

OTHER KEY HAVEN ARTICLES ON PERSONAL TAX

The Offshore Taxation Review Volume 9 Issue 1

Problems with the UK TCGA Section 13

Attribution of Capital Gains of Non-UK resident Quasi-Close Companies

Robert Venables QC

page 1

In this extended article, the author discusses several of the many problems with the interpretation of these provisions, including:

- Companies to which Provisions Apply
- Persons to whom the Provisions Apply
- Persons with Changing Domicile and Residence Status
- Participators
- Non-UK Resident Trustees
- Method of Attribution
- Practical Difficulties
- Relevance of *Leedale v Lewis*
- Minority Shareholders
- Exempt Gains
- Double UK Taxation
- Credit or Deduction or Neither
- Gains Imputed to Trustees
- Ordering Rules
- Payment of Tax by the Company
- Losses
- Taper Relief and Indexation Relief
- Indirect Interests
- Double Taxation Relief
- Relief for Foreign Tax

Tax Avoidance by Transfers of Assets Abroad: the Revenue View

Robert Venables QC

page 45

The United Kingdom Revenue has published in the Inland Revenue Tax Bulletin Issue 40, April 1999, an Interpretation "Transfer of Assets Abroad - taxation of income under the provisions of TA 1988 ss 739-746". The Interpretation is an important one, not least because some of it is arguably more beneficial to taxpayers than the strict law. In this article, the author considers the soundness of the Interpretation and the extent to which it may be relied on in tax planning.

'Pay' As You Earn: *DTE Financial Services v Wilson*

James Henderson

page 33

The author considers a scheme to avoid paying UK Class 1 National Insurance Contributions involving the provision for employees of bonuses by means of a reversionary interest in an offshore trust and its reception before the Special Commissioners.

R v Dimsey; R v Allen: A Cause for Concern

David Ewart

page 69

The author discusses the judgment of the Court of Appeal (Criminal Division) in these cases, now reported at [1999] STC 846. Two of the points arising are of general importance to tax practitioners. The first concerns the situation where, by virtue of a transfer of assets within ICTA 1988 section 739, income arises to a company which is incorporated outside the UK but is resident in the UK for tax purposes. The second concerns the Schedule E liability of shadow directors who have the use of homes and chattels owned by companies. These arrangements are very common where the occupier is a foreign domiciliary.

Cooper v Billingham; Fisher v Edwards: a Welcome Victory for the Taxpayers

Amanda Hardy

page 75

This article is concerned with the decisions of the Special Commissioners, now reported at [1999] STC (SCD) 176, on the difficult subject of the application of the United Kingdom capital gains tax Offshore Beneficiary Provisions to the granting of interest free loans by the trustees of an offshore trust to beneficiaries.

The Offshore Taxation Review Volume 9 Issue 2 (Forthcoming)

United Kingdom Mini-Budget Anti-Avoidance Measures

Robert Venables QC

This article deals with the effect on several planning strategies by the abolition by the United Kingdom Chancellor of the Exchequer in his “mini-Budget” speech on holdover relief from capital gains tax on gifts of shares and securities to United Kingdom resident companies. The strategies discussed are those using Offshore Bonds, the so-called “Envelope Trick”, various strategies involving the sale of interest under a trust, and techniques used by Temporarily Non-UK Resident Individuals.

The EC Tax Journal Volume 3 Issue 3

EC Law and Double Taxation Agreements

Paul Farmer

page 137

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

page 157

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

page 183

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

page 169

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

page 175

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 concludes that the proposal is makeshift job because a coherent approach to European tax issues is only possible if Member States no longer attempt to superimpose a thin layer of Community tax law on widely diverging national tax systems.