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From the Editors

EDITORIAL

The 2nd July Budget Speech and the Finance (No 2) 1997 Act have introduced surprisingly few changes to the areas covered by this *Review*. The Chancellor kept to his promise of not raising taxes, even if he did, as widely predicted, increase the tax yield by abolishing tax credits on Schedule F distributions.

There were, surprisingly, no changes to inheritance tax. Potentially exempt transfers remain, as does 100% relief on qualifying agricultural and business property. The Consulting Editor discusses in his article 'Hold-Over Relief via Revocable Settlements' a strategy for obtaining hold-over relief from capital gains tax on a gift while at the same time making only a potentially exempt, rather than a chargeable, transfer of any size. If potentially exempt transfers are abolished in the spring 1998 Budget Speech, this strategy will no longer be available.

The inheritance tax gifts with reservation of benefit provisions were introduced along with potentially exempt transfers in 1986. It is likely that while potentially exempt transfers will be abolished, the provisions will remain. In *Lady Ingram's Executors v IRC*, the Consulting Editor was unable to persuade a majority of the Court of Appeal that the lease carve-out scheme was effective to prevent the provisions applying. The majority did not accept the Revenue argument and found for the Revenue on a narrow ground which means that, despite this decision, many variants on the scheme still work. As Millett LJ observed *arguendo*, it will be very easy for any well-advised taxpayer in future to avoid falling into the trap the majority believed to exist. As Ferris J had found for the taxpayer, the judges so far have been equally divided. Leave to appeal to the House of Lords has been given. The appeal is likely to be heard in the new year. Amanda Hardy discusses both the merits and scope of the decision in her article in this issue.

The Consulting Editor, in his article 'Gifts to Companies: Avoiding the GROB Provisions' discusses the inheritance tax advantages and disadvantages of gifts to companies and publishes for the first time a strategy for enabling a donor to be a beneficiary under a trust to which he has made a substantial gift while avoiding the gifts with reservation of benefit provisions.

Two most important House of Lords decisions on tax avoidance by transfers of assets abroad given within a month of each other have far reaching implications.

In *IRC v McGuckian*, Lords Steyn and Cooke seemed to suggest that *Craven v White* was wrongly decided and that it is once again open season for the Revenue to attack tax planners. In *IRC v Willoughby*, by contrast, a differently constituted Appellate Committee dismissed the Revenue's appeal without needing to hear counsel for the taxpayer and propounded a very narrow doctrine of what constitutes "tax avoidance". In this issue the Consulting Editor has written two articles, one on the *Ramsay* doctrine after *McGuckian*, and the other on the meaning of "tax avoidance" in the light of *Willoughby* and the earlier Privy Council and House of Lords cases of *Challenge Corporation* and *Ensign Tankers*.

The 1906 decision of the House of Lords in *Strong & Co v Woodfield*, where an innkeeper was denied deductibility of damages payable to a visitor who was injured by a falling chimney, must be one of the most bizarre on record. One day, a more sensible House of Lords will refuse to follow it. Until then, lower courts will be tempted to distinguish it in more or less artificial ways. In *McKnight v Sheppard* the Court of Appeal, reversing Lightman J, has wisely held to be deductible legal expenses incurred by a stockbroker in respect of disciplinary hearings before Committees of the Stock Exchange Council in relation to alleged breaches of Stock Exchange rules, which were held to be proved. In his article on the decision, the Managing Editor considers the present state of the judicial authorities and concludes that they contain many fine and difficult distinctions.

In his article "Market Value": What did *IRC v Crossman* Decide?', the Consulting Editor re-analyses the classic decision of the House of Lords in 1936, which is one of the key valuation cases both for inheritance tax and capital gains tax purposes, and concludes that its ambit is far less than generally supposed. He also considers two important Court of Appeal cases on valuation for inheritance tax purposes, *Alexander* and *Walton*. All those involved in negotiating valuations with the Revenue will need to consider this article very carefully and ask themselves whether they may not have been conceding too much to the Revenue in the past.

The Editors welcome contributions, particularly on points raised in articles appearing in the *Review* (or indeed other Reviews and Journals). All articles (whether long or short), ideas for articles, and other correspondence on editorial matters should be addressed to: Julian Ghosh Esq, Managing Editor, The Personal Tax Planning Review, 24 Old Buildings, Lincoln's Inn, London WC2A 3UJ Tel: (0171) 242 2744, Fax: (0171) 831 8095.

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August 1997