

TAX CHAMBERS 15 OLD SQUARE LINCOLN'S INN
FISHER v HMRC SEMINAR NOVEMBER 11th 2014
TRANSFER OF ASSETS ABROAD - A UK CONSTRUCTION
ROBERT VENABLES Q.C.

TRANSFER OF ASSETS ABROAD - A UK CONSTRUCTION

Robert Venables Q.C.¹

1 Introduction

1.1 The Litigation

1.2 The Transfer of Assets Abroad Provisions

1.3 Scope of this Talk

2. Does Income Tax Need to Have Been Avoided?

2.1 Legislative and Judicial History in Outline

2.2 Finance Act 1997 Amendments

2.3 IRC v McGuckian

3. Which Individuals, If Any, Can Be Treated As A Transferor Where the Actual Transfer is Made by A Company?

3.1 Judicial History

3.1.1 *Congreve and Congreve v Commissioners of Inland Revenue* (1948) 30 TC 163

RV's *Taxation of Trusts 2010* at 22B.4.6 Who is a Transferor?:

¹ Chairman of the Revenue Bar Association 2001-05, Bencher of the Middle Temple, Fellow of the Chartered Institute of Taxation, Chartered Tax Adviser, (Council Member 1999- 2011), TEP. Author of Non-Resident Trusts (9th edition forthcoming), The Taxation of Trusts 2010 (published by Key Haven June 2010) The Taxation of Foundations (published by Key Haven 2010), Inheritance Tax Planning and numerous other works on trusts and tax. Senior Q.C. of Tax Chambers, 15 Old Square, Lincoln's Inn.

TAX CHAMBERS 15 OLD SQUARE LINCOLN'S INN
FISHER v HMRC SEMINAR NOVEMBER 11th 2014
TRANSFER OF ASSETS ABROAD - A UK CONSTRUCTION
ROBERT VENABLES Q.C.

“The term "Transferor" is not used at all in Income Tax Act 2007. It was used in the pre-Income Tax Act 2007 legislation, but only in the information provisions (e.g. Income and Corporation Tax Act 1988 section 745(3)(a)), where its meaning was obviously thought to be obvious!

“The term has been in use for many years. It became particularly important after it was established by the House of Lords in *Vestey v Inland Revenue Commissioners* [1980] A.C. 1148 that the only person who could be made chargeable under Income Tax Act 1952 section 412 [Income Tax Act 1952] was an individual who had sought to avoid liability to income tax by means of such transfers of assets as are mentioned in the preamble, which read: "For the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom ...”

“In order to be so taxable, must a person have actually effected the transfer in question? Or is it enough that he has sought to avoid liability to income tax by means of the transfer? In *Vestey v Inland Revenue Commissioners*, the House of Lords decided that beneficiaries of a discretionary settlement trusts who had not been in any way concerned in the making of the settlement were not caught.

“It is highly arguable that

- (a) Lords Wilberforce and Salmon would confine liability to actual transferors.
- (b) Lord Edmund Davies would clearly extend it to persons who procured the transfer
- (c) while the language of Viscount Dilhorne and Lord Keith is more ambiguous, it is wide enough to cover persons who procured the transfer (or their spouses), provided they had sought to avoid liability to income tax by means of a Relevant Transfer.

“While in *Inland Revenue Commissioners v Pratt* [1982] STC 733, Walton J seems to have assumed that it had been decided in a person who procured a transfer could be a transferor, he upheld a finding of fact that the taxpayers were not such persons. I would question whether that assumption was correctly made.”

TAX CHAMBERS 15 OLD SQUARE LINCOLN'S INN
FISHER v HMRC SEMINAR NOVEMBER 11th 2014
TRANSFER OF ASSETS ABROAD - A UK CONSTRUCTION
ROBERT VENABLES Q.C.

3.1.2 *Inland Revenue Commissioners v Pratt*

3.2 Fisher First Tier Tribunal Decision

4. What is the scope of the motive defence?

5. Income from a New Trade

Robert Venables Q.C.

Tax Chambers,
15 Old Square,
Lincoln's Inn.

11th November 2014