INSURANCE POLICIES HELD BY TRUSTS, COMPANIES OR FOREIGN INSTITUTIONS

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1 Scope of the Article

In this article I consider the taxation of insurance policies after the substantial amendments made to the charging provisions and the blocking of some much-exploited loopholes by the Finance Act 1998. I consider the present opportunities for tax planning through the combined or single use of a trust, company or foreign institution. I conclude that there are significant remaining opportunities for tax planning through offshore policies, which have become much more attractive since the extension of the capital gains tax Offshore Settlor Provisions and Offshore Beneficiary Provisions by Finance Act 1998.

The article is not concerned with the charges, introduced by regulations made under Finance Act 1998 powers, on personal portfolio bonds.[2]

2 Qualifying and Non-Qualifying Policies

The United Kingdom tax code divides insurance policies into qualifying and non-qualifying policies, As a broad rule of thumb, gains in respect of the former are not taxable in the hands of the policyholder, whereas the latter are, A new policy issued by an offshore insurer has not for many years been able to rank as a qualifying policy. While qualifying policies are often thought to be tax-free, income and gains of the underlying life fund of the insurer will normally have been taxed at a rate at

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2 See Taxes Act 1988 section 553C and the Personal Portfolio Bonds (Tax) Regulations.

least as high as the basic rate of income tax, From a purely fiscal point of view, therefore, it will normally be better for a non-qualifying policy to be an offshore policy.[3]

3 The Chargeable Event Provisions

The rules relating to the taxation of non-qualifying policies[4] are complex. One must identify a "chargeable event". Very broadly speaking this is any occasion on which a profit is derived from the policy. The chargeable event can be the maturity of the policy, a surrender in whole or in part of the policy, the payment of any benefit thereunder or an assignment of the policy for valuable consideration.[5] One must then calculate the "gain arising in connection with the policy". One might have thought that the gain arising would then be deemed to be income of the person realising it for all income tax purposes.[6] In fact, the provisions are extremely technical. They were revised by Finance Act 1998, with effect from, in general, 6th April 1998.[7] In this article I shall consider the position where gains arise in connection with policies held on trust or owned by companies or "foreign institutions". I shall consider the old and new rules, in so far as they are relevant to gains arising after 5th April 1998.

4 Trusts

4.1 "Held on Trusts Created by an Individual"

Taxes Act 1988 section 547(1) provides:

> "Where under section 541 ... a gain is to be treated as arising in connection with any policy or contract—

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3 That is not to say that onshore non-qualifying policies are necessarily disastrous, as in certain cases a credit is given for basic rate income tax. See 8 below.

4 And, exceptionally, some qualifying policies

5 Taxes Act 1988 section 540.

6 Subject only to any provision deeming it to be the income of some other person, as where the income of trustees is deemed to be that of the settlor.

7 Finance Act 1998 Schedule 20 paragraph 1(7).

(a) if, immediately before the happening of the chargeable event in question, the rights conferred by the policy or contract were … held on trusts created by an individual … the amount of the gain shall be deemed to form part of that individual's total income for the year in which the event happened …

(b)[8] …"

The words used are "held on trusts created by an individual". Until the passing of Finance Act 1998, there was only a limited explanation of this phrase, which was undoubtedly too narrow for the Revenue's good. Section 547(14)[9] merely provides:

> "Any reference in this section to trusts created by an individual includes a reference to trusts arising under—
>
> (a) section 11 of the Married Women's Property Act 1882;
>
> (b) section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880; or
>
> (c) section 4 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964;
>
> and references to the settlor or to the person creating the trusts shall be construed accordingly."

In the HM Treasury Explanatory Notes on Clauses of the 1998 Finance Bill ("the Treasury Notes"), it is stated of this subsection:

> "An existing rule about statutory trusts under the Married Women's Property Act etc. is adapted for the changes detailed above. These trusts are treated like any other trust. A special rule is needed so that the individual effecting the policy is treated as the person who created the trusts and as the settlor."

The fact that a special rule was needed even for something so simple and commonplace as a Married Women's Property Act trust suggested that the meaning

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8 Section 547(1)(b) is discussed at 9 below.

9 Although section 547(14) was added by Finance Act 1998, the substance was formerly contained in section 547(1)(a).

of "trusts created by an individual" was very narrow.

