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## THE PERSONAL TAX PLANNING REVIEW

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## Cross Reference of Articles

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### CROSS-REFERENCE OF ARTICLES

Articles published in one Key Haven Review may often be of interest to readers of another Review. In the past, we have consequently sometimes published the same article in more than one Review. As there was but a tiny overlap of subscribers and as the second publication was in addition to the material which would otherwise have been provided, we considered this helpful and unobjectionable.

It now appears that there is a considerable overlap of non-subscribing readers of our Reviews, some of whom are opposed to this practice. Some of our editors, too, prefer to maintain the integrity of "their" Review and would prefer articles appearing in it not to be duplicated elsewhere.

In deference to representations which have been made, we shall for a trial period not duplicate any articles. Instead, we shall provide a brief resumé in each Review of articles of interest which are being published in one of our other Reviews.

Robert Venables QC

President, Key Haven Publications PLC

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## From the Editors

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### EDITORIAL

In this Issue, Julian Ghosh, an acknowledged expert on the corporation tax loan relationship provisions, introduced by Finance Act 1996, discusses a possible obstacle to a strategy whereby persons other than UK resident companies can mitigate the capital gains tax liability on the disposal of certain securities. The Consulting Editor has written a preface to this article for the benefit of those who are not corporate tax specialists.

Geoffrey Simpson discusses the thorny question of the territorial source of income payments. He differs from Alexander Thornton, who in his article in Volume 8 Issue 1 of *The Offshore Taxation Review*, had concluded that the situs of funds from which the interest payments are made is the most decisive factor. He advises on how to avoid interest payments having a UK source. Mr Simpson also by implication disagrees with part of the Consulting Editor's article in *The Offshore Taxation Review* Volume 7, Issue 3, pages 177-210 'The Territorial Source of Income: *Hang Seng Bank, HK-TVB International and Orion Caribbean*'. In a Note to Mr Simpson's article the Consulting Editor replies briefly.

Ralph Ray considers the comparative advantages of discretionary trusts and interest in possession trusts, particularly having regard to the availability of hold-over relief. Now that Finance Act 1998 has imposed a uniform rate of capital gains tax on all UK resident trusts to which the UK settlor provisions do not apply, one comparative disadvantage of discretionary trusts has been removed and it is opportune to reassess their utility. Those interested in learning more about obtaining 'Hol-dover Relief via Revocable Settlements' should refer to the article of that name by the Consulting Editor in Volume 6, Issue 1, page 59 of this *Review*.

The Green Paper "Beating Fraud is Everyone's Business" is discussed by Roger Cockfield. Honest tax advisers have an identity of interest with the Inland Revenue in preventing tax fraud: no one needs our advice on how to take a suitcase full of money to some sunny place for shady people. Social Security fraud endangers the collection of taxes. A productive member of society might be very happy to pay

taxes, say, to expel an fascist invading force from democratic British islands, whereas if he thought his hard-earned income was keeping feckless frauds in the life of Riley, he might be much more ready to engage in tax avoidance, or even tax evasion. The worst feature of such fraud is that funds are diverted from the honest and deserving poor to swindling parasites. The Green Paper exposes fraud and civil service incompetence on the most disturbing scale. Perhaps the most alarming problem is the failure of magistrates courts properly to uphold the law in their sentencing policies. Serious tax fraud undoubtedly deserves a custodial sentence. Yet the moral obliquity of the rogue who abuses the system of institutionalised charity is much greater than that of the man who refuses to make his compulsory contribution to the common charitable pot. Roger Cockfield is sceptical as to whether social security fraud will be reduced to any appreciable extent. Reasonable men and women will no doubt takes different views as to whether, as he suggests, civil monetary penalties may be at least part of the answer or whether the real solution is a competent and efficient enforcement agency and condign custodial punishments.

Leon Sartin, a Lincoln's Inn barrister, deals with a problem which is becoming increasingly important and as regards which judicial attitudes are changing: the enforcement of foreign tax indemnities. This is a question on which acute minds differ. He discusses the problem in the context of the United Kingdom Offshore Settlor Provisions, which tax settlors of certain non-United Kingdom resident trusts on capital gains realised by the trustees and confer a right of indemnity on the settlor as against the trustees. Will such an indemnity be enforceable in some other jurisdiction? Traditionally, one country will not enforce the tax laws of another country, even indirectly. Can it be said that giving effect to the settlor's right of indemnity is not enforcing UK tax laws even indirectly in that the UK Revenue will be no better off as a result? The Consulting Editor, in a Note which will appear in Volume 8, Issue 3 of the *Offshore Taxation Review*, provides an alternative view.

In 'Inheritance Tax and Transfer Pricing: a New Problem,' James Henderson, a promising new recruit to Pump Court Chambers, argues that the transfer pricing provisions being introduced by Finance Act 1998 impose a charge to income tax on, inter alia, a non-resident company which allows an individual use of a home in the UK for less than full consideration. In his view, however, the transfer of assets abroad anti-avoidance provisions do not seem to apply. In Volume 8, Issue 3 of *The Offshore Taxation Review*, the Consulting Editor suggests that the transfer pricing provisions do not have this effect but that, if they did, the transfer of assets abroad provisions could well, in his view, be a problem.

Peter Vaines in '*Jagers v Ellis* Seeing the Wood for the Trees' provides a welcome *scherzo* on a recent decision of Lightman J. His Lordship tends to have very firm views on tax cases, which he is reputed to enjoy hearing.

In 'Transfers Between Settlements: a Loophole?', the Consulting Editor suggests that transfers of assets between settlements could have prevented the Offshore Beneficiary Provisions (Taxation of Chargeable Gains Act 1992 section 87 onwards) from applying to the transferee settlement and can still operate to make settled property excluded property for inheritance tax purposes. In the course of the discussion, he examines what is meant by "settlement" and "settlor" in certain tax contexts, in particular in the Offshore Beneficiary Provisions, where the importation of the income tax definition into a capital gains tax context creates some difficult problems.

Finally, the Consulting Editor, rejecting good advice to the contrary, has not been able to resist writing about the House of Lords decision in *Lady Ingram*, on a tax planning strategy which had been compared in a certain section of the professional press to the infamous carbolic smoke ball. He includes a discussion of the argument on the *Ramsay* point and the views their Lordships then expressed, which did not appear in their speeches.

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, The Managing Editor, The Personal Tax Planning Review, Pump Court Tax Chambers, 16 Bedford Row, London WC1R 4EB Tel: (0171) 414 8080, Fax: (0171) 414 8099.

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January 1999