
The Personal Tax Planning Review

OTHER KEY HAVEN ARTICLES RELEVANT TO PERSONAL TAX

The Offshore Taxation Review Volume 9 Issue 2

Purchase of Own Shares by Non-UK Incorporated Companies – Capital Or Income?

Alexander Pepper

page 121

The question whether a distribution from a company constitutes capital or income for various purposes is a very vexed one. The authorities, numerous and conflicting as they are, do not deal with the question of purchase by a company of its own shares, as this is a relatively modern phenomenon. Where the company is non-UK resident, the United Kingdom tax treatment will depend on private law principles. In this article, the author considers this important question,

What is (and what is not) A Sham

James Kessler

page 125

The cry of “sham” is often raised by Revenue authorities and by settlors of trusts and their heirs. There is much confusion as to the real meaning of the term. “Sham” was raised in three recent English tax cases, *R v Allen*, *Hitch v Stone* and *DTE Financial Services Ltd v Wilson*. The author considers the true nature of a sham in trust, tax and other contexts and contrasts it with some related concepts which may be confused with it. He gives practical advice on how to avoid creating a sham trust.

ICTA Section 146 and Allen: Must the Client Throw in the Towel?

Stephen Brandon QC

page 135

The obiter dicta of the Court of Appeal in *R v Allen* that a shadow director of a company can be taxable under the United Kingdom Taxes Act 1988 section 145 in respect of his occupation of a residence owned by a company have surprised most tax advisers. In this article, the author considers the implications of the decision, in particular the quantum of the charge under section 145 and the possible application of the usually much higher charge under section 146.

United Kingdom Mini-Budget Anti-Avoidance Measures

Robert Venables QC

page 145

This article deals with the effect on several planning strategies of the abolition by the United Kingdom Chancellor of the Exchequer in his "mini-Budget" speech of 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 an interest under a trust, and techniques used by Temporarily Non-UK Resident Individuals.

The Offshore Trust

Milton Grundy

page 149

The author, who can fairly be regarded as the father of the offshore trust, draws on his long experience in this review of the development of its development over the past thirty-five years. He considers the Cayman Exempted trust, asset protection trusts and the alteration or abolition of the perpetuity rules. His thesis that a United Kingdom resident "thin" trust may enable non-UK residents indirectly to obtain treaty relief from tax in third countries will excite debate. He considers changes of the proper law of a trust and "flee" or "trigger" clauses. In the context of the role of the Protector, he suggests that a Protector can be removed from office by the Court if he has a conflict of interest, for example, because he is the lover of one of the beneficiaries. He considers the litigation explosion and the wide misconception in the offshore industry as to "shams". The article concludes with reflections on the relative merits of large and small trust companies.

When An Offshore Trust is Not Tax Avoidance

Robert Venables QC

page 159

This article discusses a recent decision of the United Kingdom Special Commissioners in *A Beneficiary v Inland Revenue Commissioners* [1999] STC (SCD) 134 which decided that transfers of funds made in respect of a Jersey trust established for the benefit of a United Kingdom ordinarily resident individual were not for the purpose of "tax avoidance". In the author's view, this case is a welcome application of the new, restrictive, definition of "tax avoidance" propounded by the House of Lords in Professor Willoughby's case.

Money Laundering Initiative in Guernsey

Dr Raymond Ashton

page 169

This article is an extract from "Money Laundering -The Practitioners's Guide" to be published in February 2000 by Key Haven Publications PLC. The Guernsey legislation is similar to that which is being enacted in many states, including the United Kingdom.

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

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.

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.

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

David Ewart

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The author discusses the judgment of the Court of Appeal (Criminal Division) in these cases, now reported at [1999] STC846. 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 EC Tax Journal Volume 4 Issue 1

EU Tax Harmonisation

Kenneth Walker

page 1

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

page 11

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

page 45

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

page 55

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

page 71

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

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.

Royal Bank of Scotland: Implications for *Bachmann*?

Timothy Lyons

page 163

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 articles 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 a 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.