A person could well fail to qualify as an "individual" who had "created" the trusts, even though he was clearly a "settlor" for the purposes of the income tax settlement provisions in that he had "provided ... funds directly or indirectly for the purpose of ... any disposition, trust, covenant, agreement, arrangement or transfer of assets".[10] This allowed some scope for tax planning. This loophole has to some extent been closed by Finance Act 1998, albeit in a rather unobvious way. The side note to the new section 547A is "Method of charging gain to tax: multiple interests". It is therefore surprising to find buried in it subsection (10), which provides:

> "Where immediately before the happening of a chargeable event—
>
> (a) the rights conferred by the policy or contract in question are, or a share in those rights is, held subject to any trusts, and
>
> (b) different shares of the whole of the property subject to those trusts originate (within the meaning of subsection (6)(b) above) from different persons,
>
> the rights or share shall, in relation to that chargeable event, be taken for the purposes of this section to be held on trusts created by those persons. "

This sends us on a paperchase to subsections (6), (7) , (8) and (9). Broadly speaking, they provide that a share of the trust property "originates" from a person to the extent to which that person has provided directly or indirectly for the purposes of the trusts either that property or property which is now represented by such property. While this goes some considerable way to closing up the loophole, it is arguable that it is not 100% efficient.

4.2 Settlor Alive and United Kingdom Resident

An individual is charged to tax if the policy rights are held on trusts created by him. This rule is unnecessarily harsh. Income arising under a settlement is normally deemed to be that of the settlor for income tax purposes only if he or his spouse can benefit under the trust.[11] It is difficult to see what is special about insurance policies to warrant this Draconian treatment. There is nothing in Treasury Notes which

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10 Taxes Act 1988 section 660G(1) and (2).

11 See Taxes Act 1988 Part XV.

provides any explanation.

If a benefit is payable on the settlor's death, it will still be taxable on the settlor, as the gain is deemed to be realised immediately before his death. If the policy is not on the settlor's life but on, say, the life of the settlor and his spouse, so that no benefit is payable until after his death, then the amount of his gain cannot be deemed to be part of his total income if he is the first to die.

The income is not deemed to arise under any schedule or case. It simply forms part of the settlor's total income. Other anti-avoidance provisions which deem income to be that of the settlor also deem it to arise under Schedule D Case VI. In that case, the settlor can set off against such deemed income Schedule D Case VI losses. The only losses which can be set off under income deemed to be the settlor's under section 547(1)(a) are those which can be set off against his total income, e.g. trading losses.

A further consequence of the income not being assessable under any schedule or case is that it is difficult as a matter of strict law for a United Kingdom resident but non-domiciled settlor to escape taxation in respect of an offshore policy on the basis that the income has a non-UK source.

The settlor is given a right of indemnity against the trustees for the additional tax he is compelled to pay "to the extent of any sums, or to the value of any benefits, received by them by reason of the event".[12]

4.3 Settlor not Both Alive and United Kingdom Resident

4.3.1 General

If the settlor is not alive, section 547(1)(a) cannot result in a tax charge.[13]

If the settlor is non-UK resident, one would have thought that the gain could still be

12 Section 551(1). The cross-reference to section 547 in Butterworths' *Yellow Tax Handbook* wrongly suggests that the right of indemnity is available only where the settlor is a beneficiary.

13 Under section 547 before the Finance Act 1998 amendments, it was generally considered that if the chargeable event was the death of the settlor then his estate was undoubtedly liable, as the gain was deemed to arise the moment before his death. It was also thought to be further arguable that if the chargeable event happened after he had died but in the same year of assessment, then his estate was liable. It now appears that this was not the view of the Revenue. See *Treasury Notes*: "Previously, if the settlor was dead or non-resident, generally no one was taxable due to a loophole in the legislation."

deemed to be his. If the policy were a United Kingdom one, then the settlor would be taxable; otherwise he would not be. This would follow from basic principles of the territoriality of income tax and not from any express provisions in the chargeable events legislation. Yet it was the view of the Treasury that if the settlor was not United Kingdom resident, then there was no charge to tax.[14]

Section 547(1)(d) now provides:[15]

> "(d) if, immediately before the happening of that event,—
>
> (i) those rights were held on trusts, and the person who created the trusts was not resident in the United Kingdom or had died or (in the case of a company or foreign institution) had been dissolved or wound up or had otherwise come to an end, or
>
> (ii) those rights were held as security for a debt owed by trustees,
>
> subsection (9) or (10) below (as the case may be) shall apply in relation to the amount of the gain."

