
THE OFFSHORE & INTERNATIONAL TAXATION REVIEW

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The Editorial

EDITORIAL

In the first article of Volume 10, Issue 2 of the OITR James Kessler explores the motive defence to sections 739 and 740 of the Income Taxes Act 1988 in some depth. Of particular interest is the discussion of the elusive distinction between tax “avoidance” and “mitigation” and the judicial guidance that is available on such distinction. In the latter discussion, James Kessler makes illuminating reference to Frege’s philosophical writings in explaining Lord Nolan’s approach to tax avoidance in *Willoughby v IRC* 70 TC 57.

In a practical article discussing the benefits of buying real property in Spain either in one’s own name or through a company, Jonathan Miller explores the possible benefits of incorporation as well as the potential problems.

In a learned article about the disclosure of trust documents, Patrick O’ Hagan discusses the recent decisions of the Jersey Court in *Re the Rabiotti Settlement* [2000] 2 ITEL 763 and of the Isle of Man Court in *Rosewood v Schmidt* (unreported). These recent cases explore the extent of the duty of trustees to disclose trust information to beneficiaries and Patrick O’Hagan considers these decisions in the light of the *locus standi* of different classes of beneficiary, concluding (despite the decision in *Rosewood*) that maybe even objects of mere powers should be entitled to such disclosure.

Robert Argles provides a detailed consideration of the recent Court of Appeal decision in *Cooper v Billingham* in which he asks, are the Court of Appeal and the Crown both wrong in their interpretation of the legislation. Robert Argles also provides some useful pointers for overcoming some of the difficulties created by the decision.

Finally in this issue, Sarah Dunn discusses the difficult question of non domiciled individuals buying property in the United Kingdom and offers some useful alternatives to the “usual” offshore company route. As Ms. Dunn notes in her conclusion, the House of Lords decision in *R v Dimsey* and *R v Allen* may make a considerable difference to such planning. The decision is expected early in the new term.

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.

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September 2001