
The Offshore Taxation Review

LETTERS TO THE EDITOR

*From J P McNabola
Joy McNabola, Murray & Co
17 Earlsfort Terrace
Dublin 2JE*

Dear Sirs,

I would like to draw to your attention an inaccuracy in an article written by Mr Patrick Taylor in *The Offshore Tax Planning Review*, Volume 6, 1996, Issue 2, 'Trusts or Companies: A Comparative Analysis and Related Tax and Tax Planning'. On page 96 Mr Taylor states, and I quote:

"They [companies with shareholder and non-shareholder members] can also be formed in Alderney, one of the Channel Islands, and theoretically they can be formed in the Republic of Ireland, though the Irish Government is obstructing the creation of such companies (the situation is currently being tested in the Irish Courts)."

This statement is incorrect. The Companies Registration Office do not object to the registration of such companies and a letter to this effect was received by me on 13th August 1996, a copy of which is attached.

In so far as I have been able to establish, there is no case on the legality of these companies before the Irish Courts.

*From Ruairi Gogan
Manager
Companies Registration Office
Dublin Castle
Dublin 2*

Dear Mr McNabola,

Thank you for your letter of 31st July 1996 concerning an article published by Mr Patrick Taylor in respect of the formation of companies limited by guarantee and having a share capital.

I wish to confirm that this Office is not aware of any action that is currently being taken in the Irish Courts to which Mr Taylor might have been referring. The CRO is continuing to register such companies within the guidelines specified in Table D of the Companies Act, 1963.

I trust that this is to your satisfaction and again thank you for bringing the matter to my attention.

*From John F Avery Jones
Speechly Bircham
Bouvene House
154 Fleet Street
London EC4A 2HX*

Dear Sirs,

I was interested to read the "Show Stopper" argument in Mr Venables' article on *Bricom Holdings Ltd v IRC* in Volume 6, Issue 3 and his comment that he supposed that it did not occur to either of the distinguished Leading Counsel or either of the Special Commissioners that it might have any relevance. I am so sorry to disappoint him, but the argument was well known to all four people. His argument is in fact the same as the one I put forward in the course of a case note on *Padmore* nearly ten years ago in [1987] BTR 88 at 99-2. I drew it to the attention of counsel at the start of the hearing in case they wished to object to my hearing the case.

The technical defect in the argument is that, although a CFC is assumed to be resident, it is not liable to tax in the UK by reason of domicile, residence, place of management or any other criterion of a similar nature (Article 4(10) of the treaty). It is liable to tax by virtue of control by UK residents, which is not of a similar nature to the one specified. Accordingly one never reaches the dual residence provision.