Subsections (9) and (10) deal with the alternative scenarios that the trustees are and are not resident in the United Kingdom immediately before the happening of the chargeable event in question. Ordinary residence of the trustees is irrelevant. So too is their residence status at any other time in the same year of assessment.

4.3.2 Trustees United Kingdom Resident

Section 547(9), which deals with the position where the trustees were United Kingdom resident, provides:

> "(9) If, in a case falling within subsection (1)(d) above, the trustees were resident in the United Kingdom immediately before the happening of the chargeable event in question, the amount of the gain—
>
> (a) shall be deemed to form part of the income of the trustees for the year of assessment in which the chargeable event

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14 See the previous footnote.

15 Subject to transitional relief, described at 4.4 below.

happened; and

(b) shall be chargeable to income tax at the rate applicable to trusts for that year."

The rate applicable to trusts is, for 1999/2000, 34%. Again, the gain is simply deemed to form part of the income of the trustees and is not assessable under any schedule or case.

4.3.3 Trustees Non-UK Resident

Section 547(10), which deals with the position where the trustees were not United Kingdom resident, provides:

> "(10) If, in a case falling within subsection (1)(d) above, the trustees were not resident in the United Kingdom immediately before the happening of the chargeable event in question, then, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of the amount of the gain, section 740 shall apply as if—
>
> (a) the amount of the gain constituted income becoming payable to the trustees; and
>
> (b) that income were income arising to the trustees in the year of assessment in which the chargeable event happened."

Subsection (10) does not bring the income tax settlement provisions or Taxes Act 1988 section 739 into play so as to deem the income to be that of the settlor. That is already achieved by subsection (1)(a) where the settlor is resident in the United Kingdom. Section 739 does not apply to a settlor who is not ordinarily resident in the United Kingdom.[16] While the income tax settlement provisions can operate so as to deem United Kingdom source income of trustees to be that of a non-UK resident settlor, this mechanism has not been followed in section 547.

Section 740 applies where by virtue or in consequence of a transfer of assets (either alone or in conjunction with associated operations), income becomes payable to a person resident or domiciled outside the United Kingdom and an individual ordinarily resident in the United Kingdom (who is not liable to tax under section 739 by

16 There is the theoretical lacuna in the case of a settlor who is ordinarily resident in the United Kingdom but not resident in the United Kingdom at the material time.

reference to the transfer) receives a benefit provided out of assets which are available for the purpose by virtue or in consequence of the transfer or of any associated operations. It in effect attributes "relevant income" to beneficiaries who receive benefits which would otherwise not be taxable, such as payments of trust capital. Unlike the capital gains tax Offshore Beneficiary Provisions, there is no question of the recipient being obliged to pay any surcharge on tax.[17]

Section 740 is a very complicated provision. Its application is subject to the motive defence contained in section 741, which Professor Willoughby successfully invoked when assessed under the predecessor of section 739.[18] In my view, section 547(10) does not stipulate that section 740 is to apply in any particular case; merely that, if it does otherwise apply, the amount of the gain shall be treated as income payable to the trustees. If, therefore, section 740 does not apply in relation to a beneficiary for some reason, in particular, the motive defence, then the gain will normally be entirely tax free.[19] In principle, therefore, investment in an offshore insurance policy could be an excellent method of generating tax-free income and gains. Of course, it will not be in every case that the motive defence can be relied upon. In practice, it will often be available if the settlor was not United Kingdom domiciled or resident when the settlement was made, especially if at that time he had no intention of becoming so. One would also need to ensure that investment in such a policy did not itself deprive the beneficiaries of the motive defence on the ground that it constituted an associated operation which was effected for tax avoidance purposes. That will be rather easier after Professor Willoughby's victory.

4.4 Transitional Relief

The new rules concerning trusts of which there is not in existence a settlor resident in the United Kingdom at the time the chargeable event arises do not apply in certain cases.[20] The first condition is that the gain is treated as arising on the happening of a chargeable event on or after 6th April 1998 in relation to a "pre-commencement policy or contract". This term is defined to include a policy of life insurance issued in respect of an insurance made before 17th March 1998, unless it has been varied on or after that date so as to increase the benefits secured or to extend the term of the insurance. For this purpose, any exercise of rights conferred by the policy is

17 For the Offshore Beneficiary Provisions, see my *Non-Resident Trusts* 7th edition Chapter 14.

18 *Inland Revenue Commissioners v Willoughby* (1997) 70 TC 57; [1997] STC 995.

