

‘TAX AVOIDANCE AFTER *IRC v WILLOUGHBY*’ - A CLARIFICATION

Robert Venables¹

In the above article, published in the last issue of this *Review*, I stated:

‘Professor Willoughby emigrated to Alderney before disposing of the policies and will thus, in my view, escape tax completely under the Chargeable Events provisions, even as respects income which arose to the insurer while he was ordinarily resident in the United Kingdom.’

Professor Willoughby has asked me to make clear the following:

Professor and Mrs Willoughby have not yet disposed of the policies and have no intention of doing so because that would create an immediate liability to Guernsey tax under its general anti-avoidance legislation;

Professor and Mrs Willoughby’s motivation in emigrating from the United Kingdom did not include the avoidance of any United Kingdom tax liabilities; and

The reasons why Professor and Mrs Willoughby took out further offshore policies while resident in the United Kingdom included greater investment flexibility, administrative benefits and reduced charges on changes of investment. It was explained in evidence that what was involved was a long term retirement plan which would have resulted in a *taxable* pension.

I am happy to make it clear that I did not wish to suggest anything inconsistent with any of the above. If it is the case that my words were capable of a different interpretation, then I am sorry if I gave a false impression.

¹ Robert Venables QC, 24 Old Buildings, Lincoln’s Inn, London WC2A 3UJ.
Tel: (0171) 242 2744 Fax: (0171) 831 8095.

The point I was trying to make was that the House of Lords decided that one is not engaging in tax avoidance if one invests in offshore non-qualifying policies. Their reasoning was that, although income and capital gains may be rolled-up within the policy fund free of all United Kingdom taxes,² at the end of the day all the gain on the policy will be brought into charge to United Kingdom tax when it is realised. I merely wished to point out that there is a flaw in this part of the reasoning in that, if the policyholder disposes of the policy at a time when he is not resident in the United Kingdom, there will, in my view, be no charge to United Kingdom tax on the disposal. It was immaterial to my argument whether Professor Willoughby had at the time of writing in fact already disposed of his policies or not.”

¹ Except withholding tax.