of the Taxes Management Act. The question has aroused keen debate amongst counsel and a wide spectrum of opinions. Hartley Foster's article 'Can I Make A Clean Breast of it to the Gentleman I Consult?' could not be more topical. In it, he produces a series of arguments, which the Consulting Editor finds very cogent, why privilege has not been overridden by the Act.

In 'Advantages of Reservation of Benefit Trusts', the Consulting Editor, while accepting that such trusts are usually undesirable, points out situations where they may be the best option. He considers in particular reverter to settlor trusts and how to obtain their capital gains tax advantages without any inheritance tax "downside".

Finance Act 1998 introduced new rules, contained in Taxation of Chargeable Gains Act section 10A, concerning individuals who are "temporarily" non-UK resident. Extra-Statutory Concession D2, dealing with split years of residence for capital gains tax purposes has been drastically amended in consequence. In 'Migrant Individuals and Concessionary Relief From UK Capital Gains Tax: A Case For Judicial Review?', the Consulting Editor suggests that it has been revised much more than was necessary simply to take account of section 10A, and with retrospective effect. He suggests that, having regard to the Treasury Explanatory Notes to the 1998 Finance Bill, there would be a good prospect of an action for judicial review succeeding against the Revenue on the grounds that they had acted unreasonably and/or unfairly and/or defeated the legitimate expectations of taxpayers who were already neither United Kingdom resident nor ordinarily resident on 17th March 1998.

The taxation of insurance policies has always been a very technical area. The income tax charging provisions were considerably amended by Finance Act 1998, especially as regards policies held by trustees, companies or "foreign institutions". In 'Insurance Policies Held by Trusts, Companies or Foreign Institutions', the Consulting Editor considers the effect of the changes and concludes that there are significant remaining opportunities for tax planning through offshore policies, which have become much more attractive since the extension of the capital gains tax Offshore Settlor Provisions and Offshore Beneficiary Provisions by Finance Act 1998.

It was stated in the Foreword to the *Inland Revenue Consultative Document on the Taxation of Trusts*:

“The primary aim is to bring the taxation of trusts more closely into line with the taxation of individuals. This reflects a key principle: that property held in trust should in the case of trusts of any size be taxed neither more lightly nor more heavily than property held by individuals.”

Richard Vallat shows in his article ‘Discretionary Trusts and the New Dividend Regime’ how this principle has been sacrificed in constructing the rules for the taxation of dividends and other Schedule F distributions from United Kingdom companies which came into force on 5th April. The Revenue Interpretation of February 1999, ‘The taxation of Schedule F income received by trustees after 6th April 1999’, published at [1999] STI issue 7, explains only the mechanics of the new rules and offers no justification for them.

In ‘*Memec Plc v Inland Revenue Commissioners* and the Source of Discretionary Income Payments From Trusts’, the Consulting Editor challenges the view that Walker J in *Memec* confirmed the Revenue view that “the trust constitutes a new source of income where trustees distribute trust income in the exercise of their discretion”. The Consulting Editor has also updated part of his privately circulated Comments on the Revenue Consultative Document on the Taxation of Trusts under the title ‘Fundamentals of the Income Taxation of Trustees and Beneficiaries.’

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 Esq, Managing Editor, The Personal Tax Planning Review, Pump Court Tax Chambers, 16 Bedford Row, London WC1R 4EB
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May 1999