

---

## **THE OFFSHORE & INTERNATIONAL TAXATION REVIEW**

### **EDITORIAL BOARD**

Robert Venables QC (Consulting Editor)  
Amanda Hardy, Barrister (Managing Editor)  
Fay Lau, Solicitor (Assistant Editor)

Stephen Allcock QC  
Richard Bramwell QC  
Stephen Brandon QC  
David Ewart  
Michael Flesch QC  
Milton Grundy  
Professor David Hayton LLD  
Launcelot Henderson QC  
Harvey McGregor QC DCL  
Kevin Prosser QC  
Andrew Thornhill QC  
Professor John Tiley

**All editorial correspondence should be addressed to  
The Managing Editor, Amanda Hardy, 24 Old Buildings,  
Lincoln's Inn, London WC2A 3UP  
Telephone (020) 7242 2744  
Facsimile (020) 7831 8095**

**The Offshore and International Taxation Review  
(formerly The Offshore Tax Review)  
is published by  
Key Haven Publications FLC  
7 Crescent Stables, 139 Upper Richmond Road  
London SW15 2TN  
Telephone (020) 8780 2522, Facsimile (020) 8780 1693**

---

## Disclaimer

---

# DISCLAIMER

The views contained herein are put forward for further consideration only and are not to be acted upon without independent and professional advice.

Neither the Publishers nor the Authors or Contributors can accept any responsibility for any loss occasioned to any person no matter howsoever caused or arising as a result of or in consequence of action taken or refrained from in reliance on the contents hereof.

© 2000 KEY HAVEN PUBLICATIONS PLC

### **Conditions of Sale**

All rights strictly reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher.

Any person infringing the publisher's copyright will be liable to criminal and/or civil proceedings.

Printed in England by Adland Print Group

---

## Contents

---

## CONTENTS

	Page No
From the Editors	v
<b>New UK “Flip Flop” Anti-Avoidance Provisions</b> Robert Venables QC	1
<b>Spanish Inheritances and Gifts Tax</b> Jonathan Miller	43
<b>Double Taxation Conventions and Imputed Gains of Companies</b> <b>Post Finance Act 2000</b> Robert Venables QC	61
<b>Deemed Disposals by Trustees: Seeing the Wood for the Trees</b> Robert Venables QC	69
<b>Transfer Pricing and Rental Income: “Thin-Cap” Corpse Revived</b> Stephen Brandon QC	79
<b>Purpose Trusts: An Offshore Perspective</b> Patrick O’Hagan and Grant Stein	89

---

## The Editorial

---

# EDITORIAL

This issue begins with a comprehensive discussion by the Consulting Editor of the new United Kingdom “flip flop” anti avoidance provisions. These were introduced by the Finance Act 2000 as new Schedules 4B and 4C to the Taxation of Chargeable Gains Act 1992. The Consulting Editor considers, *inter alia*, the crucial question of what is a “settlement” for the purposes of the new provisions, when the trustees make a “transfer of value” within the provisions and the unusual treatment of losses by these provisions.

The Consulting Editor also examines the impact of Finance Act 2000 on double taxation conventions and the imputed gains of companies. Broadly, the discussion centres on the introduction of new section 79B to the Taxation of Chargeable Gains Act 1992, which denies double taxation relief otherwise available in relation to section 13 of the Taxation of Chargeable Gains Act 1992, where the participators are trustees (particularly of offshore settlements). The Consulting Editor questions the current usefulness of such structures and discusses what can be done by trustees who find themselves in an undesirable position as a result of the Finance Act 2000 changes and who wish to extricate themselves.

Jonathan Miller provides considerable learning on Spanish Inheritance and Gifts Tax, beginning with the interesting fact that Britons own more real property assets in Spain than in any other single jurisdiction. The article rehearses the details of Spanish Inheritance and Gifts Tax and notes that where an English domiciled individual is within the United Kingdom inheritance tax provisions as well as the Spanish Inheritance and Gifts Tax Provisions, what may be good planning from a United Kingdom perspective may produce unexpected and sometimes damaging results for Spanish Inheritance and Gifts Tax. The discussion of the Spanish anti avoidance and anti evasion legislation and regulation is also informative.

The Consulting Editor also considers the issue of deemed disposals made by offshore trustees, including the deemed dispositions introduced by Finance Act 2000 as new Schedules 4A and B to the Taxation of Chargeable Gains Act 1992.

Stephen Brandon QC, analyses the Revenue’s view that, where United Kingdom real property is purchased with loan finance, from a connected person, or from a bank, but with a connected person providing a guarantee or a back-to-back deposit, the

Income and Corporation Tax 1988 provisions relating to transfer pricing, contained in Schedule 28AA, potentially have effect.

Finally, Patrick O'Hagan and Grant Stein consider the issues surrounding purpose trusts from an offshore perspective. Patrick O'Hagan has recently moved from Conyers, Dill and Pearman in Bermuda to head the Trust and Fiduciary Services Department of UBS, Zurich and Grant Stein practices at Walkers in the Cayman Islands. After an exposition of the general principles of trust law in relation to such trusts, including the requirements of certainty and the English beneficiary and perpetuity principles, the authors discuss the Bermuda model, Cayman STAR trusts and Jersey purpose trusts concluding with an analysis of the practical uses of purpose trusts and the problems to avoid.

The Editors welcome contributions. The Editors particularly welcome debate 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: Amanda Hardy, Managing Editor, Offshore and International Taxation Review, 24 Old Buildings, Lincoln's Inn, London WC2A 3UP.

Robert Venables QC

Amanda Hardy

December 2000