
The Offshore & International Taxation Review

OTHER KEY HAVEN ARTICLES RELEVANT TO OFFSHORE AND INTERNATIONAL TAX

THE PERSONAL TAX PLANNING REVIEW

VOLUME 7 ISSUE 3

Stock Dividends and Higher-Rate Taxpayers

Robert Venables QC, Kevin Prosser QC & Julian Ghosh

In this controversial article, the authors take issue with Richard Bramwell QC's interpretation of the new Schedule F provisions introduced by Finance (No 2) Act 1997 as they apply to stock dividends received by higher rate tax payers. In the First Cumulative Supplement to the Seventh Edition of Taxation of Companies and Company Reconstructions Bramwell QC and his team suggest that as from 1999/2000 the rate of tax which a higher rate taxpayer must pay on a stock dividend is 40% of the gross, or 33% of the net, as opposed to 25% previously. Venables QC, Prosser QC and Ghosh argue that it is "clear from the context and the intendment [of the legislation] that income tax payable under section 249 is Schedule F income, at the very least for the purpose of applying the relevant rates".

Repeal of the Charge on Emigration of Trustees?

Robert Venables QC

The author considers whether section 106A Taxation of the United Kingdom Taxation of Chargeable Gains Act 1992, introduced in order to prevent the "bed and breakfasting" of securities, might inadvertently have repealed the capital gains tax charge on trusts which emigrate from the United Kingdom as far as concerns securities comprised in a trust fund.

Setting Up Business in the UK

Peter Vaines

The author of this extremely interesting article considers the opportunities for foreign domiciliaries setting up in business in the UK. He advises that, with care, considerable tax savings can be achieved.

**Enforcing Tax Indemnities and Rights of Recovery
Under the Brussels and Lugano Conventions**

Alastair Ladkin

The author challenges the principle that the Courts of one country will not enforce the revenue laws of another. He argues that this proposition no longer holds true in the case of those countries that are signatories of the Brussels and Lugano Conventions, and considers the important case of *QRS I APS v Frandsen*. He concludes that indirect enforcement of foreign revenue laws is now possible in a number of situations, and identifies UK settlors of non-resident trusts to whom gains are attributed under section 86 Taxation of Chargeable Gains Act 1992, personal representatives of deemed UK domiciliaries who are liable for inheritance tax on the deceased's world-wide estate, and UK buyers who have negotiated a tax indemnity as part of a company sale.

Discretionary Trusts - Selected Tax Planning Suggestions

Ralph Ray

The author gives clear and practical advice on a number of tax planning strategies for discretionary trustees, while identifying possible danger areas.

Stock Dividends Received by Trustees

Robert Venables QC

The author takes issue Mr Richard Bramwell QC and his team over the content of their Cumulative Supplement to the Seventh Edition of *Taxation of Companies and Company Reconstructions* as regards the taxation of stock dividends received by trustees. Mr Bramwell QC et al suggest that when a stock dividend received by trustees is taxable, it is always taxable at the Schedule F trust rate. Robert Venables QC disagrees. He argues that in some cases the trustees are liable to pay no tax beyond the amount of the tax credit.

When is a Company Not a Company?

Julian Ghosh

This article concerns a scheme which has found favour with many practitioners as a means of avoiding the attribution of gains of non-UK resident companies to their participators and others under section 13 of the United Kingdom Taxation of Chargeable Gains Act 1992.

THE PERSONAL TAX PLANNING REVIEW

VOLUME 7 ISSUE 2

Capital Losses and Trusts

Robert Venables QC

The author considers the utilisation of capital losses of trustees, settlors and beneficiaries, in the light of the changes made by the 1998 and 1999 Finance Acts. He concludes that the rules have become much more complex and that more care than ever is required to ensure that losses are not "stranded" but are utilised in the most tax-efficient manner. He notes that while one scheme for the sale of trust losses has apparently been outlawed, one will often be able to achieve the same result by other means.