19 I assume that the normal exemption from capital gains tax for life assurance policies is not for some reason unavailable.

20 Finance Act 1998 Schedule 20 paragraph 7.

somewhat unfairly treated as a variation. Care must therefore be taken not to prejudice transitional relief, at least until all or most of the gain has been realised.

The second condition is that the trusts in question were created before 17th March 1998 and the person, or at least one of the persons, who created them was an individual who died before that date.

The transitional relief is rather peculiarly structured. It is by no means the case that a gain arising in respect of every unvaried existing policy will escape the new rules.

5 Companies

5.1 The Direct Charge

If, immediately before the happening of the relevant event, the rights under the policy were in the beneficial ownership of a company, or were held on trusts created, or as security for a debt owed, by a company, the amount of the gain is deemed to form part of the company's income, chargeable under Case VI of Schedule D, for the accounting period in which the event happened: Taxes Act 1988 section 547(1)(b), which was substituted with effect from 1st April 1989.[21]

Section 547(1)(b) contains no express mention of the residence status of the company. On normal territorial principles, one would not expect it to apply to an offshore policy owned by a non-UK resident company. It is very likely that the Revenue take the view that it does not apply to even an onshore policy owned by a non-UK resident company, at least if it is not carrying on a trade in the United Kingdom through a branch or agency. The term "accounting period" is a term of art of corporation tax.[22] Companies which are neither United Kingdom resident nor carrying on a trade in the United Kingdom through a branch or agency are not within the charge to corporation tax.[23]

A company which is chargeable to income tax is chargeable only at the basic (or lower) rate. By not charging such a company in the case of an onshore policy, the Revenue are giving up very little, as the equivalent of basic rate income tax will already have been paid by the life company. In effect, the offshore company is itself placed in the same position as a United Kingdom resident individual or trustees, who

21 Section 547(1)(b).

22 Taxes Act 1988 section 8(3)

23 Taxes Act 1988 section 11(1).

are given a credit for basic rate tax.[24]

5.2 The Indirect Charge

Finance Act 1998 added a paragraph (e) to section 547(1), which confirms the view that 547(1)(a) is not considered to apply to a non-United Kingdom resident company. It provides:

> "(e) if, immediately before the happening of [the chargeable] event, [the] rights [under the policy]—
>
> (i) were in the beneficial ownership of a foreign institution, or
>
> (ii) were held as security for a debt owed by a foreign institution,
>
> subsection (11) below shall apply in relation to the amount of the gain."

"Foreign institution" is defined to mean "a person which is a company or other institution resident or domiciled outside the United Kingdom".[25] A company is "domiciled" outside the United Kingdom if it is incorporated in a jurisdiction which does not form part of the United Kingdom. It is thus possible that a company could be both resident in the United Kingdom and domiciled outside the United Kingdom, in which case the gain is prima facie caught by both paragraphs (b) and (e) of section 547(1). In such a case, it is moot point whether one of the paragraphs would prevail or whether the Revenue would have a choice as to which to apply. Normally, it would be to their advantage to apply paragraph (b). If they have no choice, then it is arguable that paragraph (e) is to prevail, as it was inserted by Finance Act 1998 and therefore impliedly abrogates paragraph (b), in so far as they are in conflict.

Section 547(1)(e) brings into play section 547(11), which provides:

> "(11) In a case falling within subsection (1)(e) above, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of the amount of the gain, section 740 shall apply as if—
>
> (a) the amount of the gain constituted income becoming payable to the foreign institution; and

24 See section 8 below. True, a United Kingdom resident company obtains no such credit, but that is an anomaly itself.

25 On "other institutions", see 7 below.

(b) that income were income arising to the foreign institution in the year of assessment in which the chargeable event happened."

Section 740 has already been discussed above in the context of non-UK resident trusts. It suffices at this point to recall, firstly, that section 740 imposes charges to income tax only to the extent that individuals ordinarily resident in the United Kingdom receive a benefit which would otherwise not be taxable and secondly that it may not apply at all because of the motive defence.

