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From the Editors

EDITORIAL

This edition of the *Review* kicks-off with a controversial article from three of the household names of the tax bar – the Consulting Editor Robert Venables QC, Kevin Prosser QC, and Julian Ghosh. In it they take issue with Richard Bramwell QC's interpretation of the new Schedule F provisions introduced by Finance (No 2) Act 1997 as they apply to stock dividends received by higher rate tax payers. In the First Cumulative Supplement to the Seventh Edition of *Taxation of Companies and Company Reconstructions* Bramwell QC and his team suggest that as from 1999/2000 the rate of tax which a higher rate taxpayer must pay on a stock dividend is 40% of the gross, or 33% of the net, as opposed to 25% previously. Venables QC, Prosser QC and Ghosh argue that it is "clear from the context and the intendment [of the legislation] that income tax payable under section 249 is Schedule F income, at the very least for the purpose of applying the relevant rates".

Is this really an issue for debate, or has a wild hare been raised by Mr Bramwell and his team which has been run convincingly to ground? It is certainly a matter of great importance given the popularity of stock dividend planning. Comments please.

Indeed "debate" may be the key-word for this edition of the *Review*, the whole of which makes for essential and compelling reading. In a further article by the Consulting Editor, he considers whether section 106A Taxation of Chargeable Gains Act 1992, introduced in order to prevent the "bed and breakfasting" of securities, might inadvertently have repealed the section 80(2) emigration charge as respects securities comprised in a trust fund. Although this result is clearly unintended, and the Courts would likely be sympathetic to any revenue argument, the Consulting Editor invites comments as to what that argument might be.

In a final article by him, the Consulting Editor takes issue once more with Mr Bramwell QC and his team over the content of their Cumulative Supplement to the Seventh Edition of *Taxation of Companies and Company Reconstructions*; this time over the taxation of stock dividends received by trustees. Mr Bramwell QC *et al* suggest that when a stock dividend received by trustees is taxable, it is *always* taxable at the Schedule F trust rate. The Consulting Editor disagrees. He argues

that in some cases the trustees are liable to pay no tax beyond the amount of the tax credit. Another wild hare, or a serious cause for debate?

More essential reading in a second article by Julian Ghosh entitled "When is a company not a company?". In this article he discusses a scheme which has found favour with many practitioners as a means of avoiding the attribution of gains under section 13 Taxation of Chargeable Gains Act 1992 – the use of non-UK resident unit trusts - and puts forward an argument why in his view such planning is unsound.

In a first appearance in the PTPR Alastair Ladkin, currently a pupil at Pump Court Tax Chambers, challenges the principle that the Courts of one country will not enforce the revenue laws of another. He advances an argument why this proposition no longer holds true in the case of those countries that are signatories of the Brussels and Lugano Conventions, and considers the important case of *QRS I APS v Frandsen*. He concludes that indirect enforcement of foreign revenue laws is now possible in a number of situations, and identifies UK settlors of non-resident trusts to whom gains are attributed under section 86 Taxation of Chargeable Gains Act 1992, personal representatives of deemed UK domiciliaries who are liable for inheritance tax on the deceased's world-wide estate, and UK buyers who have negotiated a tax indemnity as part of a company sale.

Finally, the Review features articles by two regular contributors, Peter Vaines and Ralph Ray. Peter Vaines in an extremely interesting article considers the opportunities for foreign domiciliaries setting up in business in the UK. With care, he advises, considerable tax savings can be achieved. Ralph Ray, on the other hand, outlines a number of tax planning strategies for discretionary trustees, while identifying possible danger areas. Both authors give, as always, clear and practical advice on these topical issues.

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 Tel: (020) 7414 8080, Fax: (020) 7414 8099.

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