Gifts with Reservation Wrinkles

Ralph Ray

The author deals with several aspects of the United Kingdom inheritance tax gift with reservation of benefit provisions, including:

- capital gains tax advantages and disadvantages
- gifts to trusts using the inter-spouse exemption
- avoidance of a double charge
- variations of estates
- Ingram v IRC* and Finance Act 1999 s.104
- Reversionary leases

Double Taxation Under Section 13

Sarah Dunn

The article deals with the situation where a United Kingdom domiciled and ordinarily resident individual, A, owns an offshore company, B which in turn owns

another offshore company, C, which owns a valuable asset which has increased in value and which is ripe for sale. The author points out various possibilities of double liability to United Kingdom taxation arising out of The Taxation of Chargeable Gains Act 1992 and suggests two solutions. The article also contains an analysis of whether a sale of an asset at an undervalue by an offshore company to its shareholder constitutes a "capital distribution" for United Kingdom capital gains tax purposes.

Some Thoughts on Stamp Duty in the New Regime

R S Nock LL.M FTII

United Kingdom Stamp Duties have been increased by upto 250% by the Labour Government and a new compliance regime has been introduced. The acknowledged expert on United Kingdom stamp duty considers the new compliance regime. The discussion includes:

- Territorial Jurisdiction
- Tax-efficient transfers of assets into an offshore company
- Execution of documents offshore
- Defects of CREST
- Avoiding stamp duty reserve tax
- Use of contracts for sale which are not "conveyances"
- "Long division"
- Avoidance of document
- Land transactions

Transitional Gains and Losses of Golden Trusts

Robert Venables QC

In this article, the author disagrees with certain views of the FICO of the United Kingdom Revenue in the context of the transitional provisions relating to "golden trusts", namely that:

- (a) net losses of a non-UK resident trust realised by the trustees in the transitional period March 19th 1998 - April 5th 1999 cannot be set off against gains actually realised by the trustees in the year of assessment 1999/2000; and
- (b) losses actually realised by the trustees in the year of assessment 1999 / 2000 cannot be set off against gains actually realised by the trustees in the transitional period.

The Application of Section 86 TCGA 1992 to the Migration of Trusts

Elizabeth Wilson

The author discusses a strategy whereby trustees of an offshore trust potentially caught by the United Kingdom Offshore Settlor Provisions (Taxation of Chargeable Gains Act 1992 section 86) can realise capital gains without the gains being visited on the settlor. The strategy involves the migration of the trust to a jurisdiction which has a suitably worded double taxation convention with the United Kingdom, a disposal of the relevant assets by the trustees and their subsequently becoming resident only in the United Kingdom.

The author also considers a variant strategy where the trust is initially United Kingdom resident and the assets in question consist of quoted securities.

THE CORPORATE TAXATION REVIEW

VOLUME 2 ISSUE 4

Taxation of Electronic Commerce: A Traditional View

Robert Venables QC

The author considers the present United Kingdom tax treatment of electronic commerce, in the light of the OECD Model Treaty. While his principal concern is with taxes on income, namely corporation tax and income tax, he includes a brief statement of the existing position in relation to value added tax.

THE CORPORATE TAXATION REVIEW

VOLUME 2 ISSUE 3

Yearly Interest of Money Chargeable to Tax Under Case III of Schedule D - Deduction at Source

Catherine Ghosh

This article considers two situations of interest payments by a UK company and whether UK withholding tax needs to be applied. The first is where UK Company A pays to a non-group UK Company B. The second is the borrowing, in the local country, by an overseas trading partnership with a UK corporate partner. In this second case, what is crucial is the "source" of the income for United Kingdom taxation purposes, which may be a different jurisdiction from that of the situs of the debt.

THE CORPORATE TAXATION REVIEW**VOLUME 2 ISSUE 2****UK Transfer Pricing Documentation: A Practical Perspective**

John Hobster & Robert Miall

The authors consider the practical implications of the requirements of the new legislation in relation to documentation, especially in the context of avoiding penalties.

Some Problems With Hybrid Entities

Richard Ward

This article deals with some of the uses in international tax planning of a hybrid entity, i.e. one which is classified for tax purposes differently in two jurisdictions, by being treated as fiscally transparent in one jurisdiction but a taxable entity in another. It deals in particular with a joint venture context where one or more of the parties want the joint venture vehicle to be treated as a partnership for tax purposes and the other(s) are seeking corporate treatment.

