

THE OFFSHORE TAXATION REVIEW

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CONTENTS

	Page No
From the Editors	v
‘Tax Avoidance after IRC v Willoughby’ - A Clarification Robert Venables QC	1
UK Budget Update Robert Venables QC	3
Foreign Companies and the Danger of Criminal Liability Stephen Brandon QC	9
The Taxpayer’s Tale Professor Peter Willoughby	17
The Isle of Man Limited Liability Company or LCC: Further Postscript: The Possibilities for Activity in Great Britain Patrick Taylor	39
Star Trusts Professor David Hayton	43
Non-Domiciled UK Charities: Still Possible? Geoffrey Simpson	49
Company Sales by Trustees and Restrictive Covenants by Target Company Directors Christopher Cooke	53
The Territorial Source of Interest Payments Alexander Thornton	65

EDITORIAL

We begin this issue with an update on the UK Budget Speech, in so far as it has an impact on offshore taxation.

Stephen Brandon QC writes on 'Foreign Companies and the Danger of Criminal Liability', with particular reference to the trial of Messrs Chipping, Da Costa and Dimsey last year on charges involving cheating the UK Revenue through offshore incorporated companies. As the Consulting Editor has since been retained as Mr Dimsey's counsel and as, on the strength of his Opinion, Mr Dimsey has obtained leave to appeal against his conviction out of time, this article has been printed exactly as it was written by the author without any editorial input. Whether or not the defendants in that case were properly convicted, Mr Brandon's warnings as to the dangers of innocent tax advisers being tried, or even convicted, of cheating the Revenue should be very carefully heeded by all concerned with offshore tax planning.

It might be thought that, given that so much has been written in this *Review* and elsewhere about *IRC v Willoughby*, it would be difficult to add any new points to the debate. We are very fortunate in having Professor Willoughby giving us, in 'The Taxpayer's Tale', his own version of the proceedings, a discussion of some of the wider issues raised and an account of the aftermath.

Patrick Taylor adds a 'Further Postscript' to his three articles and postscript on the Isle of Man Limited Liability Company, which have already appeared in this *Review*. He considers in particular the possible application of the UK Taxes Act 1988 section 739 (tax avoidance by transfer of assets abroad) where such a vehicle is used for the benefit of individuals ordinarily resident in the UK.

In 'Star Trusts', Professor David Hayton considers the Cayman Islands Special Trusts (Alternative Regime) Law 1997, which makes provision for what is apparently a new type of trust but which is recognisable, on closer scrutiny, as a combination of the old Cayman Islands exempt trust and the purpose trust legislation which has recently been enacted in several jurisdictions. As Professor Hayton points out, an important problem with setting up such a trust is how it will be treated by the law of other relevant jurisdictions.

In Volume 7, Issue 2, of this *Review*, Geoffrey Simpson considered the use of a company incorporated outside the UK which was a UK charity. In ‘Non-UK Domiciled Charities: Still Possible?’, he considers the difficulties of establishing such a vehicle in the light of the Court of Appeal decision in *Gaudiya Mission v Barhmachary*, reversing the decision in the Chancery Division.

The UK Offshore Settlor Provisions deem capital gains realised by non-UK resident trustees to be those of the settlor in certain circumstances. Certain trusts are brought within the scope of the provisions only if a trigger condition is satisfied. In ‘Company Sales by Trustees and Restrictive Covenants by Target Company Directors’, Christopher Cooke argues for a narrow interpretation of the trigger condition involving property or income being provided directly or indirectly for the purposes of the settlement, yet advises how care can be taken to avoid tainting a trust should the courts hold a wider interpretation to be appropriate. This article was written before the Budget Speech, as a result of which the trigger conditions will acquire a new relevance. The author has dealt with this change in a note at the end of the article.

In ‘The Territorial Source of Interest Payments’, Alexander Thornton deals with the difficult question of when a payment of interest has a UK source. He argues that the cases on the situs of an asset consisting of a debt claim have no relevance to the question.

We say farewell to Julian Ghosh as Joint Managing Editor of this *Review*. He will be devoting his attention to the new Key Haven *Corporate Taxation Review*. We welcome in his place Amanda Hardy, who also practises as a barrister in the Chambers of G R Bretten QC at 24 Old Buildings, Lincolns Inn and who has expertise in trust and company law as well as in revenue law.

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 Taxation Review*, 24 Old Buildings, Lincoln’s Inn, London WC2A 3UJ.

Robert Venables QC

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