What of Taxes Act 1988 section 739? Broadly speaking, this catches a person ordinarily resident in the United Kingdom who has made a transfer of assets abroad with the intention of avoiding United Kingdom taxation. Any income of a non-UK resident he has "power to enjoy" is deemed to be his for income tax purposes. If I, being ordinarily resident in the United Kingdom, establish an offshore company to hold an insurance bond, will I be taxed on any gain the company makes on the happening of a chargeable event? The answer to my mind is "no". Unless the gain is of an income nature and taxable quite apart from section 547, it will be a gain of a capital nature which will thus not constitute "income" for section 739 purposes. While it is deemed to be income for section 740 purposes, it is not deemed to be income for section 739 purposes.

5.3 Planning

The result is that a person domiciled and ordinarily resident in the United Kingdom can create an offshore structure from which he can benefit and under which gains on offshore insurance bonds can be realised free of tax, so long as they are not distributed. As the worst that can happen is that tax is deferred until benefits are received, the position is prima facie extremely advantageous. Capital gains tax needs to be taken into account, as does the possible incidence of the transfer pricing provisions.

6 Policies owned by Companies Owned by Trusts

There are no express rules dealing with the situation where a policy is owned by a company which is owned by a trust. One therefore applies the basic rules. If the company is United Kingdom resident, it will be itself charged to tax on the gain, but the trustees will not be. The increase in value of the policy will normally, however, result in a corresponding increase in the value of the shares in the company. If the trustees are United Kingdom resident, this will normally give rise to a charge to capital gains tax when the shares are disposed of. If the trustees are not United Kingdom resident, then either the capital gain on the disposal of the shares will be deemed to be that of the settlor under the Offshore Settlor Provisions[26] or will constitute trust gains for the purposes of the Offshore Beneficiary Provisions.[27]

If the company is not United Kingdom resident, then the chargeable gain will constitute income for Taxes Act 1988 section 740 purposes only. It will not be deemed to be that of the settlor under section 739, for the reasons given at 5.2 above. Nor will it in my view be deemed to be the settlor's by virtue of the income tax settlor provisions,[28] as there will no "income arising under a settlement". The capital gains tax considerations relevant to a disposal of shares by the trustees are the same as in the case of a United Kingdom resident company.

7 Foreign Institutions

As mentioned, "foreign institution" is defined to mean "a person which is a company or other institution resident or domiciled outside the United Kingdom". What is an "institution"? The Treasury Notes state:

> "Sub-paragraph 1(9) contains a definition of a foreign institution. They are entities with legal personality, like anstalts, stiftungs, foundations etc. found in Liechtenstein and other Roman Law jurisdictions, that may act in a fiduciary capacity, in much the same way as a trust does under UK law."

While a foundation may well be an "institution", and a stiftung arguably may be so, it is more doubtful that an anstalt could be so described. I rather suspect that the draftsman has failed to give full effect to the Revenue's intention. Of course, if an entity is in any case a "company",[29] the point will be academic. One very much wonders whether any of the entities the Revenue are trying to catch acts in a fiduciary capacity, even though their directors or governors may do so.

Section 547(1)(e) applies only to rights in the "beneficial ownership" of a foreign institution. This phrase is given an extended meaning by section 547(12), which provides that property held for the purposes of a foreign institution is deemed for the purposes of section 547 to be in its beneficial ownership.

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26 See my *Non-Resident Trusts* 7th edition Chapter 13.

27 See my *Non-Resident Trusts* 7th edition Chapter 14.

28 Taxes Act 1988 Part XV.

29 Within the meaning of Taxation of Chargeable Gains Act 1992 section 288.

This is to my knowledge the first time Parliament has attempted to legislate in anything approaching express terms for anstalts and stiftungs.[30] While, from the Revenue's point of view, this is long overdue, it is but a poor and late start.[31]

8 Comparison of Onshore and Offshore Policies

If, exceptionally, no tax levied by any jurisdiction is borne by the relevant life fund on income or gains, then an offshore policy is at the very least an instrument of deferral of tax. The main United Kingdom fiscal disadvantage is that capital gains are taxed as income without the benefit of either indexation or taper relief. To the extent to which United Kingdom or foreign taxes are suffered by the life fund, however, a policy which is taxed by section 547 is tax-inefficient if and to the extent to which the person who would have realised the income and gains had the investments been made directly would have been relieved from a double charge.

In the case of an onshore policy, the life fund will have borne United Kingdom tax on income at a rate at least as high as the basic rate,[32] albeit with, in general, the benefit of double taxation relief, whether under a double taxation convention or given unilaterally. It will likewise bear tax on capital gains, but usually with the benefit of either or both of indexation relief and taper relief.