What Can We Say to Uncle Sam? (Tax Credits for Non Residents on UK Dividend Income)

Howard Nowlan

Recent changes to the corporate tax regime are also considered by the author, who analyses the tax position of non-UK residents located in jurisdictions with which the UK has concluded a double tax treaty and who received dividends from the UK.

THE EC TAX JOURNAL**VOLUME 4 ISSUE 1****EU Tax Harmonisation**

Kenneth Walker

A stimulating analysis of the degree of tax harmonisation which is necessary within Euroland and a suggested plan of action which permits Member States a considerable level of flexibility.

Some Awfully Big Questions on Tax Sovereignty v Level Playing Fields

Dr Sandra Eden

A very useful and thorough consideration of a wide range of issues surrounding the references to the ECJ in the cases of *Hoechst* and *Metallgesellschaft* which takes account of the most recent Opinions and Judgments of the Court of Justice.

The Saint Gobain Judgment of the ECJ

Dr Martin Lausterer

Dr Lausterer represented, with Dr Rädler, Saint Gobain and is therefore well-placed to comment on the judgment of the ECJ. In doing so he helpfully considers its broader significance.

Particular Aspects of the Fundamental Freedoms

Dr Kirsten Borgsmidt

A valuable consideration of tax cases on the fundamental freedoms of the EC which demonstrates to tax advisers the dangers of ignoring cases on the fundamental freedoms affecting other areas of law.

Taxation of Non-Tradable Stock Options Granted to Employees before Secondment: A German Point of View

Volker Pannen

A topical and practical discussion by a practising international tax attorney of the difficulties of taxing stock options granted to a mobile workforce, placed in the context of recent cases in Germany.

THE EC TAX JOURNAL

VOLUME 3 ISSUE 3

EC Law and Double Taxation Agreements

Paul Farmer

This article deals with the interrelationship between Community Law and double taxation conventions, both those made between Member States and those made with third parties. The discussion includes the competence of Member States to enter into fresh DTC's between themselves and that of the Community to enter into conventions with non-Member States. A comparison is made between non-discrimination rules in DTC's and the EC equal treatment principle and fundamental

freedoms.

The Card Protection Plan Case

Marc Dassesse

This article deals with the decisions of the European Court of Justice on a reference from the House of Lords in *Card Protection Plan Ltd v Commissioners of Customs & Excise* [1999] STC 270 and *Sparekassernes Datacenter (SDC) v Skatteministeriet* [1997] STC 932. The author suggests that these decisions are not merely of interest to the insurance and banking industries but are relevant to e.g. tourism services, sale of consumption goods and long-term car rentals.

Reflections on Tax Discrimination and How It Can Be Justified

Timothy Lyons

This article deals with the decision of the European Court of Justice on 29th April 1999 in *Royal Bank of Scotland plc v Elliniko Dimosio* (Greek State) Case C-311/97, which arose out of Greece taxing the profits of the Greek branch of a UK bank at a higher rate than those of Greek banks. The author considers in particular the approach of the Court to the question of whether or not discrimination existed and the attitude of the Court to the justification of the discrimination which was found to exist.

Enforcement of Foreign Revenue Law

Jonathan S Schwarz

This article concerns a recent decision of the Court of Appeal of England *Aps and Others v Frandsen* [1999] STC 616, which involved an attempt by the Danish tax authorities to collect unpaid taxes in England. The Court reaffirmed the traditional rule that English courts will not assist the collection of a foreign Revenue debt, even by indirect means. It rejected attempts by Denmark to rely on EC law and the Brussels Convention. The author considers the three questions: (a) What are revenue matters? (b) Can a claim be struck out even if the Convention applies? and (c) Is the rule against enforcing foreign revenue judgments contrary to the EC Treaty?

Will the Proposed "Taxation of Savings Income Directive" be the Victim of its Contradiction?

Marc Dassesse

This article deals with the European Commission "Proposal for a Council Directive to ensure a minimum of effective taxation of savings income in the form of interest payments within the Community" and shows its many inadequacies. The author