
THE OFFSHORE TAXATION REVIEW

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From the Editors

EDITORIAL

In the last issue, the Consulting Editor discussed what could be the most important United Kingdom tax case for ten years: the decision of the House of Lords in *McGuckian*, on appeal from the Court of Appeal of Northern Ireland. In this issue, he discusses the decision of the same House only a month later in *Commissioners of Inland Revenue v Willoughby*, another transfer of assets abroad case. The decision will be more important for the narrow meaning it gave to “tax avoidance” than for what it decided about the transfer of assets provisions.

In ‘The European Holding Company, Revisited’, Milton Grundy updates his 1992 article in Volume 3 of this *Review*. It is fascinating to see what diversity of holding company regimes have been produced by countries as far apart in their views on tax planning as the UK and Malta.

The Court of Appeal has pronounced judgment in *Bricom v IRC*, concerning treaty override by domestic anti-avoidance provisions. The decision will perhaps be more important for what the Revenue conceded than for what the Court actually decided. The Consulting Editor follows up his earlier article on the Special Commissioners’ decision in an article considering both the soundness of the Court of Appeal decision and its importance in tax planning.

Charles Cain considers the implications of changes on US tax on asset protection strategies. He offers a new solution for the changed environment, involving the use of an LLC created under the Isle of Man Limited Liability Companies Act 1996, largely owned by the trustee of a revocable trust of which the US client is the grantor.

The Consulting Editor has taken the welcome decision of the Privy Council in *Orion Caribbean* as the starting point for an extended discussion, in the manner of the French *arrêtistes*, of the concept of territorial source of income.

The importance of the rules against perpetuities and accumulations was widely misunderstood before the motion picture *Body Heat* was made. While their importance is now more generally recognised, the rules themselves are still widely misunderstood. The scope for error increases when they are confused with rules,

such as those of the Bailiwicks of Jersey and Guernsey, which are concerned with the maximum duration of a trust. The Consulting Editor, in his article on the 100 Year Rule, attempts to set the record straight and points out some fiscal dangers of not understanding how the rules operate.

The United Kingdom Finance (No 2) Act 1997 received the Royal Assent in July. There are important provisions which deal with immediate and future restrictions on tax credits attached to dividends and other "distributions" from United Kingdom companies. These will particularly affect shareholders who are resident in foreign jurisdictions which have double taxation treaties with the United Kingdom. The provisions will form the subject matter of a future article in this *Review*.

The Editors welcome contributions. The Editors particularly welcome debate 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, Offshore Taxation Review, 24 Old Buildings, Lincoln's Inn, London WC2A 3UJ.

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October 1997