Where the section 547 charge is levied on an individual or on United Kingdom resident trustees, the taxable person is given a credit for basic rate tax. That in principle keeps the taxation of the policy relatively neutral as compared with direct investment. In one respect, however, the taxation is more beneficial. Firstly, the amount of the gain is not grossed-up. For example, if the gain is £7,700, it is not treated as a gain of £10,000 with a tax credit of £2,300, leaving £1,700 further to be paid by a higher-rate taxpayer, but as a gain of £7,700, which is taxable (in the case of a 40% taxpayer) at the rate of (40%-23%=) 17%, involving a tax charge of £1,309. This effectively reduces the tax charge from 40% to 36.09%. Where the charge is levied on trustees, the effective rate is 31.47%, as compared with the 34% which would have been levied on accumulated income and capital gains (ignoring

30 There is another example in Finance Act 1998 Schedule 23, transitional provisions concerning the extension of the Offshore Settlor Provisions: see my *Non-Resident Trusts* 7th edition at 13.3B.3.

31 See my article 'The Liechtenstein Foundation and United Kingdom Tax Avoidance' in *The Offshore Tax Planning Review* Volume 4, Issue 3 at p.185.

32 While the rate will normally be higher, there will be a deduction for expenses of management in computing taxable income.

indexation and taper relief).

The credit is not available in the case of the gain of a non-UK resident trust. Thus if the realisation of a gain does result in a beneficiary being charged to tax under section 740, there will be an element of double taxation.

There is likewise no credit where the charge is levied on a United Kingdom resident company. Where the gain is realised by a non-UK resident company and a person is as a result taxed under section 740, there will be the same element of double taxation as where section 740 applies to a gain realised by trustees.

In the case of a new offshore policy, there is no credit for basic rate tax, even though United Kingdom tax may have been suffered by the life fund.

9 Policies Held as Security for a Debt

One of the most unusual aspects of section 547 is that in the case of a policy held as security for a debt of an individual, for a company or a foreign institution, the gain is prima facie deemed to be income of the individual, company or foreign institution. If the policy is held as security for a debt of trustees, then, even if the settlor is dead or he is not resident in the United Kingdom, the gain is treated in the same way as if the policy itself were held on the trusts, i.e. if the trustees are United Kingdom resident, they are chargeable at the rate applicable to trusts and, if they are not, the amount of the gain is deemed to be income for Taxes Act 1988 section 740 purposes. See section 574(1)(d)(ii), set out at 4.3.1 above.

I have not myself ever been able to fathom the justification for this aspect of the section. No explanation is given in the Treasury Notes. Possibly, it was a reaction to some long-forgotten avoidance scheme. One would have thought that the only question was: who benefits from the gain being realised?

A further difficulty is that the same gain can be taxable under more than one heading of section 547(1), For example, I, a United Kingdom resident, take out an offshore policy for my own benefit. On arms' length terms, I allow it to be used as security for a borrowing by offshore trustees of a trust whose settlor is dead or non-UK resident. The gain is treated as mine under section 547(1)(a), on the assumption that the relevant rights are still vested in me as beneficial owner, which I shall assume is the case. Yet it is also treated as income of the trustees by section 547(1)(d)(ii). The sixteen subsections of the new section 547A (Method of charging gain to tax: multiple interests), inserted by Finance Act 1998, do not seem even to address the problem.

10 Conclusion

Offshore policies offer an opportunity for an investor at least to defer tax on income and gains arising within the life fund unless and until a benefit is enjoyed.

Non-resident trusts where the settlor is dead or not resident in the United Kingdom offer the possibility of deferring - and possibly ultimately avoiding - tax even where a policy is encashed in whole or in part. There is nothing to stop a United Kingdom resident trust from emigrating at any time before the chargeable event arises so as to avoid a direct charge.

Companies neither incorporated nor resident in the United Kingdom, whether owned directly by United Kingdom residents or owned by trustees, particularly offshore trustees, offer the possibility of deferring - and possibly ultimately avoiding - tax even where a policy is encashed in whole or in part and even where, in the case of a trust, the settlor is a beneficiary.

Liechtenstein anstalts may offer the possibility of a complete exemption from the charge.

There are other permutations of structures which the legislation still does not catch at all.