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## The Personal Tax Planning Review

# OTHER KEY HAVEN ARTICLES RELEVANT TO PERSONAL TAX

### THE OFFSHORE TAXATION REVIEW, VOLUME 8, ISSUE 3

#### **Golden Trusts: Action Prior to 6th April 1999**

Robert Venables QC

The author considers the extension of the UK Offshore Settlor Provisions to certain non-UK resident trusts which were formerly “grandfathered in” and were colloquially referred to as “golden trusts”. Although the changes were announced in the 1998 Budget Speech, they did not become fully effective until 6th April, but will then usually apply with quasi-retrospective effect to gains realized by the trustees after 16th March 1998.

#### **Residence of Companies: The Real Management and Control Test**

Robert Venables QC

There is a UK test of corporate residence enunciated in *De Beers Consolidated Mines Limited v Howe*: “a company resides, for purposes of Income Tax, where its real business is carried on ... and the real business is carried on where the central management and control actually abides.” In this article, the Consulting Editor explains that this formulation can be easily misunderstood, especially by criminal lawyers in trials for tax fraud. He re-analyses what is involved in the light of the authorities, most of which are now of some antiquity, and distinguishes the test from three other tests, namely (a) of who has control of the company, (b) of where the business of the company is carried on, and (c) of where the profits of the company are earned.

#### **The Transfer Pricing Provisions and Benefits From Offshore Structures**

Robert Venables QC

One might think that the new UK Transfer Pricing Provisions would have no

relevance to gratuitous benefits conferred by companies on their participators or on beneficiaries of trusts which own them. One section of the Revenue has taken a contrary view, based on the literal wording of the Provisions. The consequences of that could be horrendous. In this article the author argues that application of the principles laid down in the decision of the English Court of Appeal in *Memec plc v IRC* [1998] STC 754 leads to a different result.

#### **The Interpretation of Double Taxation Conventions: Residence of Dual Resident and Temporarily Non-UK Resident Individuals**

Robert Venables QC

The author considers the tie-breaker paragraph on dual resident individuals in Article 4 of the OECD Model Convention. He first discusses the principles enunciated by the English Court of Appeal in *Memec plc v IRC* [1998] STC 754 and then shows how a construction of the paragraph in the light of the OECD Commentary leads to a rather different result than if one applied UK principles.

#### **Musings on the OECD Report on Harmful Competition**

Charles Cain

In this article, Charles Cain, of the Isle of Man, provides a lively riposte to the bureaucrats who drew up the OECD Report on "Harmful Competition". The article delves into philosophical, political and economic theory.

#### **Where is an Interest in a Unit Trust Situated?**

Robert Venables QC

The author suggests that the answer to this question may not always be "in the place where the trustees are resident and administer the trust", especially if the trust is governed by a proper law similar to English law and the trust instrument does not contain any special provisions.

#### **A Note on Geoffrey Simpson's Article 'The Source of Interest: A Practical, Hard Matter of Fact'**

Robert Venables QC

Mr Simpson's original article appeared at page 109 in Issue 2 of Volume 8 of *The Offshore Taxation Review*.

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**THE CORPORATE TAXATION REVIEW, VOLUME 2, ISSUE 1**

**Convertible Shares As Remuneration**

Ian Gordon

Section 140D of the Taxes Act 1988, introduced by section 51 of the Finance Act 1998, brings in new provisions which tax the conversion of convertible shares acquired by directors and employees. Already it seems that the Inland Revenue interpret these provisions much more widely than the wording would seem to permit. In this article, the author explores the meaning of the language used, and concludes that the Revenue's view of the scope of the provisions is incorrect.

**Value Shifting Out of Shares**

Robert Venables QC

There has been much discussion recently as to whether, as an unexpected consequence of the introduction of taper relief by Finance Act 1998, the issue of a bonus or scrip issue of shares which is taxed under Taxes Act 1988 section 249 now gives rise to a deemed disposal of the shareholding from which it is derived and with what consequences. It has been suggested that Taxation of Chargeable Gains Act 1992 section 29 (value shifting: general provisions) produces that result. In this article, in addition to discussing this specific issue, the author also suggests that section 29(1) is defectively drafted and does not work in the way the Revenue suppose. He concludes that certain capital gains tax planning strategies will still normally be viable, subject to certain conditions being satisfied. In the course of the article there is also considered the vexed question of what it is to "exercise control" within the meaning of section 29.